CASE STUDY

# CLIMATE LEGISLATION IN THE UNITED KINGDOM


## SUMMARY

The United Kingdom (UK)'s *Climate Change Act 2008* was the first law of its kind. It makes long-term emissions reduction targets legally-binding, opening the door to citizen lawsuits if the government misses them, and introduces interim targets or "carbon budgets" to keep the UK on track. It also established an independent advisory body to provide advice to governments on meeting targets and to monitor progress. Notably, the scope of the legislation is not limited to climate change mitigation, but also introduced governance and processes related to adaptation. The *Act* has since been cited as a model by other jurisdictions who have introduced similar legislation. This case study reviews the six defining features of the UK's legislation.



## FEATURES OF UK LEGISLATION

### 1. Legislating climate accountability processes

The 2008 Act enshrined a long-term emissions reduction target of 80% below 1990 levels by 2050 as well as five-year "carbon budgets"—interim, cumulative emission-reduction milestones to put the UK on track to meet its 2050 target. In 2019, the UK passed legislation that increased its 2050 target to net- zero emissions, meaning that any UK emissions in 2050 would be balanced out by actions to offset an equivalent amount of emissions from the atmosphere.


CANADIAN INSTITUTE FOR CLIMATE CHOICES



March 2020


## 2. Clearly defining roles and responsibilities

### UK Government Duties

The *Act* defines the duties and powers of UK government departments and devolved administrations with regards to climate change policy. The Minister of State for Energy and Clean Growth is the minister responsible for meeting the legislated long-term targets and overseeing the UK carbon budgets. The primary UK government departments responsible for implementing climate change policies are the Department for Business, Energy, and Industrial Strategy (BEIS) and the Department for Environment and Rural Affairs (Defra). BEIS leads on policy to reduce greenhouse gas (GHG) emissions in the UK and internationally, whereas Defra leads on domestic adaptation policy.

### Committee on Climate Change

To provide independent oversight, the *Act* established a publicly funded Committee on Climate Change (CCC), which advises the UK government and devolved administrations on how to reduce GHG emissions and prepare for and address the impacts of climate change today and in the future. The primary duties of the committee are to:

1. Perform independent analysis;
2. Engage with stakeholders and the public to promote informed discussions on climate change;
3. Provide independent advice on setting and meeting carbon budgets and preparing for climate change; and
4. Monitor progress.

The CCC is comprised of a Chairman and eight independent members and is supported by a secretariat of roughly 30 staff. The CCC members are experts in the fields of climate change, science, economics, behavioural science, and business.

Funding for the CCC is provided by the UK government as well as the devolved administrations of Scotland, Wales, and Northern Ireland.

## Devolved administrations

The *Act* recognizes the roles of the devolved administrations in climate policy. The devolved administrations have their own emissions reduction targets and climate change policies, but also contribute to meeting the UK's carbon budgets and implementing UK-wide policies. The CCC is available as a resource for the devolved administrations to provide advice and report on progress for their respective carbon budgets and emissions reduction targets.

Each devolved administration has taken a different approach. Under the *Environment (Wales) Act 2016*, the Welsh Government committed to a net Welsh emissions account of at least 80% reductions from the baseline year[1] by 2050, as well as five-year cumulative carbon budgets beginning with the period of 2016 to 2020. Through its 2009 *Climate Change Act*, the Parliament of Scotland elected to set annual emissions targets at least twelve years in advance, rather than follow the UK's five-year approach. Scotland has legislated an emissions reduction target of at least 80% below the baseline year[2] by 2050. Northern Ireland does not have its own climate change legislation and emissions reduction targets.

[1] In the Welsh legislation, the baseline year for carbon dioxide, methane, and nitrous oxide is 1990 and the baseline year for hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, and nitrogen trifluoride is 1995.

[2] In the Scottish legislation, the baseline year for carbon dioxide, methane, and nitrous oxide is 1990 and the baseline year for hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, and nitrogen trifluoride is 1995.


*In the UK, long-term targets may only be amended following significant developments in climate change science or international policy or law, and budgets may only be amended following significant changes affecting the basis on which the budget was set.*

## 3. Establishing interim emissions reduction milestones

In order to meet its long-term emissions reduction targets, the UK *Climate Change Act* dictates that the government must set five-year carbon budgets at the national level from 2008 to 2050 with three budgets set at a time. These budgets are cumulative, meaning that they restrict the amount of GHGs the UK can legally emit in a given period. The government is required to consider, though not follow, the advice of the CCC when setting budgets.

| Budget | Budget Period | Carbon Budget Level | Emissions Reduction Target (below 1990 levels) |
|---|---|---|---|
| 1 | 2008 to 2012 | 3,018 MtCO2e | 25% by 2012 |
| 2 | 2013 to 2017 | 2,782 MtCO2e | 31% by 2017 |
| 3 | 2018 to 2022 | 2,544 MtCO2e | 37% by 2020 |
| 4 | 2023 to 2027 | 1,950 MtCO2e | 51% by 2025 |
| 5 | 2028 to 2032 | 1,725 MtCO2e | 57% by 2030 |

Source: Committee on Climate Change

Long-term targets may only be amended following significant developments in climate change science or international policy or law, and budgets may only be amended following significant changes affecting the basis on which the budget was set.

## 4. Producing action plans to meet milestones

The Government is required to develop and implement plans to meet carbon budgets and adapt to climate impacts. These plans must be tabled before Parliament, though the *Act* does not establish a set timeline for publication.

The *Act* does not prescribe how the Government must meet its targets or which policies must be used. However, it does lay out a set of considerations that must be taken into account by government and the CCC when making decisions or recommendations regarding action plans.

The UK model offers some flexibility in terms of meeting its carbon budgets, but with limits. When a budget is going to be missed by a small amount, the government is able to borrow one percent from the next budgetary period. Likewise, when net emissions are below the allowance, they can be carried forward to the next budgetary period. However, any amount carried forward must be recommended by the CCC and, to date, they have consistently recommended against it. The *Act* also allows Government to purchase international carbon credits in order to meet its carbon budgets.

The *Act* does not include any punitive enforcement mechanisms to prevent governments from weakening the stringency of their policy measures. However, the fact that the target is legislated opens the door to litigation by citizen groups if the government fails to meet its statutory obligations under the *Act*.

## 5. Monitoring and reporting

Legislation dictates that, each year, the Secretary of State must table in Parliament a statement on annual UK GHG emissions. The CCC is also mandated to prepare and present to Parliament progress reports, including an annual report on the implementation of carbon budgets and a bi-annual report on adaptation. The Secretary of State is required to, in turn, present to Parliament a response to the CCC's reports within a set timeline outlined in legislation.

At the conclusion of a budget period, the Government is required to publish a final report outlining, among other things, the net UK carbon account for the period and whether emissions will be banked or borrowed for the next budget. If the carbon account exceeds the allowed amount, the report must provide a rationale as well as outline proposals and policies to address the excess emissions.

## 6. Beyond emissions reductions

The *Act* goes beyond a singular focus on reducing emissions, notably to legislate governance and processes related to climate change adaptation. For example, the *Act* requires the establishment of an Adaptation Sub-Committee of the CCC. Whereas the CCC advises on how to reduce GHG emissions, the Adaptation Sub-Committee provides advice on how to adapt to the risks posed by climate change. The Adaptation Sub-Committee is comprised of a Chairman and five independent members.

Legislation also introduced additional adaptation-related measures. For example, the *Act* mandates that the Government produce a climate change risk assessment every five years as well as a National Adaptation Programme. In addition to the National Adaptation Programme, the *Act* also granted the government Adaptation Reporting Power, which allows them to require certain organizations to report on how they are adapting to climate change.

Beyond adaptation, the *Act* also ingrains broader social and economic considerations into the process for setting budgets and developing action plans to meet them. For example, the legislation establishes a set of considerations that must be taken into account by both the CCC and the government when providing advice or making decisions relating to carbon budgets. These considerations include (but are not limited to) impacts on the economy and the competitiveness of particular sectors, differences in circumstances between England and the devolved administrations, and social circumstances, notably how specific decisions or advice could contribute to, or prevent, fuel poverty.

# LESSONS FOR CANADA

## Independent, expert advice is essential

The CCC has garnered a strong reputation with diverse stakeholders in the UK (including across political parties) as a credible, authoritative, and trusted voice on climate change—and its advice has been broadly accepted by governments. For example, the first five UK carbon budgets were all set at the levels recommended by the CCC, despite changes of government (as discussed below). It suggests that an independent, expert advisory body is key to ensuring consistent and credible climate policy, as well as evidence-based decision making. As a result, its example has been replicated in other countries that have implemented climate accountability legislation.

Climate legislation could establish a similar body in Canada. Like the CCC, it could have a clear mandate enshrined in law, adequate resources to conduct research and analysis, and sufficient power to hold governments to account, including authority to monitor and report on progress. Similar to the CCC, a Canadian advisory body could be available as a resource to other levels of government to provide independent, expert advice on climate policy.

## Legislation can acknowledge devolution of power

While the UK has a centralized governance structure, the *Act* recognizes the roles of the devolved administrations of Wales, Scotland, and Northern Ireland. Although the devolved administrations have, to varying degrees, implemented their own emissions reduction targets and climate change policies, they also contribute to meeting the national UK carbon budget. A similar approach could be adopted in Canada, whereby other levels of governments have their own targets and policies, but also contribute to national goals.

## Adaptation should feature in climate accountability legislation

Notably, the *Act* goes beyond a singular focus on reducing emissions to also recognize the importance of preparing for, and adapting to, the impacts of climate change. As described above, the *Act* includes a number of measures related to climate adaptation. While Canada can learn from the inclusion of adaptation *planning* in the UK's legislation, it is worth noting that the *Act* has been criticized for its lack of focus on adaptation *action*.

## The *Act* has been relatively durable, despite political changes

Implemented more than a decade ago, the UK *Act* has shown a strong degree of political durability. The *Act* was originally passed under a Labour government and was broadly endorsed by all political parties at the time. Since then, the *Act* has been primarily administered by Conservative governments and continues to be widely supported, even through several changes in government.

An important factor in maintaining political will and cross-party consensus is the relative flexibility that is built into the *Act*. While legislation sets out the long-term destination and some parameters for how to get there, it leaves decisions—like policy instrument choice—up to the government of the day. The *Act* also grants governments a

degree of flexibility in meeting the budgets, permitting governments to carry forward over-achievements from previous periods or borrow up to 1% from subsequent ones.

However, some observers have cast doubts as to whether this political durability will last. While there was widespread political support in 2008 for the first three carbon budgets, adopting the fourth proved to me more fraught, with the UK Cabinet divided over whether to accept the CCC's advice. The Prime Minister ultimately intervened and adopted the advice, albeit with some caveats, notably the ability to review and revise the budget again in 2014. The political commitment to the *Act* will likely be tested more and more as the task of meeting budgets becomes increasingly difficult.

In addition, the UK's withdrawal from the European Union (EU) (commonly referred to as "Brexit") raises concerns about the durability of the *Act* and the impact on the UK's ability to deliver on its legislated commitments. Seeing as the *Act* is a domestic law, Brexit does not change the UK's legal duties to meet its emissions reductions targets, nor its overall approach to attaining them.

While it is too soon—in early 2020—to know whether and how Brexit could affect the *Act*, it is not too early to identify some issues. For example, Brexit may impact the accounting of carbon budgets. For example, if the UK leaves the EU Emissions Trading Scheme, the accounting rules for how its national carbon budgets are measured could change. Second, Brexit will impact policy for meeting carbon budgets and long-term targets. Notably, strained relations between the UK and the EU could impede joint efforts on climate action. In addition, the UK will need to introduce new policies and regulations in instances where EU schemes no longer apply. However, this also presents an opportunity for the UK to develop more stringent policies and regulations than the current EU approaches. Regardless, implementing Brexit will be a significant distraction for UK governments and will present challenges that may threaten UK progress towards its carbon budgets and long-term emissions reduction targets.

# ASSESSING THE UK'S PROGRESS TO DATE AND LOOKING AHEAD

Since the introduction of the *Act* in 2008, the UK has experienced notable emissions reductions—particularly in the power sector—while maintaining continued economic growth. In 2018, UK emissions were 44% below 1990 levels, well beyond the target of 37% by 2020. The UK met both its first (2008 to 2012) and second (2013 to 2017) carbon budgets and is on track to outperform its third (2018 to 2022).

However, the UK is currently not on track to meet its fourth and fifth carbon budgets, let alone its newly legislated net-zero target. According to a 2019 report by the CCC, the UK government and all devolved administrations must significantly and urgently ramp up policy in order to get back on track.

Meeting the first three carbon budgets was relatively straightforward, as the UK government benefited from low-hanging fruit and factors outside their control. Three-quarters of emissions reductions between 2012 and 2016 came from using less coal for power generation. In addition, lower economic growth as a result of the financial crisis in the late 2010s meant lower energy demand, and therefore lower emissions. However, now that coal-fired electricity generation has reached very low levels, the UK must shift its attention to pursuing emissions reductions in more challenging sectors of the economy to meet future carbon budgets and the 2050 target.

While climate accountability legislation is by no means a silver bullet and cannot guarantee that government efforts will be successful in reducing emissions, the UK example illustrates the value of establishing a legislated process to identify and tackle challenges that arise—through independent oversight, transparent monitoring and reporting, and regular opportunities for course correction.

# REFERENCES


Benson, Davis, and Irene Lorenzoni. 2014. "Examining the Scope for National Lesson-Drawing on Climate Governance." The Political Quarterly 85(2): 202–11. http://doi.wiley.com/10.1111/1467-923X.12080

*Climate Change Act*, 2008. http://www.legislation.gov.uk/ukpga/2008/27/introduction

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

Committee on Climate Change. "Carbon Budgets: How We Monitor Emissions Targets." https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/

Committee on Climate Change. "Meeting Carbon Budgets – Implications of Brexit for UK Climate Policy." https://www.theccc.org.uk/publication/meeting-carbon-budgets-implications-of-brexit-for-uk-climate-policy/

Committee on Climate Change. 2019. *Reducing UK Emissions: 2019 Progress Report to Parliament Committee on Climate Change*. www.theccc.org.uk/publications

Committee on Climate Change. "UK Regulations: The Climate Change Act." https://www.theccc.org.uk/tackling-climate-change/the-legal-landscape/the-climate-change-act/

*Environment (Wales) Act*, 2016. http://www.legislation.gov.uk/anaw/2016/3/section/30/enacted

Fankhauser, Sam et al. 2018. *10 Years of the UK Climate Change Act About the Authors and Acknowledgements*. www.cccep.ac.uk

Farstad, Fay, Neil Carter, and Charlotte Burns. 2018. "What Does Brexit Mean for the UK's Climate Change Act?" *Political Quarterly* 89(2): 291–97. http://doi.wiley.com/10.1111/1467-923X.12486

Gage, Andrew. 2015. *A Carbon Budget for Canada*. https://www.wcel.org/sites/default/files/publications/CarbonBudget (Web)_0.pdf

Gillard, Ross. 2016. "Unravelling the United Kingdom's Climate Policy Consensus: The Power of Ideas, Discourse and Institutions." *Global Environmental Change* 40: 26–36

Kōmihana, Te, Whai Hua O Aotearoa, and Teresa Weeks. 2017. *Examining the UK Climate Change Act 2008 The New Zealand Productivity Commission Research Note: Examining the UK Climate Change Act 2008*. www.productivity.govt.nz

Lockwood, Matthew. 2013. "The Political Sustainability of Climate Policy: The Case of the UK Climate Change Act." *Global Environmental Change*

Lord Deben. 2019. *Net-Zero and the Approach to International Aviation and Shipping Emissions.* www.theccc.org.uk



## ACKNOWLEDGEMENTS

This case study was prepared by **Anna Kanduth** of the Canadian Institute for Climate Choices, with staff contributions from **Jason Dion**, **Caroline Lee** and **Dave Sawyer**.