

COP 26 - Glasgow and beyond

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Starting shortly....

COP 26



Overview

- Net zero and the Climate Change Act 2008
- Net Zero and the Courts
- Mobilising green and sustainable finance
- Adapting to the Unadaptable
- From Paris through Glasgow to Sharm El-Sheikh

Net zero and the Climate Change Act 2008

Catherine Dobson

The Climate Change Act



Climate Change Act 2008



The Climate Change Act

Section 1: *"It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline".*



Section 4(1)(b): *"It is the duty of the Secretary of State to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget".*



The Climate Change Act



Climate Change Act 2008

“[G]iven the statutory basis of the targets and budgets in the Bill, any failure to meet a target or budget carries the risk for the Government of judicial review, like most legal duties on the Government.” Minister of State for the Environment, Public Bill Committee 1 July 2008 c236

“This legislation puts a legal duty on the Government to ensure that the UK meets its targets and stays within the limits of its carbon budgets (subject to provisions on banking and borrowing). This legal duty would mean that a Government which fails to meet its targets or stay within budget would be open to Judicial Review” CM 7040 Consultation Document, § 5.44

The Climate Change Act



“[A] target is not something that you can guarantee...it is something you would like to happen but you are not sure it will. So the duty of the Secretary of State to achieve the target is at best a duty to use his or her best endeavours to achieve that target, it cannot guarantee that the target will be achieved. The consequence that has for legal enforceability of this duty is that a failure to achieve the target does not, it seems to me, imply a breach of the duty, so there is nothing for the court to enforce even were it minded to do so. I am of the clear view...that this is a duty that is unenforceable in the courts” Oral and Written Evidence (second report); Draft Climate Change Bill (2006-7, HL 170-II, HC 542-II) 239-240

The Climate Change Act

“I do not think it is very enforceable in practice... Judicial Review is designed for challenges in relation to public bodies which act unreasonably. It is not an appeal tribunal that is supposed to have an overarching approach to bigger picture politics, political decisions and targets such as this. What will happen is if there is a flawed decision then certainly a challenge could be brought, but in all likelihood all we would find is that, as happened recently with the Energy Review, the Government has to go back, have another look at its figures and then reproduce its paper or its legislation or its rules. The judicial review challenge would not actually change anything”.

Michael Woods, UKELA Council, evidence to EFRA Committee



Enforceable duties?

Obligations to achieve clear results

Section 1(1) *"It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline".*

Section 4(1)(b) *"It is the duty of the Secretary of State to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget".*

Enforceable duties?

Unqualified obligations

Warm Homes and Energy Conservation Act 2000, s.2(1)

“It shall be the duty of the appropriate authority to prepare and publish... a strategy ... setting out the authority’s policies for ensuring ...that as far as reasonably practicable persons do not live in fuel poverty.”

Climate Change and Sustainable Energy Act 2006, s.4(5)

“If a target is designated under subsection (1), the Secretary of State must take reasonable steps to secure that the target is met.”

Enforceable duties?

Unqualified targets

A target duty is a category of duties in respect of which (though it is not express) "[t]he authority is simply required to "do its best" and "failure ... without more does not constitute a justiciable breach": Catherine Callaghan "What is a Target Duty ? [2000] JR 184

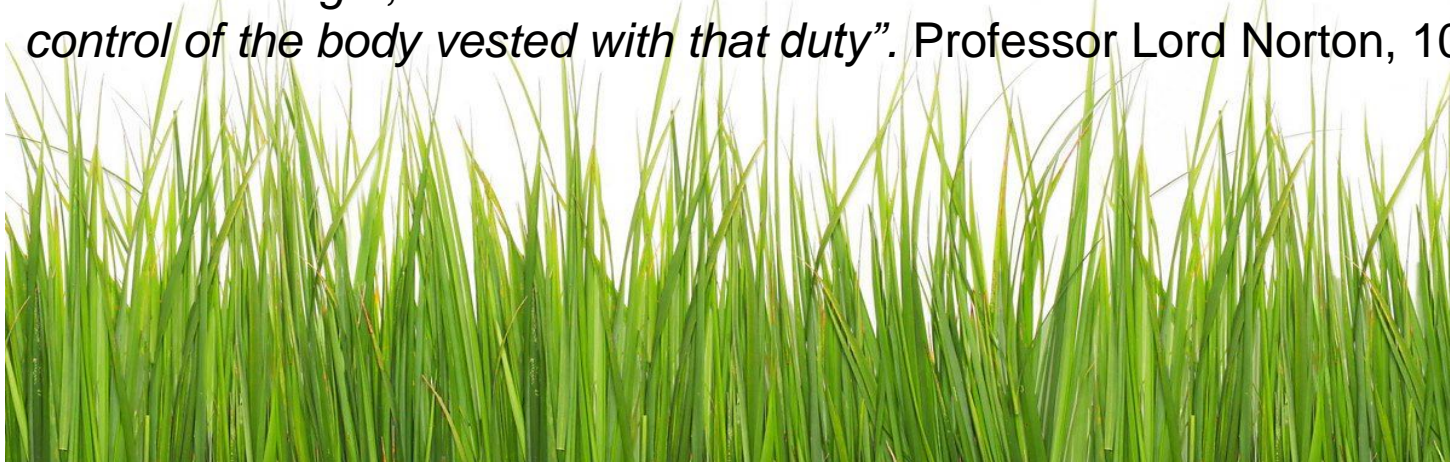
"in construing the scope and content of the duty the court will be driven by what the purpose intended by Parliament is, as revealed in the words of the enactment. Had Parliament wanted to create a duty to take reasonable steps, it could have done so expressly. Had Parliament wanted to exclude or reduce the scope for judicial review challenge, it could have done so expressly. The better view is that a court called upon to review whether a hard-edged strategic outcome duty has been fulfilled should do so on the basis of evidence; the answer is either yes or no." De Smith's Judicial Review (8th edn)

Enforceable duties?

Long-term targets



- Difficulties of enforcement prior to deadline
- Problems with political accountability for achieving targets
- Obligations on single Minister – not all public bodies

“[i]t is not unusual to impose statutory duties on a public authority to meet specified goals but these are duties that the authority is deemed able to fulfil within the powers and resources vested in it... The problem is not one of target setting, nor of embodying a target in statute, but rather the imposition of a duty to meet a target, the fulfilment of which relies on circumstances beyond the control of the body vested with that duty”. Professor Lord Norton, 107 CCB 91



Enforceable duties?

Absence of sanctions

- Failure to fulfil s.1 duty  Secretary of State provide a statement to Parliament explaining why target has not been met: s.20(6) CCA
- Failure to fulfil s.4 duty  Secretary of State must provide statement to Parliament explaining why carbon budget has not been met (s.18(8)) and produce a report setting out proposals and policies to compensate for future periods of excess emissions: s.19(1)

Net Zero and the Courts

Richard Wald QC

Cases Considered

1. *R(Friends of the Earth) v SSBERR* [2009] EWCA Civ 810
2. *R(People & Planet) v HM Treasury* [2009] EWHC 3020
3. *R(Plan B Earth) v SSfT* [2020] EWCA Civ 214
4. *Packham v (1) SSfT (2) The PM & HS2 Ltd* [2020] EWHC 829
5. *R(Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52
6. *R(Finch) v Surrey CC* [2020] EWHC 3566 (Admin)
7. *Elliott-Smith v SSBEIS* [2021] EWHC 1633
8. *R(Transport Action Network Ltd) v SSfT* [2021] EWHC 2095

R(Friends of the Earth) v SSBERR [2009] EWCA Civ 810

Relevant facts:

- FoE appealed McCombe J's decision [2008] EWHC 2518 refusing its JR of SSBERR's alleged failure to implement its fuel poverty strategy.
- Under s2 of Warm Homes & Energy Conservation Act 2000 SSBERR had to publish a strategy specifying a target date by which, "as far as reasonably practicable", people would not live in poverty.
- Increase in fuel prices rendered target date likely to be missed.

Issues included:

- Whether SSBERR was required to achieve a result by the target date
- What meaning to be given to "as far as reasonably practicable".

R(Friends of the Earth) v SSBERR [2009] EWCA Civ 810

CoA held:

- The obligation was to make an effort, not to achieve a result.
- Current resources were relevant but no applicable minimum standard.
- SSBERR had not therefore erred in assessing reasonable practicability in part by reference to departmental budgets.

Comment:

- CoA judgement and its specific interpretation of “reasonably practicable” imposes only a limited governmental obligation on SSBERR to make endeavours but not to achieve any particular result.
- Telling observation by Maurice Kay LJ at [2]: “This style of legislation is of recent origin. Historically, central Government has announced and developed its policies primarily through political rather than statutory or legal channels and the consequences of failure have been political rather than justiciable.”

R(People & Planet) v HM Treasury [2009] EWHC 3020

Relevant facts:

- P&P JR'd HMT's handling of its investment in RBS
- HMG owned 70% of RBS's share capital and in accordance with the 'Green Book' and its objective of preserving the stability of the UK financial system with minimum tax payer cost it pursued a purely commercial approach

Issues included:

- Were climate change and human rights harms relevant considerations or would they breach s172 Companies Act 2006 duty to shareholders?
- Should lending practices have avoided businesses causing such harm?

R(People & Planet) v HM Treasury [2009] EWHC 3020

Sales J refused permission and held:

- The Green Book gave HMT a wide discretion as to which factors to take into consideration and how to inform itself
- Where HMG was a majority shareholder in a bank HMT was entitled to adopt a commercial approach to preserve financial stability at minimum taxpayer cost (which were considerations of great weight).
- HMT entitled to leave addressing such harms to bank regulation

Comment:

- HMT was “perfectly entitled to form the view that that was a large topic not suitable to be resolved in the context of this assessment” [32] reflects an emerging reluctance for judicial intervention in this area.

R(Plan B Earth) v SSfT [2020] EWCA Civ 214

Relevant facts:

- Appeal vs Div Ct's refusal of JR of SSfT's ANPS designating a 3rd runway at LHR as the preferred option for meeting SE airport capacity need under s5(1) PA 2008.
- It was common ground that the designation was without regard to HMG's commitments under the 2015 Paris Agreement ("PA").

Issues included:

- Habitats and SEA Directives, UK climate change commitments and the appropriate relief.
- These centred around the interpretation and application of s5(8) of PA 2008 which provides that: "The reasons [for an NPS] 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."

R(Plan B Earth) v SSfT [2020] EWCA Civ 214

The CoA held:

- Only the climate change ground prevailed.
- HMG's commitment to the PA constituted government policy on climate change which, pursuant to s.5(8) CCA 2008 Act, SSfT had to take into account in his designation decision.
- His failure to do so vitiated his designation of the ANPS.
- The PA was 'so obviously material' to the designation decision that it was irrational not to have taken it into account [222-247], [283].

Comment:

- A broad and inclusive interpretation of "government policy".
- The first example of net zero arguments prevailing in the UK courts. Cited extensively thereafter at infrastructure inquiries nationwide.

Packham v (1) SSfT (2) The PM & HS2 Ltd [2020] EWHC 829

Relevant facts:

- Mr P sought (i) JR of HMG's decision to continue HS2 (ii) an interim injunction to protect 6 ancient woodlands, 9 years after HS2 public consultation in 2011
- Following various JRs and ES publication the *High Speed Rail (London – West Midlands) Act 2017* was passed
- In Aug 2019 SSfT est'd Oakervee Review (OR) to conduct HS2 cost/benefit analysis
- On 2 Feb 2020 OR recommended that HS2 proceed and the SSfT so decided
- Mr P filed his claim 6 ½ weeks later but no party raised promptness issues

Issues included:

- Was the claim brought promptly? (Div. Ct's own point)
- Did the decision failed to consider climate change issues?
- Should an interim injunction be granted?

Packham v (1) SSfT (2) The PM & HS2 Ltd [2020] EWHC 829

The Div. Ct. held (inter alia):

- Claim dismissed as not prompt because filed after 6 ½ weeks and on all grounds.
- There had been no failure to consider climate change issues. The OR report and the February 2020 decision had taken into account estimated construction carbon emissions associated with HS2 and the Government's climate change commitments following the PA [97-102]. Plan B in the CoA distinguished at [99].
- Re interim injunction - Given that the claimant had shown no real prospect of success in any of his grounds of challenge, his application for an interim injunction preventing the clearance works in the woodlands could not succeed. The balance of convenience test would anyway have favoured continuation of the works. They were long ago authorized by Parliament and there was a strong public interest in ensuring that, in a democracy, activities sanctioned by Parliament were not stopped by individual objectors [117-119], [133].

Comment:

- Cautionary tale about the strictness of the 6 week deadline for JRs under the Planning Acts (even where no party raises the issue and a reminder of the difficulties of challenging a political judgment relating to a project authorised by an act of Parliament (see e.g. [55])

Relevant facts:

- HAL appealed a decision that the SSfT's designation of the ANPS favouring LHR 3rdR was unlawful
- HMG had accepted the case for LHR expansion in 2015 and SSfT designated the ANPS in June 2018 under s5(1) PA 2008.
- CoA declared the ANPS unlawful for failure to take account of the PA and 2 ministerial statements made pre-ratification. SSfT did not appeal but HAL did.

Issues included:

- Had the duty under s5(8) to explain how “government policy” had been taken into account in designating an NPS been breached?

R(Friends of the Earth) v Heathrow Airport Ltd [2020] UKSC 52

SC held [101-111]:

- Purpose of s5(8) is to ensure coherence between NPSs and established Govt. climate change policy.
- CoA erred in ruling that “Govt. policy” were ordinary words and that the 2 ministerial statements made before ratification qualified.
- The phrase was to be given a narrow interpretation within its context or else civil servants would have to trawl through Hansard / press statements to find “policy”.
- When ANPS designated no carbon target specified and no established domestic policy on climate change beyond s1 CCA 2008

Comment:

- cf Lord Sales in *R (A) v SSHD* [2021] UKSC 37 at [39]: policies “come in many forms and may be more or less detailed and directive depending on what a public authority is seeking to achieve by issuing one. There is often no obligation in public law for an authority to promulgate any policy and there is no obligation, when it does promulgate a policy, for it to take the form of a detailed and comprehensive statement of the law in a particular area, equivalent to a textbook or the judgment of a court.”
- 10 05 21 SC convicted Mr Crosland (Plan B) of contempt of court and fined him £5k.

R(Finch) v Surrey CC [2020] EWHC 3566 (Admin)

Relevant facts:

- Ms F JR'd LPA's grant of PP for retention/expansion of existing oil well site and drilling of 4 new wells for 25 years
- LPA assessed GHG due to excavation but not use of hydrocarbons thereafter.

Issues included:

- Did the requirement under the TCP (EIA) Regs 2017 to describe likely significant direct and indirect effects of a development extend to GHG emissions of end users?

R(Finch) v Surrey CC [2020] EWHC 3566 (Admin)

Holgate J held (inter alia):

- End user emissions were outside the meaning of “effects of the proposed development” Reg 4(2), which were limited to those for which PP was required [101-102], [110], [112], [115], [117], [120] and [126].
- Since there was no legal requirement to calculate GHG end user emissions there was none in relation to PA allowances either [134-140].

Comment:

- Imaginative, albeit unsuccessful, way of bringing the issue before the court in the face of the welter of judicial reluctance to engage with it.
- CoA is considering this issue today and tomorrow, so watch this space!

Elliott-Smith v SSBEIS [2021] EWHC 1633

Relevant facts:

- CI JR'd decision to create UK ETS as replacement for EU ETS which set a diminishing cap on sector-wide GHG emissions over a given period, set a reserve price and auctioned allowances which could then be traded.

Issues included:

- Had the cap & auction reserve price taken account of the requirement in Arts 2 and 4(1) of PA to take urgent action to limit GHGs?
- Did the UK ETS breach s44 CCA 2008 by failing to limit / encourage the limitation of activities causing/ contributing to GHG emissions?

Elliott-Smith v SSBEIS [2021]

EWHC 1633

Dove J held (inter alia):

- Not for this court to resolve questions of construction on an unincorporated international treaty (i.e. the PA). At most it could assess whether SSBEIS view was tenable
- Although no express references to Arts 2 and 4(1) the need for urgent action was implicit in the approach adopted, which was tenable [55-57]
- ETS did not have to achieve a GHG reduction to meet the statutory purpose. It was sufficient that it aimed at that [66-67], [73-74]

Comment:

- Further example of judicial reluctance to directly apply the PA in domestic law.

R(Transport Action Network Ltd) v SSfT [2021] EWHC 2095

Relevant facts:

- CI JR'd SSfT's decision to set a road investment strategy under Infrastructure Act 2015 Pt 1 s3(1)

Issues included:

- Had the SSfT failed to comply with s3(5) by not taking into account the objective in Art 4.1 of the PA to reach peak gas emissions ASAP and reductions thereafter?

R(Transport Action Network Ltd) v SSfT [2021] EWHC 2095

Holgate J held (inter alia):

- PA not an obviously material consideration (*R(FoE) v HAL* [2020] UKSC 52) so nor was its “urgency” objective in Art. 4.1
- There was no reason to reach a different conclusion in the context of the 2015 Act

Comment:

- The application of the SC’s judgment in *FoE* to different circumstances creates a daunting task to anyone attempting this argument in the UK without the support of legislative change.

The Upshot

- The judgment of the CoA in Plan B was the high water mark for net zero in the UK courts and a false dawn for those hoping to see the predictions expressed in Parliament as to the enforceability of targets and budgets before the enactment of the CCA 2008 (see CD's 3rd slide) come true.
- For examples of such enforceability one must therefore look further afield such as to *Friends of the Irish Environment v Ireland* [2020] IESC 49 (in which the SC of Ireland struck down the Irish Government's National Mitigation Plan for failing to be 'sufficiently specific' as to how climate targets would be met by 2050, with the proposed policies 'excessively vague' or *Urgenda v Netherlands* [2015] HAZA C/09/00456689 in which the Dutch SC interpreted their powers under the ECHR boldly, ordering its Govt. to take more dramatic action to counter the threat of climate change.

Reform of the Climate Change Act

Catherine Dobson

Strengthening CCA

(1) Shorter targets

Danish Climate Act 2020



“7. (1) The Minister for Climate, Energy and Utilities must annually present a climate programme for the Danish Parliament

(3). In the climate programme, the Minister for Climate, Energy and Utilities must provide an assessment of whether it appears probable that the national climate targets mentioned in Articles 1(1) and 2(1) will be reached.”

German Federal Climate Protection Act 2019

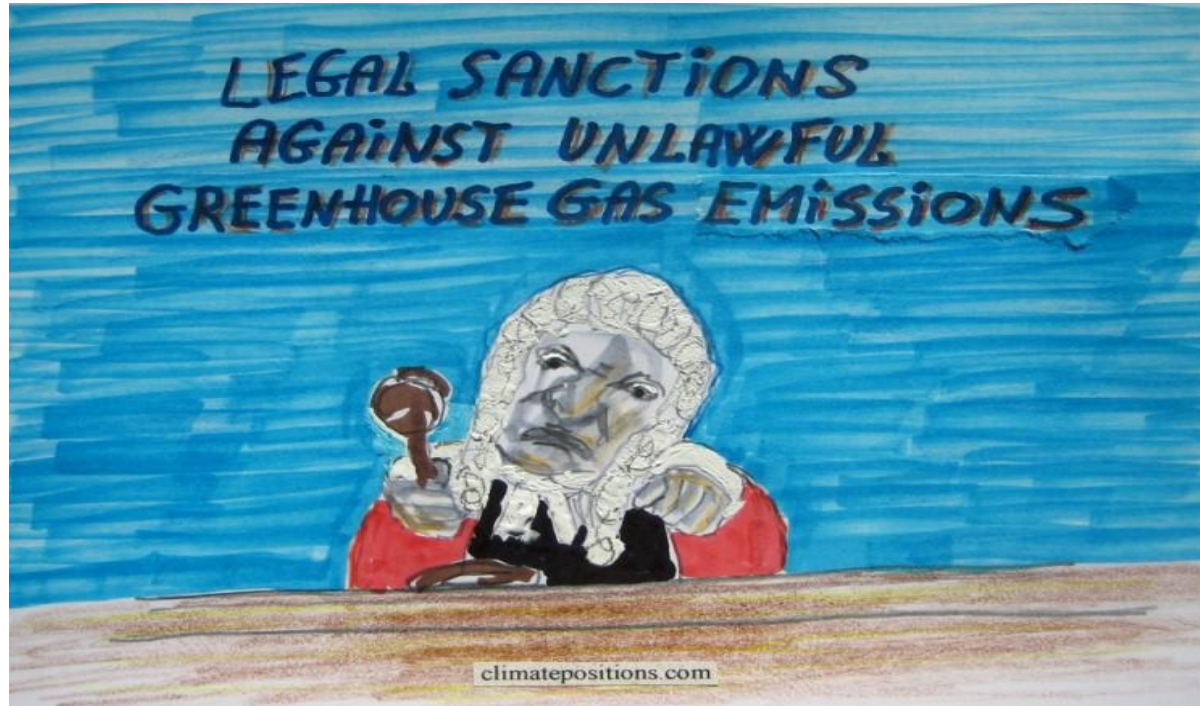


“Section 4 Permissible annual emission budgets, authority to enact statutory instruments

(1) To achieve the national climate targets referred to in section 3 subsection (1) of this Act, annual reduction targets shall be set by stipulating annual emission budgets for the following sectors: [...]”

Strengthening CCA

(2) Sanctions



Strengthening CCA

(3) Obligations on public bodies – and private actors?

Climate Change (Scotland)
Act 2009



S.44(1)(a) of the places a duty on public bodies, in exercising their functions to “*act in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of this Act*”.

German Federal Climate
Protection Act



Section 4(4) “*Responsibility for ensuring compliance with annual emission budgets shall lie with the federal ministry whose remit gives it primary competence for the sector in question. It shall have the task of initiating the national measures required for such compliance and in particular of presenting and implementing the measures referred to in sections 8 and 9 of this Act.*”

Mobilising green and sustainable finance



Ruth Keating

Third goal of COP26

“3. Mobilise finance

To deliver on our first two goals, developed countries must make good on their promise to mobilise at least \$100bn in climate finance per year by 2020.

International financial institutions must play their part and we need work towards unleashing the trillions in private and public sector finance required to secure global net zero.”

Article 2 of the Paris Agreement

- One of the three key objectives of Article 2:

“(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.”



Central Bank priority

PRESS RELEASE

ECB presents action plan to include climate change considerations in its monetary policy strategy

8 July 2021



BANK OF ENGLAND

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Climate change, the economy and financial system

Climate change affects our planet, our economy and our financial system. As such, climate change is relevant to the Bank of England's central mission to promote the good of the people of the United Kingdom by maintaining monetary and financial stability.

Three areas of mobilising green and sustainable finance

- What's happening in the UK?
- What's happening in the EU?
- What's happening around the world?



What's happening in the UK?



New mandatory climate related financial reporting for UK businesses (BEIS)



- Draft regulations have been published with the intention that they come into force for accounting years on or after 6 April 2022.
- An incentive for green investments.
- Requirement to disclose climate-related financial information in their Strategic Report or Energy and Carbon Report.
- Disclosures will be legally mandated by new regulations aligned to the Taskforce on Climate-Related Financial Disclosures (TCFD) framework and will require the inclusion of scenario analysis.
- Powers under the Companies Act 2006, and powers under the Limited Liability Partnerships Act 2000.

New mandatory climate related financial reporting for UK businesses (BEIS)

The draft Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021, climate-related disclosures will include the following:

- “1. a description of the company’s governance arrangements in relation to assessing and managing climate-related risks and opportunities;*
- 2. a description of how the company identifies, assesses, and manages climate-related risks and opportunities;*
- 3. a description of how processes for identifying, assessing, and managing climate-related risks are integrated into the company’s overall risk management process;*
- 4. a description of— 1. the principal climate-related risks and opportunities arising in connection with the company’s operations, and 2. the time periods by reference to which those risks and opportunities are assessed;*

New mandatory climate related financial reporting for UK businesses (BEIS)

- 5. a description of the actual and potential impacts of the principal climate-related risks and opportunities on the company's business model and strategy;*
- 6. an analysis of the resilience of the company's business model and strategy, taking into consideration different climate-related scenarios;*
- 7. a description of the targets used by the company to manage climate-related risks and to realise climate-related opportunities and of performance against those targets; and*
- 8. a description of 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."*

New mandatory climate related financial reporting for UK businesses (BEIS)

The directors of a company can omit climate related disclosure in whole or part if they:

“reasonably believe that, having regard to the nature of the company’s business, and the manner in which it is carried on, the whole or a part of a climate-related financial disclosure required by subsection (2A)(e), (f), (g) or (h) is not necessary for an understanding of the company’s business...”

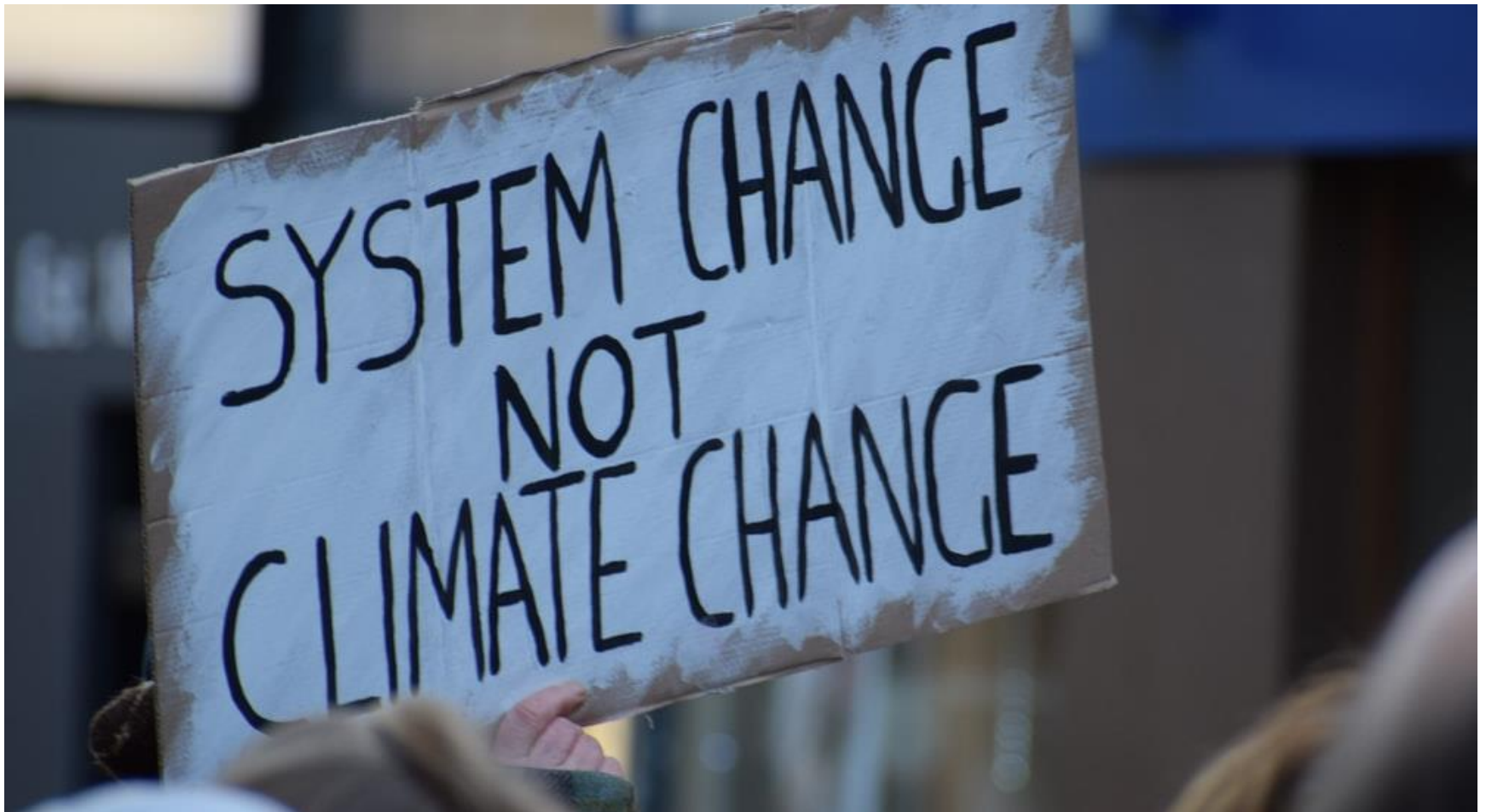


What's happening in the UK?



- Climate adaptation reports: the Financial Conduct Authority's first Climate Change Adaption Report.
- The Pensions Regulator.

What's happening in the EU?



EU changes

- The EU Taxonomy Regulation – Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088 – establishes criteria for determining whether an economic activity is environmentally sustainable: (i) substantial contribution. (ii) Harm to environmental objectives. (iii) Compliance with minimum social and labour safeguards. (iv) Technical screening criteria.
- EU Green Bond Standard.
- The European Commission issued a proposed Corporate Sustainability Reporting Directive.



What's happening around the world?



What's happening around the world?

- New Zealand: Financial Sector (Climate-related Disclosures and Other Matters) Amendment Bill.
- France: adopted Decree No. 2021-663, in application of article 29 of the Climate Energy Law (Law no. 2019-1147).
- Japan's: Corporate Governance Code effective from 11 June 2021.
- Brazil/Hong Kong/Singapore/Switzerland: TCFD-aligned disclosure requirements.

Where is this going?

- Shell judgment.
- ClientEarth's case against the central bank of Belgium.
- Liability risk.
- Stranded assets and reputational harm.

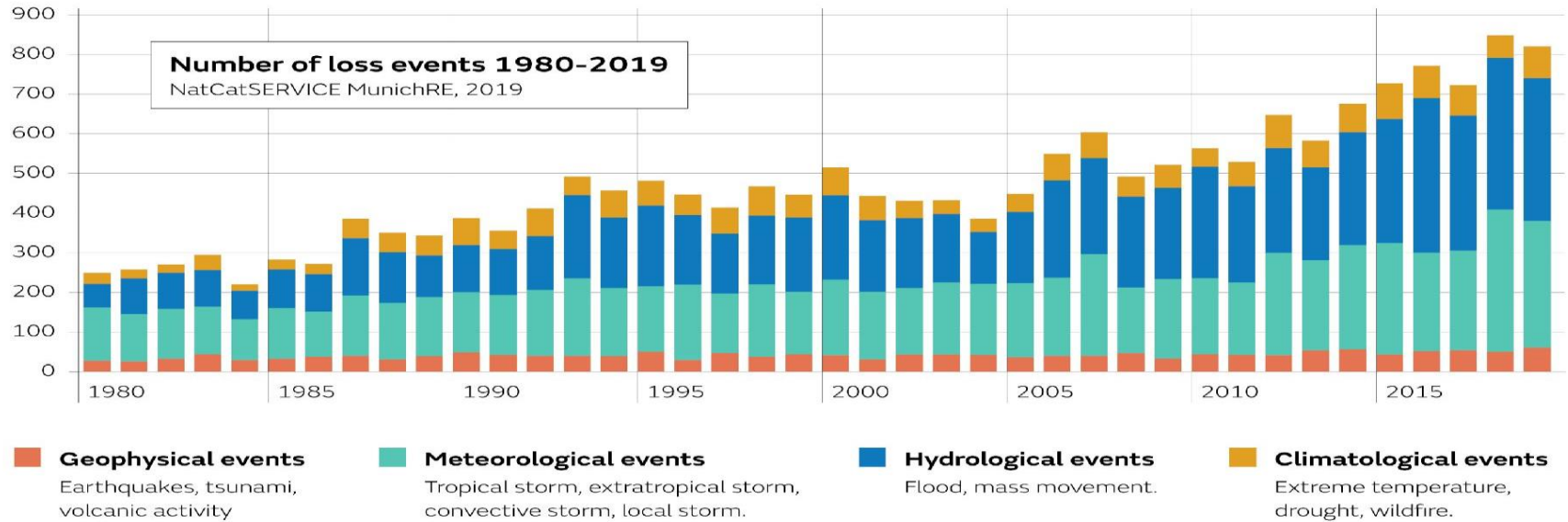


Adaptation

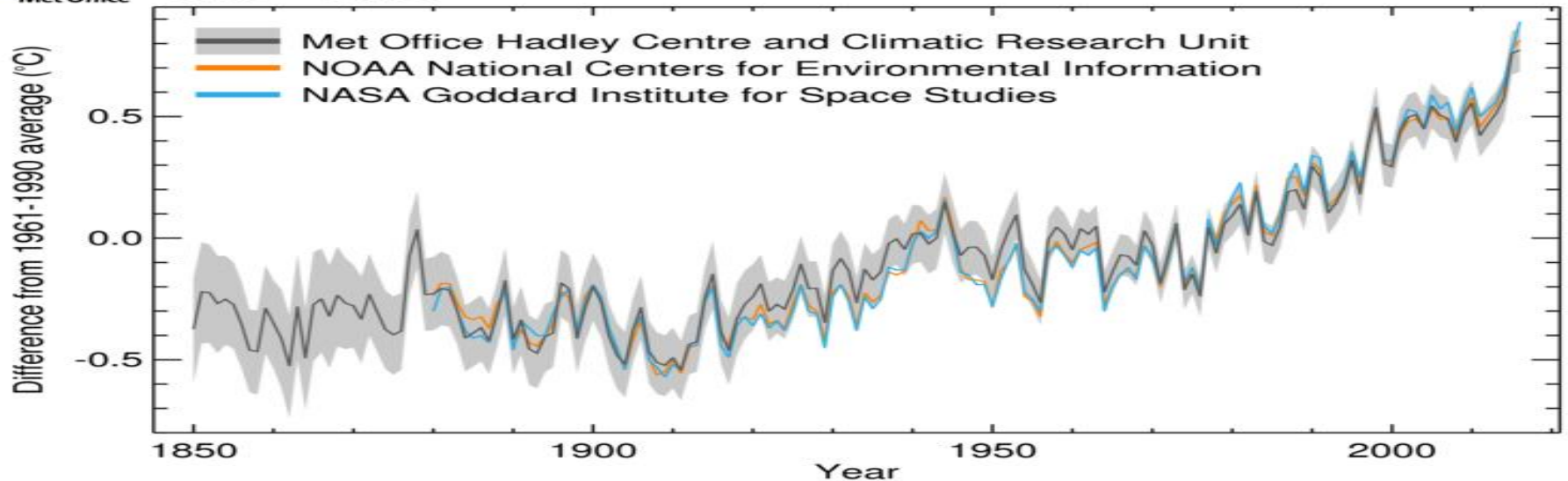


Gethin Thomas

Met Office Are extremes becoming more frequent?



Global average temperature anomaly 1850 - 2016



The unadaptable?

[In 2021 alone] 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.

COP26 Glasgow Adaptation Imperative



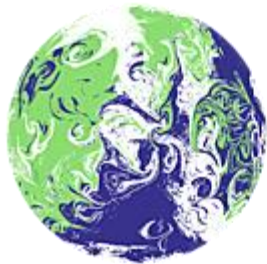
The Second Goal of COP26

2. Adapt to protect communities and natural habitats

The climate is already changing and it will continue to change even as we reduce emissions, with devastating effects.

At COP26 we need to work together to enable and encourage countries affected by climate change to:

- protect and restore ecosystems*
- build defences, warning systems and resilient infrastructure and agriculture to avoid loss of homes, livelihoods and even lives*



**UN CLIMATE
CHANGE
CONFERENCE
UK 2021**

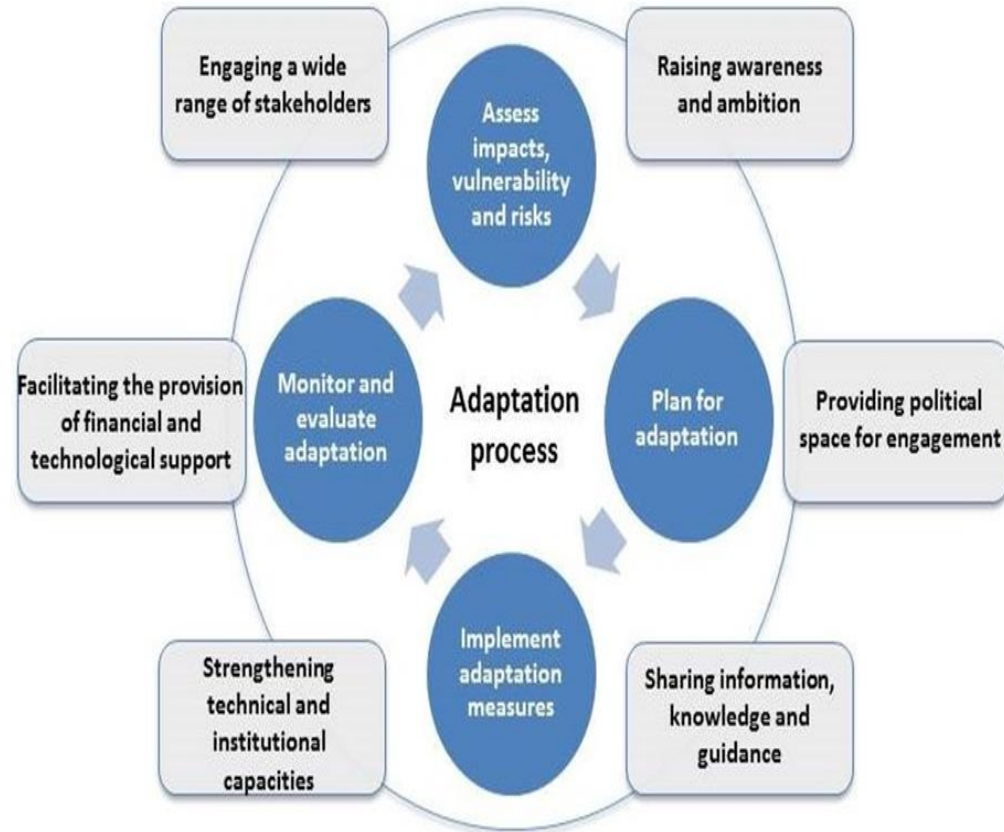
IN PARTNERSHIP WITH ITALY



What does 'adaptation' actually mean?

'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.'

United Nations Framework Convention on Climate Change



Paris Agreement 2015: 'Global Goal on Adaptation'

- *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. (Article 7(1))*
- *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. (Article 7(5))*
- *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. (Article 7(6)).*
- *Each Party should, as appropriate, submit and 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 (Article 7(10)).*

The UK's Adaptation Communication 2020



- UK impacts, risks and vulnerabilities: 56 priority risks to the UK to be addressed in adaptation planning.
- Implementation of adaptation actions, and results achieved: lists a number of recent initiatives such as the National Framework for Water Resources published by the EA.
- Monitoring and evaluation of adaptation, barriers and challenges: Absence of a full set of robust metrics and indicators. Adaptation and resilience planning is inherently complex, with uncertainty related to climate models, projections, and what this means in terms of climate impacts.



Thames Estuary 2100

Part 4 of the Climate Change Act 2008

PART 4

IMPACT OF AND ADAPTATION TO CLIMATE CHANGE

National reports and programmes

- 56 Report on impact of climate change
- 57 Advice of Committee on Climate Change on impact report
- 58 Programme for adaptation to climate change
- 59 Reporting on progress in connection with adaptation
- 60 Programme for adaptation to climate change: Northern Ireland

Reporting authorities: non-devolved functions

- 61 Guidance by Secretary of State to reporting authorities
- 62 Directions by Secretary of State to prepare reports
- 63 Compliance with Secretary of State's directions
- 64 Consent of, or consultation with, devolved authorities
- 65 Report on exercise of power to give directions

Reporting authorities: devolved Welsh functions

- 66 Guidance by Welsh Ministers to reporting authorities
- 67 Directions by Welsh Ministers to prepare reports
- 68 Compliance with Welsh Ministers' directions

The National Adaptation Plan

- Six priority areas of climate change risks for the UK:
 - Flooding and coastal change risks to communities, businesses and infrastructure.
 - Risks to health, well-being and productivity from high temperatures.
 - Risks of shortages in the public water supply for agriculture, energy generation and industry.
 - Risks to natural capital including terrestrial, coastal, marine and freshwater ecosystems, soils and biodiversity
 - Risks to domestic and international food production and trade
 - New and emerging pests and diseases and invasive non-native species affecting people, plants and animals



The National Adaptation Programme and the Third Strategy for Climate Adaptation Reporting

Making the country resilient to a changing climate

July 2018



Detailed Action Log

2. Restore degraded ecosystems, for example by restoring ecological and hydrological functions and expand and	NE1	Develop and start to implement a Nature Recovery Network, linking habitat restoration and creation to improved access, flood protection and water quality, ensuring its design is based on evidence of what works for climate change adaptation.	By 2023	Reports on the status of habitats of European Importance Extent of selected coastal, peatland and other wetland ecosystems under restoration management. Proportion of habitats of European Importance in favourable or recovering condition.	Defra; Environment Agency; Forestry Commission; Natural England
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1. Increase and improve our	NE13	Introduce a sustainable fisheries policy as we leave the Common Fisheries Policy and prepare marine plans that include policies for climate adaptation.			Defra; MMO
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		Take action to eradicate high priority invasive non-native species		Effective eradication campaigns have been implemented against high priority species'	APHA, EA, FC, NE, MMO, GB non-native species Secretariat
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Section 2.7 – Forestry

1. Woodland resource is expanded and better linked to enhance its resilience at stand	NE1	Plant 5,000-10,000 hectares of new woodland habitat (including new native woodland priority habitat) per year in England, helping to enhance landscape resilience, taking opportunities to establish a better adapted woodland resource and contributing to the Nature Recovery Network	Up to 38,000 hectares by 2023	Annual new planting statistics Landscape resilience indicator Woodland creation Forestry Statistics	Defra; Forestry Commission
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The National Adaptation Plan

Climate Change Committee Insight (Kathryn Brown), 'The New National Adaptation Programme: Hit or miss?' (July 2018)

It's worth comparing the forewords to the first NAP (by Owen Paterson MP, Secretary of State for the Environment, 2012-2014) and the second (by Lord Gardiner, the current Parliamentary Under Secretary of State for Rural Affairs and Biosecurity). The difference in tone is quite striking, and not just because the word 'climate' is actually mentioned more than once in the latest version. This in itself is certainly cause for optimism.

Climate Change Committee's Progress Report (2021): Key messages

Only five of 34 sectors assessed have shown notable progress in the past two years, and no sector is yet scoring highly in lowering its level of risk. We provide 50 recommendations, including:

- Restore 100% of upland peat by 2045, including through a ban on rotational burning.*
- Bring forward proposed plans to address overheating risk in homes through Building Regulations.*
- Make the Government's next round of Adaptation Reporting mandatory for all infrastructure sectors.*
- Build a strong emergency resilience capability for the UK against climate shocks, learning from the COVID-19 response.*
- Implement a public engagement programme on climate change adaptation.*

Legislative adaptation obligations



Agriculture Act 2020

CHAPTER 21

AGRICULTURE ACT 2020



Fisheries Act 2020

CHAPTER 22

FISHERIES ACT 2020

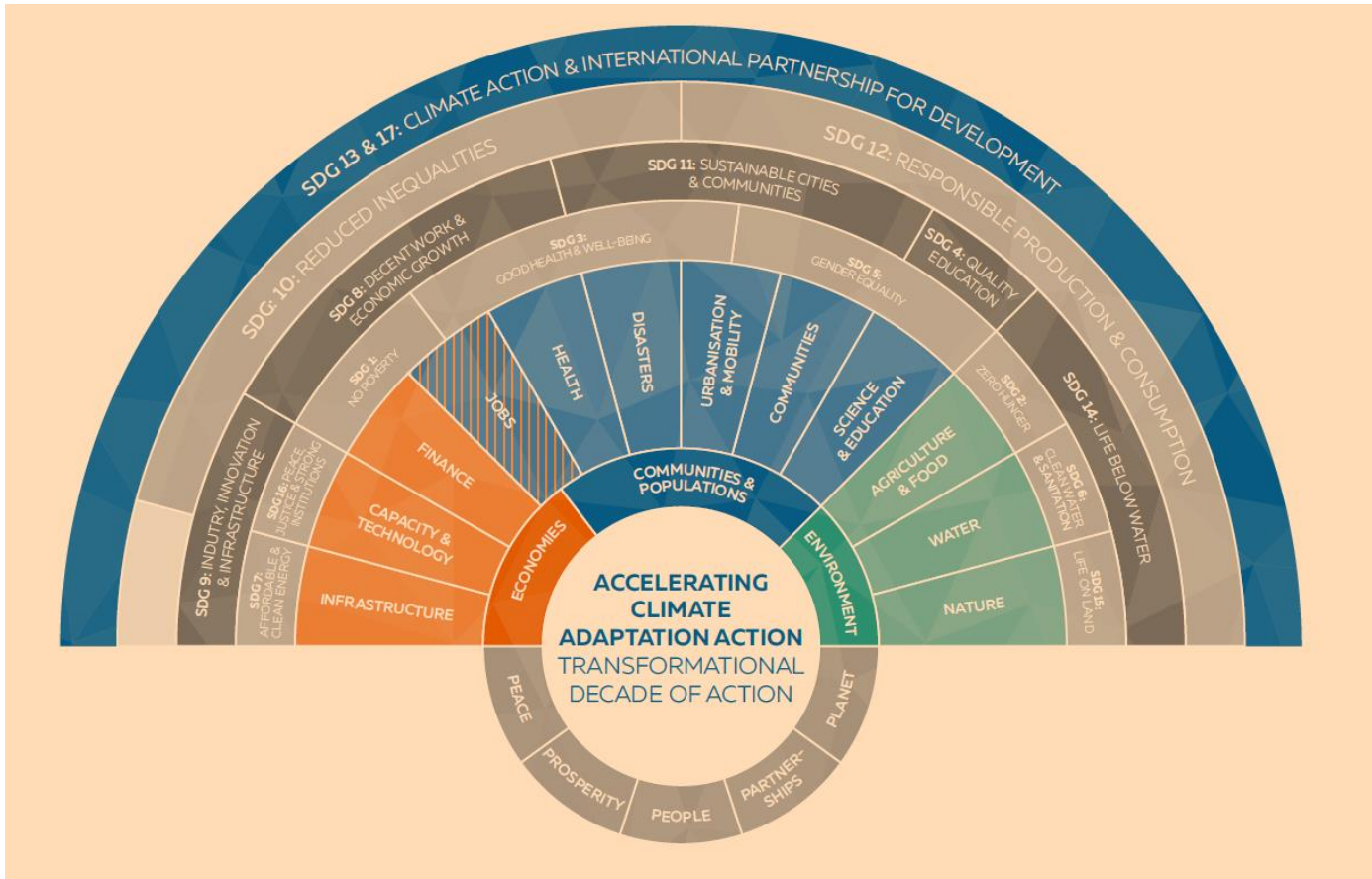


Environment Act 2021

CHAPTER 30

ENVIRONMENT ACT 2021

The Glasgow Adaptation Imperative



What was achieved in Glasgow?

Glasgow-Sharm el Sheikh Work Programme on the Global Goal on Adaptation (“the GlaSS) Objectives:

- 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.



From Paris through Glasgow to Sharm el-Sheikh

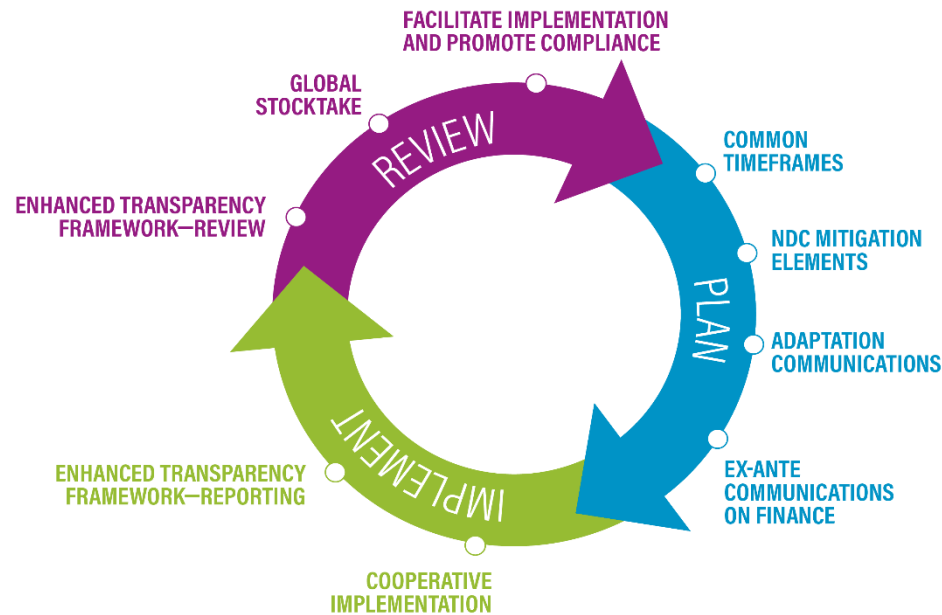


Stephanie David

[photograph ref: NASA: <https://www.nasa.gov/topics/earth/index.html>]

Paris to Glasgow: Delivery

- Finalising the Paris Rulebook – model of delivery within the Paris Agreement



Ref: <https://www.wri.org/paris-rulebook>

Article 6 – Carbon Markets and International Cooperation

Three cooperation mechanisms; higher ambition as set out in Art 6(1)

1. Internationally Transferred Mitigation

2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

2. Sustainable Development Mechanism (“SDM”)/carbon markets (Art 6(4))

4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:

(a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;

(b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;

(c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and

(d) To deliver an overall mitigation in global emissions.

3. Non-market approach [not a defined

8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:

- (a) Promote mitigation and adaptation ambition;
- (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and
- (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.

Glasgow on Article 6

- Carbon credits generated under the Kyoto protocol
- “Share of proceeds” on Article 6(4)– set aside to fund adaptation efforts in the most vulnerable countries
- “Corresponding adjustments” to address double counting
- Credits generated historically under the REDD+ scheme (relating to deforestation) were excluded

Glasgow to Sharm el-Sheikh: Loss and Damage (1)

“In Kenya and Africa, we cry, we bleed. We bleed when it rains, we cry when it doesn’t rain,” he said. “So for us, ambition, 1.5 is not a statistic. It is a matter of life and death.”

Keriako Tobiko, Kenyan environment minister

- What is “Loss and Damage”?

“[U]navoidable impacts of climate change that cannot be adapted to, from flooded villages to drought-struck farms”

Carbon Brief

Loss and Damage (2)

- Paris Agreement (Article 8) – Warsaw International Mechanism for Loss and Damage
- G77 + China – funding facility VS US/Europe – only technical assistance
- **Why so contentious?**

Glasgow Climate Pact on Loss and Damage

63. *Reiterates* the urgency of scaling up action and support, as appropriate, including finance, technology transfer and capacity-building, for implementing approaches for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change in developing country Parties that are particularly vulnerable to these effects;

64. *Urges* developed country Parties, the operating entities of the Financial Mechanism, United Nations entities and intergovernmental organizations and other bilateral and multilateral institutions, including non-governmental organizations and private sources, to provide enhanced and additional support for activities addressing loss and damage associated with the adverse effects of climate change;

65. *Recognizes* the importance of demand-driven technical assistance in building capacity to implement approaches to averting, minimizing and addressing loss and damage associated with the adverse effects of climate change;

66. *Welcomes* the further operationalization of the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including the agreement on its functions and process for further developing its institutional arrangements;

Questions?

- Series of webinars presented by 39 Essex Chambers on the environment and related areas – webinars and podcasts
- <https://www.39essex.com/category/webinars/>
- <https://www.39essex.com/category/podcasts/>

Thank you for listening!

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