



Article by Brian Hurwitz, Partner

RECENT DEVELOPMENTS ON PLANNING AND CLIMATE CHANGE

Introduction

The last 18 months have been lively as far as new developments on climate change are concerned. Parliament enacted the much heralded Climate Change Act 2008 (the “Act”) and the Planning and Energy Act Committee in November 2008. A new body, the Climate Change Committee, created under the Climate Change Act 2008, came into being in December 2008. Planning policy saw the Planning Policy Statement 1: Supplement on Climate Change¹. This article intends to give an overview of these initiatives.

Legislation

The Act includes the requirement for a carbon target and carbon budgeting. The UK’s net UK carbon account by the year 2050 must be at least 80% less than the 1990 baseline. This is the aggregate of emissions of carbon dioxide and various other greenhouse gases for 1990. The Secretary of State is to set an amount for the net UK carbon account for successive five year budgeting periods, commencing from 2008 to 2012. This is called the carbon budget.

The Act requires reductions in carbon budget for various budgeting periods, i.e.

- for 2020 = at least 26% less than 1990 baseline²; and
- for 2050 = at least 80% less than 1990 baseline.

Various matters are to be taken into account in connection with the setting of carbon budgets. These include scientific knowledge about climate change, technology relevant to climate change, economic, fiscal and social circumstances, energy policy, European and international circumstances and estimated amounts of the emissions of targeted greenhouse gases from international aviation and international shipping. These are listed in the Act and include carbon dioxide and five others. The Secretary of State may add to the list. The emission of greenhouse gases from international aviation and shipping do not count as emissions from sources in the UK, unless changed by regulations.

On 31 May 2009 the Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 came into force. It changes the reduction in carbon budgets to 34% to 2020. Although it defines international aviation and shipping, it does not make these count as emissions. One will need to await subsequent regulations (if any).

The Planning and Energy Act 2008 allows local planning authorities to include in their development plan documents policies to require that a proportion of energy used in development in their area is to be from renewable sources in the locality, to be low carbon energy from

¹ Issued by CLG in December 2007.

² Now 34%. See below.

sources in the locality and to comply with energy efficient standards in excess of building regulations. Such policies must not be inconsistent with national policies.

The Committee on Climate Change

This body corporate was established under the Act. It has the statutory duty to advise the Secretary of State on whether the target to 2050 should be amended. It must also advise on the level of carbon budget for each budgetary period and the extent to which this should be met by reducing the amount of net UK emissions of targeted greenhouse gases or carbon credits (subject to regulations being brought into effect). The Committee's first report "Building a low carbon economy"³ endorses the 80% target and the proposed level of the first three carbon budgets for 2008-2022. They include an aim by the UK to reduce emissions of greenhouse gases by 31% in 2020 (below 2005 levels) once a global deal is reached and pending this, aimed reduction by 21% in 2020 (below 2005 levels). According to the report, the 80% target by 2050 should cost between 1% and 2% of the UK's GDP in 2050 and the cost of meeting proposed carbon budgets is less than 1% of the GDP in 2020.

Supplement to PPS1

This contains a series of key planning objectives ("KPOs"), e.g. make a full contribution to the Government's Climate Change Programme, securing new developments that provide resilience to climate change. Spatial strategies must follow various principles (e.g. new development should minimise future vulnerability in a changing climate). Development plan documents must be kept up to date and properly reflect national policy. Until then, if proposals for planning permission are inconsistent with the KPOs, LPAs should consider how they may be amended to be made acceptable or where not practicable, whether to refuse planning permission.

In practical terms, there are a number of initiatives which LPAs may take in achieving sustainable development that also assists in contributing to reduction in greenhouse gas emissions, by means of suitable Section 106 obligations or conditions. For example, it is good practice to include requirements for green travel plans/use of renewable energy in developments and construction, etc. It is hoped that the initiatives identified in this paper could make such practices more widespread in the planning system.

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**This note is intended to provide a brief overview of the legal principles under discussion.
It is not intended to be a comprehensive guide or to constitute legal advice.**

³ 1 December 2008. See www.theccc.org.uk/reports

