

The Climate Change Act 2008

April 2009



The Climate Change Act 2008 was given royal assent on 26 November 2008 and is the world's first long-term and legally binding framework to tackle the dangers of climate change. The two key aims underpinning the Act are:

1. To improve carbon management and help the transition towards a low carbon economy in the UK; and
2. To demonstrate strong UK leadership internationally.

The Act extends to Northern Ireland.

Key Provisions

1. Carbon Targeting

The Act introduces a legally binding obligation upon the Secretary of State for Energy and Climate Change to ensure that by the year 2050 the UK's greenhouse gas emissions, both at home and abroad, are at least 80% lower than a 1990 baseline. Furthermore, Carbon Dioxide emissions must see a reduction of at least 26% by 2020 against a 1990 baseline. This 2020 target is due to be reviewed to reflect the move to all greenhouse gases and the increase in the 2050 target to 80%.

There will be limits upon the number of international carbon credits that can be used towards meeting the 2050 target in order that domestic action remains the primary focus.

2. Carbon Budgeting

A carbon budgeting system requires the Secretary of State to set out budgets for five year periods detailing how the longer targets will be met. The budgets will also set out limits on the level of emissions that can be produced over each five year period. The Secretary of State will publish three of these five year budgets at a time, with the first three running from 2008-12, 2013-17 and 2018-22, and they must be set by 1 June 2009. The Government must publish policies and proposals to meet the first three carbon budgets soon after they have been set.

3. International Aviation and Shipping

Only emissions from domestic aviation and shipping count as sources of emissions in the UK and so greenhouse gases emitted from international aviation and shipping are not included in the targets mentioned above. However, the Secretary of State must make regulations to incorporate the international dimension before the end of 2012 and if not an explanation must be given to Parliament as to why not.

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4. Committee on Climate Change

The Act creates a new, independent, expert body, to be known as the Committee on Climate Change. The Committee's function is to advise the Government on the carbon targets and the level of the carbon budgets and will advise where cost effective savings could be made. It will submit an annual report to Parliament setting out the Committee's views on the UK's progress towards meeting the targets and budgets, and providing suggestions for further progress that is needed to meet those targets. It will also advise the Government on the consequences of including emissions from international aviation and shipping into the targets and budgets. The Government must respond to the annual report thus helping to secure transparency and accountability on an annual basis.

The Committee was formally established on 1 December 2008 and has already considered the targets to be met in the first three carbon five year budgets. The interim budgets require an emissions reduction of 34% in 2020 relative to the 1990 baseline, however, should a global deal on climate change be reached this amount will be increased to a reduction of 42% by 2020. The Committee's first report must be laid before Parliament no later than September 2009.

5. Trading Schemes

The Act creates powers to introduce domestic emission trading schemes quickly and easily at local government level.

It also provides a legal basis for the Carbon Reduction Commitment (CRC) which is a legally binding climate change and energy saving scheme applicable across the UK. Consultation on the CRC regulations is to begin in February 2009 and it is intended that it will cover large business and public sector organisations whose 2008 half-hourly metered electricity use is above 6,000Mwh.

6. Impact and Adaption to Climate Change

Every five years the Secretary of State must submit risk assessments to Parliament on the current and predicted impact of climate change, with the first report due no later than 26 January 2012. As soon as reasonably practicable after each of these reports the Secretary of State must publish a programme setting out how these impacts will be addressed. The Act also introduces powers for the Government to require public bodies and statutory undertakers to carry out their own risk assessments and make plans to address those risks.

7. Corporate Reporting Requirements

The Act contains a requirement for the Secretary of State to issue guidance, which must be published no later than 1 October 2009, on the way companies should report their greenhouse gas emissions. The Secretary of State is also required, by 6 April 2012, to use powers conferred by the Companies Act 2006 to make corporate reporting mandatory.

8. Other Provisions

Further measures to reduce emissions are provided for by the Act, including powers to introduce measures on biofuels, provision for waste reduction schemes which provide a financial incentive for householders to produce less waste (though at present this type of scheme can only operate in England), and powers to require a minimum charge on single-use carrier bags.

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Commentary

The Government has hailed the Climate Change Act 2008 as an international leader on environmental concerns and a blue print that will take the UK into a low carbon economy. It creates a unilaterally binding obligation on future British governments and it is hoped that many other nations will follow suit thus leading to a dramatic reduction in greenhouse gas emissions on a worldwide scale.

The Act has not been without its critics, with some arguing that the cost of implementing the programme will unjustly prove to be a heavy burden to the taxpayer. There are many consultations to be had, reports to be published, and regulations to be passed in order to give effect to the Act which largely comprises a regulatory framework only. There is no guarantee that other countries will adopt similar legislation. The Act itself acknowledges in a number of its provisions that the targets may not be achieved. If they are not achieved there are no specific sanctions stated to apply to punish the Secretary of State for the failure. It has also been suggested that the Act does not go far enough in that it does not address airport expansion, car emissions and carbon allowances for private households.

The extent to which the Act will help reduce carbon footprints will not be seen until all the necessary subordinate legislation has been brought into force and the targets are tested. Whilst the current Minister for the Environment Sammy Wilson has made his views on man-made climate change quite clear he has said that he has no objections to energy saving measures. In a recent appearance before Stormont's Environment Committee he said, "We have a commitment to reducing carbon emissions. That commitment will be met by reducing energy consumption."

For further information on the Climate Change Act 2008 please contact Karen Blair or Maria O'Loan of our Environmental and Planning team.

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