

# **British Climate Change Act 2008 as a legislative stimulus towards more sustainable economies in EU member states – legal challenges and opportunities**

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## **Abstract:**

In 2008 the United Kingdom as a first EU country passed legislation which introduced binding framework to tackle the GHG emission reduction on a national level. Environmental Law Service as an NGO working with various campaigner's groups and providing legal support uses the British Climate Change Act 2008 as a model framework how to proceed in preparatory legislative work on a national level. So far, the campaigns have had mixed success. Nevertheless, in several EU member states an UK CCA act-like laws have already been adopted or are seriously discussed. If this model is feasibly and effectively extended the national Climate Change Acts ("CCA") may become a main driving force in the area of GHG emission reductions within the EU realm, by far exceeding the current EU climate change policies targets. However, on the way to this goal, there are number of challenges and questions that are important to explore in relation to adoption the UK CCA model.

This paper presents the structure of provisions of a potential CCA and explores the challenges that could occur in the legislative process and will like be faced during preparation either by campaigners or legislators. Mainly the questions of control, enforceability and public participation in the whole process will be considered.

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## **1. Introduction**

Climate change resulting from CO<sub>2</sub> and other greenhouse gas emissions presents a serious threat to human society and the Earth. To mitigate this danger it is needed to reduce emissions on global as well as national level.

In Hilary Benn's words,

*'Climate change is the greatest challenge facing our generation. It is the ultimate expression of our interdependence and its effects will be felt by all of us, in every corner of this small and fragile planet. The debate about the science is over. The economic message is just as stark: doing nothing will cost us far more than dealing with the problem now. Collective and decisive action is*

*needed if we are to deal with this threat and create a global low carbon economy'.<sup>4</sup>*

With aim of reducing greenhouse gas (hereinafter “GHG”) emissions and moving towards a low-carbon economy, the UK<sup>ii</sup> and later on Scotland adopted the national climate change laws<sup>iii</sup>. The main driving force is to create the low carbon economies with opportunities for development through the sustainable economic growth.

Why is it important to tackle the climate change on the national level? In the long term the emission’s cuts will be economically beneficial, will bring new jobs and will foster technological development<sup>iv</sup>. The Stern Review<sup>v</sup> estimates that if there is no action on reducing greenhouse gas emissions to avoid the worst impacts of climate change taken, the overall costs and risks of climate change will be equivalent to losing at least 5% of global GDP each year. If a wider range of risks and impacts is taken into account, the estimates of damage could rise to 20% of GDP each year or more. Contrary, the costs of taken action can be limited to around 1% of global GDP each year.

It could be argued that without the global agreement on reducing the GHG emissions the national effort is the most efficient way how to deliver these reductions and further it is in line with the international and european commitments on climate change.

How to implement the GHG emission’s reduction targets into the national legislation? In general, for the legislative implementation of the reduction targets of greenhouse gas emissions the following ways are possible. Firstly, the partial amendments of the already existing laws<sup>vi</sup> so as to deliver the desirable results in reducing the GHG emissions can be made. We consider that this method is having the disadvantage of the fragmentary measures in case of which it is difficult to have clear picture of what is prescribed and what should be enforced. The second disadvantage of such approach is a possible future problem with amendment of the established obligations that could lead to non-transparent and opposing duties imposed in various laws and documents. Secondly, there is possibility to establish the specific framework legislation with clearly set aims and targets, providing the clear structure of the policies and leaving the space for the individual measures falling within its scope. The second way is recommended for the reasons as the principle of legal certainty, predictability of measures for the business sector and public administration and last but not least, the clear vision for the way towards effective reduction in GHG emissions.

As an examples of the national initiatives<sup>vii</sup> there are the British Climate Change Act 2008 and the Scottish Climate Change Bill 2009 that have already been adopted. In more EU countries the legislative process and campaigns for climate change laws are running. For example the Climate Change Bill<sup>viii</sup> was published on 23rd December 2010 in Ireland. However, the collapse of the government followed and lead to the postponement of the legislative process. It is important to mention that the law has a cross-party support<sup>ix</sup>. In 2009 in the Czech Republic there was already legislative proposal presented in the parliament, although with the minimum obligatory requirements set. In Denmark, the campaign Klima SOS, has a proposal for a climate law. Additionally, the Danish Climate Commission<sup>x</sup> published its recommendations, among others stating “That an overall statutory framework be established for the vision of Denmark becoming independent of fossil fuels and achieving significant reductions in greenhouse gas emissions”. This is in line with proposal for a climate law.

## **2. The structure of Climate Change Act**

The core idea of the climate change law is to effectively implement long term GHG emission's reduction targets. Such law requires certain crucial provisions in order to deliver determined objective.

The important point to bear in mind when thinking about national climate change law is its place within the existing legal framework, in other words it is necessary to secure its legal coherence of international law, European Union law and the national legal system as well. As the potential climate change law covers the cross-cutting issues it is possible to collide with the existing legislation on various levels.

Furthermore, when deciding about national climate change law it is crucial to decide what areas should be covered by the new piece of legislation in order to deliver its targets, to function effectively and what mechanisms to set in place ensuring its effective implementation and enforcement.

The model used in this paper is the British Climate Change Act 2008 (hereinafter "CCA") that was created as the framework legislation to provide some specific plans, measures and policies which will support the Government's action to deliver the targeted reductions of GHG emissions and meet its obligations under the CCA. Strategies for the reductions can be implemented through separate pieces of legislation, however the CCA establishes the well-based grounds for such measures.

The key provisions of the CCA set up a legally binding target of at least an 80 percent cut in GHG emissions by 2050. On this way also a reduction in emissions of at least 34 percent by 2020 is to be achieved. Both these targets are against a 1990 baseline and cover the targeted GHG<sup>24</sup>. In course of staying on a track for a main target a carbon budgeting system is established which caps emissions over five-year periods, with three budgets set at a time 15 years ahead. The Government is required to report to Parliament its policies and proposals to meet the budgets.

The carbon budgets fix the amount of the GHG emissions for the whole state, for particular regions of the state and for particular sectors of industry so the main CCA's target will be achieved until the year 2050. By carbon budgets the private sector is provided a clear and long-term framework that is necessary for bringing forward the investments in low carbony economy.

The CCA contains various supplementary provisions to enable specific policies and powers to be carried out to achieve the main target. Although it is only a framework and the detailed provisions should be described in the secondary legislation, the most important part of these provisions is the implementation of the emission trade system on a national level complementary with the EU ETS. Other provisions of the CCA regulates the waste management, the adaptation to the impacts of climate change, including the support of public awareness and education, the energy efficiency and use of renewable energy sources, including the possible financial incentives.

The supplementary provisions can be a part of the national climate change law or can be regulated by another law or need not to be regulate by law at all, depending on the national legal system and legal traditions.

The CCA must also contain the controlling mechanisms which ensure the enforcement of the law against the Government, Parliament and against the private persons. Otherwise the CCA will be only a proclamation that legally binds no one.

### 3. System of „checks and balances“, control and reporting

In order to have effective and functional climate change law able to deliver the reduction targets a system of accountability or control that would be independent of the government of the day (and overall political atmosphere) is needed. Therefore a system of control and reporting among particular „actors“ of procedures under the climate change law is essential. This requirement concerns mainly the government, parliament and the Climate Change Committee (or other independent expert body responsible under the law). It is important to note that the role of the public also has to be taken into account.

The British lawmaker chose a parliamentary control system in which the main responsibility is clearly divided amongst the Secretary of the State, the Parliament, the Government (other national authorities) and the Committee on Climate Change (hereinafter “CCC”).

According to the CCA, the Secretary of the State has the main responsibility for fulfillment of the CCA because its main duty is to ensure achieving the main GHG emissions reduction target. The Secretary of the State has power to amend the main target, set the carbon budget for each budgetary period or amend the target percentages, carry amounts from one budgetary period to another, alter the budgetary periods etc. Most of the Secretary of the State’s proposals and orders must be laid before the Parliament and must pass the affirmative resolution procedure, the rest of the orders must pass the negative resolution procedure which is less stringent than the affirmative resolution procedure<sup>vii</sup>. Most of the orders must be also consulted with the other national authorities and with the CCC so the powers of the Secretary of the State are under permanent control.

**The Committee on a Climate Change<sup>viii</sup>** is the independent expert body which has neither the power to investigate nor the power to penalize violations of the CCA and serves as an expert body only to advise the Government on the level of carbon budgets and on where cost-effective savings can be made. The main duty of the Committee is to submit an annual report on the UK’s progress towards meeting the objectives of the CCA – targets and carbon budgets. The Government must respond to these annual reports, thus transparency and accountability on an annual basis is ensured. The CCC has also the duty to publish its recommendations and advices provided to the Secretary of the State and to other national authorities. Because all the reports and advices are accessible to the public, as long as the public consider the GHG reduction necessary the politicians are under the constant political pressure so the achieving of the CCA’s target is in their best interest.

The CCA sets out a number of matters on which the Government is required to obtain, and take into account, the advice from CCC. The Government and the national authorities can also seek the CCC’s advice on other matters related to the CCA or climate change in general. The advice of the CCC must generally be published. The CCC also has an important role in monitoring and reporting on the Government’s progress under the CCA, and its annual reports are presented directly to the parliament.<sup>ix</sup>

The CCC is required to submit reports on progress towards meeting the budgets and the Secretary of State must lay before the Parliament a response to the points raised by each report of the CCC. By requiring the Government to respond to the CCC's annual report is ensured that the Government and possibly the public are able to monitor policy in this area and that the Government can be held to account annually in the Parliament.

National climate change law should give the CCC a primary function in reporting on progress towards meeting the targets and thus maintaining a consistent approach regardless of the present government. The CCC should have specified duties in relation to its advisory function (advice for Government amending the target or baseline year, setting or amending target percentages, consultation on carbon budgets), in relation to reporting (preparation and presentation of annual reports, reports on specific programs), and in providing information for the public (publish all relevant documents concerning its advisory or reporting function and problem of climate change in general).

Obligatory **reporting** securing the necessary communication among particular „actors“ may be efficient way of control mechanism set in the climate change law. The series of reporting duties is able to provide the transparency and accountability necessary to achieve the purpose of the law.

We would recommend to explicitly set the rules for obligatory communication between the government, CCC and parliament. We can use the CCA as an example – the obligation of the CCC to publish advice to the government on setting the budgets, the obligation of the government to explain to parliament the reasons for not following the advice from CCC, the duty of the CCC to monitor the progress of the government by providing annual report to parliament on progress towards targets and budgets and on the other hand the duty of the government to respond to these reports by submitting a report to parliament to ensure the accountability and transparency in the procedures and plans.

In our opinion it is useful to establish a consultative process between the government and parliament on policies and plans under the provisions of the Act. For the government it would form a useful feedback on it's proposals of plans and policies how to achieve the set aims. On the other hand for the parliament it represents an opportunity to presents its point of view on incoming programs. Thus the common opinion platform would be established. This could prevent the possible future conflicts during adoption of the climate change measures.

As an alternative enforcing mechanism a „**Budgetary Responsibility**“ could be used. Presently the members of the parliament and ministers are not personally responsible for national budget's deficit so it makes no difference to them whether the approved national budget would be achieved or not.

Budgetary responsibility is a new legal tool which may enforce the main Climate Change law's target. The basic idea is that the members of the government and also the members of the parliament should be personally responsible for non-fulfilment the GHG emission reduction through carbon budgets. Whenever the carbon budget is exceeded due to the lack of government's or lawmaker's effort to meet the reduction target, the members of these public bodies should be made to pay penalties (in form of reduction in their salaries for example). The amount of reduction will depend on the difference between the approved and the real carbon budget of the budgetary period. On the other hand, the exemption clause to refrain from the budgetary responsibility should be made to enable the members of the parliament to

take into account circumstances (such as the significant changes (or developments) in climate science or in international law) that were unforeseeable at the time of carbon budget's approval.

As an example of alternate penalty the compulsory financial transfer from the national budget to the public fund for fulfillment of the climate change law's targets may be adopted. The basic idea is that an adequate and effective remedy should be provided in cases of climate change law's infringements because of the future consequences (slower reduction of GHG emissions may harm the environment) for the whole society. The purpose of the public fund is to block the finances which will be spend otherwise and to use that finances to remedy the damages caused by the Climate Change law's infringements. The certain amount of finances transferred this way may be multiplied so it may serve as an example of punitive damages but the total amount of finances transferred this way should be limited.

### 3. Conclusions

The piece of law setting up the framework for all national actions to tackle climate change can be an effective effort towards the reduction of the GHG emissions bringing the advantage of transformation towards low-carbon economy. The British Climate Change Act setting a long-term target for GHG emissions reductions and establishing a legally binding trajectory towards this target can be used as a model for other european countries providing valuable points to national campaigns and discussions.

### Notes

<sup>i</sup> Hilary Benn, Secretary of State for Environment, Food and Rural Affairs, October 2007, p. 4, Taking Forward the UK Climate Change Bill: The Government Response to Pre-Legislative Scrutiny and Public Consultation, <http://www.official-documents.gov.uk/document/cm72/7225/7225.pdf>

<sup>ii</sup> It all began in the UK. The NGO Friends of the Earth started a campaign for a so called climate change law. The campaign was called The Big Ask and it still continues in various countries around Europe. For more information see <http://www.thebigask.eu/>

<sup>iii</sup> Climate Change Act 2008 <http://www.legislation.gov.uk/ukpga/2008/27/contents>

Climate Change (Scotland) Act 2009 <http://www.legislation.gov.uk/asp/2009/12/contents>

<sup>iv</sup> e.g. UNEP study "Green Jobs: Can the Transition to Environmental Sustainability Spur New Kinds and Higher Levels of Employment?" from December 2007: <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=523&ArticleID=5717&l=en/>

<sup>v</sup> [http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/3/2/Summary\\_of\\_Conclusions.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/3/2/Summary_of_Conclusions.pdf)

vi Every state has specific legislation on the protection of environment, energy, industry etc. That could provide and cover for the aims of the emissions reductions.

vii Outside EU territory the Japan has Act on Promotion of Global Warming Countermeasures, [www.cas.go.jp/jp/seisaku/hourei/data/APGWC.pdf](http://www.cas.go.jp/jp/seisaku/hourei/data/APGWC.pdf), further there was the proposal in Canada <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3662654&File=24&Language=e&Mode=1>, United States -Pennsylvania Climate Change Act (2008), [http://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/Climate%20Change%20Advisory%20Committee/Sept\\_16\\_2010/CLIMATE\\_CHANGE\\_ACT\\_ACT\\_70.pdf](http://files.dep.state.pa.us/Energy/Office%20of%20Energy%20and%20Technology/OETDPortalFiles/Climate%20Change%20Advisory%20Committee/Sept_16_2010/CLIMATE_CHANGE_ACT_ACT_70.pdf)

viii <http://www.environ.ie/en/Legislation/Environment/Atmosphere/FileDownload,24989,en.pdf>

ix <http://www.foe.ie/blog/2011/02/17/all-parties-commit-to-passing-climate-legislation/>

x <http://www.klimakommissionen.dk/en-US/Sider/Forside2.aspx>, <http://www.klimakommissionen.dk/en-US/AbouttheCommission/TheDanishClimateCommissionreport/Documents/green%20energy%20GB%20screen%201page%20v2.pdf>

xi “targeted greenhouse gas” means—(a) carbon dioxide, (b) methane, (c) nitrous oxide, (d) hydrofluorocarbons, (e) perfluorocarbons, (f) sulphur hexafluoride, and (g) any other greenhouse gas designated as a targeted greenhouse gas by order made by the Secretary of State. British CCA - Climate Change Act 2008 (c. 27) Part 1 – Carbon target and budgeting, s 24

xii For crucial changes in CCA the more stringent decision-making rules are required (e.g. Amendment of 2050 target or baseline year or Alteration of carbon budgets is subject to affirmative resolution procedure—“Statutory Instruments which are subject to affirmative resolution are less common, making up about 10% of the total. This is the more stringent form of parliamentary control as it requires positive approval, rather than the absence of a decision to annul. Accordingly, it is used where the delegated legislation may be more controversial”). It is then specified where affirmative resolution procedure is not used, the negative resolution procedure is applied.

xiii <http://www.theccc.org.uk/>

xiv ClientEarth report: The UK Climate Change Act 2008 – Lessons for national climate laws, p.19, available at <http://www.clientearth.org/reports/climate-and-energy-lessons-from-the-climate-change-act.pdf>

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