

Adapting to the unadaptable?

Environment Energy Hub

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Environment

A. INTRODUCTION

The Second Goal of COP26

1. As we're all aware, the impacts of climate change are being felt globally. The scale of the issue, in 2021 alone, is pithily summarised in the COP26 Glasgow Adaptation Imperative:

Drought in southern Madagascar, flash flooding in Germany and China, and wildfires in Greece and the US are among events that are far more likely to have occurred due to our changing climate, with wide-ranging impacts on food harvests, livelihoods and tragically, life. While no-one is immune, it is the poorest countries who are at the frontline of climate impacts, and the most vulnerable, including young people, women and girls, people with disabilities and indigenous peoples who are hardest hit.^[1]

2. Against this alarming context, the second of the four COP26 goals is 'adapt to protect communities and natural habitats'. The goal identifies two particular tasks: (i) protect and restore ecosystems, and (ii) build defences, warning systems and resilient infrastructure and agriculture to avoid loss of homes, livelihoods and lives.

What does adaptation actually mean?

3. The general idea of 'adaptation' to climate change is as easy to state as perhaps it is hard to achieve. The UN has expounded the following neat and comprehensive definition:

Adaptation refers to adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. It refers to changes in processes, practices, and structures to moderate potential damages or to benefit from opportunities associated with climate change. In simple terms, countries and communities need to develop adaptation solution and implement action to respond to the impacts of climate change that are already happening, as well as prepare for future impacts.^[2]

4. In short, the aim of adaptation to climate change is to safeguard people from higher temperatures, rising seas, fiercer storms, unpredictable rainfall and more acidic oceans.

B. ADAPTATION IN THE PARIS AGREEMENT

Paris Agreement

5. Article 7 of the Paris Agreement^[3] set a 'Global Goal on Adaptation', one of the three core goals established at Paris. Article 7(1) stated:

Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal.

6. Article 7 further states:

(5) Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

(6) Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

7. Article 7(10) provides the most concrete limb of the Global Goal on Adaptation. It obliges each party to submit and then update periodically 'an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.'

C. ADAPTATION IN DOMESTIC LAW AND POLICY

The UK's Adaptation Communication 2020

8. In December 2020, DEFRA published the UK's adaptation communication. It summarises how climate adaptation will be "integrated across government departments". It notes, among other things:

- UK impacts, risks and vulnerabilities: The second UK Climate Change Risk Assessment (CCRA), which was laid before Parliament in January 2017, included 56 priority risks to the UK to be addressed in adaptation planning.
- Implementation of adaptation actions, and results achieved: It lists a number of recent adaptation initiatives such as the National Framework for Water Resources published by the EA.
- Monitoring and evaluation of adaptation, barriers and challenges: It notes that the monitoring of adaptation progress remains a significant challenge, with an absence of a full set of robust metrics and indicators, and that adaptation and resilience planning is inherently complex, with uncertainty related to climate models, projections, and what those means in terms of climate impacts.

9. The UK's Adaptation Communication also summarises the statutory framework that the UK already has in place to plan for planning adaptation to climate change. The UK does have a legislative system in place for programming adaptation efforts, and was among the first countries to legislate for climate change adaptation.

Part 4 of the Climate Change Act 2008

10. Part 4 of the Climate Change Act 2008 addresses the impact of, and adaptation to, climate change. In particular, the key provisions are:

- Report on impact of climate change: Section 56 places a duty on the Secretary of State to carry out an assessment of the risks to the UK from the impact of climate change; the first report was required to be made within three years, with subsequent reports at least every five years thereafter. Each risk assessment must then be followed by the publication of a Government programme of adaptation measures. The most recent report was laid in 2017.
- Programme for adaptation to climate change: Under section 58, the Secretary of State is under a duty to lay programmes before Parliament setting out: (a) the objectives of the Government in relation to adaptation to climate change, (b) the Government's proposals and policies for meeting those objectives, and (c) the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under section 56. The objectives, proposals and policies must contribute to sustainable development.

- Reporting on progress in connection with adaptation Under section 59, when the Climate Change Committee produces its report on progress towards meeting carbon budgets (for the purposes section 36), it must also assess the progress made towards implementing the objectives, proposals and policies set out in programmes laid before Parliament under section 58. The Secretary of State published the most recent National Adaptation Plan in July 2018, which I'll come onto in a moment.
- Directions by Secretary of State to prepare reports The Secretary of State can require public bodies and infrastructure operators that provide key services, referred to as 'reporting authorities' to report on what actions they are taking to address climate impacts:
 1. The Secretary of State has a power, under section 62, to direct a 'reporting authority' to prepare a report containing: (a) an assessment of the current and predicted impact of climate change in relation to the authority's functions; (b) a statement of the authority's proposals and policies for adapting to climate change in the exercise of its functions and the time-scales for introducing those proposals and policies; (c) an assessment of the progress made by the authority towards implementing the proposals and policies set out in its previous reports.
 2. The Secretary of State is empowered to issue guidance (under section 61) on those issues.
 3. Under section 63, a reporting authority is obliged to comply with directions issued by the Secretary of State. A failure to comply with the statutory duty would therefore be an illegality challengeable by way of a judicial review.
 4. However, in the 2018 NAP, it is explained that the Secretary of State does not intend to direct organisations to report. The Government considered that a voluntary reporting process was the most constructive and collaborative approach for engaging reporting organisations and it considered would allow the greatest flexibility and innovation to address climate risk. Accordingly, the obligatory process prescribed by sections 62 to 63 is currently, has been in the recent past, dormant.

National Adaptation Plan

11. The National Adaptation Plan published in July 2018 is the second NAP since the 2008 Act was brought into force. The NAP identifies six priority areas of climate change risks for the UK.
12. Annex 2 to the NAP is a 'Detailed Actions Log', which sets out proposed planning, or monitoring. The Detailed Actions log is relatively light, in the main, on concrete actions, or is vague in describing exactly what action is required. For example, one of the key actions it prescribes is to '*Take action to eradicate high priority invasive non-native species.*'
13. However, there are, albeit perhaps in the minority, some clear tasks, such as planting 5,000-10,000 hectares of new woodland habitat (including new native woodland priority habitat) per year in England, up to 38,000 hectares by 2023.
14. When the NAP was published, it was criticised as being only a 'partial plan', and that it was hard to say if the NAP was sustainable and effective. On a more positive note, the author of a CCC insight article did observe that the forewords to the first NAP (by Owen Paterson MP) and the second (by Lord Gardiner) had a striking difference in tone, and not just because '*the word 'climate' is actually mentioned more than once in the latest version,*' which was said to be '*certainly cause for optimism.*'[4]
15. The CCC also has a duty to assess the progress in implementing the NAP, reporting to Parliament every two years. The most recent report was published on 24 June 2021.[5] In short, whilst the CCC recognised some areas of good progress, it noted that progress had been made only in a minority of sectors. The overarching theme of its report was that more effort is required. It made a series of recommendations, among which was to resume the use of the mandatory reporting power under section 62 of the Climate Change Act 2008.
16. The Government thereafter published its response to the CCC's report. It explained that it is now preparing for the next National Adaptation Programme, and will consult on the future use of the reporting power.[6]

Other statutory measures

17. There have been, in the past couple of years, a number of more targeted adaptation planning measures. To take some very brief indicative examples:

- Agriculture Act 2020: The Government now has a duty to publish a regular report on the subject of UK food security, under section 19.
- Fisheries Act 2020: The Fisheries Act 2020 set a new regime for fisheries management. The fisheries objectives listed at section 1, include a sustainability objective requiring that fish and aquaculture activities are environmentally sustainable in the long term, and specifically the precautionary objective
- Environmental Act 2021: The Environment Act 2021 includes a number of measures which are aimed at adaptation planning, including, for example, drought plans.

Conclusion on the statutory framework

18. In summary, it is a great credit that the Climate Change Act 2008 established a statutory framework for the purposes of planning and programming adaptation to climate change. It ensures, at the very least, that adaptation is kept on the government of the day's agenda, and the value of that is easy to underestimate. The complexity of the task of identifying and implementing clear and effective adaptation measures is also easy to underestimate. That said, the primary function of the current framework is, arguably, to plan to plan, which takes us to Glasgow.

D. ADAPTATION AT COP26

The Glasgow Adaptation Imperative

19. At COP26, securing action on adaptation was a key goal. The Glasgow Adaptation Imperative, produced to set out action to date and prescribe the progress required to COP27 set key objectives which were relatively broad.

So, what was achieved?

20. With the intention of strengthening action on adaptation, a 2 year Glasgow-Sharm el Sheikh Work Programme on the Global Goal of Adaptation ("the GlaSS") was agreed as a product of the COP26 negotiations. The GlaSS objectives are:

Enable the full and sustained implementation of the Paris Agreement with a view to enhancing adaptation action and support.

Enhance the understanding of the global goal on adaptation.

Contribute to reviewing the overall progress made in achieving the global goal on adaptation.

Enhance national planning and implementation of adaptation actions.

Enable parties to better communicate their adaptation priorities, needs, plans and actions.

Facilitate the establishment of robust, nationally appropriate systems for monitoring and evaluating adaptation actions.

Strengthen implementation of adaptation actions in vulnerable developing countries

21. Whether this will be as significant a step forward as it claims to be, will have to be seen in Egypt. But there can be no question that the time for planning is running out, and implementation now, is imperative.

[1] The UK COP26 Presidency Glasgow Imperative: Closing the Adaptation Gap and Responding to Climate Impacts, available online here: <https://ukcop26.org/the-uk-cop26-presidency-glasgow-imperative-closing-the-adaptation-gap-and-responding-to-climate-impacts/>.

[2] United Nations Framework on Climate Change, available online here: <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/what-do-adaptation-to-climate-change-and-climate-resilience-mean>.

[3] Available online here: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

[4] Kathryn Brown, *The New National Adaptation Programme: Hit or Miss?* (19 July 2018), available online here: <https://www.theccc.org.uk/2018/07/19/the-new-national-adaptation-programme-hit-or-miss/>.

[5] Available online here: <https://www.theccc.org.uk/wp-content/uploads/2021/06/Progress-in-adapting-to-climate-change-2021-Report-to-Parliament.pdf>.

[6] Available online here: <https://www.gov.uk/government/publications/government-response-to-the-climate-change-committee-report-on-progress-in-adapting-to-climate-change>.

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