

18 July 2022



## SUMMARY

***The Queen (on the application of (1) Friends of the Earth Limited (2) ClientEarth (3) Good Law Project and Joanna Wheatley v Secretary of State for Business, Energy and Industrial Strategy***

***[2022] EWHC 1841 (Admin)***

**Mr Justice Holgate**

### ***Introduction***

1. This judgment deals with three claims for judicial review brought by the claimants in separate proceedings which were heard together on 8 and 9 June 2022. They challenged decisions under the Climate Change Act 2008 by the Secretary of State for Business, Energy and Industrial in relation to the Net Zero Strategy (“NZS”).

2. In June 2019, section 1 of the 2008 Act was amended by Parliament to set a revised target to reduce the UK’s greenhouse gas (“GHG”) emissions to “net zero” by 2050, that is 100% lower than the UK’s 1990 baseline. This replaced the earlier target of reducing 2050 emissions by 80% compared to 1990. The new target forms part of the UK’s response to the Paris Agreement.

3. To achieve the 2050 target the 2008 Act requires the Secretary of State to set a series of 5 year carbon budgets leading up to 2052. The budgets have to be approved by Parliament. Once a budget is approved, the 2008 Act imposes a duty on the Secretary of State to ensure that the target is met.

4. These claims do not challenge the decisions to set the net zero target or any carbon budget.

5. The most recent budget, the sixth carbon budget (“CB6”), took effect on 24 June 2021. CB6 is the first carbon budget to be based upon the net zero target and to include emissions from international aviation and, attributable to the UK.

6. It is common ground that the target in CB6 is more challenging than those previously set. It requires the net UK carbon account over the period 2033-2037 to be 78% lower than the 1990 baseline. As the Chairman of the Climate Change Committee (“CCC”) has said, CB6 has the effect of bringing forward the former 80% target for 2050 by nearly 15 years.

7. CB1 (2008- 2012) required the 1990 baseline emissions to be reduced by 25%, CB2 (2013-2017) by 31% and CB3 (2018-2022) by 41%. The UK has outperformed the targets for CB1 and CB2 and is on track to meet the 41% reduction required by CB3.

### ***The issues in the case***

8. This case is about whether the defendant failed to comply with further requirements, contained in sections 13 and 14 of the 2008 Act, in relation to the NZS.

9. Section 13 Act imposes a continuing duty upon the Secretary of State to prepare policies and proposals that will enable the carbon budgets to be met. On 17 October 2021 a Minister acting on behalf of the Secretary of State approved the policy package published as the NZS.

10. Section 14 requires the Secretary of State, as soon as reasonably practicable after a carbon budget is set (in this case CB6) to lay a report before Parliament setting out his proposals and policies for meeting the carbon budgets up to and including the new carbon budget. The report must also cover other matters such as the time-scales over which those policies are expected to take effect and how they affect different sectors of the economy. On 19 October the Secretary of State laid the NZS before Parliament as his report under section 14.

11. The claimant put forward three grounds of challenge in relation to the NZS:

#### *Ground 1 – section 13*

a. The claimants say that under section 13 the Secretary of State had to be satisfied that his numerical estimate of emissions reductions from policies with a quantifiable effect will enable 100% of the numerical target in CB6 to be met. Here, the defendant erred in law because he was satisfied that his quantifiable policies would achieve only 95% of the target in CB6, leaving the shortfall to be made up by a qualitative judgment about the future effects of his policies;

b. In addition, the Secretary of State failed to take into account matters which he was legally obliged to consider. In particular, under his numerical analysis, he did not consider the contributions which each quantifiable policy would make to meeting the carbon budgets, and under his qualitative analysis, which policies were proposed to make up the 5% shortfall and in what ways. He was not briefed by his officials on those matters.

#### *Ground 2 - section 14*

The Secretary of State failed to include in the NZS information which was legally required to discharge his reporting obligations under section 14, in particular an estimate of the contribution which each quantifiable policy would make to meeting the carbon budgets, the existence of the 5% shortfall resulting from the quantitative analysis and how that shortfall was to be made up.

#### *Ground 3 – Human Rights Act 1998*

The court should prefer the claimants' interpretation of sections 13 and 14 to the defendant's because that would be more, rather than less, conducive to the protection of rights under the Human Rights Act 1998.

12. The claimants said that if they should succeed on any of the grounds of challenge, the court would be asked to grant a declaration as to the legal position, and mandatory orders but not to quash the NZS.

13. The Friends of the Earth also challenged the Government's Heat and Buildings Strategy, which was published on the same day as the NZS. Before the hearing took place, the defendant accepted that he had failed to carry out in relation to that strategy an Equality Impact

Assessment for the purposes s.149 of the Equality Act 2010 (the public sector equality duty) and that one should now be carried out [24] – [27]. The court now makes a declaration to that effect. The court was not asked to quash this strategy.

### ***The contents of the judgment***

14.Paragraph [23] lists the contents of the judgment with paragraph numbers.

15.First the statutory framework is summarised [28] – [59] and then how CB6 came to be set [60] – [68]. The NZS is summarised in paragraphs [69] – [99] of the judgment, followed by the defendant’s evidence on the process leading to the publication of the NZS [100] – [146] The CCC’s analysis of the strategy is addressed at [147] – [154] of the judgment.

16.The judgment then deals with the three grounds of challenge.

### ***Ground 1: Section 13***

17.The court rejected the first of the two main points raised by the claimants under ground 1. It accepted the Secretary of State’s submission that section 13 does not require him to be satisfied that his numerical estimate of emissions reductions from quantifiable policies will enable 100% of the target in a carbon budget to be met. Therefore the Secretary of State did not make any legal error by proceeding on that basis that those quantifiable effects were expected to achieve only 95% of the reductions required by CB6 [161] – [193].

18.However, the claimants are successful on the second main point in ground 1 [194] – [222]. Under the 2008 Act the Secretary of State has duties which are crucial to the operation of the legislation. They include setting carbon budgets, to ensure that they are met, and to prepare policies under s.13 that will enable those targets to be met. The Act imposes the sole responsibility for discharging those obligations on the Secretary of State, not his officials.

19.Although the Department had carried out extensive quantitative analysis which identified the contributions made by individual policies to meeting carbon budgets, that information was not included or summarised in the briefing given to the defendant for the purposes of his approving the NZS. Instead, the quantitative analysis presented to him considered only overall effects of policies in reducing GHG emissions.

20.The court concluded that on a proper interpretation of the 2008 Act, and particularly in view of an assumption made by officials that the quantified policies would be delivered in full, the defendant had been legally obliged to take into account

(a) the quantitative effects of individual policies; and

(b) in the qualitative analysis, which policies were relied upon to make up the 5% shortfall and in what ways.

Without that information in the ministerial briefing, the defendant had been unable to take into account and to decide for himself how much weight to give to the quantitative assessment or his department’s approach to making up the 5% shortfall, or to the contributions which individual policies are expected to make to reducing future GHG emissions and the risk of statutory targets not being delivered. Consequently, he did not discharge his duty under s.13.

### ***Ground 2: Section 14***

21.The Claimants submitted that there ought to be included in a section 14 report, and hence in the NZS, a numeric explanation for the defendant’s conclusion that his policies will enable the carbon budgets to be met and a numeric explanation of the extent to which those policies individually and in combination are expected to achieve that objective.

22. The claim succeeds on Ground 2 in substantial part [223] – [260].

23. The court has decided that a report under section 14 is important not only to enable Parliament to scrutinise the Secretary of State’s policies and to hold him to account, but also to provide transparency so that the public can properly understand how the Government intends to meet the statutory targets.

24. The court rejects the defendant’s submissions that essentially a section 14 report, such as the NZS, need only tell Parliament what the defendant’s policies are and need not provide any explanation or quantification of the effects of those policies for meeting the numerical targets. On a proper interpretation of the legislation those matters must be covered in a section 14 report.

25. Here, the defendant did not satisfy the requirements of section 14 because the NZS lacked any quantitative assessment of the contributions expected to be made by individual policies to reductions in GHG emissions, and also because the report did not reveal that the quantitative analysis put before the Minister left a shortfall against the reductions required by CB6, or how that shortfall was expected to be met.

### ***Ground 3 – Human Rights Act 1998***

26. The claim fails on Ground 3 [261] – [275].

27. The court rejects the claimants’ approach to using s.3(1) of the Human Rights Act 1998 for interpreting an Act of Parliament. Section 3 only enables the court to depart from the ordinary meaning of the language used by Parliament where that would be incompatible with a Convention right. Even then, the court may only modify that meaning to the extent necessary to overcome the incompatibility identified. Section 3 does not allow the court to depart from the ordinary meaning of a statute to achieve an interpretation which is said to be more conducive to, or more effective for, the protection of a Convention right.

28. In any event, the court’s duty is to follow Strasbourg case law provided that it is “clear and constant” (save in special circumstances). Generally, the court keeps pace with that jurisprudence as it evolves over time, no less and no more. Here, the court accepted the defendant’s submission that the claimants’ argument went beyond any “clear and constant” principles laid down in the Strasbourg case law.

### ***The court’s order***

29. The court has granted declarations summarising key decisions in the judgment.

30. The court has ordered the Secretary of State to lay before Parliament a fresh report under section 14 before the end of March 2023.

31. The court has ordered the Secretary of State to pay the claimants’ costs, subject to costs caps.

32. The court has refused the Secretary of State’s application for permission to appeal on the basis that he has not put grounds with a real prospect of success and there is no other compelling reason for an appeal to be heard by the Court of Appeal.

NOTE: This summary is provided to help in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk> and <https://www.nationalarchives.gov.uk/>.