

English High Court Rules on the UK Government's Net Zero Strategy

R (on the application of Friends of the Earth Limited and others) v Secretary of State for Business, Energy, and Industrial Strategy

By David Hunt and Sagar Gupta

In an impetus to climate-related litigation in the UK, the English High Court held that the UK government's actions in formulating the Net Zero Strategy were unlawful and in violation of its obligations under the UK Climate Change Act. David Hunt and Sagar Gupta consider the UK's legal framework for climate change and the potential impact of this decision on climate-related judicial review proceedings.

Background

Ahead of its presidency of the COP26 last year, the UK government published its [Net Zero Strategy](#) (the "NZS") setting out plans to meet its target of net zero emissions by 2050. The NZS contains several policies, measures, and commitments in relation to emissions reduction targets for all major sectors of the economy – including power, industry, heat and buildings, transport, and natural resources exploitation.

This judicial review decision of the English High Court (the "**Court**") in [R \(on the application of Friends of the Earth Limited and others\) v Secretary of State for Business, Energy and Industrial Strategy](#) ("**Friends of the Earth**") is the latest in the line of climate-related litigation before UK courts. The judicial review action was brought by three public interest groups – Friends of the Earth Limited, ClientEarth, and the Good Law Project – together with an environmental campaigner, Joanna Wheatley.

Whilst the claimants acknowledged that "much of the content of the NZS is commendable", in the judicial review claim they alleged that the proposals and policies outlined in the NZS were inadequate as they would fall short of achieving the legally binding targets for emissions reduction (the "**Section 13 Ground**"). Further, there was limited opportunity for parliamentary scrutiny as the NZS neither included information on sectoral impact of climate policies nor any quantitative analysis carried out by the government (the "**Section 14 Ground**"). Finally, the claimants contended that the government's actions in formulating the NZS contravenes, or risks contravention of the rights set out in the European Convention on Human Rights (the "**Human Rights Ground**"). The Court declared that the challenge based on the Section 13 Ground and the Section 14 Ground succeeded to the extent set out in the decision and the challenge on the Human Rights Ground failed. In this piece, we focus on the challenge based on the Section 13 and 14 Grounds.

The Climate Change Act 2008

The UK has consistently been at the forefront of the global debate and action on climate justice and accountability. The primary legislation that provides the basis for climate action in the UK is the Climate

Change Act 2008 (the "CCA").¹ The CCA requires the government to set legally binding and evidence-based emissions reduction targets. These targets are subject to independent oversight of the Climate Change Committee.

In accordance with the CCA, the UK has set carbon budgets for each five-year period with the ultimate goal of net zero in 2050, i.e., reducing emissions by at least 100% of the 1990 base levels. Section 13 of the CCA obliges the government to "prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under [the CCA] to be met." Section 14 of the CCA imposes a duty to provide a report to Parliament "setting out proposals and policies for meeting the carbon budgets", which must "explain how the proposals and policies set out in the report affect different sectors of the economy." The NZS was formulated as a report under Section 14 of the CCA in respect of the sixth carbon budget for the period 2033-2037.

In its [first comprehensive appraisal](#) of the NZS, the Climate Change Committee (as the UK's independent adviser on climate change under the CCA) has warned that the current delivery programmes of the government will not deliver its climate goal of net zero by 2050. It found major failures in the implementation and delivery of government policies under the NZS – including "shocking gaps" in delivering energy efficient homes and "glacial" policy development on reducing agricultural emissions. It also criticised the lack of quantification of individual policy proposals in the NZS.

The Court's findings

Judicial review is intended to assess the lawfulness of government policy, not the effectiveness or content of those policies. As a result, the Court did not rule on the substance of the NZS.

Section 13 Ground

The claimants argued that Section 13 required that the government's numerical projections show that the proposals and policies set out in the NZS would reduce emissions by at least 100% of the amount required to meet the carbon budget. The Secretary of State accepted that the Section 13 requirement required at least some quantitative analysis but that it was not necessary to show quantitatively that all of the required effects would be achieved – some qualitative element of the assessment could be included. The Court found partially for the claimants:

- The Court rejected the claim that Section 13(1) of the CCA requires the Secretary of State to be satisfied that the quantifiable effects of their proposals or policies will enable the whole of the reduction targets in the carbon budget to be met. The Court stated that there were other qualitative effects (for instance climate justice) that the Secretary of State might consider in policy formulation.
- However, the Secretary of State was held to not have taken all "obviously material" matters (such as the quantification of the impact of individual policies) into consideration while promulgating the NZS, as such materials were not provided to the Secretary of State in his briefings. As a result he

¹ For completeness, we note that the UK's devolved administrations have separate climate change regimes based on the Climate Change (Scotland) Act 2009 and the Environment (Wales) Act 2016.

could not assess the risk that non-achievement of these policies would pose to the delivery of the government's legally binding climate goals.

Section 14 Ground

The Court considered that the obligation in Section 14 went beyond simply providing the NZS to Parliament. The NZS needed to explain the thinking behind the government's proposals and how they would enable the carbon budget to be met. The Court held that because the NZS omitted to include the impact of individual policies on emissions reduction targets, it did not discharge the requirements of Section 14 of the CCA. The Court stated that these omissions seriously prejudiced Parliamentary accountability in the context of the NZS and consequently, render the NZS unlawful.

The Court ordered the government to lay before Parliament a report which is compliant with Section 14 of the CCA by no later than 31 March 2023.

Comment

The *Friends of the Earth* decision and the Climate Change Committee report expose the shortcomings in the government's policy framework and implementation in order to achieve net zero. In light of this decision and in advance of COP27 in November this year, the government should be considering setting out specific policies and programmes focussing on risk and sectoral impact assessments. It also underlines the significance of making decisions on the basis of robust quantitative analysis, even where there is an inevitable element of subjectivity and qualitative assessment.

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