

The full PAP letter is at

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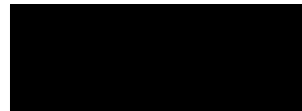
This document contains keys section as quoted in my Deadline 10 submission

Readers are advised to read the full letter at the link above.



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LETTER BEFORE CLAIM: PROPOSED JUDICIAL REVIEW OF THE NET ZERO STRATEGY

1. This letter is a formal letter before claim written in accordance with the Pre-action Protocol for Judicial Review under the Civil Procedure Rules.

The proposed claimant

2. The proposed claimant is Good Law Project.

Details of the matter being challenged

4. The publication on 19 October 2021 of the Net Zero Strategy ("**the Strategy**") by the Secretary of State for Business, Energy and Industrial Strategy, in purported compliance with his duties under sections 13 and 14 of the Climate Change Act 2008.

The issue

The Climate Change Act Framework

6. The Climate Change Act 2008 (“**CCA 2008**”) is central to the UK’s efforts to tackle climate change. It creates a scheme of legally binding targets to reduce emissions of greenhouse gases (“**GHG**”), together with five-yearly carbon budgets which are to be set by the Secretary of State and approved by Parliament with a view to meeting the targets. The Secretary of State is also required by the CCA 2008 to formulate and publish policies and proposals to meet the carbon budgets. In more detail:
 - a. Section 1 CCA 2008, as amended by The Climate Change Act (2050 Target Amendment) Order 2019, requires the UK Government to reduce net emissions of ‘targeted greenhouse gases’ to zero by 2050 (“**the Net Zero Target**”).
 - b. Sections 4 to 10 of the CCA 2008 create a scheme of five-yearly “carbon budgets” which must be set by the Secretary of State by specified dates, and approved by Parliament, and which establish the maximum allowable GHG emissions over each five-year budget period.
 - c. At present, the Secretary of State has legislated for the amounts of such carbon budgets up to and including the sixth carbon budget (“**CB6**”), which covers the period 2033-2037. The CB6 is set at a level that effectively equates to a 78% reduction by 2035 compared to 1990 levels.

- d. Sections 13 and 14 of the CCA 2008 impose linked duties on the Secretary of State respectively to prepare and to report on policies and proposals for meeting the legislated budgets:

13 Duty to prepare proposals and policies for meeting carbon budgets

(1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.

(2) The proposals and policies must be prepared with a view to meeting—

(a) the target in section 1 (the target for 2050) [...]

14 Duty to report on proposals and policies for meeting carbon budgets

(1) As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period.

(2) The report must, in particular, set out—

(a) the Secretary of State's current proposals and policies under section 13, and

(b) the time-scales over which those proposals and policies are expected to take effect.

7. The Strategy contains the policies and proposals that the Secretary of State has prepared in relation to the CB6 (and preceding carbon budgets) and the Net Zero Target. It states on its face that it is ‘Presented to Parliament pursuant to Section 14 of the Climate Change Act 2008’. However, as explained further below, the Strategy is unlawful because it does not discharge the Secretary of State’s duties under ss. 13 and 14. That is because it does not set out policies and proposals for meeting the CB6. Rather it identifies the pathway that UK emissions will need to be on to meet the CB6 and then sets out a series of actions that will need to happen for that to occur, but does not present a set of policies or proposals that have been designed so as to bring about the change which will be necessary to meet the CB6. Merely listing ambitions and discussing possible pathways does not meet the duties under ss.13 and 14.

Proposed Ground of Challenge

14. The Strategy fails to meet the duties in s.14 CCA 2008, and the policies and proposals it contains fail to meet the duties in s.13 CCA 2008.

Nature of the duties under s.13 and s.14 CCA 2008

15. By s. 13(1) CCA, the Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under the CCA 2008 to be met. The underlined words emphasise the high degree of confidence as to the outcome that the Secretary of State must achieve in his own mind in order to discharge the duty. The Claimant accepts, of course, that the words 'as the Secretary of State considers' confer on the decision-maker a degree of latitude in his assessment of the effect of the proposals and policies. But that does not relieve him of the duty to make an assessment, so as to assure himself that the proposals and policies will enable the budgets to be met.
16. Such an assessment will involve projections and estimates of the effect of the proposals and policies. Clearly, certainty as to the outcome is not possible or demanded by the CCA 2008. Nonetheless, for the Secretary of State to be able lawfully to conclude that the proposals and policies will enable the carbon budgets to be met, he must assess their collective effect on GHG emissions, and assure himself that they will (on his best estimates) bring about the necessary reductions. There is no indication in the Strategy that such an assessment has been made of the proposals and policies it contains.

The Strategy and its proposals and policies do not discharge the s.13 and s.14 duties

22. The Strategy fails entirely to seek to quantify the emissions reductions which each proposal and policy is expected to achieve. It is for that reason unlawful, as it is not a set of policies and proposals for meeting the CB6.
23. Indeed the Strategy, in its own methodological statements, does not even purport to be a set of proposals and policies for meeting the CB6. It is avowedly more aspirational than that. For example:

6. To show how we will meet our climate targets, including legislated carbon budgets up to and including the sixth carbon budget, the Net Zero Strategy contains both an indicative delivery pathway and illustrative 2050 net zero scenarios. The pathway, which stretches to the end of the Sixth Carbon Budget period in 2037, provides an indicative trajectory of emissions reductions which we aim to achieve through the Strategy and through delivery of the policies and proposals outlined.

[page 306, underlining added]

Aiming to achieve an indicative trajectory of emissions reductions is not the same as, and falls far short of, considering that the policies and proposals set out in the Strategy will, or even are likely to, enable particular targets to be met.

34. We note that the Government's statutory advisers on climate change, the CCC, have advanced the same criticism of the Strategy as that set out above:

However, the Government has not quantified the effect of each policy and proposal on emissions. So while the Government has proposed a set of ambitions that align well to the emissions targets, it is not clear how the mix of policies will deliver on

those ambitions – albeit in theory they could. This makes it hard to assess the risks attached to the plans and how best to manage these.⁶

35. For the reasons above, the Secretary of State has failed to discharge his duties under both s.13 and s.14 CCA 2008, and the Strategy is unlawful as a result.