

# Addressing Climate Change Through the Law

**Alex Goodman**

**2 April 2019**

## Rights: Community: Action

- [www.rightscommunityaction.co.uk](http://www.rightscommunityaction.co.uk)
- [admin@rightscommunityaction.co.uk](mailto:admin@rightscommunityaction.co.uk)



## *Strategic Decision Duty*

Every organisation when making decisions or taking actions of a strategic nature must:

- a. not increase greenhouse gas emissions;
- b. progressively reduce their own and any greenhouse gas emissions to which they directly or indirectly contribute so as to eliminate net greenhouse gas emissions by at least 100% as soon as possible;
- c. have due regard to the need to eliminate net greenhouse gas emissions by at least 100% as soon as possible.

## A Climate Right

*Perhaps:*

**“Everyone has the right to be free from harmful impacts of climate change”**

*Complemented by the well known interpretive obligations in section 3 of the Human Rights Act 1998, derived from the Marleasing case about indirect effect of EU law*

**“So far as it is possible to do so, primary and subordinate legislation must be read and given effect in a way which is compatible with the rights and duties in this Act.”**

## A Climate Duty?

And something similar to section 6 of Human Rights Act 1998 might apply so as to provide a more enforceable obligation on the state in respect of its statutory duties:

**“It is unlawful for a public authority to act in a way which is incompatible with section 1 of the Climate Change Act 2008 (requiring the net UK carbon account for the year 2050 to be at least 100% below the 1990 baseline).”**

# A Climate Emergency Commission Proposal

The Commission shall exercise its functions with a view to encouraging a society which:

- a. eliminates UK and global greenhouse gas emissions as soon as possible; and
- b. adapts to climate change.

The Commission may:

- a. Investigate anybody in relation to securing the fulfilment of the rights and duties set out above
- b. Bring proceedings for any contravention of the provisions above
- c. The Schedule makes further provision as to the powers of the Commission.

## Plan B Earth

*Plan B Earth; Friends of the Earth and Hillingdon LBC v Secretary of State for Transport* [2020] EWCA Civ 214

- The secretary of state's designation, under the [Planning Act 2008 s.5\(1\)](#), of the Government's "Airports National Policy Statement" favouring the development of a third runway at Heathrow airport, was unlawful. The secretary of state should have taken the 2015 Paris Agreement into account, for two reasons (a) because it was part of "government policy" under section 5(8) of the Planning Act (paras 222- 231) or
- (b) because, as Friends of the Earth argued, it was material under section 10 of the Planning Act (see paragraphs 234-236)

## Monbiot, Vince, Good Law Project Challenge

The Claimants will seek a declaration that the only rational decision for the Secretary of State is that it is appropriate to review all or part of each of the Energy NPSs for Energy Infrastructure now and that he must therefore do so.

<https://www.crowdjustice.com/case/no-new-fossilfuel-projects/>

[Baker McKenzie pre-action letter](#)

To access the recording of this webinar...

The recording may be accessed [here](#).

**Alex Goodman**  
**2 April 2020**

**Landmark Chambers**

Registered office:  
180 Fleet Street, London  
EC4A 2HG | DX: 1042 (LDE)

**London**

+44 (0) 20 7430 1221

**Birmingham**

+44 (0) 121 752 0800

**Contact**

clerks@landmarkchambers.co.uk

[www.landmarkchambers.co.uk](http://www.landmarkchambers.co.uk)

 @Landmark\_LC