



Legal and Regulatory Review: Climate Change, the Environment and Health in the UK

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Introduction

Climate change represents one of the most pressing existential threats facing the planet. The United Kingdom (UK) is subject to an array of ambitious international and national legal obligations to reduce its emissions of greenhouse gases to mitigate further climate change, and to facilitate its adaptation to the effects of a changing climate.

Climate change law is extensive and often complex, highly technical, and multifaceted. Piecing together the legal framework can be a daunting task, even for lawyers. A substantial array of legislation applies to climate change, and national and international courts regularly hear cases on a number of climate-related issues. In the UK, most aspects of environmental protection, and climate change issues, have been further devolved to the governments of Scotland, Northern Ireland and Wales, each of which take subtly different approaches to a common issue. Despite the importance of climate change to society, and the strong interest of the general public in the development of laws and policies to address these problems, there are relatively few resources to help make the UK legal framework readily accessible. This Review aims to provide an overview of both the legal approaches and obligations concerning climate change, as well as the most significant recent cases that have interpreted these requirements in the UK and transnational courts.

This review is divided into three parts:

1. International law
2. UK law
3. Devolved law

The first part of this Review introduces the international treaties concerning climate change to which the UK is a party. This part outlines the UN Framework Convention on Climate Change 1992, developed as the primary architecture of international law to frame the global response to climate change, as well as other legally-binding regimes such as the Kyoto Protocol 1997 and the Paris Agreement 2015. It also considers the growing role that human rights treaties and institutions may have to play as climate change is increasingly considered to have significant impacts on human health, wellbeing, property rights and other fundamental interests.

The second part of this Review details the main legislation developed by the UK Government addressing climate change. The Climate Change Act 2008 primarily frames the national response to climate change, and the main vehicle through which the UK government has sought to fulfil its international commitments regarding emissions reductions, notably by instituting its 'net zero' targets. However, a number of different laws are also important. This includes planning law, which involves a complex network of laws, policies and legal judgments, and has provided a vital opportunity to challenge development decisions that could undermine the pursuit of net zero. Increasingly, climate commitments have also been applied to a host of non-governmental organisations, ranging from churches to companies. This part of the Review unpacks this framework and illustrates the key requirements of the law.

The final part of this Review considers the laws and policies of the devolved governments. Scotland and Northern Ireland have each enacted their own Climate Change Acts, which have important and interesting differences to the UK legislation, while Wales has a novel approach based on ensuring protections for future generations.

While the Review seeks to be comprehensive, its primary focus is to make the legislative and policy framework as accessible as possible to an audience that is interested in climate change, but may not have a legal background. It cannot therefore be a fully exhaustive account of the policies and laws applying to all industries and sectors, and nor is it intended as a substitute for specialist advice on a specific legal matter. This review was completed between June and August 2024, and has incorporated as many recently-decided cases by the various courts of the UK on climate change. As the Review indicates, a number of cases remain ongoing with decisions yet to be rendered. Climate change law and policy remains remarkably fast-paced and is constantly evolving. This Review seeks to capture and document the core framework as it stood in summer 2024.

Summary of Law and Regulation

UK's International Climate Commitments

Conference of the Parties (COP)

The COP provides an opportunity to exercise leadership on climate change considerations. COP26 was convened in the UK in 2021. The COP is the primary decision-making body of the UNFCCC, where the parties review progress and seek to agree on future emissions standards, individual climate policies, and the further interpretation of the convention. The decisions of the various COPs are therefore also of regulatory significance to each respective party. Significantly, the COP provides a greater degree of flexibility for the UNFCCC to respond to changing conditions, and to develop additional binding mechanisms and agreements, most notably the 1997 Kyoto Protocol and the 2015 Paris Agreement (see below).

The UN Framework Convention on Climate Change 1992

The UNFCCC is an international treaty that has provided the basis for international climate change negotiations (through its annual Conference of the Parties), climate related agreements and national policies. The UNFCCC recognises a need to develop climate change strategies that will stabilise greenhouse gas emissions to a pre-1990 level. The convention places obligations on states that have signed the treaty, such as the UK, to address these issues and acknowledges that the most developed countries must take specific actions to reduce emission and support developing countries. The UNFCCC laid the ground for subsequent international agreements, namely the Kyoto Protocol and the Paris Agreement.

The Kyoto Protocol 1997

The Kyoto Protocol helps to implement the UN Framework Convention on Climate Change by providing a series of technical requirements for certain countries to reduce their emissions of greenhouse gases. The Kyoto Protocol only creates obligations for developed states, which includes the UK, to reduce their emissions by at least 5% of their 1990 levels by 2012. Meeting this target in practice required significant changes to industrial processes, energy production and infrastructure, and some important developed countries chose not participate in the second phase of the Protocol. To help developed countries make these major changes, a series of market-based mechanisms were introduced to allow them to offset emissions in exchange for undertaking projects or assisting countries to reduce their emissions.

The Paris Agreement 2015

The Paris Agreement 2015 is the most recent legally binding component of the international climate change framework. The Agreement expands its approach to the principle of common but differentiated responsibility and integrates universal commitments, rather than focusing primarily on the role of developed countries. The Paris Agreement aims to hold the increase in global temperature to 2 °C above pre-industrial levels and aspires to reduce this to a 1.5 °C increase. The main requirement of the Paris Agreement is for every country to designate and communicate its Nationally Determined Contributions, which are a series of

actions that each Government will take to reduce their greenhouse gas emissions and to build resilience to adapt to the impacts of climate change.

[The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950](#)

The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (better known as the European Convention on Human Rights) is a pioneering treaty that guarantees a series of fundamental human rights, and establishes a Court through which applicants can hold their Governments to account for violations of the Convention. Although the Convention does not expressly apply to climate change, the Court has ruled that the environmental issues are incorporated within the rights protected by the Convention. In April 2024, the Court gave an important judgment in the case of *Verein KlimaSeniorinnen Schweiz v. Switzerland*, in which deficiencies in climate policy on the part of the Swiss Government were considered to have breached the right to private and family life protected under Article 8 of the Convention.

UK Climate Change Legislation

[Climate Change Act 2008](#)

The Climate Change Act 2008 is the main legislation governing the UK government's obligations and responsibilities towards mitigating and adapting to climate change. The Act establishes the overarching requirement for the UK to attain net zero by 2050. To achieve this objective, the UK government develops carbon budgets on a five-year basis to facilitate a steady net reduction of emissions to meet this target in stages. Initially, the climate targets were less ambitious and sought a reduction to 80% of emissions at 1990 levels, although this has been amended in 2019 in the light of the UK's accession to the Paris Agreement. The Climate Change Act 2008 also requires the UK government to assess the risks of climate change and develop National Adaptation Programmes. The Act created an independent advisory body, the Climate Change Committee, which provides neutral advice to the UK and devolved governments on their respective climate policies. The devolved governments have separate legislative arrangements for climate change – Scotland and Northern Ireland have both enacted individual Climate Change Acts, while the Environment (Wales) Act provides a legal basis for the Welsh Government to address climate change.

[Town and Country Planning Act 1990](#)

The Town and Country Planning Act 1990 is the most prominent legislation that makes up a wide range of laws, regulations and policy documents that collectively comprises the planning framework for the UK. The Town and Country Planning Act empowers Local Planning Authorities (LPAs) to develop plans to frame future development in the areas under their control, and to make decisions on applications for planning permission based on these plans. In some cases proposals are 'called in', where the relevant Secretary of State will take the decision on whether to approve the development, rather than the LPA. The UK government's central planning documents require LPAs to take climate mitigation and

adaptation into account in both these plans and their decision making. In June 2024 the [Supreme Court](#) ruled that decision-makers considering planning applications for fossil fuel production must also consider the greenhouse gas emissions from burning the fuel, as well as the emissions made during the life of the development.

[Planning Act 2008](#)

The Planning Act 2008 is a lengthy statute that provides a planning framework for ‘nationally significant infrastructure projects’. These are major industrial projects, such as building new highways and airports, that are likely to have implications for achieving net zero. When the UK government is advised that a nationally significant infrastructure project is necessary, it will undertake a process to ‘designate’ a National Policy Statement for that sector. The National Policy Statement will provide a framework against which applications for development consent can be assessed. In developing a National Policy Statement, the relevant Secretary of State must consider how that policy will contribute to mitigating and adapting to climate change, and to achieving sustainable development. National Policy Statements can be subject to judicial review, if it is considered that these obligations have not been met.

[Companies Act 2006](#)

The Companies Act 2006 is an extensive statute that provides the primary obligations relating to company law in the UK. It has recently been amended to place company directors under wider duties to prepare and publish Non-Financial and Sustainability Information statements, which must contain the climate-related financial disclosures of the company. Similar obligations have been introduced under the amended Pensions Act 1995 in relation to pensions schemes. The Companies Act also establishes a series of legal duties on company directors. This has also been amended to have regard to the impact of the company’s operations on the community and the environment. Shareholders in a company can seek to bring legal claims against company directors for alleged wrongdoing. Claims have been initiated on this basis against leading oil companies to try to promote a greater degree of climate change accountability, but to date the English courts have been reluctant to allow such actions to proceed.

Devolution and Climate Change

Scotland

[Climate Change \(Scotland\) Act 2009](#)

The Climate Change (Scotland) Act 2009 provides a comprehensive framework for the Scottish Government to work towards mitigating and adapting to climate change in Scotland. The Act was substantially amended in 2019 to apply the UK-wide net zero requirement to Scotland, although the Scottish target is set the earlier point of 2045, rather than 2050. Important innovations were made in the Act, including the novel objective of ‘Just Transition’ and a series of unique institutions that have provided for additional public engagement. Further revisions to the Act are forthcoming, and the Scottish Government intends to revise

its initial approach to setting annual targets in favour of developing five-year carbon budgets.

Northern Ireland

[Climate Change \(Northern Ireland\) Act 2022](#)

The Climate Change (Northern Ireland) Act 2022 is the first statute enacted by the Northern Ireland Assembly to frame its approach to mitigating and adapting to climate change. The Act applies the 2050 net zero target to Northern Ireland, although a special exception is made regarding methane reductions due to the important role of agriculture to the economy. The Act incorporates important elements of the Scottish approach, notably regarding the principle of Just Transition. There is also provision for a Northern Ireland Climate Commissioner and requirements for the development of Climate Action Plans and Sectoral Plans to facilitate coordinated climate policies.

Wales

[Environment \(Wales\) Act 2016](#)

The Environment (Wales) Act 2016 provides the legal foundation for the Welsh Government to manage the natural resources of Wales. Climate change is addressed prominently in the Act, providing the Welsh Government with powers and responsibilities to develop five-yearly carbon budgets, establish interim climate targets and to achieve net zero in Wales by 2050. Instead of a specific Climate Change Act, as in Scotland and Northern Ireland, the Environment (Wales) Act 2016, in conjunction with a package of secondary legislation called the Climate Change (Wales) Regulations, which are periodically updated, provides the legal framework to mitigate and adapt to climate change in Wales.

[Wellbeing of Future Generations \(Wales\) Act 2015](#)

The Wellbeing of Future Generations (Wales) Act 2015 is a unique statute that provides a legal duty for public bodies in Wales to act in the interests of future generations. It is currently the only legislation of its kind in the UK, although proposals have been made for similar legislation in Westminster and Scotland. The Future Generations (Wales) Act 2015 places a duty on public bodies to carry out sustainable development and to meet a series of wellbeing goals, of which climate change is a cross-cutting theme. The legislation is supported by a Future Generations Commissioner for Wales, who advises public bodies on how sustainable development and the wellbeing goals may be implemented and achieved in the matters that are under their control and responsibility.

1. The UK's International Climate Commitments

International law to protect the global environment, and to address issues of common concern has a long history, although consideration of climate change is a comparatively recent development.

In 1972, the [UN Conference on the Human Environment](#) was convened to consider for the first time how the international community could better protect its common environment. Although this resulted in a number of important developments, climate change was a largely peripheral issue at this time, and the global community recommended only that Governments should 'be mindful of activities in which there is an appreciable risk of effects on climate'.¹

By the late 1980s, however, climate change had become a far more prominent part of the international agenda. In 1988, the [United Nations Environment Programme](#) and the [World Meteorological Organization](#) created the [Intergovernmental Panel on Climate Change](#) (IPCC) as an international body for assessing the science of climate change. Later in 1988 the UN General Assembly adopted a Resolution recognising that climate change is 'a common concern of mankind, since climate is an essential condition which sustains life on Earth' and called for 'necessary and timely action to be taken to deal with climate change within a global framework'.²

In 1992, this global framework was developed at the [UN Conference on Environment and Development](#), culminating in the adoption of the [UN Framework Convention on Climate Change](#) (UNFCCC). The UNFCCC remains the primary source of international climate obligations for Governments and features near-universal participation by the countries of the world, with 198 current parties, including the UK.

The United Nations Framework Convention on Climate Change 1992

As its name suggests, the UNFCCC provides a 'framework' for international activities towards climate change. Therefore, rather than laying down an exhaustive series of targets, policies, and technical standards within one exceptionally large document, the UNFCCC instead provides a distinct architecture for the elaboration of these requirements.

This includes a Conference of the Parties (COP), which is convened on an annual basis and hosted in rotation between the various parties. The UNFCCC also provides for a Secretariat, which acts as the administrative wing of the treaty. A series of subsidiary bodies provide

¹ Recommendation 70 of the United Nations *Report of the United Nations Conference on the Human Environment 1972*, United Nations Document A/CONF/48/14/Rev.1. Available at: <https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf>.

² United Nations General Assembly Resolution 43/53 of 6 December 1988 *Protection of global climate for present and future generations of mankind*. Available at: <https://www.ipcc.ch/site/assets/uploads/2019/02/UNGA43-53.pdf>.

scientific and technical advice, assist in reviewing implementation, and administer financial resources.

The preamble of the UNFCCC expresses that ‘human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth’s surface and atmosphere and may adversely affect natural ecosystems and humankind’. Two important approaches are taken by the UNFCCC in framing the obligations imposed upon national governments.

First, the UNFCCC pioneered the concept of ‘common but differentiated responsibilities’, which acknowledges that while responsibility for combatting climate change and its impacts falls on all members of the global community, the ability of each individual country to take action is different and that their commitments to do so must be tailored accordingly.

Second, the preamble to the UNFCCC expressly recognises that ‘largest share of historical and current global emissions of greenhouse gases has originated in developed countries’. Therefore while all countries will increasingly be affected by climate change, responsibility for the greenhouse gas emissions that drive it lies overwhelmingly with the most developed. The UNFCCC recognises in Article 3 that that developed states should ‘take the lead in combatting climate change’. However, the UNFCCC also recognises that the contribution of developing states to global warming is likely to increase. It therefore has to steer a difficult balancing act between respect for countries’ right to develop, while ensuring their respect for obligations not to further drive dangerous climate change.

The objective of the UNFCCC is expressed in Article 2 as:

‘to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner’.

Therefore the UNFCCC does not seek to stop all emissions of greenhouse gases, but instead aims to stabilise them at safer levels. The UNFCCC did not articulate exact time scales within which this should occur. However, more specific sets of targets were established on particular countries, including the UK, in the 1997 Kyoto Protocol and the 2015 Paris Agreement (discussed in more detail below).

Underpinning this objective are five core principles to guide the parties:

- the parties are to protect the climate system ‘for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities’, with developed states required to ‘take the lead’ in this respect;

- full consideration shall be given to the specific needs and circumstances of developing states that are party to the UNFCCC, especially those that are most vulnerable to the adverse effects of climate change and those that would have to bear a disproportionate or abnormal burden;
- precautionary measures should be taken to anticipate, prevent or minimise the causes of climate change and to mitigate its adverse effects;
- all parties have a right to sustainable development; and
- parties should cooperate to promote a supportive and open international economic system to promote sustainable economic growth and development.

Climate change obligations do not follow a generic approach and national commitments are tailored to their individual capacities. Two key clusters of commitments are prescribed under the UNFCCC. First, the requirements of Article 4(1) apply to all parties, while taking into account their common but differentiated responsibilities. They must develop, update, publish and make available national inventories of greenhouse gas emissions and to develop national programmes to mitigate climate change by addressing anthropogenic emissions of such gases. The parties must also cooperate to control, reduce and prevent emissions, to promote sinks and reservoirs for greenhouse gases and, to the extent feasible, take climate considerations into account in social, economic and environmental policies.

Second, additional obligations are prescribed under Article 4(2) for developed countries and 'economies in transition'. The countries subject to these obligations are identified in the Annexes to the UNFCCC. This includes the UK, which is listed on Annex I and Annex II. Most importantly, countries listed on Annex I are required to adopt national policies to limit anthropogenic emissions of greenhouse gases and protect sinks and reservoirs, and to commit to reducing emissions of particular gases to 1990 levels. Countries listed on Annex II must also provide funding and resources to meet the agreed costs of developing countries in complying with their climate obligations and to assist those countries that are particularly vulnerable to the adverse impacts of climate change.

The Kyoto Protocol 1997

Article 4 of the UNFCCC required the parties to review at the first COP whether the targets set for Annex I parties were sufficient. The first COP was convened in 1995 in Berlin, and the first decision to be adopted by the parties, called the 'Berlin Mandate', agreed that these commitments were 'not adequate'.³ The Berlin Mandate called upon the parties to develop further targets for the post-2000 period for Annex I countries, while simultaneously agreeing that no new targets should be applied to developing states. The result of these negotiations was the [Kyoto Protocol](#), which was adopted by the parties at the third COP in 1997 and entered into force in 2005. The Protocol currently has 192 parties, including the UK.

The Kyoto Protocol is a complex agreement that establishes specific commitments for particular developed states (including the UK) to reduce emissions of greenhouse gases within

³ Decision 1/CP.1 The Berlin Mandate: Review of the adequacy of Article 4, paragraph 2 (a) and (b), of the Convention, including proposals related to a protocol and decisions on follow-up of the United Nations *Report of the Conference of Parties on its First Session* 1995. Available at: <https://unfccc.int/resource/docs/cop1/07a01.pdf>.

prescribed time frames. Annex A of the Protocol lists six greenhouse gases that are to be reduced (namely carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride), and the primary industrial sources of these gases. Annex B identifies the countries required to reduce their emissions of these gases and the quantified emission limitation or reduction period for each individual government. It stipulated an initial commitment to reduce the overall emissions of such gases by at least 5% below 1990 levels in the commitment period 2008-2012. These targets were accompanied by further commitments for the named developed states to implement further national policies to address climate change through enhancing energy efficiency, protecting carbon sinks, promoting renewable energy, improving the sustainability of agriculture, developing carbon sequestration techniques and advancing economic reforms to remove incentives for greenhouse gas emissions.

The Kyoto Protocol also introduced of three significant market-based mechanisms to help Annex I parties under the UNFCCC to meet these commitments.

- Article 6 created the concept of Joint Implementation, which allows one Annex I party to undertake either a project that reduces emissions or enhances carbon sinks in another Annex I party. That Government then receives Emission Reduction Units that can be counted against its own national targets.
- Article 12 created the [Clean Development Mechanism](#) (CDM), which allows Annex I parties to provide financial assistance to non-Annex I parties to reduce emissions. In exchange for Certified Emissions Reductions, which may also be counted by an Annex I party against its own national targets.
- Article 17 allows Annex I parties to participate in Emissions Trading 'for the purposes of fulfilling their commitments under Article 3'. This allows parties to sell emissions that they are permitted to them but which have not been used. The rules and modalities for such activities was established under the subsequent [Marrakesh Accords](#).

The Kyoto Protocol also established a system to monitor, review and verify emissions targets, as well as a compliance system. In 2008 the [Doha Amendment to the Kyoto Protocol](#) was adopted, which created a second commitment period for the years 2013-2020. The Doha Amendment provided a fresh set of commitments for Annex I parties and revised the list of greenhouse gases subject to these obligations. Although the Doha Amendment ultimately secured the required support of 144 parties, including the UK, a number of key Annex I states declined to participate, necessitating further reform to the international climate change regime.

The Paris Agreement 2015

The [Paris Agreement](#) is a legally binding treaty that was adopted at COP21 in 2015. The Paris Agreement seeks to increase the level of climate ambition by the global community and introduces a series of new targets and requirements, for both developed and developing countries. Symbolically, the Agreement opened for signature on 22 April 2016, which is designated Earth Day. The Paris Agreement has 195 parties, including the UK.

The Paris Agreement was necessary for two main reasons. First, some highly industrialised countries opted not to participate in the second commitment period of the Kyoto regime as they were concerned about the impacts that this could have on their economies. Second, while the international climate regime had traditionally applied to developed states, it had become clear that a number of non-Annex I states were contributing significantly to the global output of greenhouse gas emissions. This led to negotiations to seek to agree on a more uniform set of targets.

In 2009, the [Copenhagen Accord](#) was agreed at [COP15](#) in which developed states agreed to commit individually or jointly to a series of quantified economy-wide emissions targets. Significantly, for the first time, non-Annex I states agreed to implement mitigation actions in a similar manner to developed countries. A further important element of the Copenhagen Accord was the creation of a [Green Climate Fund](#) to mobilize \$100 billion annually by 2020 to address the needs of developing states.

In 2011 a process began to negotiate a legally-binding instrument that would be ‘applicable to all’.⁴ This raised contentious questions over the continuation of the concept of common but differentiated responsibilities and the traditional approach of developed states bearing the greater burden for the impacts of climate change.

The preamble to the Paris Agreement expands upon the notion of climate change as a common concern of humankind expressed in previous agreements. It calls on its parties, when taking action to address climate change, to ‘respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’. In addition, the Paris Agreement notes a more multi-species dimension, recognizing ‘the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change’.

The core obligations of the Paris Agreement are articulated in Article 2, as ‘holding the increase in the global average temperature to well below 2 °C above pre-industrial 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’. The Paris Agreement also seeks to increase 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. Echoing the Kyoto Protocol, the Paris Agreement aims to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. The Paris Agreement also observes the need for its parties to apply a ‘just transition’ of the workforce, through the creation of

⁴ Decision 1/CP.17 Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action of the United Nations *Report of the Conference of Parties on its Seventeenth Session* 2011. Available at: <https://unfccc.int/sites/default/files/resource/docs/2011/cop17/eng/09a01.pdf>.

decent work and quality jobs. A number of governments have created institutions to help facilitate this, including in Scotland and Northern Ireland.

The main innovation of the Paris Agreement requires all parties to individually prepare, communicate and maintain [Nationally Determined Contributions](#) (NDCs) that it intends to achieve and to pursue domestic mitigation measures to facilitate achieving these objectives. In this regard, the Paris Agreement does not elaborate what NDCs should be, or how they should be substantively achieved, and places the onus on each party to do so in good faith and in line with national capacity. Each NDC is considered to be a ‘progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances’.

In December 2020, the UK communicated its NDC as being to reduce economy-wide greenhouse gas emissions by at least 68% by 2030, compared to 1990 levels.⁵ This commitment will accordingly frame UK climate change policies in the years up to 2030.

The European Convention on Human Rights

Traditionally, human rights treaties have tended to focus on a relatively narrow set of civil and political rights and entitlements. Many of the most prominent treaties concerning human rights were developed in the years following the Second World War, and were designed to protect ordinary citizens from interference with their rights by their governments. Accordingly, they were not originally intended to be used as mechanisms to promote environmental protection. However, in recent years an increasing volume of cases has been brought before international courts, who have reinterpreted the mandate of their constituent treaties to encompass consideration of environmental concerns. This has led to a number of cases engaging climate change having been raised as a result.

One of the most longstanding treaties for the protection of human rights is the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR). The ECHR was adopted in 1950, and entered into force in 1953; the UK became a party to the Convention in 1951. The ECHR was developed under the auspices of the Council of Europe, a separate, larger, and older organisation than the European Union (EU), and the UK’s ongoing participation in the ECHR is unaffected by Brexit.

The ECHR is a highly innovative treaty that was inspired by the (non-binding) [Universal Declaration of Human Rights](#), adopted by the UN General Assembly in 1948. The Convention requires its parties to guarantee a series of fundamental rights, including right to life, freedom of expression, fair trials and privacy, as well as freedom from torture, slavery, and discrimination. The Convention also created an international court, the European Court of Human Rights, to enforce these rights, allowing individuals to bring an action against a party

⁵ See further: Secretary of State for Business, Energy and Industrial Strategy (2022) United Kingdom of Great Britain and Northern Ireland’s Nationally Determined Contribution, available at: <https://assets.publishing.service.gov.uk/media/633d937d8fa8f52a5803e63f/uk-nationally-determined-contribution.pdf>.

to the Convention if these rights had been violated. Prior to the [Human Rights Act 1998](#), if an individual wished to enforce their ECHR rights against the UK, they would have to apply to the European Court of Human Rights. After the Act entered into force in 2000, such cases are now heard in the UK courts, although it is possible to apply to appeal to the European Court of Human Rights after the issue has been considered by the national courts. This structure and approach has subsequently been highly influential, and separate regional human rights treaties and courts have been established for [Africa](#) and the [Americas](#).

The text of the ECHR does not expressly establish any rights concerning climate change or the environment. However, many of the rights in the Convention itself may be engaged in an environmental context and over 300 cases have now been heard by the Court that concern environmental harms.⁶ For example, the Convention could be invoked in cases of death from exposure to toxic materials, which could infringe the right to life protected under Article 2 of the Convention, or the inability to attain an effective remedy, which could infringe the right to fair trial under Article 6. Similarly, cases could include the unfair denial of rights of protest for demonstrators concerned about climate policies, which would engage rights to freedom of expression under Article 10 of the Convention. The Court has also clearly established in the case of [López Ostra v. Spain](#) that 'severe environmental pollution' could amount to a violation of Article 8 of the Convention, which protects the right to respect for family life and home.

A number of applications have been made to the Court, specifically raising concerns over the climate policies of particular Governments.⁷ While a considerable proportion of these claims have been declared inadmissible, and others are pending, on 9 April 2024 the Grand Chamber of the Court considered three major cases involving climate change. Two of the cases were ruled inadmissible. In [Duarte Agostinho and others v. Portugal and 32 others](#), a number of young people resident in Portugal brought an action against thirty-three European governments. The applicants alleged that actions by these countries had contributed to harms caused by climate change, specifically: emissions released by these countries, both within and beyond their jurisdictions; as well as the export of fossil fuels extracted on their territories; the import of goods whose production had caused the release of emissions; and permitting entities in their jurisdiction to contribute to the release of emissions overseas by either extracting fossil fuels or by investing in their extraction. The applicants argued that this was a violation of Articles 2 (right to life), 3 (prohibition of torture) 8 (right to private and family life) and 14 (prohibition of discrimination). They alleged these violations on the basis of the current and future impacts of climate change, especially heatwaves and from wildfires and their associated smoke, upon their physical and mental health and personal amenities. Ultimately, the Court considered the case to be inadmissible, as the applicants had not exhausted their domestic remedies (since they had not applied to the Portuguese courts) and considered the Convention could not be applied to such an extraterritorial degree.

In the second of the cases to be considered inadmissible, [Carême v. France](#), the applicant was appealing against a decision of the French courts. Having previously been a municipal mayor, the applicant had since been elected to the European Parliament and had therefore relocated

⁶ See further: European Court of Human Rights (2024) *Environment and the European Convention on Human Rights Factsheet*, available at: https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG.

⁷ These cases are summarised further at: European Court of Human Rights (2024) *Climate Change Factsheet*, available at: https://prd-echr.coe.int/documents/d/echr/fs_climate_change_eng.

to Brussels. However, the applicant brought an action against the French government over the projected risks of flooding to his former constituency as a result of climate change. The *Conseil d'État* rejected his application on the basis that he had no legal interest in bringing the claim as he was no longer resident in the area and there was little indication of whether he would be resident during there during the timescale in which flooding was projected to occur. The European Court of Human Rights upheld the decision of the domestic courts that the applicant lacked the legal standing to bring the case.

The third case, [*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*](#) was initiated by a non-governmental organisation that had been established in Switzerland by a group of elderly women. The applicants alleged that the Swiss government's failure to take measures to achieve climate targets under the Paris Agreement violated their rights under Articles 2 and 8 of the Convention, as the resultant heatwaves would have particular impacts upon the health of women of an advanced age. The Court ruled clearly that climate change is capable of posing significant threats to the enjoyment of the various rights protected under the Convention, and that current global mitigation efforts are insufficient to meet the targets prescribed under the Paris Agreement.

The Court declared that while it is competent only to consider the provisions of the ECHR, rather than the specific obligations of the climate change treaties, governments nevertheless had positive obligations under Article 8 of the Convention to mitigate climate change. The Court considered that Switzerland had failed to put in place necessary measures and policies to quantify reductions in greenhouse gas emissions, which amounted to a violation of Article 8. This is an important first step in role of the Court in potentially holding ECHR parties to account on human rights grounds for deficiencies in their national climate policies.

There are however a number of uncertainties remaining. The Court, having found a violation of one provision of the ECHR, declined to consider the Article 2 arguments, and the judgment itself was subject to an extensive dissenting opinion that raised concerns about perceived judicial over-reach.

This emerging area of ECHR application will be refined by subsequent judgments, with there likely to be many applications in the light of this ruling. Subsequent cases are poised to follow in swift succession – in June 2024, the Court gave notice to Austria that it would grant priority status in the forthcoming case of [*Müllner v. Austria*](#). The applicant in this case is challenging a policy of the Austrian government to grant tax benefits to the aviation industry, alleging that this contributes to climate change impacts that are exacerbating his long-term ill-health.

Advisory Opinions of International Courts and Tribunals

Beyond the UNFCCC regime, in recent years a number of governments have sought legal clarification on their obligations and responsibilities concerning climate change. A large number of cases have been brought before national courts by litigants seeking to hold their governments to account for allegedly failing to correctly implement their climate commitments. This has not yet led to international litigation between countries, in which one country alleges that damage has been caused in another country by a failure to adhere to these obligations. However, two requests for advisory opinions have been submitted to

separate international courts concerning national obligations towards climate change, and a third advisory opinion has been sought from the Inter-American Court of Human Rights.

International courts are empowered to hear contentious cases, which involves giving a judgment in a dispute between countries, and to hear requests for Advisory Opinions, where an international organisation may request clarification on a point of international law. Regional human rights courts also have the power to deliver advisory opinions on aspects of their constituent treaties. Unlike judgments of international courts, advisory opinions are not considered to be legally binding, although they carry significant moral authority and provide a strong indication of how a court would be likely to rule on that issue in a contentious case. Most advisory opinions have tended to concern questions over the competences of particular international organisations. More recently, requests for advisory opinions have focused upon national obligations and have increasingly considered environmental responsibilities.

The first advisory opinion on aspects of climate change was delivered in May 2024 by the [International Tribunal for the Law of the Sea](#) (ITLOS). ITLOS was created by the [UN Convention on the Law of the Sea 1982](#) (UNCLOS), an extensive treaty that codified and developed the international law concerning the global seas, and is popularly considered to be ‘a constitution for the oceans’. UNCLOS currently has 170 parties, including the UK. Although UNCLOS is a vital part of the international framework concerning the global protection of the marine environment, it was negotiated between 1973-1982, at a time at which climate change had limited recognition in international law, and it does not make explicit reference to climate change within its provisions.

The request for an advisory opinion was made by the Commission of Small Island States on Climate Change and International Law (COSIS), a group of Small Island Developing States from the Pacific and Caribbean that are especially vulnerable to the adverse impacts of climate change. Under [Article 1\(3\) of the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law](#), COSIS was founded to ‘promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change’. As part of this mandate, COSIS sought an advisory opinion from ITLOS requesting clarification on what the specific obligations of the parties to UNCLOS are to prevent, control and reduce pollution of the marine environment in relation to the adverse impacts of climate change and to protect and preserve the marine environment from climate change.

In a landmark opinion,⁸ ITLOS considered that anthropogenic greenhouse gas (GHG) emissions met the definition of ‘pollution’ articulated in Article 1(1)(d) of UNCLOS.⁹ Consequently, this triggered the obligation in Article 194 of UNCLOS to take all necessary measures with a view to preventing, controlling and reducing such emissions. Such measures should take into

⁸ *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024. Available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

⁹ *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraphs 174-179.

consideration both the best available science and the relevant international rules and standards contained in the climate change treaties.¹⁰ While this obligation ‘does not entail the immediate cessation of marine pollution from anthropogenic GHG emissions’,¹¹ it involves ‘preventing future or potential pollution and reducing and controlling existing pollution’.¹² This was considered to be an obligation of conduct, rather than one of result,¹³ but one that requires states to exercise ‘stringent’ due diligence.¹⁴ In the view of the Tribunal, a country that failed to comply with this obligation could be held internationally responsible.¹⁵

The ITLOS advisory opinion is a powerful interpretation of the obligations of governments regarding greenhouse gas emissions, albeit from the specific perspective of the commitments established under UNCLOS. However, it is likely to provide important guidance for future considerations of climate change obligations by international courts.

In December 2024, the International Court of Justice (ICJ) will commence public hearings concerning a separate request for an advisory opinion, which had been referred to it by the UN General Assembly.¹⁶ The ICJ is scheduled to deliver its advisory opinion concerning the obligations of states in respect of climate change in 2025, which is likely to be one of the most significant pronouncements of modern international environmental law.

¹⁰*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 243.

¹¹*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 199.

¹²*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 198.

¹³*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 233.

¹⁴*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 241.

¹⁵*Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Case No 31 to the International Tribunal for the Law of the Sea 21 May 2024, Paragraph 223.

¹⁶ <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240531-ord-01-00-en.pdf>.

2. UK Climate Change Legislation

The UK became a party to the [UNFCCC](#) in 1992, and the obligations and commitments established under the international framework have provided a strong impetus for the development of UK-wide climate legislation.

Early policies and legislative approaches

In 2000 the UK Government launched an extensive national Climate Change Programme (CCP) to elaborate how it intended to meet its targets under the Kyoto Protocol.¹⁷ Nevertheless, the CCP extended beyond the Kyoto targets and included an ambitious domestic goal of reducing emissions of carbon dioxide by 20% based on the 1990 levels by 2010. The 2000 CCP sought to reduce emissions primarily by promoting energy efficiency and incentivising a greater use of renewable energy.

An extensive, if fragmented, framework of legislation had been initially developed throughout the 1990s by the UK Government to address its commitments under the UNFCCC. The first legislation adopted by the UK Government to specifically contribute towards mitigating emissions was the [Electricity Act 1989](#). While the Act was primarily intended to reform the electricity industry and to provide a framework for privatisation, important first steps were made within this legislation towards reducing emissions of fossil fuels. Most significantly, [section 32 of the Electricity Act 1989](#) originally established a Non Fossil Fuel Obligation (NFFO) for England and Wales. Section 32 was intended to promote the national nuclear power industry by giving the relevant Government minister the power to order electricity distribution network operators in England and Wales to purchase electricity from non-fossil fuel sources. In 1990, the NFFO was expanded to include renewable energy sources in order to promote this sector in addition to the nuclear industry.

The NFFO was replaced in England and Wales by the Renewables Obligation by [section 62 of the Utilities Act 2000](#), effective from 2002. This sat alongside a separate but similar scheme in Scotland, termed the Scottish Renewables Obligation (SRO),¹⁸ (SRO), with further arrangements for Northern Ireland developed in 2005.¹⁹ The Renewables Obligation sought to encourage electricity generation by and purchased from renewable sources, through the use of tradable certificates known as Renewable Obligation Certificates.²⁰ These certificates were issued to operators of accredited renewable generation stations in respect of the energy

¹⁷ Reproduced at: *UK Climate Change Programme 2000*

<https://web.archive.org/web/20060524100456/http://www.defra.gov.uk/ENVIRONMENT/climatechange/uk/ukccp/2000/index.htm>.

¹⁸ Scottish Government *Renewable and Low Carbon Energy: Renewables Obligation*, available at:

<https://www.gov.scot/policies/renewable-and-low-carbon-energy/renewables-obligation/#:~:text=Renewables%20obligation%202022%20to%202023,be%200.492%20ROCs%20per%20MWh>

¹⁹ Northern Ireland Department for the Economy *Northern Ireland Renewables Obligation*, available at:

<https://www.economy-ni.gov.uk/articles/northern-ireland-renewables-obligation>.

²⁰ Garton Grimwood G and Areas E (2016) *Energy: The Renewables Obligation Briefing Paper* House of Commons Library, available at:

<https://researchbriefings.files.parliament.uk/documents/SN05870/SN05870.pdf>.

that they produced, and provided evidence that they had met their obligations for supplying renewable energy.

The NFFO was incentivised and underwritten by a Fossil Fuel Levy, introduced by [section 33 of the Electricity Act 1989](#). The Levy was a charge paid by suppliers of electricity derived from fossil fuels. It was abolished by [section 66 of the Utilities Act 2000](#), and replaced by a more broad-ranging Climate Change Levy, introduced through [section 30 of the Finance Act 2000](#). The Climate Change Levy, which remains in place today, was introduced as a new environmental tax paid by businesses on their use of electricity, gas and other sources of energy.²¹ The Climate Change Levy does not currently apply to charities or domestic users, or to businesses whose energy use falls below prescribed limits. The intention behind the Climate Change Levy is to incentivise energy efficiency and to reduce emissions.

Further incentives to promote energy efficiency have been developed by the UK government in the form of the Climate Change Agreement scheme, where voluntary agreements may be concluded between the Environment Agency and national industry to reduce energy usage and carbon dioxide emissions.²² In return for measuring and reporting energy outputs and meeting a series of agreed emissions targets, energy-intensive users are eligible to claim a discount on their Climate Change Levy. Initially, renewable energy providers were exempt from the Climate Change Levy, but the exemption scheme was closed in 2015.

The 2000 CCP was reviewed in 2004 and amended in 2006.²³ While a similar approach to the 2000 Programme remained, the 2006 CCP contained important new developments, including:

- recognition that ‘some degree of climate change ... is already inevitable’ requiring complementary approaches to climate adaptation as well as ongoing commitments to reducing emissions;
- recognition that anticipated adverse impacts included ‘health issues in summer’;
- recognition of the important role played by the devolved governments in addressing climate change within the boundaries of their respective competences; and
- provision for a new annual reporting process by the government to Parliament on the level of greenhouse gas emissions in the UK and the steps that the government has been taking to reduce them.

The regulation of the UK’s oil and gas resources has been primarily codified under the [Petroleum Act 1998](#). Although the legislation outlined above has sought to diversify sources of energy, it remains the case that the ‘principal objective’ of the Petroleum Act 1998, as specified in [section 9A](#), is ‘the objective of maximising the economic recovery of UK petroleum’. This objective may eventually require future revision in the light of the UK’s international commitments, and its domestic obligations towards attaining net zero advanced under national and devolved climate change legislation.

²¹ HM Government *Environmental Taxes, Reliefs and Schemes for Businesses*, available at: <https://www.gov.uk/green-taxes-and-reliefs/climate-change-levy>

²² HM Government *Climate Change Agreements*, available at: <https://www.gov.uk/guidance/climate-change-agreements--2>.

²³ HM Government (2006) *Climate Change: The UK Programme 2006*, available at: <https://assets.publishing.service.gov.uk/media/5a7c98f040f0b6629523a8c9/6764.pdf>.

The Climate Change Act 2008

The [Climate Change Act 2008](#) is the most significant single piece of UK legislation addressing climate change. The Act was enacted to elaborate how the UK government will implement its commitments under the international climate change regime. It takes a variety of approaches to addressing climate change, including mitigation (reducing levels of emissions of greenhouse gases), adaptation (i.e. facilitating actions to assess the prospective impacts of climate change and enhance resilience to them), the promotion of emissions trading schemes, and the creation of the [Climate Change Committee](#) as an independent government advisory body.

As detailed further below, the devolved governments of [Scotland](#) and [Northern Ireland](#) have each enacted their own individual Climate Change Acts, applicable to their jurisdictions, which broadly follow similar objectives to the UK legislation. There are however certain differences between the approaches in Scotland and Northern Ireland to attaining net zero, and in the institutions established to facilitate climate change policies. Wales does not have its own Climate Change Act, but separate legislation provides a framework through which the Welsh Government is to attain net zero.

Climate mitigation and 2050 net zero target

Climate mitigation is a core element of the Climate Change Act 2008, and its most prominent obligation is the UK's 'net zero' target, laid down in [section 1](#). This imposes a legal duty on the relevant Secretary of State 'to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline' by 2050. Duties are imposed on the relevant government minister to take action to ensure that this occurs, rather than the Act establishing specific obligations to achieve this upon businesses and individuals in the UK. Subsequent policies and legislation will provide a practical legal basis to meet the net zero target. As currently formulated, these obligations are directed at the Secretary of State for Energy Security and Net Zero, which is a government office created in 2023 that took over the energy and climate duties that had been previously discharged by the Department for Business, Energy and Industrial Strategy. Separate obligations to contribute proportionally to this central UK target have also been formulated by the devolved governments of Northern Ireland, Scotland and Wales. The net zero target established in section 1 relates specifically to carbon, although [section 24](#) of the Act also allows the Secretary of State to set targets for other greenhouse gases.

The [original version of section 1 of Climate Change Act 2008](#) called for the UK government to reduce its emissions to 80% of 1990 levels by 2050. [Section 2 of the Act](#) allows the Secretary of State to amend either the target or the baseline if he or she considers that there have been significant developments in either scientific knowledge about climate change, or in European or international law and policy. In exercising the power to revise either the target or baseline, [section 3](#) requires the Secretary of State to first obtain external advice and consider any representations from the other national authorities. In 2019, the [Climate Change Act 2008 \(2050 Target Amendment\) Order 2019](#) amended the original 80% target to net zero, in order to respond to the more advanced climate ambitions expressed within the international

framework by the Paris Agreement. In so doing, the UK became the first major developed economy to legally commit itself to achieving net zero within a set timescale.

Carbon budgets

The overall net zero objective is intended to be met through a series of emissions restrictions that will be set incrementally by the government. This process is outlined through [section 4 of the Climate Change Act 2008](#), which requires the Secretary of State to set successive five-year 'carbon budgets',²⁴ commencing with the period 2008-2012. A carbon budget is a government order placing a specified cap on the amount of greenhouse gases that are allowed to be emitted within the UK across this time period. Meeting these graduated targets will require increasingly ambitious and far-reaching modifications to manufacturing processes and working practices by industry and businesses. [Section 4](#) requires that each individual climate budget must now be set at least twelve years in advance, in order to provide sufficient opportunity to plan ahead and make the necessary adjustments.

The objectives of the carbon budgets are established under [section 5 of the Climate Change Act 2008](#), which requires the government to first reduce its annual carbon budget to at least 34% of its 1990 levels by 2020, and then to attain net zero by 2050. These are currently the only two named targets within the legislation, and the respective carbon budgets are developed with these milestone years in mind. To do this, the UK government has set six separate climate budgets to date, effective through to 2037, with graduated targets to reduce emissions to 78% of 1990 levels by 2035. The first carbon budget (CB1, applying from 2008-2012) targeted reductions of 26% below 1990 levels, with the second carbon budget (CB2, applying from 2013-2017) intended to reduce this to 32% below 1990 levels. The third carbon budget (CB3, applying from 2018-2022) sought to secure reductions to 38% of 1990 levels and the fourth and current carbon budget (CB4, from 2023-2027) seeks to reduce emissions to 52% of 1990 levels.

The first five carbon budgets were set prior to 2019 and were therefore based on the original section 1 target to reduce emissions to 80% of their 1990 levels by 2050. The sixth carbon budget, CB6, established for 2033-2037 was the first carbon budget to be based on the revised net zero requirements. CB6 is also the first carbon budget to incorporate specific targets for the aviation and shipping sectors, which have been historically exempt from these calculations, due to the operation of the Kyoto Protocol.²⁵ This means that CB6 is the most ambitious carbon budget that has been set to date by the UK government, and the targets are more challenging to attain in comparison to previous carbon budgets. All future carbon budgets will also be set with these targets in mind, with the seventh carbon budget due in 2025.

The reductions specified in the first two carbon budgets were successfully met by the UK government, acting together with the devolved governments. This also meant that the UK met

²⁴ See further: HM Government (2021) *Carbon Budgets*, available at: <https://www.gov.uk/guidance/carbon-budgets>.

²⁵ HM Government (2023) *Carbon Budget Delivery Plan*, available at: <https://assets.publishing.service.gov.uk/media/6424b2d760a35e000c0cb135/carbon-budget-delivery-plan.pdf>.

the first 2020 target set under section 5 of the Climate Change Act 2008. These initial successes were attained by phasing out coal-generated electricity during this period, in tandem with a significant expansion of the renewable energy network to create alternative and less carbon-intensive forms of energy. However, on 18 July 2024, the government's independent advisory body, the Climate Change Committee, announced that despite this progress, the UK was unlikely to meet its current targets, and that only one third of the emissions reductions required to achieve the 2030 target under the Paris Agreement are currently covered by credible plans.²⁶

The Committee made ten recommendations for priority actions to facilitate improvements, including reducing the price of electricity; reversing rollbacks to previously ambitious policies; removing planning barriers to the approval process for onshore windfarms, heat pumps and charging points for electric vehicles; decarbonising public sector buildings; and extending programmes for tree planting and peatland restoration.²⁷ The publication of this analysis was postponed due to the general election in June 2024, although the incoming government subsequently adjusted the planning rules to facilitate the construction of onshore windfarms,²⁸ and a Great British Energy Bill was announced in the King's Speech on 17 July 2024 to accelerate investment in developing renewable energy infrastructure.²⁹

Under [section 12 of the Climate Change Act 2008](#), the Secretary of State has a legal duty to provide a report to Parliament setting out the 'indicative annual range' for the 'net UK carbon account' during every year of the application of each individual carbon budget. The government compares the net UK carbon amount against its individual carbon budgets to ascertain whether it is meeting these targets. [Section 13 of the Act](#) places a legal duty on the Secretary of State to prepare 'proposals and policies' to enable the respective carbon budgets to be met, in order to ensure that the broader 2020 and 2050 targets established in section 5 are met in full. This is further supported by [section 14](#), which requires the Secretary of State to report on these policies 'as soon as is reasonably practical' after each individual carbon budget is set. Significantly, [section 15](#) imposes a duty on the Secretary of State to have 'regard to the need for UK domestic action on climate change', both in setting carbon budgets and in pursuing the net zero target. This means that the onus is on the government to ensure that emissions of greenhouse gases are reduced across the UK, or that the UK increases its removal of these gases, or a combination of both strategies, rather than seeking to purchase reduction credits under the international framework. [Section 16 of the Climate Change Act 2008](#) requires the Secretary of State to make an annual statement to Parliament of UK emissions.

The requirements of sections 13 and 14 have been subject to judicial review, which has required the Secretary of State to substantively revise the UK government's proposals and

²⁶ Climate Change Committee (2024) *2024 Progress Report to Parliament*, available at: <https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/>.

²⁷ Climate Change Committee (2024) *2024 Progress Report to Parliament*, available at: <https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/>.

²⁸ HM Government (2024) *Policy Statement on Onshore Wind*, available at: <https://www.gov.uk/government/publications/policy-statement-on-onshore-wind/policy-statement-on-onshore-wind>.

²⁹ *The King's Speech* (2024), available at: https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf.

policies towards net zero. In October 2021, the UK government laid its Net Zero Strategy before Parliament,³⁰ as a report under section 14 of the Climate Change Act 2008. A number of campaign groups challenged the Net Zero Strategy,³¹ arguing on a variety of grounds that it failed to meet the requirements of sections 13 and 14.

The High Court upheld some of these claims and declared that the Net Zero Strategy breached section 13 because the quantified policies contained in the Strategy only amounted to approximately 95% of the reductions required under CB6, and the Secretary of State was unable to ascertain what the contributions of individual policies would make to this total, or how other measures would make up the shortfall. The High Court further considered there to have been a breach of section 14, because the Net Zero Strategy lacked the necessary information for Parliament and the public to fully scrutinise the document.

As a result of the judicial review, the UK government was ordered to prepare a new document before Parliament by 31 March 2023. The government did so, in the form of its Carbon Budget Delivery Plan.³² This document was in turn challenged and in May 2024, the High Court again ruled that this subsequent document has failed to meet the requirements of sections 13 and 14,³³ again due to a lack of information underlying the ability of these policies to attain the CB6 requirements. A revised strategy will now be needed to fully comply with these obligations, with the High Court emphasising the need for a clearer evidence base to account for the feasibility of the government's proposals and policies.

Net zero and the role of individual organisations

While net zero obligations apply primarily to the Secretary of State, a number of significant organisations also have important roles in contributing towards meeting this overarching target. This includes the National Health Service (NHS). A legal duty towards climate change was established for NHS England by [section 9 of the Health and Care Act 2022](#). The 2022 Act has amended the National Health Service Act 2006, introducing a new [section 13NC](#) into this legislation. This requires NHS England to have regard to the net zero target established in section 1 of the Climate Change Act 2008 when exercising its functions, and to address current or predicted impacts of climate change identified by the Climate Change Committee. As healthcare is a devolved matter, similar obligations have been established for these individual branches of the wider NHS by the governments of Scotland, Wales and Northern Ireland respectively, as outlined below in the consideration of devolved climate change obligations.

Other major organisations have also emphasised that contributing to the net zero target and facilitating measures to adapt to climate change is a significant moral and ethical duty, even if

³⁰ HM Government (2021) *Net Zero Strategy: Build Back Greener*, available at:

<https://assets.publishing.service.gov.uk/media/6194dfa4d3bf7f0555071b1b/net-zero-strategy-beis.pdf>.

³¹ *R (On the Application of Friends of the Earth) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin). Available at: <https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf>.

³² HM Government (2023) *Carbon Budget Delivery Plan*, available at:

<https://assets.publishing.service.gov.uk/media/6424b2d760a35e000c0cb135/carbon-budget-delivery-plan.pdf>.

³³ *Friends of the Earth v. Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin).

Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2024/995.html>.

they are not under any explicit legal obligations to do so. In recent years, successive religious leaders have considered that addressing climate change is an important tenet of faith. Prior to the Paris COP to the UNFCCC, at which the Paris Agreement was concluded, Pope Francis issued an Encyclical Letter calling on Catholics to protect ‘our common home’, which included a plea to address climate change.³⁴ The General Synod of the Church of England concurrently issued a call to action on climate change,³⁵ while other individual Synods have declared a climate emergency.³⁶ In 2016, the Islamic Declaration on Climate Change was issued, recognising its implications for human health and calling on both governments and individuals to commit to meeting their international climate obligations and to strive to achieve net zero.³⁷ Similar sentiments have been expressed by leaders of the Jewish³⁸ and Buddhist faiths.³⁹

UK legislation addressing the Church of England, through [section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#), imposes a duty to care for churches. In 2024, section 35 was amended so that the previous duty to ‘have regard for a church’s purpose’ was extended to a duty to ‘have regard for a church’s purpose and environmental protection’. Accordingly, any person exercising functions or care and conservation under the Measure must have due regard to both the role of the church as a place of worship and mission, and ‘the importance of environmental protection’. While this does not explicitly consider climate change, in 2022 the General Synod approved a Routemap by which the Church of England can meet net zero carbon by 2030,⁴⁰ and wider climate-focused initiatives have been advanced under its Environmental Programme.⁴¹

Climate adaptation

In addition to the overarching requirement to attain net zero by 2050, [section 56 of the Climate Change Act 2008](#) requires the Secretary of State to lay a report before Parliament every five years containing an [assessment](#) of the risks for the UK of the current and predicted impact of climate change. The UK Climate Change Risk Assessment (UKCCRA) is based on the

³⁴ The Holy See (2015) *Encyclical Letter Laudato Si’ of the Holy Father Francis: On Care for Our Common Home*, available at: https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

³⁵ United Nations Climate Change (13 July 2015) *Church of England Issues Strong Call for Long Term Climate Action*, available at: <https://unfccc.int/news/church-of-england-issues-strong-call-for-long-term-climate-action>.

³⁶ Diocese of Oxford (21 May 2021) *Diocese of Oxford Declares a Climate Emergency*, available at: <https://www.oxford.anglican.org/climateplan/>.

³⁷ The Islamic Foundation for Ecology and Environmental Sciences (2016) *Islamic Declaration on Global Climate Change*, available at: https://www.ifees.org.uk/wp-content/uploads/2020/01/climate_declarationmmwb.pdf.

³⁸ Yale Forum on Religion and Ecology (11 May 2015) *250 Rabbis Sign Rabbinic Letter on the Climate Crisis*, available at: <https://fore.yale.edu/news/250-Rabbis-Sign-Rabbinic-Letter-Climate-Crisis>.

³⁹ Yale Forum on Religion and Ecology (14 May 2015) *The Time to Act is Now: A Buddhist Declaration on Climate Change*, available at: https://fore.yale.edu/files/buddhist_climate_change_statement_5-14-15.pdf.

⁴⁰ The Church of England (2022) *Routemap to Net Zero Carbon by 2030*, available at: <https://www.churchofengland.org/sites/default/files/2022-09/RoutemapToNetZeroCarbonFinal.pdf>.

⁴¹ The Church of England *Church of England Environment Programme*, available at: <https://www.churchofengland.org/about/church-england-environment-programme>.

independent advice of the Climate Change Committee. The third, and current, iteration of the UKCCRA was produced in 2022.⁴²

In conjunction with this obligation, [section 58 of the Climate Change Act 2008](#) requires the Secretary of State to also lay programmes before Parliament setting out the UK government's objectives in addressing the risks identified in the UKCCRAs, as well as the proposals and policies for meeting these objectives and the time scales in which these are to be achieved. This is implemented through the elaboration of National Action Programmes, which are also developed on a five-yearly basis. The Third National Adaptation Programme (NAP3) was published in 2023 and applies through to 2028.⁴³ The Department for Environment and Rural Affairs is the primary government department responsible for leading on climate adaptation.

The NAP produced by the UK government applies to England, as well as to issues that have not been devolved to the governments of Scotland, Wales and Northern Ireland. Devolved legislation places similar obligations on the other governments of the UK and adaptation programmes have been developed in Scotland, Northern Ireland, and Wales in line with their respective legislative timeframes.

NAP3 is presently subject to ongoing judicial review. On 23 and 24 July 2024, an action was brought in the High Court,⁴⁴ alleging that NAP3 as it is currently formulated is insufficient to meet the requirements of section 58 of the Climate Change Act 2008, as well as a number of provisions of the [Human Rights Act 1998](#). The three claimants are Friends of the Earth, alongside a disability rights campaigner concerned about the enhanced risks to health posed by seasonal heatwaves that are exacerbated by climate change, and a claimant concerned about the risks to property from coastal erosion and rising sea levels. This novel legal claim alleges that:

- NP3 does not set out specific objectives as is required under section 58;
- the UK government has not elaborated on the risks to the delivery of its objectives;
- there has been a failure to consider the unequal impacts of climate change on protected groups in society, notably those whose age, health conditions and ethnicity make them more susceptible to the adverse impacts of climate change; and
- there has been a failure to meet human rights commitments, notably in failing to establish a policy and funding for current and future care homes whose residents are more susceptible to the impacts of increased heat, a lack of clarity over compensation for lost property, a failure to provide adequate support or resources, including for the mental health and emotional wellbeing of those whose property is at risk from flooding or coastal erosion, and a lack of public engagement.⁴⁵

⁴² UK Government (2022) *UK Climate Change Risk Assessment 2022*, available at:

<https://www.gov.uk/government/publications/uk-climate-change-risk-assessment-2022>.

⁴³ HM Government (2023) *Third National Adaptation Programme (NAP3)*, available at:

<https://www.gov.uk/government/publications/third-national-adaptation-programme-nap3>.

⁴⁴ The BBC (23 July 2024) *Erosion Victim Challenges Government's Climate Plan*, available at:

<https://www.bbc.co.uk/news/articles/cv2g0wxqxx4o>.

⁴⁵ Friends of the Earth (7 July 2024) *Our Legal Challenge on the National Adaptation Plan*, available at:

<https://friendsoftheearth.uk/climate/our-legal-challenge-national-adaptation-plan>.

Institutional arrangements

In order to facilitate the implementation of these commitments, [section 32 of the Climate Change Act 2008](#) created a new, impartial body called the [Committee on Climate Change](#) (subsequently renamed the Climate Change Committee). Its powers and functions are elaborated further under [Schedule 1 of the Act](#). The central focus of the Committee is to advise the Secretary of State and the devolved governments on emissions targets. This includes

- having a duty to advise on whether the targets set in section 1 of the Climate Change Act should be amended;
- providing advice concerning climate budgets; and
- setting out an annual report to Parliament and the devolved authorities on the progress that has been made towards meeting the carbon budgets and the wider net zero target, whether further progress is needed to meet these commitments and whether the government is likely to meet its carbon budgets.

The importance of the technical expertise provided by the Climate Change Committee has been recognised by the High Court as advice that a judge ‘should give considerable weight to’ in interpreting the provisions of the Climate Change Act 2008.⁴⁶

The UK planning framework

The planning process is a vital framework through which the UK government will implement its legal obligations towards attaining net zero. It also plays a significant role in facilitating important climate adaptation policies, such as requiring energy efficiency for new and adapted buildings and approving flood defences. Planning legislation can also be used as a basis to challenge proposed developments that may prospectively impact negatively upon the pursuit of net zero, such as projects that entrench dependence upon fossil fuels.

Town and Country Planning

The UK planning framework is codified through an extensive mosaic of legislation and government policy statements. While land-use legislation and practices have existed for centuries, the defining statute of modern planning law is considered to be the [Town and Country Planning Act 1947](#), which was established to promote post-war reconstruction and urban development, while also instituting stronger and more centralised controls over the development of land. The 1947 Act made significant reforms to this system, requiring landowners and developers to secure planning permission for their development projects. To facilitate this, local authorities were reorganised and given responsibilities to prepare development plans, make compulsory purchases of land and to approve all new development proposals. Development in the UK has since been ‘plan-led’, with planning permission contingent upon compliance with the land-use plans of local authorities.

⁴⁶ *R (On the Application of Friends of the Earth) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin). Available at: <https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf>.

In 1990, planning legislation was consolidated into the [Town and Country Planning Act 1990](#). Separate planning legislation is in effect for Wales, Scotland and Northern Ireland, although the central approach of the Town and Country Planning Act 1990 has been adopted for these jurisdictions too. Local Planning Authorities (LPAs) are responsible for developing local plans that frame their vision for future development and land use within their area, and neighbourhood plans are prepared by parish or town councils or local groups.

In 2012 the UK government adopted the National Planning Policy Framework (NPPF), which provides extensive guidance to LPAs on how local plans should be formulated.⁴⁷ [Paragraph 7 of the NPPF](#) elaborates that the purpose of the planning system is ‘to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner’. [Paragraph 11](#) states that the plans produced by LPAs to guide planning objectives, and the subsequent decisions made by LPAs on planning permission ‘should apply a presumption of sustainable development’. Under [paragraph 8](#), sustainable development is considered to have an economic objective, a social objective and an environmental objective. The environmental objective includes mitigating and adapting to climate change. To assist LPAs in this regard, [paragraphs 157-179](#) address the need to meet the challenges of climate change, flooding and coastal change. This includes requirements for:

- plans to ‘take a proactive approach to mitigating and adapting to climate change’;
- new development to be planned in ways that avoid increased vulnerability to the range of impacts arising from climate change and help to reduce greenhouse gas emissions; and
- promoting the use of renewable and low-carbon energy and heat.

Furthermore, [section 19\(1A\) of the Planning and Compulsory Purchase Act 2004](#) requires that the development plan documents produced by LPAs ‘must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change’, a requirement that became operational in 2009. More recently, the [Levelling-Up and Regeneration Act 2023](#) introduced new powers for the Secretary of State for Housing, Communities and Local Government to introduce National Development Management Policies (NDMPs) to help streamline aspects of the planning process. Where an NDMP is developed by the government, the 2023 Act introduced a new requirement within [section 38\(ZA\) of the Planning and Compulsory Purchase Act 2004](#) for the Secretary of State to have regard to the need to mitigate and adapt to climate change.

Environmental Impact Assessment requirements

An important element of planning permission for particular developments is the need to conduct an environmental impact assessment (EIA). EIA requirements in UK law are primarily derived from key Directives that were implemented by the UK during its membership of the

⁴⁷ HM Government (2023) *National Planning Policy Framework*, available at: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>.

EU. The EU's EIA legislation, consolidated in 2011⁴⁸ and revised most recently in 2014 to include prominent consideration of climate change,⁴⁹ specifies that development consent for public or private projects that are likely to have significant effects on the environment should only be granted after an assessment of the likely environmental effects. [Article 4\(2\) and Annex II of the 2011 Directive](#) elaborates an extensive list of projects that should be subject to a prior EIA process, which includes major energy and infrastructure projects. In the UK, these requirements have been implemented through the planning regime, in the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). In June 2024, the Regulations, and the climate change impacts that ought to be considered during the planning process, were reviewed in a highly important judgment by the UK Supreme Court.

The case of *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council and others*⁵⁰ was a judicial review of a decision by Surrey County Council, a LPA, to grant development consent for a phased expansion of onshore oil extraction. Under the 2017 Regulations, as guided by the broader EU legislation, such a project required an EIA. Under [Regulation 4](#), an EIA requires the submission of an environmental statement, which identifies, describes and assesses the direct and indirect significant impacts of the proposed development, including climate factors, before a decision on consent is made ([Regulation 26](#)). Under [Regulation 15](#), the process allows for the developer to request a prior 'scoping opinion'. A scoping opinion allows the planning authority to specify the scope and level of detail required in the environmental statement, to assist the developer in providing the appropriate information to frame the decision-making process. The Regulations do not explicitly prevent an LPA from granting consent if the information specified in a scoping opinion is not ultimately present in the environmental statement, although [Regulation 18\(4\)](#) requires that the environmental statement is 'based on' that prior scoping opinion.

In this case, the developer requested a scoping opinion, in which the Council advised that the environmental statement would be expected to include information concerning the global warming potential of the oil that would be produced by the proposed site. Although the environmental report did ultimately consider direct emissions of greenhouse gases caused during construction, production, decommissioning and restoration of the site, the developer declined to consider the emissions resulting from the later use of the oil produced by the refinery. The developer contended that this was beyond both the scope of the development and the control of the developers, and that the 'downstream' or 'scope 3' consequences of the oil extraction (i.e. refining and use by consumers its use in other processes) were addressed by other regulators. The LPA accepted this reasoning and approved the development.

⁴⁸ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2012.026.01.0001.01.ENG&toc=OJ%3AL%3A2012%3A026%3ATOC.

⁴⁹ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052>.

⁵⁰ *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council and others* [2024] UKSC.

The decision to grant development consent was subject to an application for judicial review, due to concerns about its implications for climate change. The application was rejected in the High Court,⁵¹ and by the Court of Appeal,⁵² but in a highly significant judgment for future fossil fuel development decisions, the Supreme Court⁵³ ruled that the planning permission had been unlawfully granted. In so doing, the Supreme Court observed that the use of oil by consumers was not beyond the control of the developer, since ‘if no oil is extracted, no combustion emissions will occur’ and ‘any extraction of oil by the site operators will in due course result in GHG [greenhouse gas] emissions upon its inevitable combustion’. The Supreme Court also rejected the argument it would be inappropriate for an LPA to have to consider the climate implications of the subsequent combustion of oil extracted by the development in deciding whether to grant planning permission.

The Supreme Court judgment in *Finch* is likely to have a significant impact on planning decisions regarding fossil fuel developments. One important development in this respect occurred in July 2024 relating to a previous decision by the UK government to grant development consent for a new coal mine in Cumbria to produce coking coal for steel development. While many planning decisions are made by LPAs, [section 77 of the Town and Country Planning Act 1990](#) allows the Secretary of State for Housing, Communities and Local Government to have applications referred directly to them for a decision. Where this occurs, the proposed development is said to have been ‘called-in’. In 2022, the then Secretary of State for Levelling Up, Housing and Communities initiated this process and approved the development.⁵⁴ In approving the development, as in the *Finch* case, the Secretary of State stated that the climate change considerations were confined solely to the mining processes and that it was unnecessary to consider the ‘downstream’ or ‘scope 3’ implications of burning any of the coal subsequently produced by the mine.

The decision to allow the development prompted the Climate Change Committee to urge the UK government to reconsider.⁵⁵ On 16 July 2024 two separate challenges to the legality of the planning permission were heard in the High Court.⁵⁶ Significantly, in the light of the *Finch* decision, the UK government declined to defend the decision and declared that an ‘error of law’ had been made in granting approval for the mine.⁵⁷ The decision was instead defended by the developer, with the High Court still due to deliver its judgment at the time of writing. If successful, development consent will be quashed and the proposal will be referred back to

⁵¹ *R (On the Application of Sarah Finch) v. Surrey County Council and others* [2020] EWHC 3566 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3566.html>.

⁵² *R (on the application of Sarah Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2022] EWCA Civ 187. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2022/187.html>.

⁵³ *R (on the application of Finch on behalf of the Weald Action Group) v. Surrey County Council and others* [2024] UKSC

⁵⁴ HM Government Department for Levelling Up, Housing & Communities (2022) *Application Ref 4/17/9007*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122625/22-12-07_Whitehaven_-_Decision_Letter_and_IR.pdf.

⁵⁵ Climate Change Committee (2021) *Deep Coal Mining in the UK*, available at: https://www.theccc.org.uk/wp-content/uploads/2021/01/Lord-Deben-to-Robert-Jenrick-MP-Deep-coal-mining-in-the-UK_290121.pdf.

⁵⁶ Friends of the Earth (16 July 2024) *High Court Hears Legal Challenges to Cumbrian Coal Mine*, available at: <https://friendsoftheearth.uk/climate/high-court-hears-legal-challenges-cumbrian-coal-mine>.

⁵⁷ The BBC (11 July 2024) *New Coalmine in Doubt After ‘Error’ in Planning Decision*, available at: <https://www.bbc.co.uk/news/articles/c99w1qjp8qko>.

the Secretary of State for a new decision that will likely need to consider the ‘downstream’ or ‘scope 3’ implications of the mine.

Nationally Significant Infrastructure Projects: The Planning Act 2008

The [Planning Act 2008](#), which received Royal Assent on the same day as the [Climate Change Act 2008](#), introduced a new framework for authorising ‘nationally significant infrastructure projects’. The Planning Act 2008 was introduced to rectify difficulties in the planning process for large scale projects of this nature,⁵⁸ which often lacked a clear national policy framework to guide planning decisions, and could then be delayed in lengthy planning inquiries. The types of infrastructure projects that are considered to be ‘nationally significant’ are listed in [section 14 of the Planning Act 2008](#), and involve major public development projects such as highways, airports, energy supply systems, harbours, railways, reservoirs and dams.

The Planning Act 2008 establishes obligations to ensure that the decision-making process for major infrastructure projects considers the impacts of climate change that will result from their approval. Under [section 5 of the Act](#), when the UK government determines that a nationally significant infrastructure project is necessary, the relevant Secretary of State must produce a National Policy Statement. Responsibility for this will depend on the type of project being proposed, for example transport infrastructure projects will fall under the remit of the Secretary of State for Transport. A National Policy Statement is a document that guides how decisions on proposed projects of that nature should proceed.⁵⁹ Under [section 5 of the Planning Act 2008](#), each National Policy Statement must specify the reasons for the policy, a requirement which ‘must (in particular) include an explanation of how the policy set out in the statement takes account of government policy relating to the mitigation of, and adaptation to, climate change’. In producing and reviewing a National Policy Statement, [section 10](#) imposes a further duty on the Secretary of State ‘to do so with the objective of contributing to the achievement of sustainable development’, and to ‘in particular’ have regard to ‘the desirability of mitigating, and adapting to, climate change’. The designation of a National Policy Statement by the Secretary of State does not mean that a development will be automatically approved. [Section 120](#) requires a developer wishing to undertake a nationally significant infrastructure project to obtain a Development Consent Order from the government. The National Policy Statement will then guide the decision whether to grant a Development Consent Order, and any further conditions that will apply to it.

[Section 13](#) of the Planning Act 2008 allows for a judicial review to be made ‘questioning a national policy statement or anything done, or omitted to be done, by the Secretary of State in the course of preparing such a statement’. This provides scope to challenge a National Policy Statement that has been prepared by the UK government, if an applicant believes that insufficient consideration has been given to climate change in developing such a document.

⁵⁸ See further: UK Parliament *Planning and Major Infrastructure: Key Issues for the 2010 Parliament*, available at: <https://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/green-growth/major-infrastructure-planning/>.

⁵⁹ HM Government (2012) *Nationally Significant Infrastructure Project: National Policy Statements*, available at: <https://www.gov.uk/guidance/nationally-significant-infrastructure-projects-national-policy-statements>.

Between 2019 and 2020, the climate requirements of the development of National Policy Statements were subject to a lengthy series of legal challenges on this basis, resulting in an extensive judgment of the Supreme Court. *R (on the application of Friends of the Earth Ltd and others) v. Heathrow Airport Ltd*⁶⁰ concerned the decision of the UK government to approve a National Policy Statement applicable to airports, following the recommendation of an independent commission that either a new runway should be built at Heathrow or Gatwick Airport, or the existing runway capacity should be significantly expanded at Heathrow. The Secretary of State did not consider the Paris Agreement when designating the Airports National Policy Statement (ANPS) as a national policy statement in 2018 under the Planning Act 2008. A variety of applicants sought a judicial review, arguing that the decision to designate the ANPS should be declared unlawful for failing to take full account of the environmental and climate implications of airport expansion. This was rejected by the High Court.⁶¹

The Court of Appeal reversed the High Court's decision and declared the ANPS to be unlawful, finding a breach of sections [5\(8\)](#) and [10\(3\)](#) of the Planning Act 2008.⁶² This overturned the earlier judgment of the High Court that, for the purposes of section 5(8), the 'Government policy relating to the mitigation of, and adaptation to, climate change' that ought to have been taken account of by the Secretary of State in producing the ANPS was the Climate Change Act 2008. Instead, the Court of Appeal ruled that it would have been consistent with the objectives of section 5(8) to have also considered the wider implications of the Paris Agreement, given that a number of ministers had made Parliamentary statements concerning the UK's international commitments, and a failure to do so amounted to a breach of this provision.

The Supreme Court in turn reversed the decision of the Court of Appeal,⁶³ declaring that the obligations under section 5(8) ought to be interpreted narrowly, to ensure that relevant government policies can be clearly identified without the need for civil servants to incorporate a multitude of extraneous statements by Ministers as forming part of a wider policy. Moreover, the ratification of the Paris Agreement by the UK government was not sufficient to make the Agreement part of a 'Government policy' towards infrastructure. Because the ANPS was designated while the UK government was still developing its approach on how to adapt its domestic policies to the Paris Agreement, this was not part of the wider government policy and did not have to be taken into account for the purposes of section 5(8).

The Court of Appeal had further considered that the Secretary of State had failed to correctly apply section 10(3) in designating the ANPS. This ground of appeal was different to section 5(8), as the duty to contribute to achieving sustainable development under section 10(3) is of a more general nature and is not tied to a specific government policy. Here, the Court of Appeal ruled that the Paris Agreement was so clearly connected to the designation of the

⁶⁰ *R (on the application of Friends of the Earth Ltd and others) v. Heathrow Airport Ltd* [2020] UKSC 52. Available at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf>.

⁶¹ *R (on the application of Spurrier and others) v. Secretary of State for Transport* [2019] EWHC 1070 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2019/1070.html>.

⁶² *R (on the application of Plan B Earth) v. Secretary of State for Transport* [2020] EWCA Civ 214. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2020/214.html>.

⁶³ *R (on the application of Friends of the Earth Ltd and others) v. Heathrow Airport Ltd* [2020] UKSC 52. Available at: <https://www.supremecourt.uk/cases/docs/uksc-2020-0042-judgment.pdf>.

ANPS that it would have been ‘irrational’ for the Secretary of State not to take it into account. The Supreme Court overturned this judgment and ruled that the Secretary of State was under no obligation to consider the Paris Agreement at the time, since work was ongoing on how to incorporate these obligations further into national legislation. The Supreme Court also noted that the Secretary of State had considered these implications based on the legal obligations that existed at the time, and that there was an opportunity to consider additional climate considerations when deciding on whether to grant Development Consent Order. In 2023 the European Court of Human Rights rejected an appeal against the Supreme Court’s judgment and considered the application to be inadmissible.⁶⁴

Climate ethics and the financial and corporate sectors

Corporate obligations

An increasing amount of legislation has been enacted to address the responsibilities of companies regarding climate change. Companies in the UK are primarily regulated under the [Companies Act 2006](#). [Section 172](#) of this legislation establishes a legal duty for the directors of a company to promote the success of that company and to have regard, among other things, to ‘the impact of the company’s operations on the community and the environment’. As part of this duty, [section 414A](#) requires the directors to prepare a Strategic Report for each financial year. Under [section 414CB](#) of the Act, Strategic Reports are now required to include a Non-Financial and Sustainability Information (NFSI) statement, which must contain the climate-related financial disclosures of the company.

In 2022, a series of important changes were made to the requirements of the NFSI statement to specifically focus on climate change considerations, which have given effect to international standards of best practice. In 2009, the [G20](#) – the intergovernmental forum comprising most of the world’s largest economies – created the [Financial Stability Board](#) to monitor the global financial system and make recommendations to promote financial stability. In 2015, the Financial Stability Board created a [Task Force on Climate-Related Financial Disclosures](#) (TCFD), which published a series of recommendations in 2017.⁶⁵ In 2022, the UK government enacted the [Companies \(Strategic Report\) \(Climate-related Financial Disclosure\) Regulations](#). This made the UK the first G20 country to make the main elements of the TCFD’s recommendations legally binding on companies. The regulations entered into force on 6 April 2022 and apply to NFSI statements within Strategic Reports prepared for financial years commencing on or after this date. The 2022 Regulations further amended the [Companies Act 2006](#) and requires the directors of particular companies to disclose the principal climate-related risks and opportunities arising in connection with their operations.

The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 apply to any company incorporated in the UK with over 500 employees, and is either a ‘traded’

⁶⁴ Climate Litigation Database (2022) *Plan B Earth and Others v the United Kingdom*, available at: <https://climaterightsdatabase.com/2022/12/13/plan-b-earth-and-others-v-the-united-kingdom/>.

⁶⁵ Task Force on Climate Related Financial Disclosures (2017) *Recommendations of the Task Force on Climate-Related Financial Disclosures*, available at: <https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>.

company (one whose shares are traded on a UK-regulated market or on the Alternative Investment Market), a banking company, an authorised insurance company, or a company that has become classed as a ‘high turnover company’ (i.e. a company with a turnover of more than £500 million) within the financial year in question. The 2022 Regulations have amended [section 414CB of the Companies Act 2006](#), and require such a company to describe the following to ascertain the necessary ‘climate-related financial disclosures’:

- its governance arrangements in relation to assessing and managing climate-related risks and opportunities;
- how it identifies, assesses, and manages climate-related risks and opportunities;
- how processes for identifying, assessing, and managing climate-related risks are integrated into the company’s overall risk management process;
- the principal climate-related risks and opportunities arising in connection with the company’s operations and the time periods by reference to which those risks and opportunities are assessed;
- the actual and potential impacts of the principal climate-related risks and opportunities on the company’s business model and strategy;
- its analysis of the resilience its business model and strategy, taking into consideration different climate-related scenarios;
- the targets used by the company to manage climate-related risks and to realise climate-related opportunities and of performance against those targets; and
- the key performance indicators used to assess progress against targets used to manage climate-related risks and realise climate-related opportunities and of the calculations on which those key performance indicators are based.

The same obligations are required of particular Limited Liability Partnerships, through the [Limited Liability Partnerships \(Climate-related Financial Disclosure\) Regulations 2022](#).

These requirements were initially established for private sector companies so that financial markets could have access to clear, comprehensive and high-quality climate information underpinning financial decisions. Nevertheless, the UK government has recognised that sustained and quantifiable reflection on these issues has considerable benefits for accountability and transparency of decision-making in the public sector and instituted a three-year phase-in of the TCFD’s recommendations for government bodies and large public sector entities, effective from 2023/4.⁶⁶

Pensions

In addition to reporting obligations on companies, climate change considerations have also been applied to pension schemes in order to promote environmental considerations in investment policies. In 2021, the [Pensions Act 1995](#) was amended to consider climate change risks. A new [section 41A](#) of the 1995 Act now gives the UK government powers to introduce

⁶⁶ HM Government (2024) *TCFD-Aligned Disclosure Guidance for Public Sector Annual Reports*, available at: <https://www.gov.uk/government/publications/tcf-aligned-disclosure-application-guidance#:~:text=HM%20Treasury%20has%20set%20out,from%20their%20respective%20relevant%20authorities>.

regulations that may impose requirements upon the trustees and managers of occupational pensions schemes, to ensure that there is effective governance of these schemes with respect to climate change. Like the revised provisions of the Companies Act 2006, such regulations require trustees and managers of pensions to consider the risks and opportunities posed by climate change. This could extend to reviewing the exposure of the scheme to particular risks, developing strategies to manage the scheme's exposure to climate risks, and determining and measuring performance targets relating to these exposures.

[Section 41B](#) further allows the UK government to enact regulations that require that and managers to publish information concerning the impacts of climate change upon the pensions scheme under their oversight. The UK government subsequently enacted the [Occupational Pension Schemes \(Climate Change Governance and Reporting\) Regulations 2021](#), which required trustees and managers of trust schemes with assets over £1 billion to report on how they are governing the scheme with respect to the impacts of climate change, with oversight of reporting provided by the Department of Work and Pensions.

The UK legislation provides important reporting requirements for major companies and pension funds, and has prompted many organisations to consider their investment strategies in line with these enhanced climate obligations. This remains on a predominantly voluntary basis, however. There have been a number of high-profile examples of important investment funds divesting from investments and assets that may exacerbate fossil fuel production or that fail to work towards the international ambitions of the Paris Agreement or domestic targets of net zero. For instance, the Church of England's Responsible and Ethical Investment Policy is guided by a key commitment to be Paris-aligned,⁶⁷ with clear carbon reduction requirements incumbent within its investment strategies, and since 2021 has steadily and publicly excluded major hydrocarbon producers from its investment portfolio.⁶⁸

Cases brought against corporate entities

In some countries, legal actions have been brought to require companies and corporate entities to amend their business strategies to promote progress towards meeting net zero and attaining the objectives of the Paris Agreement, notably those closely associated with the hydrocarbon industries. One prominent example occurred in 2021 in the Netherlands. In [Milieudefensie et al. v. Royal Dutch Shell plc](#), the Hague District Court ruled that Royal Dutch Shell was required, through its corporate policy, to reduce its emissions of carbon dioxide across its group of companies to a net level of 45% by 2030 based on its 2019 levels of emissions.

There are legal avenues available to pursue this approach in the UK. Using a legal procedure known as a 'derivative action', shareholders can apply to the High Court for permission to bring a legal claim against individual company directors for alleged wrongdoing. Concerned actors

⁶⁷ Church Commissioners for England (2024) *Responsible and Ethical Investment Policy*, available at: <https://www.churchofengland.org/sites/default/files/2024-04/ccfe-responsible-and-ethical-investment-policy-2024-public-version-23apr2024.pdf>.

⁶⁸ The Church of England (22 June 2023) *Church Commissioners to Exclude Oil and Gas Companies Over Failure to Align with Climate Goals*, available at: <https://www.churchofengland.org/media/press-releases/church-commissioners-exclude-oil-and-gas-companies-over-failure-align-climate>.

who own shares in particular companies have sought to use this mechanism to hold directors to account for continuing to invest in fossil fuels, or for a perceived failure to work assiduously to contribute to climate targets. However, while this has been successful in some countries, litigation of this nature has, so far, been largely unsuccessful in the UK.

In 2023, ClientEarth sought permission to bring a derivative action against Shell,⁶⁹ a company in which it owned a small number of shares. This was the first time that this procedure had been applied against corporate directors in the UK. ClientEarth alleged that Shell's UK directors were in breach of sections [172](#) and [174](#) of the Companies Act 2006, which establish the general duties of company directors and involve the duty to promote the success of the company and the duty to exercise reasonable care, skill and diligence respectively. The High Court refused permission to bring the action and also rejected a further claim that Shell was legally obliged in the UK to follow the ruling in the earlier Dutch case. Leave to appeal was rejected in November 2023. In 2021, a similar challenge was made against the directors of a pension scheme that had continued to invest in fossil fuels as part of its wider business portfolio. This was rejected by both the High Court⁷⁰ and the Court of Appeal.⁷¹

⁶⁹ *ClientEarth v. Shell Plc* [2023] EWHC 1897 (Ch). Available at: <https://www.bailii.org/ew/cases/EWHC/Ch/2023/1897.html>.

⁷⁰ *McGaughey and Davies v. Universities Superannuation Scheme Ltd and Directors* [2022] EWHC 1233 (Ch). Available at: <https://www.bailii.org/ew/cases/EWHC/Ch/2022/1233.html>.

⁷¹ *McGaughey and Davies v. Universities Superannuation Scheme Ltd and Directors* [2023] EWCA Civ 873. Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2023/873.html>.

3. Devolution and Climate Change

Devolution

Devolution is the process by which particular powers and legislative competences have been steadily transferred from the central UK government to the governments of [Scotland](#), [Northern Ireland](#) and [Wales](#). In 1998, a series of constitutionally important Acts of Parliament created these new political and legislative institutions and established their powers and responsibilities, which have been amended and expanded over time to increase the transfer of legislative competence to the devolved administrations.

Under the respective devolution arrangements, powers over healthcare and environmental regulation have been transferred to Scotland, Northern Ireland and Wales. With regard to the implementation of the UK government's climate change obligations under international law, the devolved governments are responsible for contributing to the national net zero target by overseeing reductions in greenhouse gas emissions within their jurisdictions. The devolved governments are responsible for facilitating climate adaptation within their countries. In so doing, the three devolved governments have each developed their own legislation to address climate change, which applies different approaches. As discussed below, Scotland and Northern Ireland have enacted their own separate Climate Change Acts to facilitate their responses to climate change, while Wales has remained more closely aligned to the UK government but has advanced novel legislation to promote the rights of future generations.

Beyond the devolved governments, the UK government exercises legislative competence over England. The [Greater London Authority Act 1999](#) provided new arrangements for the City of London, establishing the Greater London Authority which consists of a Mayor of London and a London Assembly. In 2020 the Mayor of London declared a climate emergency and committed to make London net-zero carbon by 2030,⁷² announcing a Climate Action Plan to facilitate this.⁷³ Beyond London, during the early stages of the devolution process in Scotland, Northern Ireland and Wales, a series of elected regional assemblies was envisaged to mirror aspects of these arrangements. However this has since been reformulated through the creation of nine [Combined Authorities](#), headed by elected metro mayors, providing a further tier of governance through which localized climate action can be taken as part of a wider national contribution.

⁷² Mayor of London and London Assembly *Our Fight Against Climate Change*, available at: <https://www.london.gov.uk/programmes-strategies/environment-and-climate-change/climate-change?ac-8535=8522>.

⁷³ Mayor of London and London Assembly *1.5C Compatible Climate Action Plan*, available at: <https://www.london.gov.uk/programmes-and-strategies/environment-and-climate-change/climate-change/climate-action-plan>.

Scotland

In Scotland, the [Scotland Act 1998](#) created a Scottish Parliament, which was initially overseen by the Scottish Executive, which has since become the Scottish Government, following the [Scotland Act 2012](#). The legislative abilities of the Scottish Government follow the ‘reserved powers’ model, where the Scotland Act 1998 specified a series of matters and policy areas that were reserved for the exclusive competence of the UK government, with powers to create primary legislation over all other remaining matters devolved to Scotland. The reserved powers are listed in [Schedule 5](#) of the Scotland Act 1998 and, from a climate perspective, include issues such as foreign affairs – meaning that Scotland cannot individually become a party to, or leave, the climate treaties that have been signed by the UK – and energy production from electricity, oil and gas, coal and nuclear power. This does however grant scope for significant legislative activity over climate change through powers over the environment and health.

Responding to the impacts of climate change has constituted an important cross-cutting issue in Scottish governance since an early stage in the devolution process. In 2019 Scotland became one of the first Parliaments worldwide to formally declare a climate emergency.⁷⁴ Climate change considerations remain a significant element of Scotland’s domestic agenda. In 2020, the Scottish Government published its *Environment Strategy for Scotland*,⁷⁵ which featured the central vision of restoring nature and ending Scotland’s contribution to climate by 2045. Climate change is also a leading component of Scotland’s international relations agenda. In *Scotland’s International Strategy*,⁷⁶ published in January 2024, cooperation with the international community to meet the challenges of climate change and to facilitate the global transition to net zero was identified as a core area of external activity for the Scottish Government, with a similar emphasis placed upon Scottish partnerships on climate change within *Scotland’s Arctic Policy Framework*.⁷⁷ Glasgow was the host city in 2021 for COP26 to the UNFCCC, and the important package of measures agreed at the COP to catalyse the UNFCCC’s work across the present decade was christened the Glasgow Climate Pact,⁷⁸ which

⁷⁴ Scottish Government (2019) *The Global Climate Emergency – Scotland’s Response: Climate Change Secretary Roseanna Cunningham’s Statement*, available at: <https://www.gov.scot/publications/global-climate-emergency-scotlands-response-climate-change-secretary-roseanna-cunninghams-statement/>.

⁷⁵ Scottish Government (2020) *The Environment Strategy for Scotland: Vision and Outcomes*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/02/environment-strategy-scotland-vision-outcomes/documents/environment-strategy-scotland-vision-outcomes/environment-strategy-scotland-vision-outcomes/govscot%3Adocument/environment-strategy-scotland-vision-outcomes.pdf>.

⁷⁶ Scottish Government (2023) *Scotland’s International Strategy: Delivering for Scotland*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2024/01/scotlands-international-strategy/documents/scotlands-international-strategy-delivering-scotland/scotlands-international-strategy-delivering-scotland/govscot%3Adocument/scotlands-international-strategy-delivering-scotland.pdf>.

⁷⁷ Scottish Government (2019) *Arctic Connections: Scotland’s Arctic Policy Framework*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2019/09/arctic-connections-scotlands-arctic-policy-framework/documents/arctic-connections-scotlands-arctic-policy-framework/arctic-connections-scotlands-arctic-policy-framework/govscot%3Adocument/arctic-connections-scotlands-arctic-policy-framework.pdf>.

⁷⁸ United Nations (2022) *Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its Third Session*, available at: https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf.

provides further scope to promote Scotland's wider ambitions towards contributing to global climate governance.

In 2009, the Scottish Government enacted the [Climate Change \(Scotland\) Act 2009](#), which has subsequently been substantially revised and amended, and constitutes the primary legislative provision of Scotland to address climate change.

Climate Change (Scotland) Act 2009

Shortly after the enactment of the [Climate Change Act 2008](#) by the UK government, specific legislation was adopted in turn by the Scottish Government to frame its targets and policies regarding climate change. During the 2007 Scottish Parliament elections it was clear that there was strong public support for parallel Scottish legislation, and all the major parties included a prominent pledge to introduce climate change laws within their respective manifestos. This was eventually enacted through the [Climate Change \(Scotland\) Act 2009](#), which received Royal Assent on 4 August 2009 and entered into effect as one of the most extensive and ambitious Acts of the Scottish Parliament to date.

Net zero obligations

The Climate Change (Scotland) Act 2009 prescribes a series of obligations to support and contribute to the pursuit of the central priorities and approaches of the Climate Change Act 2008, but also features a number of key departures to the UK legislation. Notably, it applies a different and more ambitious series of targets to attain net zero, while also facilitating the creation of novel institutions to oversee climate governance in Scotland. In 2019, the 2008 Act was substantively amended through the [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#), which has 'the objective of Scotland contributing appropriately to the world's efforts to deliver on the Paris Agreement'. These amendments scaled-up the ambitions of Scotland's net zero targets and pioneered new principles for a 'just transition', which aims to ensure equity across all sectors of society and the economy in the pursuit of net zero. In a further departure to the UK legislation, [section A1\(1\)](#) of the 2009 Act imposes obligations upon the 'Scottish Ministers', thereby applying these requirements collectively across all government departments. In contrast, the duties incumbent under the Climate Change Act 2008 apply to one specific UK government minister, namely the Secretary of State for Energy Security and Net Zero.

In line with the UK's revised climate change legislation, the central objective of the Climate Change (Scotland) Act 2008 is to facilitate a tiered reduction of emissions of greenhouse gases to ultimately achieve net zero. [As originally formulated](#), the 2008 Act mirrored the initial UK commitments and established an obligation for the Scottish Ministers to ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the baseline year of 1990. The 2019 Act revised this approach in line with the changes to the UK legislation and a new [section A1](#) was introduced into the 2008 Act, requiring the Scottish Ministers to attain net zero. Unlike the UK legislation, however, the 2019 amendments to the Climate Change (Scotland) Act 2009 [set the target year to achieve net zero as 2045](#), five years earlier than the

parallel commitments for the UK as a whole, and for Northern Ireland and Wales. Additional powers are given to modify the target year to an earlier or later point. In this regard, [Section A1\(3\)](#) allows the Scottish Ministers to revise the target to an earlier year at their discretion, but if this deadline is to be extended to a later point, it must be on the basis of scientific advice indicating that a delay is appropriate on the basis of current knowledge on climate change and/or current international carbon reporting practices.

In seeking to meet the net zero requirement, the amended [section 2 of the Climate Change \(Scotland\) Act 2009](#) established a series of three interim targets. These require the Scottish Ministers to ensure that the net Scottish emissions account for the year is at least 48.5% lower than the baseline by 2020, 75% lower by 2030 and 90% lower than the baseline by 2040. The original interim target for 2020 was set at a more ambitious 56%, but was revised downwards in 2023 by the [Climate Change \(Scotland\) Act 2009 \(Interim Target\) Amendment Regulations 2023](#). In elaborating both the overarching 2045 net zero target and the preceding interim targets, [section 2B\(1\) of the Act](#) prescribes a series of target-setting criteria, which expressly includes the likely impacts of any resultant targets of public health, and requires prior consideration of the following:

- the objective of not exceeding the fair and safe Scottish emissions budget;
- European and international law and policy relating to climate change (including the UNFCCC and protocols to that Convention);
- scientific knowledge about climate change;
- technology relevant to climate change;
- economic circumstances, in particular the likely impact of the target on the Scottish economy, the competitiveness of particular sectors of the Scottish economy, small and medium-sized enterprises, and jobs and employment opportunities;
- fiscal circumstances, in particular the likely impact of the target on taxation, public spending and public borrowing;
- social circumstances, in particular the likely impact of the target on those living in poorer or deprived communities;
- the likely impact of the target on public health;
- the likely impact of the target on those living in remote rural communities and island communities;
- energy policy, in particular the likely impact of the target on energy supplies, the renewable energy sector and the carbon and energy intensity of the Scottish economy;
- environmental considerations and, in particular, the likely impact of the target on biodiversity;
- the likely impact of the target on the achievement of sustainable development, including the achievement of the United Nations sustainable development goals; and
- current international carbon reporting practice.

Annual targets, carbon budgets and future legislative changes

In contrast to the central UK legislation and the legal frameworks of Northern Ireland and Wales, which operate by setting five-yearly carbon budgets, the Climate Change (Scotland) Act

2008 instead required the Scottish Government to establish [annual targets](#). However, despite its ambition, this approach will be subject to substantial revision in late 2024.

On 20 March 2024, the Climate Change Committee, having reviewed progress by Scotland towards attaining its respective objectives, declared that the 2030 interim target was [‘no longer credible’](#) and raised strong concerns that the annual targets had not been met in eight of the previous twelve years. In response, on 18 April 2024 the Cabinet Secretary for Wellbeing Economy, Net Zero and Energy announced the development of [a new Bill](#) to remove the 2030 and 2040 interim targets from the Climate Change (Scotland) Act 2009. Annual targets will also be replaced with the carbon budget approach applied across the UK, Northern Ireland and Wales, while further reaffirming Scotland’s commitment to its ultimate 2045 net zero target. This development led to the termination of the Bute House Agreement that had framed the Parliamentary power-sharing agreement between the Scottish National Party and the Scottish Greens,⁷⁹ and ultimately forced the resignation of the First Minister on 7 May 2024.⁸⁰ On 14 May 2024 the [Climate Change Committee](#) urged the Scottish Government to act swiftly to institute a new legislative framework to facilitate a transition to applying carbon budgets to prevent further slippage on its climate obligations.⁸¹ On 5 July 2024 the consultation process opened on the Climate Change Targets Bill, closing on 16 August 2024, with the Scottish Government having pledged to expedite the passage of the Bill through the Parliament upon its return from summer recess⁸²

Climate change plans

Although the underlying approaches to attaining net zero are poised to change significantly in Scotland in the near future, a series of further obligations apply to both the Scottish Government and public bodies in Scotland. [Section 35](#) of the Climate Change (Scotland) Act 2009 requires the Scottish Ministers to lay a Climate Change Plan before the Scottish Parliament, setting out their plans and proposals for meeting their emissions targets. The current iteration of the plan, which applies between 2018 and 2032, is termed the *Third Report on Proposals and Policies 2018-2032* (RPP3)⁸³ and operates in conjunction with the Climate Change Plan update.⁸⁴ This was elaborated in 2020 in the light of the revisions made to the Climate Change (Scotland) Act 2009 by the 2019 Act.

⁷⁹ Scottish Government (2024) *Bute House Agreement Ends*, available at: <https://www.gov.scot/news/bute-house-agreement-ends/>.

⁸⁰ The BBC (7 May 2024) *Humza Yousaf Formally Resigns as Scotland’s First Minister*, available at: <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-68968015>.

⁸¹ Climate Change Committee (2024) *Scotland Carbon Budgets*, available at: <https://www.theccc.org.uk/wp-content/uploads/2024/05/Letter-to-Mairi-McAllan-MSP-CCC-Scotland-carbon-budgets.pdf>.

⁸² The Scottish Parliament (2024) *Climate Change Target Bill*, available at: <https://yourviews.parliament.scot/nzet/climate-change-targets-bill/>.

⁸³ Scottish Government (2018) *Climate Change Plan: The Third Report on Proposals and Policies 2018-2032*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2018/02/scottish-governments-climate-change-plan-third-report-proposals-policies-2018/documents/00532096-pdf/00532096-pdf/govscot%3Adocument/00532096.pdf>.

⁸⁴ Scottish Government (2020) *Update to the Climate Change Plan 2018-2032: Securing a Green Recovery on a Path to Net Zero*, available at: <https://www.gov.scot/publications/securing-green-recovery-path-net-zero-update-climate-change-plan-20182032/>.

Under [section 35 of the Act](#), Climate change plans are required to be laid before the Scottish Parliament on a [five-yearly basis](#). On this timescale, a new iteration of the Climate Change Plan was due to have been published in 2023, but this deadline was missed. Consultations on a new draft plan closed in April 2024 with the aim that a final draft plan may be published in Autumn 2024.⁸⁵ In tandem with concerns over annual targets, delays in developing the next iteration of the Climate Action Plan prompted the extensive criticism of the Scottish Government by the Climate Change Committee in March 2024,⁸⁶ that ultimately triggered the resignation of the First Minister and required a new legislative approach.

Public duties

A series of additional duties are also placed upon the Scottish Ministers under the 2009 Act to help contribute towards climate change mitigation and adaptation. These include a duty to develop a land use strategy ([section 57](#)), and to prepare and publish plans for discharging respective duties to promote energy efficiency ([section 60](#)) and renewable heat ([section 61](#)). [Section 94A](#), introduced by the 2019 Act, also requires the Scottish Ministers to publish an assessment of the extent to which investments required in infrastructure plans are expected to contribute to meeting the respective emissions targets established under the Climate Change (Scotland) Act 2009. In 2021, the Scottish Government announced a £26 billion infrastructure investment plan, but did not publish the required assessment of its climate impact. In September 2023 the Environmental Rights Centre for Scotland (ERCS) and the Good Law Project threatened to bring a judicial review, alleging that section 94A had been breached.⁸⁷ The Scottish Government admitted that its response ‘falls short’ of the requirements of the legislation,⁸⁸ and published the required assessment in January 2024 without the need for the judicial review to proceed further.⁸⁹

Beyond the duties of the Scottish Ministers, [section 44 of the Climate Change \(Scotland\) Act 2009](#) further prescribes obligations upon public authorities when exercising their duties ‘to act in the way best calculated’ to contribute to the delivery of the net zero target and in any climate adaptation programme developed by the Scottish Government. A public body is one defined as a Scottish public authority for the purposes of [section 3 of the Freedom of](#)

⁸⁵ Scottish Government (2024) *Draft Scottish National Adaptation Plan (2024-2029): Actions Today, for a Climate Resilient Future*, available at:

(<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2024/01/public-consultation-scottish-national-adaptation-plan-2024-2029/documents/draft-scottish-national-adaptation-plan-2024-2029/draft-scottish-national-adaptation-plan-2024-2029/govscot%3Adocument/draft-scottish-national-adaptation-plan-2024-2029.pdf>).

⁸⁶ Climate Change Committee (2024) *Progress in Reducing Emissions in Scotland – 2023 Report to Parliament*, available at: <https://www.theccc.org.uk/publication/progress-in-reducing-emissions-in-scotland-2023-report-to-parliament/>.

⁸⁷ Good Law Project (12 September 2023) *Scottish Government Faces Legal Action Over Missing Climate Assessment*, available at: <https://goodlawproject.org/update/scottish-government-faces-legal-action-over-missing-climate-assessment/>.

⁸⁸ Scottish Government (2023) *Climate Change (Scotland) Act 2009 – Section 94A Assessment of Climate Impact of Infrastructure Investment Plan Judicial Review – Response to Letter before Claim*, available at: https://drive.google.com/file/d/1brRPLo5s2L1YLglScbXI_RpldeIrc7Z6/view.

⁸⁹ Scottish Government (2024) *Carbon Assessment of the Infrastructure Investment Plan for Scotland 2021-22 to 2025-26*, available at: <https://www.gov.scot/publications/carbon-assessment-infrastructure-investment-plan-scotland-2021-22-2025-26/>.

[Information \(Scotland\) Act 2002](#). This [includes](#) the Scottish Government itself, as well as local government authorities and the National Health Services Scotland.

Climate Adaptation

As outlined above, [section 56 of the Climate Change Act 2008](#) facilitates a five-yearly [risk assessment](#) of the current and predicted impacts of climate change and [section 58](#) requires the development a [National Adaptation Programme](#) to respond to this assessment. The National Adaptation Programme applies to England, with separate arrangements developed by the devolved administrations. In the context of Scotland, once the UK government publishes the UK Climate Change Risk Assessment, [section 53 of the Climate Change \(Scotland\) Act 2009](#) requires the Scottish Ministers to develop their own adaptation programme in a similar manner to that required by section 58 of the Climate Change Act 2008 in England. In developing an adaptation programme, a broader array of requirements apply to the Scottish Ministers than are prescribed under the Climate Change Act 2008, who must set out:

- their objectives in relation to adaptation to climate change;
- their proposals and policies for meeting those objectives;
- the arrangements for involving employers, trade unions and other stakeholders in meeting those objectives;
- the mechanisms for ensuring public engagement in meeting those objectives; the period within which those proposals and policies will be introduced; and
- otherwise addressing the risks identified in the report under section 56 of the 2008 Act.

In 2019 a further requirement was added to the 2009 Act through [section 53\(2\)\(A\)](#) where, in setting out their objectives in relation to climate adaptation, the Scottish Ministers must also ‘include an objective in relation to Scotland's contribution to international climate change adaptation in line with international best practice’.

To date, Scotland has developed two Scottish Climate Change Adaptation Programmes. The second, and current (at the time of writing), Programme⁹⁰ is applicable for the years 2019-2024. [Section 54 of the Climate Change \(Scotland\) Act 2009](#) requires the Scottish Government to report annually on its progress towards meeting the Programme, with additional review provided by the Climate Change Committee. In 2022, the Climate Change Committee commended the vision of the current Scottish Climate Change Adaptation Programme, but called for a further series of specific objectives and actions to be incorporated to deliver fully on this strategy.⁹¹

⁹⁰ Scottish Government (2019) *Climate Ready Scotland: Second Scottish Climate Change Adaptation Programme 2019-2024*, available at: <https://www.gov.scot/publications/climate-ready-scotland-second-scottish-climate-change-adaptation-programme-2019-2024/>

⁹¹ Climate Change Committee (2022) *Is Scotland Climate Ready? 2022 Report to Scottish Parliament*, available at: <https://www.theccc.org.uk/publication/is-scotland-climate-ready-2022-report-to-scottish-parliament/>.

Just Transition

One of the primary innovations of the Scottish legislation is its central recognition of the concept of ‘just transition’. The ‘just transition’ principles are defined in [section 35C of the Climate Change \(Scotland\) Act 2009](#) as being the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which:

- supports environmentally and socially sustainable jobs;
- supports low-carbon investment and infrastructure;
- 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;
- creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy; and
- contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.

The principles are not necessarily static. Under section 35C(2) of the Act, the Scottish Government may introduce subsequent regulations to modify them if necessary. It is notable, for instance that (as discussed below) the equivalent provision in the Northern Irish legislation advances a more extensive series of principles underpinning its version of ‘just transition’, which includes an emphasis on gender inequality and, in tandem with the approach of Wales, to consider the needs of future generations.

Climate change institutions

As with the UK legislation, the Scottish statute also calls for climate policy to be underpinned by scientific advice. [Section 24 of the Climate Change \(Scotland\) Act 2009](#) establishes powers for the Scottish Government to create an advisory body for this purpose, with [section 25](#) and [Schedule 1](#) elaborating the scope and prospective composition of a Scottish Committee on Climate Change. Nevertheless, these powers have not yet been applied and a specific Scottish Committee remains theoretical at present, with Scotland continuing to draw upon the expertise of the UK-wide Climate Change Committee until the development of a Scotland-centric body is deemed necessary.

In 2018, the Scottish Government established the [Just Transition Commission](#) as an additional independent advisory body. An initial Just Transition Commission operated between 2019 and 2021, charged with scrutinising the production and delivery of transition plans developed by the Scottish Government. A prominent development was the adoption of a National Just Transition Planning Framework in September 2021 to inform the Scottish planning process.⁹² A reformulated Just Transition Commission was subsequently established, tasked with

⁹² Scottish Government (2021) *Just Transition: A Fairer, Greener Scotland*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/09/transition-fairer-greener-scotland/documents/transition-fairer-greener-scotland/transition-fairer-greener-scotland/govscot%3Adocument/transition-fairer-greener-scotland.pdf>.

scrutinising government proposals, advising on monitoring and evaluation, engaging with stakeholders that are likely to be most impacted by transition, collaborating with other expert bodies, and producing an annual report.

A further institution was introduced by the 2019 amendments, where [section 32A of the Climate Change \(Scotland\) Act 2009](#) mandated the establishment of a citizens' assembly on climate change, in a similar manner to the [Climate Assembly UK](#) convened in 2019. The Climate Assembly, convened in Scotland between 2020 and 2022, had a task-and-complete mandate, acting independently of the Scottish Government and, as required by section 32A, was composed of 'persons as the Scottish Ministers consider to be representative of the general populace of Scotland'. The Climate Assembly produced a report,⁹³ including 81 recommendations for action that were further considered by the Scottish Government, resulting in proposals for further legislative activity with an emphasis on waste management.⁹⁴

Beyond the Climate Change (Scotland) Act 2009, in 2012 the Scottish Government launched the [Climate Justice Fund](#), which at the time was the world's first government fund to address climate injustice. The Fund focuses on providing financial assistance to communities in a number of sub-Saharan counties that are most acutely impacted by the negative impacts of climate change, with particular emphasis on water supply, agricultural assistance and tree-planting.⁹⁵

Scottish case law and climate change

To date, very little litigation has been brought in respect of the various climate commitments established under the Scottish framework. This is primarily because the most environmentally contentious projects that may have climate change implications – notably licensing decisions concerning offshore oil and gas exploration and exploitation – are taken by the central UK government. This is because [Schedule 5 of the Scotland Act 1998](#) states that most aspects of energy policy are 'reserved matters' and are therefore outside the legislative control of the Scottish Government. Accordingly, legal challenges in respect of these decisions are brought in the English courts. On occasion, however, the jurisdiction of the Scottish courts has been engaged.

⁹³ Scottish Government (2021) *Scotland's Climate Assembly – Recommendations for Action: SG Response*, available at:

<https://webarchive.nrscotland.gov.uk/20220324022931/https://www.gov.scot/publications/scottish-government-response-scotlands-climate-assembly-recommendations-action/documents/>.

⁹⁴ Scottish Government (2021) *Scotland's Climate Assembly – Recommendations for Action: SG Response*, available at: <https://www.gov.scot/publications/scottish-government-response-scotlands-climate-assembly-recommendations-action/pages/3/>.

⁹⁵ NIRAS (2021) *Evaluation of the Climate Justice Fund: Final Evaluation Report*, available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/12/evaluation-climate-justice-fund-final-evaluation-report/documents/evaluation-climate-justice-fund-final-evaluation-report/evaluation-climate-justice-fund-final-evaluation-report/govscot%3Adocument/evaluation-climate-justice-fund-final-evaluation-report.pdf>.

The primary example of this is the case of *Greenpeace Limited v. The Advocate General*.⁹⁶ Here, a judicial review was sought regarding the decision by the UK government to grant consent to explore and drill for oil within the Vorlich oil field, located within Scottish waters. In challenging the decision, Greenpeace argued that the UK government had failed to consider the impact that the consumption of the oil extracted would have on the UK's carbon budget and its contribution to climate change. The High Court rejected the application. However, [Regulation 15 of the Offshore Petroleum Production and Pipelines \(Assessment of Environmental Effects\) Regulations 1999](#) stipulates that the [Court of Session](#) – the supreme civil court of Scotland – has jurisdiction over appeals that concern Scottish waters. The Court of Session also rejected the appeal and ruled that it would not be practical for the regulator to conduct a wide-ranging examination into the local or global effects of the use of the fuel by consumers as part of the process of conducting the necessary Environmental Impact Assessment.⁹⁷ Permission to appeal to the UK Supreme Court was sought by the applicants but was not forthcoming. However, it is important to observe that this point of law was subsequently considered by the Supreme Court in the *Finch* case (as outlined above) In that judgment, the opposite view narrowly prevailed, and it was determined that greenhouse gas emissions from the eventual use of the extracted oil should also be assessed.

Emerging developments

Beyond the extensive legislation on climate change currently applicable within Scotland, consultations on three significant new legislative proposals have been initiated. In the first instance, a long-term legislative priority for the Scottish Government has been the development of a Human Rights Bill for Scotland. In 2018 an Advisory Group on Human Rights was established for Scotland, which recommended a the development of an Act of the Scottish Parliament to facilitate further protections for human rights.⁹⁸ In 2019 a National Taskforce made a series of recommendations concerning the prospective content of a Human Rights Bill, which were accepted by the Scottish Government.⁹⁹ Following this, in June 2023 the Scottish Government launched consultations on a Human Rights Bill based on these recommendations.¹⁰⁰

A series of important human rights obligations are already applicable to Scotland through the application of the Human Rights Act 1998, which enshrines the European Convention on Human Rights into national law. The Human Rights Act 1998 is the most important statute on human rights concerns in the UK, but it applies predominantly to civil and political rights. The

⁹⁶ *Greenpeace Limited v. The Advocate General* [2021] CSIH 53. Available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211007_14430_judgment.pdf.

⁹⁷ See: paragraph [28] of the judgment.

⁹⁸ First Minister's Advisory Group on Human Rights Leadership (2018) *Recommendations for a New Human Rights Framework to Improve People's Lives: Report to the First Minister*, available at: <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>.

⁹⁹ Scottish Human Rights Commission *Recommendations of the Taskforce*, available at: <https://www.scottishhumanrights.com/projects-and-programmes/incorporation-a-new-human-rights-law-for-scotland/recommendations-of-the-national-taskforce-for-human-rights-leadership/#recommendations-of-the-taskforce-26656>.

¹⁰⁰ Scottish Government (2023) *A Human Rights Bill for Scotland: Consultation*, available at: <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/>.

proposed Scottish legislation aims to enshrine a series of economic, social, cultural and environmental rights into Scots law, applying to those areas of policy that have been formally devolved to Scotland. This will include incorporating obligations under four key international treaties into Scots law, namely the [International Covenant on Economic, Social and Cultural Rights](#), the [International Convention on the Elimination of All Forms of Racial Discrimination](#), the [Convention on the Elimination of All Forms of Discrimination Against Women](#), and the [Convention on the Rights of Persons with Disabilities](#). Significantly, the Human Rights Bill also seeks to incorporate the right to a healthy environment into Scots law. The recommendations accepted by the Scottish Government indicated that ‘a safe climate’ should be an important component of this future legislation. The proposed legislation will place particular organisations under a duty to give effect to the rights contained within the Bill.

The second development of prospective significance to climate change is the [Wellbeing and Sustainable Development \(Scotland\) Bill](#), inspired by legislation in Wales (discussed below). The proposed legislation, which prominently considers the climate emergency as a significant motivation behind its development, intends to fully define sustainable development and create duties on public authorities to achieve sustainable development and well-being, supported by oversight from a designated Commissioner. Consultations on the proposal were held between 2023-2024,¹⁰¹ for which the results were currently being analysed at the time of writing by the Scottish Government to inform its next steps.

These two proposals have been made by the Scottish Government. The third legislative proposal with potential application to climate change obligations is a Private Member’s Bill – one proposed by an individual member of the Scottish Parliament, rather than by the government – called the [Ecocide Prevention \(Scotland\) Bill](#). Ecocide has been defined by the Independent Expert Panel for the Legal Definition of Ecocide, established under the auspices of the Stop Ecocide Foundation, as ‘unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts’.¹⁰² The definition is framed in the language of International Humanitarian Law – the body of international law that seeks to limit the effects of armed conflict – and is intended as a proposed amendment to the Rome Statute of the International Criminal Court.¹⁰³ The Rome Statute established the International Criminal Court, and gives it jurisdiction over the most serious four international crimes (genocide, crimes against humanity, war crimes, and aggression). Although Rome Statute has not yet been amended to recognise ecocide, a number of governments world-wide have enacted legislation to incorporate this concept into national law.

The Ecocide Prevention (Scotland) Bill highlights the impacts that climate change can have on the degradation of the natural environment. It further highlights that climate change can exacerbate societal inequalities, given that some people will inevitably be more acutely affected by these effects. The Bill, if successful, would introduce a new criminal offence of

¹⁰¹ Scottish Government (2024) *Wellbeing and Sustainable Development (Scotland) Bill*, available at: <https://consult.gov.scot/national-performance-framework-unit/wellbeing-and-sustainable-development-scotland/>.

¹⁰² Stop Ecocide (2021) *Legal Definition*, available at: <https://www.stopecocide.earth/legal-definition>.

¹⁰³ International Criminal Court (2021) *Rome Statute of the International Criminal Court*, available at: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

ecocide to supplement the existing criminal and environmental legislation, and would be the first such statute within the UK. A similar Private Member's Bill [has also been proposed in the House of Lords](#).

Northern Ireland

Devolution in Northern Ireland has followed a different path to Scotland and Wales, due to its unique historical and political context. A Northern Ireland Parliament was created under the [Government of Ireland Act 1920](#) as the 'home rule' legislative body for Northern Ireland following the separation of Irish governance between Northern Ireland and the Republic of Ireland, and was abolished under the [Northern Ireland Constitution Act 1973](#) in the light of the political and security conditions at the time. Northern Ireland was governed by 'direct rule' by the UK government until 1998, since attempts to operate a series of Northern Ireland Assemblies proved unsuccessful. Following the signing of the [Good Friday Agreement](#) and the enactment of the [Northern Ireland Act 1998](#), new devolution arrangements were created. The Northern Ireland Act 1998 created a revised Northern Ireland Assembly, with the power to enact primary legislation, albeit under different arrangements to those of Scotland and Wales.

The Northern Ireland Act 1998 categorises competences as either 'excepted matters' ([Schedule 2](#)), for which the UK government retains exclusive competence, 'reserved matters' ([Schedule 3](#)), which are currently retained by Westminster but for which the Assembly can legislate with the consent of the Secretary of State for Northern Ireland, or 'transferred matters' ([section 4](#)), for which the Assembly has full law-making powers. The Government of Northern Ireland is termed the Executive Committee (expressed in governmental shorthand as the 'Executive'). Under the power-sharing arrangements specified in the Northern Ireland Act 1998, the Executive must operate as a coalition. Political complexities within these arrangements have nevertheless impacted upon governance in Northern Ireland. The Northern Ireland Assembly has been suspended on six separate occasions since 2000, including periods of multiple years.¹⁰⁴ This has meant that legislative activity within Northern Ireland, including initiatives in respect of climate change, has been unable to proceed at particular times in the recent past.

Climate Change (Northern Ireland) Act 2022

In February 2020, the Assembly declared a climate emergency, and called upon the Executive to reduce carbon emissions and to establish an independent body to oversee compliance with these objectives.¹⁰⁵ This led to calls for specific legislation in Northern Ireland to address climate change, which eventually resulted in the enactment of the [Climate Change \(Northern Ireland\) Act 2022](#). Unlike the parallel legislation in the UK and Scotland, the Northern Irish provisions followed a complex and unusual pathway into law. In 2021, an initial Climate Change Bill was tabled in the Assembly, and was the first legislative proposal concerning climate change to have been proposed for Northern Ireland. The Bill was also notable for having been prepared by [a wide coalition](#) of cross-party politicians, concerned civil society

¹⁰⁴ The BBC (12 February 2022) *Stormont Without NI Leadership for Third of its Lifespan*, available at: <https://www.bbc.co.uk/news/uk-northern-ireland-60249249>.

¹⁰⁵ Northern Ireland Assembly (2020) *Motion: Climate Emergency (Revised Wording)*, available at: <https://aims.niassembly.gov.uk/plenary/details.aspx?sp=0&pid=2&doc=290756%20>.

activists, academics and lawyers.¹⁰⁶ Concurrently, a second separate Climate Change Bill was launched by the Minister for Agriculture, Environment and Rural Affairs and the Department for Agriculture, Environment and Rural Affairs (DAERA), who bears overall devolved responsibility for climate change and environmental regulation in Northern Ireland. As an official government initiative, this Bill received legislative priority, and eventually became the [Climate Change \(Northern Ireland\) Act 2022](#), which received Royal Assent on 6 June 2022.

Net zero obligations

The Climate Change (Northern Ireland) Act 2022 shares a number of common features with the original Climate Change Act 2008 enacted by the UK government. As with the 2008 Act, the Climate Change (Northern Ireland) Act 2022 advances the overarching commitment to attain net zero. [Section 1\(1\)](#) of the devolved legislation requires the Northern Ireland Departments to ensure that the 'net Northern Ireland emissions account for the year 2050 is at least 100% lower than the baseline'. [Section 7](#) clarifies that the 'baseline' refers to the aggregate amount of emissions of particular greenhouse gases judged against particular years. [Section 1\(2\)](#) specifies that the net zero target for Northern Ireland applies to emissions of carbon dioxide. Due to the nature of the Northern Irish economy, which currently has a heavy emphasis on agriculture, [section 1\(3\)](#) of the 2022 Act prescribes a lower target for methane emissions, which have been set at 46% lower than the 1990 baseline. This unique position on methane in the Northern Irish legislation will mean that other greenhouse gas emissions will need to be reduced to a level below their individual targets within the Act, to facilitate the cumulative achievement of net zero.

In order to maintain momentum across both the short- and mid-term future, [section 2](#) of the Act also requires the relevant government department (DAERA) to set targets for the years 2030 and 2040 that are in line with achieving the net-zero target by 2050, thereby further committing the Minister to lay proposed targets for both 2030 and 2040 before the Assembly by June 2024. Consultations on these targets closed in October 2023¹⁰⁷ and the responses were collated in May 2024,¹⁰⁸ and this process remains ongoing..

While DAERA takes the lead on many aspects of climate policy, the primary duties regarding emissions apply to all of the Northern Ireland's respective Departments. Reinforcing this position, [section 52](#) establishes a legal duty upon each of the Departments to exercise their functions, insofar as it is possible to do so, in a manner consistent with achieving the net zero objective; to cooperate with other Departments as they perform this duty; and to draw up and implement plans, policies and strategies to attain the net zero objective. In discharging

¹⁰⁶ The BBC (22 March 2021) 'Historic' Climate Bill Due Before NI Assembly, available at: <https://www.bbc.co.uk/news/uk-northern-ireland-56478081>.

¹⁰⁷ Northern Ireland Executive Consultation on: Northern Ireland's 2030 & 2040 Emissions Reduction Targets & First Three Carbon Budgets & Seeking Views on Climate Change Committee (CCC) Advice Report: The Path to a Net Zero Northern Ireland, available at: https://consultations2.nidirect.gov.uk/daera/carbon-budget-consultation/supporting_documents/Carbon%20Budget%20Consultation%20Document%20FINAL.pdf

¹⁰⁸ Department of Agriculture, Environment and Rural Affairs Northern Ireland (2024) Summary of Responses: Consultation on Northern Ireland's 2030 & 2040 Emissions Reduction Targets & First Three Carbon Budgets & Seeking Views on Climate Change Committee (CCC) Advice Report: The Path to a Net Zero Northern Ireland, available at: <https://www.daera-ni.gov.uk/publications/summary-responses-consultation-on-emissions-reduction-targets-and-carbon-budgets>.

this duty, section 52 requires each of the Departments ‘as far as reasonably practical’ to align their plans, policies and strategies to those of the Republic of Ireland.

As with the central UK legislation, [section 23\(1\)](#) of the Climate Change (Northern Ireland) Act 2022 also requires DAERA to reduce emissions on a tiered basis by setting carbon budgets, which establish the net Northern Ireland emissions account. Like the UK process, individual carbon budgets operate for a period of five years, commencing for the period 2023-27 and, under section 27, the first three carbon budgets must be established before the end of 2023. In contrast to the Climate Change Act 2008, the Northern Irish legislation is not only required to draw on advice from the Climate Change Committee, but under [section 23\(3\)](#) DAERA must give ‘due regard’ to the expertise and advice of both the Intergovernmental Panel on Climate Change and the Republic of Ireland’s [Climate Change Advisory Council](#).

In order to meet the net zero targets, the Climate Change (Northern Ireland) Act 2022 makes provision for the government to develop two specific types of plans: Climate Action Plans and Sectoral Plans.

Climate action plans

Under [section 29](#), DAERA is responsible for preparing and publishing periodic Climate Action Plans in respect of each carbon budget. A Climate Action Plan applies for the five-year duration of each of the respective carbon budgets, and is a report setting out proposals and policies for meeting the carbon budget for that period. This includes proposals and policies covering the areas of responsibility for each individual Department. Each Department must also provide DAERA with its plans and proposals for the areas that fall under their respective areas of responsibility, following consultation with their sector-specific advisory groups.

[Section 30](#) specifies that, in determining the policies and proposals to be submitted to DAERA to be included within in a Climate Action Plan, each individual Department must have regard to the desirability of coordinating proposals and policies with other parts of the UK, as well as the Republic of Ireland (given that section 32 of the Act recognises the island of Ireland as a ‘single biogeographic unit’) and elsewhere. Section 32 establishes that proposals and plans are also subject to a duty of consultation, as well as a prior financial, social, economic and rural impact assessment of their prospective effects and the need to give due regard to ‘the special economic and social role of agriculture, including the distinct characteristics of biogenic methane’. In preparing Climate Action Plans, the Departments must also consider the ‘just transition’ principle and the desirability of using nature-based projects, either alone or together with other types of action.

The ‘just transition’ principle is inspired by, but substantially expands upon, the earlier approach of the revised Scottish legislation. It is defined further within [section 30\(3\)](#) of the Climate Change (Northern Ireland) Act 2022 as taking action to reduce Northern Ireland’s emissions and to increase its removals in a manner that so far as possible achieves the following objectives:

- supporting jobs and the growth of jobs that are climate resilient and environmentally and socially sustainable;

- 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;
- supporting low-carbon investment and infrastructure;
- 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;
- creating decent, fair and high-value work in a way which does not negatively affect the current workforce;
- contributing to a resource-efficient and sustainable economy;
- 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;
- reducing – with a view to ultimately eliminating – poverty, inequality and social deprivation;
- eliminating gender inequality and advancing equality of opportunity between men and women;
- supporting the social and economic needs of people in rural areas; and
- taking into account the future generations principle.

Under [section 33](#), the proposals and policies required under [section 29](#) must ensure that the relevant carbon budget is attained in particular sectors, namely:

- energy production and supply (including for residential, public and district heating and cooling purposes);
- transport (including shipping and aviation);
- infrastructure (including infrastructure for electric vehicular transport);
- business and industrial processes; residential and public (in relation to buildings in these sectors);
- waste management;
- agriculture;
- land use and land-use change, including forestry; fisheries; and
- the provision of financial assistance to any person in connection with the promotion of economic development and infrastructure, goods or services in Northern Ireland.

In addition, under [section 36\(2\)](#), the plans and proposals of the respective Departments are also subject to a requirement to avoid ‘carbon leakage’, which is the transfer of the production processes and services to countries without comparable climate change policies. This is a novel requirement that does not, as yet, apply within the other climate change legislation of the UK or other devolved Parliaments.

Sectoral plans

The second type of plan envisaged under the Act are Sectoral Plans, which are devised by the various Departments and address individual areas of the economy. The primary difference between the two is that Climate Action Plans are designed to facilitate the successful implementation of the respective five-year climate budgets, while Sectoral Plans are initiatives

with a longer-term approach that are directly related to meeting the emissions targets in sections 1, 3 and 4 of the Act.

[Section 13](#) of the Act specifies that sectoral plans involve setting targets for areas of the economy to meet the net zero targets in the Act, while also supporting a just transition. In addition to these broad requirements, individual targets are prescribed for particular sectors, including that at least 80% of electricity consumption is to be from renewable sources by 2030 ([section 15](#)), and for at least 70% of waste to be recycled by 2030 ([section 18](#)).

Ultimately, the successful implementation of both Climate Actions Plans and sectoral plans will be of fundamental importance in achieving net zero in Northern Ireland. However, the development of plans and policies in Northern Ireland requires the national governance structures to be fully functional and minimal disruption to the day-to-day work of the Assembly. The regular and lengthy suspensions of the Assembly in recent years has inevitably delayed progress on these vital components of climate change policy.

Institutions established under the Act

The Climate Change (Northern Ireland) Act 2022 also creates additional institutions to provide oversight of the implementation of these obligations. [Section 37](#) mandates the establishment of a Just Transition Commission, based on the earlier Scottish legislation, whose respective composition and functions are to be determined by Executive regulations, and will include representatives from key economic sectors, as well as civic society, academics, youth groups, environmental groups and trade unions. The establishment of the Just Transition Commission was formalised by the Executive in April 2024.¹⁰⁹ [Section 31](#) of the Act also provides for the creation of a specific Just Transition Fund for Agriculture.

[Section 50](#) also provides for a Northern Ireland Climate Commissioner, responsible for overseeing and reporting on the operation of the Act, which has yet to be formally established. Further obligations towards public accountability are prescribed under [section 42](#) of the Act, which allows DAERA to adopt regulations imposing specified climate change reporting duties upon certain public bodies.

In May 2024, the [Climate Change \(Reporting Bodies\) Regulations \(Northern Ireland\) 2024](#) came into effect, identifying 40 bodies subject to these requirements, including educational establishments, health and social care trusts and the emergency services. These bodies are required to produce reports on climate mitigation on a three-yearly basis (commencing in 2025), and climate adaptation on a five yearly-basis (commencing in 2026).

Northern Ireland case law and climate change

Given its comparatively recent enactment, relatively few cases have been brought under the Climate Change (Northern Ireland) Act 2022 to date. However, the cases that have proceeded,

¹⁰⁹ [Department of the Environment, Climate and Communications Northern Ireland \(2024\) Just Transition Commission, available at: https://www.gov.ie/en/publication/just-transition-commission/#:~:text=The%20Just%20Transition%20Commission%20is,Decision%20of%2030%20April%202024.](https://www.gov.ie/en/publication/just-transition-commission/#:~:text=The%20Just%20Transition%20Commission%20is,Decision%20of%2030%20April%202024.)

and are currently awaiting judicial consideration, will have important interpretive implications for the legislation. One particularly important case has been brought from the standpoint of public health.¹¹⁰ Here the Climate Change (Northern Ireland) Act 2022 has been used as the basis for a judicial review on the medical impacts of harmful emissions. A decision in what has since been termed the ‘Diesel Emissions’ case is expected shortly.

This legal action was brought in the Northern Irish courts by the campaign group [Friends of the Earth](#), acting in partnership with the [Northern Ireland Commissioner for Children and Young People](#). The applicants allege that long-term deficiencies in vehicle emissions policy have prolonged and amplified air pollution in Northern Ireland. In 2006, the Department of Infrastructure introduced a legal requirement for diesel-fuelled cars to be subject to exhaust emissions tests, although this policy was then suspended after just four months and has remained so for over seventeen years. In bringing the action for judicial review, which was heard by the High Court in March 2024,¹¹¹ the applicants argued that the failure to apply emissions tests affects not only human health, but the health of Northern Ireland’s biodiversity and its wildlife habitats. The ‘Diesel Emissions’ case will therefore be an important test case concerning the parameters and application of the 2022 Act.¹¹²

In the meantime, significant judgments have also been forthcoming regarding the implications of climate change on other aspects of the law applicable to Northern Ireland. The first case to formally raise climate change concerns within the context of planning and licensing decisions was heard in August 2023. *No Gas Caverns Ltd v. Another*,¹¹³ campaigners sought a judicial review of a decision by DAERA, which had granted planning permission to a project that would use a drilling process known as ‘solution mining’ to create a series of cavities in the seabed for the storage of natural gas. In this case, permissions had been previously granted for terrestrial work, and planning permission for the marine component was granted for drilling in the Larne Lough, which was subject to a series of protective designations under nature conservation laws.

[Section 58 of the Marine and Coastal Access Act 2009](#) requires a public authority exercising authorisation powers to take any decisions in line with appropriate marine policy documents. The relevant document, the UK Marine Policy Statement,¹¹⁴ states that decision-makers must take account of climate change considerations. The applicants also argued that there had been a failure to refer the project to the Executive, as is required under sections [20](#) and [28A](#) of the Northern Ireland Act 1998 when a project affects more than one ministry and is ‘significant or controversial’. The application for judicial review was initially rejected, but in June 2024 the

¹¹⁰ Northern Ireland Commissioner for Children and Young People (21 September 2023) *Landmark Legal Challenge Over Northern Ireland Air Quality Failure*, available at: <https://www.niccy.org/news/landmark-legal-challenge-over-northern-ireland-air-quality-failure/>.

¹¹¹ The BBC (1 March 2024) *MoT: Plan to Test Diesel Car Emissions – Court Told*, available at: <https://www.bbc.co.uk/news/uk-northern-ireland-68332193>.

¹¹² Friends of the Earth (1 March 2024) *NI Diesel Pollution Legal Challenge Resumes*, available at: <https://friendsoftheearth.uk/climate/ni-diesel-pollution-legal-challenge-resumes>.

¹¹³ *In the Matter of an Application by No Gas Caverns Limited and Friends of the Earth Limited for Judicial Review* [2023] NIKB 84. Available at: <https://www.bailii.org/nie/cases/NIHC/KB/2023/84.html>.

¹¹⁴ <https://assets.publishing.service.gov.uk/media/5a795700ed915d042206795b/pb3654-marine-policy-statement-110316.pdf>.

Court of Appeal overturned the High Court's original assessment,¹¹⁵ and ruled that the project should have been referred to the Executive, as it was both 'cross-cutting' and 'significant'. In so doing, the Court of Appeal considered that the project was effectively 'locking in fossil fuel dependency for 40 years to come'. The Court of Appeal ruled that this represented a potential conflict with climate policies that aspired to meet net zero by 2050, and also observed that climate policy was part of a 'wider canvas' of government activities. The original planning decision was subsequently quashed on 27 June 2024, although the developer is currently considering its options to appeal.

Wales

In Wales, the [Government of Wales Act 1998](#) initially provided for a softer form of devolution than Scotland, creating a National Assembly for Wales with powers only to enact secondary legislation. This was strengthened by the [Government of Wales Act 2006](#), which created a Welsh Government and gave the Assembly additional legislative competences. Unlike the position in Scotland, this initially operated on a 'conferred powers' model, where the legislation prescribed twenty specific fields of activity that were devolved to Wales, with powers over all remaining matters retained by the UK government. The 2006 Act provided a basis for the Assembly to enact primary legislation, provided that this was first accepted by the Welsh electorate in a referendum,¹¹⁶ which was approved in 2011. The [Wales Act 2017](#) revised these arrangements significantly, whereby Wales now follows the reserved powers model applied in Scotland. In 2020 the Assembly was renamed the Senedd Cymru/Welsh Parliament through the [Senedd and Elections \(Wales\) Act 2020](#), to more clearly reflect the fundamental changes to this governance model.

On 1 May 2019, the Senedd became the first national Parliament to formally pass a motion declaring a climate emergency.¹¹⁷ Unlike Scotland and Northern Ireland, however, Wales has not yet enacted its own individual Climate Change Act. Instead, the framework for Welsh powers and responsibilities concerning climate change are derived primarily through the [Environment \(Wales\) Act 2016](#). Using this legal platform, the Senedd has adopted a group of four key regulations, collectively termed the [Climate Change \(Wales\) Regulations 2021](#), through which the core policies towards net zero are elaborated. In addition to this, Wales enacted the [Wellbeing of Future Generations \(Wales\) Act 2015](#), as the first of the constituent UK governments to formally protect the interests of future generations. Climate change considerations continue to form an important area of activity in Wales under this unique statute.

¹¹⁵ *In the Matter of an Application by No Gas Caverns Limited and Friends of the Earth Limited for Judicial Review* [2024] NICA 50. Available at: <https://www.judiciaryni.uk/files/judiciaryni/2024-06/No%20Gas%20Caverns%20Ltd%20and%20Friends%20of%20the%20Earth%20Ltd%27s%20Application.pdf>.

¹¹⁶ House of Commons Library (2011) *Referendum in Wales*, available at: <https://researchbriefings.files.parliament.uk/documents/SN05897/SN05897.pdf>.

¹¹⁷ Welsh Government (2019) Written Statement: Welsh Government Declares Climate Emergency, available at: <https://www.gov.wales/written-statement-welsh-government-declares-climate-emergency>.

Environment (Wales) Act 2016

The Environment (Wales) Act 2016 provides a legislative framework for the Welsh Government to manage the natural resources of Wales. The 2016 Act largely mirrors the Climate Change Act 2008 enacted by the UK government, and applies its key targets and approaches to Wales, while establishing a legal platform for the Welsh Government to take action to meet these targets.

Net zero

In line with the Climate Change Act 2008, [section 29](#) of the Environment (Wales) Act 2016 requires the Welsh Government to ensure that Wales achieves net zero by 2050. Like the individual Climate Change Acts for Scotland and Northern Ireland, the Environment (Wales) Act 2016 applies to the Welsh Ministers, ensuring that this is a collective duty that falls upon each of the respective Ministers of Wales. The key departure to the Climate Change Act 2008 for Wales is established in [section 30](#) of the Environment (Wales) Act. This requires the Welsh Government to establish interim emissions targets for the years 2020, 2030 and 2040, with a further duty to provide [statements](#) to the Senedd for each interim target year. The interim emissions targets were set under the [Climate Change \(Interim Emissions Targets\) \(Wales\) Regulations 2018](#), and were later revised in 2021. For 2020, an interim target of 27% lower than the baseline was set, with the 2030 and 2040 targets initially set at 45% and 67% respectively.

As with the UK and Northern Irish Governments (and Scotland in due course), under [section 31 of the Act](#) the Welsh Government is responsible for setting carbon budgets at five-yearly intervals, commencing in 2016. The respective Welsh Ministers are also required under [section 39](#) to set out proposals and policies within their areas of governmental responsibility to meet each individual carbon budget. As with Scotland, Wales has the power to create an advisory body ([section 44](#)), but continues to draw upon the advice of the Climate Change Committee to fulfil this purpose.

Net zero policies are elaborated further in a group of Regulations collectively termed the Climate Change (Wales) Regulations. To date, two iterations of these Regulations have been elaborated, following the timetable for carbon budgets. The first iteration was adopted in 2018 and the second and current package of Regulations was enacted in 2021. The Climate Change (Wales) Regulations 2021 comprise four individual Regulations.

- The [Environment \(Wales\) Act 2016 \(Amendment of 2050 Emissions Target\) Regulations 2021](#), which adjusted the overarching target 2050 target, in line with the 2019 amendments to the Climate Change Act 2008, to attain net zero as opposed to an 80% reduction relative to the national baseline.
- The [Climate Change \(Interim Emissions Targets\) \(Wales\) \(Amendment\) Regulations 2021](#), which have amended the interim targets for 2030 and 2040 with more ambitious targets of 63% and 89% respectively.
- The [Climate Change \(Carbon Budgets\) \(Wales\) \(Amendment\) Regulations 2021](#), which revised the 2021-2025 carbon budget and set the 2026-2030 carbon budget.

- The [Climate Change \(Net Welsh Emissions Account Credit Limit\) \(Wales\) Regulations 2021](#), which limits the amount of carbon units that may be credited to the Welsh account at zero.

In 2019, the Welsh Government published *Prosperity for All: A Climate Conscious Wales*, its second and current Climate Adaptation Plan, operational for 2020-2025.¹¹⁸ It was subsequently reviewed by the Climate Change Committee, which commended a number of positive examples of adaptation plans having been put in place, although it also raised concerns over a lack of consistency across sectors.¹¹⁹

Wellbeing of Future Generations (Wales) Act 2015

A key departure in the Welsh Government's response to climate change, which is not replicated in the legislation of the other devolved administrations, is a statute that places a legal duty to consider the needs of future generations in the acts and policies of public bodies in Wales. This requirement was established and elaborated in the pioneering Wellbeing of Future Generations (Wales) Act 2015, the first of its kind adopted in the UK. [Section 121 of the Government of Wales Act 1998](#), the first devolution statute for Wales, imposed a duty on what was then the National Assembly of Wales (now the Senedd) to promote sustainable development in the exercise of its functions. This has remained a core obligation in the formulation of laws and policies by the Senedd and one that has found particular articulation through the Wellbeing of Future Generations Act 2015.

Under [section 2](#) of the Wellbeing of Future Generation Act 2015, sustainable development is defined as 'the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle' which is 'aimed at achieving the well-being goals' of the Act'. [Section 3](#) of the Act places a wellbeing duty on every public body in Wales to 'carry out sustainable development'. Applying the sustainable principle requires a public body to act 'in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs' ([section 5](#)). In so doing, a public body must take account of:

- the importance of balancing short term needs with the need to safeguard the ability to meet long term needs, especially where things done to meet short term needs may have detrimental long term effect;
- the need to take an integrated approach, by considering how the body's well-being objectives may impact upon each of the well-being goals and how its well-being objectives impact upon each other or upon other public bodies' objectives, in particular where steps taken by the body may contribute to meeting one objective but may be detrimental to meeting another;
- the importance of involving other persons with an interest in achieving the well-being goals and of ensuring those persons reflect the diversity of the population of Wales

¹¹⁸ Welsh Government (2019) *Prosperity for All: A Climate Conscious Wales*, available at: https://www.gov.wales/sites/default/files/publications/2019-11/prosperity-for-all-a-climate-conscious-wales_0.pdf.

¹¹⁹ Climate Change Committee (2023) *Adapting to Climate Change: Progress in Wales*, available at: <https://www.theccc.org.uk/publication/adapting-to-climate-change-progress-in-wales/>.

(where the body exercises functions in relation to the whole of Wales), or the part of Wales in relation to which the body exercises functions;

- how acting in collaboration with any other person (or how different parts of the body acting together) could assist the body to meet its well-being objectives, or assist another body to meet its objectives; and
- how deploying resources to prevent problems occurring or getting worse may contribute to meeting the body's well-being objectives, or another body's objectives.

This is to be pursued in order to achieve the seven unique 'wellbeing goals', that are described in [section 4](#) as:

- a prosperous Wales;
- a resilient Wales;
- a healthier Wales;
- a more equal Wales;
- a Wales of cohesive communities;
- a Wales of vibrant culture and thriving Welsh language; and
- a globally responsible Wales.

Of these, the goals concerning prosperity, resilience, health and global responsibility are most directly relevant to addressing climate change in Wales.

A *prosperous Wales* is described as being 'an innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work'.

A *resilient Wales* is one 'which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)'

A *healthier Wales* is 'a society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood'

A *globally responsible Wales* embodies a nation 'which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being'. Global responsibility has been recognised by the Welsh Government as involving climate duties, with climate responsibility established as a prominent component of its current *International Strategy*, operational from 2020-2025.¹²⁰ In August 2024, the Welsh Government opened consultations

¹²⁰ Welsh Government (2020) *International Strategy*, available at: <https://www.gov.wales/sites/default/files/publications/2020-10/international-strategy-for-wales-v1.pdf>.

on a new iteration of the *International Strategy*, with climate considerations likely to remain a central element from 2025 onwards.¹²¹

Public bodies are listed in [section 6](#) of the Wellbeing of Future Generations Act 2015, and includes the Welsh Ministers, local authorities, local health boards, and Public Health Wales (the national public health agency in Wales). Public bodies also include national parks, Natural Resources Wales, Social Care Wales, Transport for Wales, fire and rescue and cultural and educational bodies.

The Welsh Ministers ([section 8](#)) and public bodies ([section 7](#)) are required to publish their well-being objectives and annual reports on their progress towards meeting them. [Section 11](#) of the Act also requires the Welsh Government to publish a [Future Trends](#) report that specifically takes into account an assessment of the risks of climate change elaborated in the UK Climate Change Risk Assessments mandated under the Climate Change Act 2008, and any action taken by the United Nations in pursuit of the Sustainable Development Goals. Under [section 10](#), national indicators for measuring progress must be developed by the Welsh Government and a national [Wellbeing Report](#) is published annually to measure progress and areas of concern.

Most significantly, the [section 17](#) of Act creates the office of the [Future Generations Commissioner for Wales/Comisiynydd Cenedlaethau'r Dyfodol Cymru](#), which was instituted in 2016. [Section 18](#) elaborates that the Future Generations Commissioner has a general duty to promote the sustainable development principle, in particular to 'act as a guardian of the ability of future generations to meet their needs and encourage public bodies to take greater account of the long-term impact of the things that they do' and thus 'monitor and assess the extent to which well-being objectives set by public bodies are being met'. In this regard, [section 19](#) indicates that the Commissioner's powers are essentially advisory in nature and are largely concerned with providing advice, encouraging best practices, promoting awareness and undertaking research. Insofar as the Commissioner does have enforcement capacity, [section 20](#) establishes that this is primarily restricted to conducting reviews of the extent to which public bodies have been meeting this mandate. Under [section 21](#), the Commissioner has the authority to make recommendations. These must be followed unless there is 'good reason' not to, or an acceptable alternative course of action has been developed ([section 22](#)).

In 2023, the office of the Future Generations Commissioner for Wales published *Cymru Can*, establishing its strategy and core missions for the period 2023-2030.¹²² This incorporated a series of five Missions, of which one concerns Climate and Nature. A key part of this particular Mission has been identified as being to 'challenge and advise public bodies to deliver against their climate targets and to forge a pathway to a net zero public sector by 2030'. This entails a series of activities to:

- advocate that all decision making takes a preventative and long-term view of the climate and nature emergencies;

¹²¹ Welsh Parliament *Welsh Government's International Strategy*, available at: <https://business.senedd.wales/mgConsultationDisplay.aspx?ID=561>.

¹²² Cymru Can (2023) *The Strategy for the Future Commissioner for Wales 2023-2030*, available at: <https://www.futuregenerations.wales/wp-content/uploads/2023/11/2023-11-20-Strategy-English.pdf>.

- ensure levers, like procurement, land use planning and business support, are affecting positive change;
- convene Welsh public bodies with others to share good practice and facilitate learning exchanges on the net zero and nature positive agendas;
- support public bodies to involve communities in assessments and joint actions to reduce emissions on an area-wide basis; and
- help and overcome systemic infrastructure problems, such as access to national grid.

While these are not legally binding targets or objectives, the Wellbeing of Future Generations Act 2015 and its associated Commission does exert a strong moral and ethical influence over the policies of the public bodies subject to duties under the legislation, which can be harnessed to provide a further spur to achieving the objectives of the climate change laws applicable to Wales.

Conclusion

Climate change has led to the development of an extensive framework of legislation and case law at both an international and national level. This Review has sought to provide an accessible overview of the UK legal framework, considering its international commitments, as well as national and devolved legislation.

Since the elaboration of the UNFCCC in 1992, the international community has primarily sought to reduce its collective emissions of greenhouse gases, with the aspiration of mitigating further warming and adapting to the impacts of climate change. The reduction of emissions has often proved difficult to attain, since it involves significant adjustments to industrial and economic activities. It has also required a careful balancing of responsibilities, and the recognition some countries will be more acutely impacted by climate change and others bear a greater share of responsibility for these effects. In 2015 the Paris Agreement marked a watershed in international climate governance, recognising that climate ambitions needed to be collectively raised. International climate change law has since moved beyond the confines of the UNFCCC regime, and increasingly engages issues of human rights and other provisions of international law, further advancing the array of obligations that will apply to governments.

The UK government has committed itself to an ambitious programme of climate action, with the ultimate aim of achieving net zero emissions by 2050. This has entailed the enactment of an extensive framework of legislation to facilitate this objective, creating a new advisory architecture, as well as a series of specific obligations upon the government to oversee tiered reductions of greenhouse gas emissions through the elaboration of five-yearly carbon budgets. The legislative framework extends beyond the Climate Change Act 2008, however, and involves a tapestry of other statutes. Notably this includes significant adjustments to planning legislation, to seek to factor in climate considerations at an earlier stage in the development and approval process, while public and private bodies have also acquired an array of commitments to promote a greater appreciation of and readiness for the impacts of climate change upon their activities. However, these laws and policies have been subject to regular legal challenges, in order to advance the ambition of their requirements and the speed of their implementation. Not all legal challenges have proved successful, and many were still ongoing at the time of writing. However, a number of recent court judgments have required the government to make significant changes to its approaches and policies.

The nature of devolved governance in the UK means that responsibility for climate mitigation and adaptation is not concentrated centrally, with devolved law and policy playing an equally important role in meeting the UK's internationally obligations. The devolved governments have taken subtly differing approaches to addressing climate within the limits of their respective powers. Scotland and Northern Ireland have enacted their own specific Climate Change Acts, which have spread responsibility for climate action across the entirety of their government departments, while also advancing consideration of 'just transition' more explicitly than in England. Wales has expressly placed the needs of future generations at the heart of its response to climate change. While the devolved legislation has faced important challenges, it has also provided a basis for innovation and a scope to respond to the impacts of climate change on a localised basis.