

Climate change after Plan B



Tim Mould QC

Perspectives on climate change

- Political – the environment, economic and social challenge of global warming
- Legal – the Climate Change Act 2008; the Net Zero Target Amendment Order 2019
- Government Policy – The Clean Air Strategy
- International – treaty commitments – the Paris Agreement
- Need assessment for major projects - National Policy Statements
- Authorisation of major projects – DCOs

Legal Response to Climate Change

- Climate Change Act 2008
- The Committee on Climate Change
- The Mandatory Target for UK carbon change
- Setting periodic carbon budgets to cap UK carbon emissions in a series of 5 year periods
- Advisory role of CCC
- Objective to move progressively towards 2050 target
- Section 10 considerations – economic circumstances, UK technology etc
- Carbon budgets are laid before Parliament
- Annual emissions statement laid before Parliament

Policy Response to Climate Change

- Clean Air Strategy 2019
- Government policy for decarbonizing the national economy
- Proposals for spreading decarbonization through the economy – illustrative pathways
- Not prescriptive
- Identifies means of managing emissions – taxation, technology, emissions trading schemes
- Choices for Government on management of emissions from major infrastructure projects within strategy for achieving 2050 net zero target

UK Government treaty commitments

- The Paris Agreement
- Signatory parties agreed to prepare, communicate and maintain successive nationally determined contributions (NDCs) they intended to achieve and to pursue domestic measures to achieve their NDCs
- No obligation on parties to adopt binding domestic targets to ensure NDCs are met
- Paris set a global target – hold global average temperatures to well below 2% above pre-industrial levels and to pursue efforts to limit temperature increases to 1.5% above those levels
- Commitment to achieve long term balance between emissions and removal

Ministerial statements on Paris

- Enshrine the Paris goal of net zero emissions in UK law
- Question for government is not whether we do it but how we do it
- Following ratification by UK Government of Paris Agreement, CCC advised that then current statutory carbon reduction target did not require to be changed
- Draft Airports National Policy Statement (ANPS)
- Secretary of State took account of existing domestic carbon reduction targets and advice of statutory advisory body on climate change – the CCC
- ANPS adopted June 2018

Issue before the Supreme Court

- Did the ministerial statements on Paris agreement and UK response show that Paris Agreement was “government policy” for the purposes of preparation of the ANPS under the Planning Act 2008
- Court of Appeal held that this was the case
- Court of Appeal concluded that Secretary of State had failed to explain how ANPS took account of government policy, committing to implementing emissions reductions targets in Paris Agreement
- Heathrow Airport Limited challenged that analysis as based on a misconception of what constitutes “government policy” in context of PA 2008 and NPS preparation

Supreme Court – what is government policy?

- Judgment [105]-[108]
- Purposive approach rooted in the statutory context in which the question arises
- Relevant statutory purpose here is to ensure a degree of coherence between policy set out in NPS and established government policies relating to mitigation of and adaptation to climate change
- Policies which have been cleared by the relevant departments on a government wide basis – the “write round” process
- The “bear trap” – practical difficulties and risks of CA approach
- Epitome – formal written statement of established policy

Paris and the ministerial statements

- Ministerial statement not “government policy”
- Civil servants not required by law to “trawl through Hansard and press statements” when preparing and consulting on draft NPS
- Paris Agreement not “government policy”
- Ratification of treaty is “an act on the international plane”
- UK obligations in international law but are not part of UK law and give rise to no legal rights or obligations in domestic law – the Gina Miller case
- Requires domestic law-making steps which are uncertain and unspecified at the time of ratification

Consequences

- Legal and policy arrangements on climate change provide clear strategy for meeting carbon budgets and achieving net zero target by 2050
- Government has “good deal of latitude” in the action it takes to attain those objectives as part of economy wide transition
- Likely emissions resulting from construction and operation of major projects to be considered under that statutory and policy framework
- Government is responsible for policy choices on how to manage the impact of such projects as part of that transition
- R (Packham) v Secretary of State and Prime Minister [2020] at [87]
- Focus on the project and leave the grand gesture to politics

Thank you for listening

© Copyright Landmark Chambers 2021

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
📘 Landmark Chambers
📺 Landmark Chambers