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BRITISH CLIMATE POLICY UNDER THE CLIMATE CHANGE ACT¹

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INTRODUCTION

Climate change may lead to socio-economic consequences that are difficult to predict in the long term. Therefore, in recent years, countering climate change has become of interest to an increasing number of countries, which is reflected in, inter alia, the conclusion of the Paris Agreement – an international treaty on climate change². It is also noteworthy that several countries have adopted internal legal acts for this purpose. In this context, the example of the United Kingdom³ seems particularly interesting, although it has not yet been analysed in detail in Polish literature in relation to this subject.

The Climate Change Act⁴ (CCA or Act), passed into law on 26 November 2008, is “a major step forward in the UK’s effort to address climate change and

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¹ The article does not present the official position of the institution where the author works, but his personal views only. The translation of the quoted Polish sources into English is the author’s own.

² The Paris Agreement was adopted at COP21 in Paris on 12 December 2015, and entered into force on 4 November 2016. Text available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf, accessed: 15.03.2022.

³ The United Kingdom of Great Britain and Northern Ireland is the official name of the country. For practical reasons, the commonly known name – the United Kingdom (UK) – will be used in this article.

⁴ The Climate Change Act 2008, <https://www.legislation.gov.uk/ukpga/2008/27/contents/enacted>, accessed 15.03.2022.

represents the world's first long-term legally binding framework for reducing emissions"⁵. Climate policy in the UK thus ceased to function on the basis of acts of political will, and began to be subject to binding legal regulations⁶.

The CCA, which remains the main piece of legislation in the area of British climate policy, initially set a target of at least 80% reduction of greenhouse gas (GHG) emissions by 2050 compared to the 1990 baseline⁷. However, in May 2019, the Committee on Climate Change (CCC)⁸, guided by, inter alia, the latest scientific evidence⁹ and the aspiration to define the appropriate¹⁰ role of the UK in global efforts to stop global warming, recommended¹¹ that the UK government raise this target to at least 100%. The amendment to the Act, introduced a month later, made the UK the first G7 and G20 country to commit to achieving climate neutrality¹² by 2050 at the national level.

The CCA is also significant because "good climate laws are essential for the successful implementation of the Paris Agreement and its goal of limiting the global temperature increase to 1.5°C above pre-industrial levels. Such

⁵ *Making a Climate commitment: Analysis of the first Report (2008) of the UK Committee on Climate Change*, The Tyndall Centre, University of Manchester, 2009, p. 4, <https://documents.manchester.ac.uk/display.aspx?DocID=42722>, accessed: 15.03.2022.

⁶ K. Dośpiał-Borysiak, *Polityka klimatyczna państwa. Norweska droga do zrównoważonego rozwoju*, Wydawnictwo Uniwersytetu Łódzkiego, 2018, p. 140.

⁷ This article concerns the area of climate change mitigation. Other issues, such as adaptation to climate change, are outside the scope of this text.

⁸ More information on the Committee on Climate Change can be found later in this article.

⁹ Including, among others, the IPCC's *Global warming of 1.5°C* report, https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf, accessed: 15.03.2022.

¹⁰ However, the question of what UK contribution would be appropriate remains under discussion: D. Campbell, *How UK Climate Change Policy Has Been Made Sustainable*, "Social & Legal Studies" 2015, vol. 24, issue 3, p. 399–418; and K. Anderson, J. Broderick, I. Stoddard, *A factor of two: how the mitigation plans of 'climate progressive' nations fall far short of Paris-compliant pathways*, "Climate Policy" 2020, vol. 20, issue 10, pp. 1290–1304, who suggest the need for even greater emissions reductions.

¹¹ *Net Zero: The UK's contribution to stopping global warming*, Committee on Climate Change 2019, <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>, accessed: 15.03.2022.

¹² The CCA specifies that it is a net reduction target. Adopting a gross target would implicate the need to completely eliminate all greenhouse gas emissions, which in practice does not seem to be realistic at the present stage of technological development. The net target, on the other hand, means that the UK will continue to emit a certain amount of greenhouse gas in 2050, but this will be offset by absorbing an equivalent amount of greenhouse gases from the atmosphere.

laws are essential because they ‘lock in’ policy commitments and help achieve national climate goals”¹³. This issue is of particular importance for the UK, whose ambition is to play a leading role in international efforts to combat climate change. This is most clearly expressed¹⁴ in the latest GHG emissions reduction targets announced by the UK government: 68% to 2030 as part of the Nationally Determined Contribution (NDC)¹⁵ to the Paris Agreement and 78% by 2035 under the CCA¹⁶, both very ambitious targets compared to other countries¹⁷.

Even before the adoption of the climate neutrality goal, the CCA was described in the literature on the subject as pioneering legislation, and one of the most ambitious and advanced legal acts in the world in the field of climate change¹⁸. In this context, the CCA deserves attention due to establishment, for the first time in the world, of medium and long-term GHG emissions reduction targets in the legal system of a given country. Equally important was the creation of an institutional and legal regime aimed at forcing successive UK governments to pursue these goals and weakening the so-called credible commitment problem. In the following years, the CCA served as a source of inspiration and a point of reference, for, among others, Austria (2011), Iceland (2012), Denmark (2014), Finland and Ireland (both 2015), and

¹³ M. Socorro Manguiat, A. Raine, *Strengthening National Legal Frameworks to Implement the Paris Agreement*, “Carbon & Climate Law Review” 2018, vol. 12, issue 1, p. 15.

¹⁴ Such ambitions are also visible in the strategic documents published by the UK government, in particular see: HM Government, *Net Zero Strategy: Build Back Greener*, October 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf, accessed: 15.03.2022.

¹⁵ A national target for combating climate change set over five years. Each subsequent NDC should be more ambitious. The British NDC does not account for international aviation and shipping emissions – in line with the internationally accepted standards.

¹⁶ Including international aviation and shipping emissions: UK Government, *UK enshrines new target in law to slash emissions by 78% by 2035*, <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035>, accessed: 15.03.2022.

¹⁷ For example, the European Union has set the 2030 target of 55% reduction of greenhouse gas emissions in relation to the 1990 base year. See also: UNFCCC NDC Registry, <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx>, accessed: 15.03.2022.

¹⁸ For example: S. Fankhauser, D. Kennedy, J. Skea, *The UK’s carbon targets for 2020 and the role of the Committee on Climate Change*, [in:] *Building a low-carbon future: The politics of climate change*, ed. A. Giddens, S. Latham, R. Liddle, Policy Network, London 2009, p. 99; I. Lorenzoni, D. Benson, *Radical institutional change in environmental governance: Explaining the origins of the UK Climate Change Act 2008 through discursive and streams perspectives*, “Global Environmental Change” 2014, vol. 29, p. 10.

Norway and Sweden (both 2017), which introduced, albeit to a different extent, similar laws to their legal systems¹⁹.

The aim of this article is to present the main elements of the British model of climate policy and to outline future challenges for its credibility in the context of the CCA's foregoing implementation process and the abovementioned emissions reduction targets that were announced at the end of 2020 and in the first half of 2021, respectively. In this article, I will focus primarily on the assessment of the Act and its implementation in terms of the abovementioned credible commitment problem.

The article is divided into five parts. The first one presents a general nature of the CCA as well as some theoretical foundations of the credible commitment problem. The next part describes the most pertinent elements of the Act that form the basis of the British climate policy model. The third part touches upon the current state of implementation of the Act, as well as presenting the latest British emissions reduction targets resulting from the Act itself and the Paris Agreement. In the fourth part, selected²⁰ problems are outlined in the context of maintaining the long-term credibility and stability of the model created by the Act. In the conclusion (fifth part), the Act is assessed in the abovementioned context and the consequences of the CCA's potential failure to help global efforts combat climate change are signalled.

THE NATURE OF THE CCA AND THE CREDIBLE COMMITMENT PROBLEM

Due to its nature, the CCA is sometimes referred to as the flagship law in the area of climate policy²¹. The nature of such laws was in the last

¹⁹ S. Nash, R. Steurer, *Taking stock of Climate Change Acts in Europe: living policy processes or symbolic gestures*, "Climate Policy" 2019, vol. 19, issue 8, p. 1053.

²⁰ E.g. due to the scope of this article and the fact that the CCA adopted the concept of calculating greenhouse gas emissions on the territorial basis, the issue of the level of British emissions including consumption (which is important from the point of view of the nature of the climate change problem) was omitted. The consumption-based method also takes into account emissions embedded in products and services imported to the UK – see the Department for Environment, Food and Rural Affairs' study which suggests that UK emissions calculated on the consumption basis would be almost 50% higher than in the case of the territorial criterion, <https://www.gov.uk/government/statistics/uks-carbon-footprint>, accessed: 15.03.2022.

²¹ For example: S. Fankhauser, C. Gennaioli, M. Collins, *The political economy of passing climate change legislation: evidence from a survey*, "Global Environmental Change"

few years the subject of growing interest among researchers²². This article uses Thomas L. Muinzer's definition of CCA-type acts: a "broad national legislative framework that has been set in place by a state legislature as an Act of Parliament (or equivalent) for the purpose of redressing specific problems posed by climate change in an overarching or otherwise broadly strategic manner within that particular country"²³. It is particularly noteworthy that, in this case, it is a legal act that deals with the issue of climate change in a superior manner, i.e. it does not introduce into the legal system provisions creating specific initiatives to reduce GHG emissions in a given sector of the economy. Acts of this type create an institutional and legal order (and often set specific emissions reduction targets), under which sectoral initiatives are subsequently designed and implemented. Nash and Steurer indicate that the creation of such acts was a response to the ineffectiveness of creating climate policy by means of strictly political documents (e.g. in the form of government strategies), which were not legally binding and were not able to systematically limit GHG emissions²⁴.

The adoption of such laws by individual countries is not the only way to operationalize the transition to a low-carbon economy. It seems that the real needs and local conditions, such as political traditions or the political system, are decisive in this context. The need to adopt the CCA in the UK resulted from negative experiences related to the occurrence of the credible commitment problem²⁵. In fact, it is the problem of time inconsistency, which was first described in 1977 by Kydland and Prescott²⁶ in relation to monetary policy. The essence of the problem is that "while many governments want to commit to climate policies, there may also be incentives for them or future governments to weaken or abandon those policies if and when short-term policy costs are perceived to create the risk of electoral unpopularity"²⁷.

2015, vol. 35, p. 52; or T. Townshend, S. Fankhauser, R. Aybar, M. Collins, T. Landesman, M. Nachmany, C. Pavese, *How national legislation can help to solve climate change*, "Nature Climate Change" 2013, vol. 3, p. 430.

²² For example: T. Muinzer, *What are national 'climate change acts'?*, "Journal of Energy & Natural Resources Law", vol. 39, issue 4, pp. 419–438; S. Nash, R. Steurer, *Taking stock...*, pp. 1052–1065.

²³ *Ibidem*, pp. 429–430.

²⁴ S. Nash, R. Steurer, *op. cit.*, p. 1053.

²⁵ M. Lockwood, *Routes to credible climate commitment: the UK and Denmark compared*, "Climate Policy", vol. 21, issue 9, p. 1236.

²⁶ F. Kydland, E. Prescott, *Rules Rather than Discretion: The Inconsistency of Optimal Plans*, "Journal of Political Economy", vol. 85, issue 3, pp. 473–491.

²⁷ M. Lockwood, *op. cit.*, p. 1235.

In other words, the motivation to implement the assumed commitments varies with time due to the current political situation, so the actions declared by the government may not be perceived as credible. This is significant, *inter alia*, in the planning and decision-making process of enterprises²⁸.

As a response to this threat, Kydland and Prescott advocate introducing “institutional arrangements which make it a difficult and time-consuming process to change the policy rules in all but emergency situations”²⁹. Dośpiał-Borysiak describes this method as “tying hands” and specifies that “it would consist in defining norms that would be sanctioned in the form of statutes or even constitutional provisions, which would require significant expenditure and political capital to change them”³⁰. In British conditions, this postulate took the form of the CCA, as “what distinguishes the UK constitutional system from other modern countries is the lack of a constitution in a formal sense, that is, a specific codified legal act passed under a specific extraordinary procedure”³¹.

THE MOST PERTINENT ELEMENTS OF THE BRITISH MODEL OF CLIMATE POLICY SET OUT IN THE CCA

The CCA can therefore be seen as a device that increases the credibility of the commitment to achieving the established direction of the climate policy. It is worth emphasizing in this context that it is a construction in line with the principle of parliamentary sovereignty – the central principle of the British constitution, which is an example of a constitution in the material sense. According to it, the UK Parliament has unlimited legislative power. It is not bound by the will of the previous parliament and it cannot bind the future

²⁸ For more on this subject, see e.g. A. McHarg, *Climate Change Constitutionalism? Lessons from the United Kingdom*, “Climate Law” 2011, vol. 2, issue 4, pp. 469–484; P. McGregor, K. Swales, M. Winning, *A review of the role and remit of the committee on climate change*, “Energy Policy” 2012, vol. 41, pp. 466–473; D. Frame, J. von Stein, *Automaticity and delegation in climate targets*, “Environmental Research Letters” 2021, vol. 16, issue 4; G. Nemet, M. Jakob, J. Steckel, O. Edenhofer, *Addressing policy credibility problems for low-carbon investment*, “Global Environmental Change” 2017, vol. 42, pp. 47–57.

²⁹ F. Kydland, E. Prescott, *op. cit.*, p. 487.

³⁰ K. Dośpiał-Borysiak, *op. cit.*, p. 87.

³¹ M. Moulin-Stożek, *Status prawny sędziego w Zjednoczonym Królestwie Wielkiej Brytanii i Irlandii Północnej*, [in:] *Status prawny sędziego. Państwa europejskie. Tom I*, ed. B. Przywora, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warszawa 2019, p. 536.

parliament with its will³². As Brunner, Flachslund, and Marschinski point out, “every subsequent legislature will have the authority to change laws and subsequent governments will be able to change the degree of enforcement. Legislation, however, raises the discursive hurdle for policy change. Targets can no longer be silently dropped when they become inconvenient. Changing laws entails a visible (and perhaps politically costly) process if constituents are not convinced of the action’s legitimacy”³³.

The UK model of climate policy has been additionally strengthened by delegating some of the rights and obligations to an external institution – the aforementioned CCC – which is supposed to perform the entrusted tasks in a manner based on scientific knowledge, free from the current political situation³⁴. The CCC is an independent³⁵ expert body. One of its functions is the preparation of an annual report for the parliament (progress report), in which actions taken by the UK government are analyzed from the point of view of the CCA’s goals. Furthermore, the impact of those actions is shown in the progress in achieving intermediate targets expressed in the so-called carbon budgets. Progress reports are an increasingly important tool of influence, especially in the context of growing public interest in the subject of climate change. Under these conditions, the CCC progress reports are increasingly discussed in the mainstream media, which thus creates an additional layer of political pressure.

The abovementioned concept of carbon budgets is a key element of the Act. They set the maximum allowable level of GHG emissions in the UK for a given five-year period, compared to the 1990 baseline. Carbon budgets assume a phased emissions reduction and are set at least 12 years in advance by means of secondary (delegated) legislation issued by the competent Secretary of State, after obtaining and considering the CCC

³² S. Kubas, *Parlament Szkoeki: dewolucja – wyzwanie dla Zjednoczonego Królestwa*, Wydawnictwo Sejmowe, Warszawa 2004, pp. 34–36.

³³ S. Brunner, C. Flachslund, M. Marschinski, *Credible commitment in carbon policy*, “Climate Policy” 2012, vol. 12, issue 2, p. 263.

³⁴ The inspiration for the creation of the CCC seems to be the model of the Monetary Policy Committee of the Bank of England, whose task is, inter alia, to independently set interest rates so as to achieve the inflation targets set by the government – see P. McGregor, K. Swales, M. Winning, *op. cit.*, p. 466; and D. Helm, C. Hepburn, R. Mash, *Credible carbon policy*, “Oxford Review of Economic Policy” 2003, vol. 19, issue 3, pp. 438–450.

³⁵ In an organizational sense, i.e. it is not part of any of the government departments (non-departmental public body). However, the CCC does not have financial independence.

recommendations, as well as opinions of devolved administrations³⁶. Such a legal act is passed in the affirmative procedure, which requires the approval of both Houses of Parliament³⁷.

Table 1

Carbon budgets under the Climate Change Act

Nazwa	Years	Emissions limit	Legal basis	Status
1st carbon budget	2008–2012	3018 MtCO ₂ e	Carbon Budget Order 2009	Met with a headroom of 1%
2nd carbon budget	2013–2017	2782 MtCO ₂ e	Carbon Budget Order 2009	Met with a headroom of 14%
3rd carbon budget	2018–2022	2544 MtCO ₂ e 2632 MtCO ₂ e*	Carbon Budget Order 2009	Ongoing
4th carbon budget	2023–2027	1950 MtCO ₂ e	Carbon Budget Order 2011	Adopted, not yet started
5th carbon budget	2028–2032	1725 MtCO ₂ e	Carbon Budget Order 2016	Adopted, not yet started
6th carbon budget	2033–2037	965 MtCO ₂ e	Carbon Budget Order 2021	Adopted, not yet started

* The emissions limit has been increased by transferring 88 MtCO₂e of the surplus achieved under the 2nd budget – see remarks later in this article.

Source: own study based on legal acts indicated in the table.

Carbon budgets are another layer of building the credibility, stability, and predictability of British climate policy. They not only set intermediate goals, in theory stimulating the government to take ambitious actions also in the short term, but above all, they are supposed to send a positive signal to investors interested in transformation projects in individual sectors of the economy. Moreover, they indicate a reduction trajectory allowing for the actual achievement of the long-term goal, i.e. climate neutrality by 2050.

³⁶ Section 9 of the CCA. In addition, Section 10 identifies other issues that the Secretary of State has to consider when determining the level of a carbon budget, including the state of scientific knowledge on climate change or the impact on the country's economy.

³⁷ Section 91.1 of the CCA. See also: UK Parliament, *Affirmative procedure*, <https://www.parliament.uk/site-information/glossary/affirmative-procedure>, accessed: 15.03.2022.

As Church notes, “it is fundamental to the effectiveness of the Act that these carbon budgets do indeed chart an appropriate – gradual and cost-effective – course which keeps its sight on the 2050 target”³⁸.

The CCA formalized the political consensus³⁹ on the need to take urgent action to combat climate change. However, while the Act sets goals and the organizational and institutional framework of the British climate policy, it does not specify how these goals are to be achieved. Development of specific initiatives and their implementation remains the domain of the government⁴⁰.

STATE OF IMPLEMENTATION OF CARBON BUDGETS AND SETTING NEW EMISSIONS REDUCTION TARGETS

The periods covering the first and second carbon budgets have now ended. As indicated in Table 1, both budgets were met with a surplus⁴¹. This is especially true for the second carbon budget, during which emissions were 384 MtCO₂e below the maximum level. However, in this context, attention should be paid to the way UK carbon budgets are structured and accounted for.

For the settlement of carbon budgets, the CCA adopted the concept of the net carbon account⁴². According to the Act, a given carbon budget is deemed to be met if the net carbon account does not exceed the set level of the carbon budget at the end of the budgetary period. This concept includes considering the results of trading between participants in the EU Emissions Trading System (EU ETS). The UK net carbon account for a given year is calculated by adjusting the net emissions (i.e. UK⁴³ real emissions from all sources minus

³⁸ J. Church, *Enforcing the Climate Change Act*, “UCL Journal of Law and Jurisprudence” 2015, issue 1, p. 110.

³⁹ Only three MPs voted against the CCA.

⁴⁰ And also, to some extent, devolved governments.

⁴¹ *Final Statement for the First Carbon Budget Period*, Department of Energy & Climate Change, 2014, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310648/final_statement_first_carbon_budget_period.pdf, accessed: 15.03.2022; and *Final Statement for the Second Carbon Budget*, Department for Business, Energy & Industrial Strategy, 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803404/Final_Statement_for_2n_Carbon_Budget.pdf, accessed: 15.03.2022.

⁴² Section 27 of the CCA.

⁴³ That is, emissions that were created within the borders of the UK, but excluding overseas territories and dependencies.

the estimated absorption of emissions, e.g. by forests and land use) by adding or subtracting an appropriate amount of EU ETS credits. Buying allowances abroad means a reduction in net carbon account; selling them, in turn, means an increase as the emissions will take place outside the UK⁴⁴.

The first five carbon budgets were adopted when the UK was still a member of the European Union and participated in the EU ETS. Thus, the level of the budgets passed at that time consisted of two parts: emissions from sectors covered by the EU ETS (e.g. energy sector) and others (e.g. agriculture or transport). In practice, this means that the budget in the part concerning the EU ETS depended not on the actual emissions but on the share of British installations in the overall system limit. For example, when establishing the recommended level of the fifth carbon budget – which will be discussed later – the CCC assumed that 140 MtCO₂e should be added to the part concerning the EU ETS in order to balance the expected sales of allowances by British installations⁴⁵.

The period of the second carbon budget coincided with the beginning of the third phase of the EU ETS (2013–2020). As indicated in the final report on the implementation of the second budget, “in this phase Member States do not receive a fixed cap at the national level as was the case during the first carbon budget; the ETS instead operates at installation level”⁴⁶. When the appropriate emissions limit was being worked out for the second carbon budget, the exact number of allowances for British installations was not known. Therefore, it was necessary to adopt a notional cap which was set at 1078 MtCO₂e. Later, however, the UK cap was set at 782 MtCO₂e, which is as much as 296 MtCO₂e less than assumed.

The difference has thus created an additional “empty” space for emissions in sectors not covered by the EU ETS. As indicated by the authors of the Cambridge Econometrics report prepared for the CCC, due to the fact that the assumptions of the second carbon budget were not revised in connection with

⁴⁴ In 2018, the UK’s net carbon account was 476.2 MtCO₂e, including 24.7 MtCO₂e (approx. 5% of the total) as a result of functioning in the EU ETS; see: *2018 UK greenhouse gas emissions: final figures – data tables*, Department for Business, Energy & Industrial Strategy, 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875508/final-greenhouse-gas-emissions-tables-2018.xlsx, accessed: 15.03.2022.

⁴⁵ *The Fifth Carbon Budget. The next step towards a low-carbon economy*, Committee on Climate Change, 2015, p. 115, <https://www.theccc.org.uk/wp-content/uploads/2015/11/Committee-on-Climate-Change-Fifth-Carbon-Budget-Report.pdf>, accessed: 15.03.2022.

⁴⁶ Department for Business, Energy & Industrial Strategy, *op. cit.*, p. 9.

a smaller than expected allocation of allowances for British installations under the EU ETS, “the second carbon budget was easily met, purely as a result of changes in accounting and not measures to lower carbon emissions”⁴⁷. The report further states that, in addition to considering external factors beyond the control of the government, e.g. economic slowdown caused by the financial crisis of 2007–2008, the UK would not have an excess emissions reduction, but a deficit resulting from the mismatch between emissions reduction targets envisaged and the measures implemented to meet these targets (policy gap).

This problem was also repeatedly highlighted by the CCC. The analysis of the annual progress reports mentioned earlier in this article indicates that the policy gap issue has been raised annually since 2014⁴⁸. The scale of the problem is estimated by reviewing and assessing government plans and actions to achieve emissions reductions, and then comparing them with the recommended emissions reduction path developed by the CCC, leading to the achievement of the emissions level assumed in the carbon budgets.

Against this background, the latest British emissions reduction targets were announced, i.e. the NDC and the sixth carbon budget. The British NDC from 2020⁴⁹ includes a commitment to a 68% reduction in GHG emissions by 2030 compared to the 1990 baseline⁵⁰, while the sixth carbon budget assumes a GHG emissions limit of 965 MtCO₂e, i.e. 78% reduction by 2035 relative to the same baseline.

Considering the level of ambition expressed in the latest emissions reduction goals, it is clear that meeting them will require the adoption of an extensive package of measures, which are postulated in successive CCC annual reports. The structure and accounting methods for carbon budgets, in combination with external factors, have so far allowed for the formal fulfilment of the assumed goals, as well as for the duration of the described

⁴⁷ *A report for the Committee on Climate Change. How the UK met its carbon budgets. Covering carbon budgets 1 and 2*, Cambridge Econometrics, Cambridge 2019, p. 7, <https://www.theccc.org.uk/wp-content/uploads/2019/07/How-the-UK-met-its-carbon-budgets.pdf>, accessed: 15.03.2022.

⁴⁸ See CCC, *Progress Reports*, <https://www.theccc.org.uk/publicationtype/0-report/02-progress-reports/>, accessed: 15.03.2022.

⁴⁹ As a member of the European Union, in 2015 the UK was part of the joint EU NDC. In 2020, after leaving the EU, the UK presented its own updated NDC. See: UK Government, 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943618/uk-2030-ndc.pdf, accessed: 15.03.2022.

⁵⁰ As previously mentioned, this target – unlike the sixth carbon budget – does not include international aviation and shipping emissions.

situation of discrepancy between the goals and the actions actually taken to achieve them (policy gap), without serious political consequences. In the abovementioned article by Brunner, Flachslund, and Marschinski of 2012, the authors emphasize that the fact of establishing an independent entity to which certain rights and obligations are delegated is not in itself sufficient to increase the credibility of the commitment. They also state that “time will show whether the political clout of the UK CCA suffices to effectively check political opportunism”⁵¹. In retrospect, it seems that the political importance of the CCC in this respect was not strong enough to influence government climate actions in real terms, as Averchenkova, Fankhauser, and Finnegan note: “While the CCC has been a successful knowledge broker, there are limits to its influence on policy outcomes. The CCC’s statutory advice on carbon budgets has generally been followed. However, its repeated warnings that policy was off track, and the recommended remedies, have largely gone unheeded by Government”⁵².

CHALLENGES IN THE CONTEXT OF MAINTAINING THE CREDIBILITY OF THE BRITISH CLIMATE POLICY MODEL

The issues outlined above will be important for the credibility of the Act and the model it has created in the coming years. Official estimates of the ongoing third carbon budget indicate⁵³ that it will also be achieved with a surplus, in part for the reasons already described above. Although the scale of the surplus is not yet known, the CCC indicated that it may be “extremely large”⁵⁴. This does not change the fact that the policy gap problem has remained and will have an impact on the prospects of meeting the growing emissions reduction targets set for the 2020s and 2030s. One

⁵¹ S. Brunner, C. Flachslund, M. Marschinski, *op. cit.*, p. 264.

⁵² A. Averchenkova, S. Fankhauser, J. Finnegan, *The influence of climate change advisory bodies in climate governance: The UK’s Committee on Climate Change*, “Climate Policy”, vol. 21, issue 9, p. 1231.

⁵³ *Updated energy and emissions projections 2019*, Department for Business, Energy & Industrial Strategy, 2020, p. 12, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/931323/updated-energy-and-emissions-projections-2019.pdf, accessed: 15.03.2022.

⁵⁴ Much will depend on the extent to which the COVID-19 pandemic will ultimately affect emissions. See: *The Sixth Carbon Budget. The UK’s path to Net Zero*, Committee on Climate Change, 2020, p. 435, <https://www.theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf>, accessed: 15.03.2022.

solution in this context is the possibility of transferring the surpluses achieved in the previous budget to the next budgetary period⁵⁵, in whole or in part. As a result, the level of the carbon budget for the next period is increased by the amount transferred. The decision made by the competent Secretary of State in this matter is subject to few formal conditions, i.e. it requires consultation with devolved administrations and obtaining the CCC's recommendation. In addition, the decision is time-limited – it must be made no later than 31 May in the second year after the end of the earlier of the two budgetary periods affected.

In *The Clean Growth Strategy* published in 2017, the UK government signalled⁵⁶ its readiness to use the surplus transfer mechanism. Ultimately, it happened in 2019. Despite the negative CCC recommendation⁵⁷, the government decided⁵⁸ to carry over approximately 23% (88 MtCO₂e out of 384 MtCO₂e) of the surplus achieved in the second carbon budget, increasing the permissible emissions limit in the third carbon budget from 2544 MtCO₂e to 2632 MtCO₂e.

The CCC consistently⁵⁹ takes the position that surpluses generated in carbon budgets should not be used in this way. It should be noted that this mechanism is a form of providing a measure of flexibility in the Act, which was largely designed to “block” commitments. As Cambridge Econometrics analysts note in the previously cited study, “this is a useful design feature and is based on climate science and the political context at the time of setting carbon budgets. From a scientific perspective, it is the accumulation of long-lived greenhouse gases in the atmosphere over time that matters (the stock

⁵⁵ Section 17 of the CCA.

⁵⁶ *The Clean Growth Strategy. Leading the way to a low carbon future*, HM Government, 2017, p. 40, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf, accessed: 15.03.2022.

⁵⁷ *An independent assessment of the UK's Clean Growth Strategy. From ambition to action*, Committee on Climate Change, 2018, pp. 11–12, <https://www.theccc.org.uk/wp-content/uploads/2018/01/CCC-Independent-Assessment-of-UKs-Clean-Growth-Strategy-2018.pdf>, accessed: 15.03.2022.

⁵⁸ Minister Chris Skidmore's letter to CCC Chairman Lord Deben, http://data.parliament.uk/DepositedPapers/Files/DEP2019-0626/Chris_Skidmore_to_Lord_Deben.pdf, accessed: 15.03.2022. However, as the decision to carry forward was taken as a contingency, it remains to be seen whether the government will eventually use the over-performance to meet the third carbon budget.

⁵⁹ This position was once again expressed in the recommendation of the sixth carbon budget; see: Committee on Climate Change, *op. cit.*, p. 435.

of emissions) and so if the UK's domestic emissions are within the combined budgets it is largely (but not entirely) irrelevant whether they were emitted, for instance, in 2015 or 2020. From a political context, if the UK's emissions are within the combined budgets then the government could consider the transition a success and that the UK has met its international and legal obligations"⁶⁰.

Possible action of this type to meet the fourth carbon budget (and also subsequent ones), in a situation where the surplus from the third carbon budget would not result mainly from political initiatives, seems very risky for the credibility of the entire model of British climate policy. As already mentioned, carbon budgets set the desired, cost-effective reduction trajectory allowing for the achievement of climate neutrality. Meeting them by means of an accounting mechanism significantly increases the risk of excessive deviation from the designed trajectory, resulting in reduced chances of achieving all assumed emissions reduction targets.

In this context, it should also be emphasized that the desired trajectory has changed following, *inter alia*, the June 2019 Act's amendment whereby the UK has adopted the goal of climate neutrality by 2050. In other words, the new commitment means at least 100% reduction in the UK's net carbon account by 2050 compared to 80% before the amendment. In connection with that increase, the CCC developed a new, more demanding emissions reduction trajectory (Balanced Net Zero Pathway)⁶¹, optimal and in line with the climate neutrality goal. It was on this basis that the CCC developed the government-approved level of the British NDC for 2030 and the sixth carbon budget.

Both targets are the only ones that were established after the CCA amendment entry came into force. The previously adopted but not yet started carbon budgets therefore do not fit the new trajectory. This applies in particular to the fifth carbon budget (2028–2032). As the CCC points out, this budget is too loose (between 140 MtCO₂e and 335 MtCO₂e) in relation to the new path⁶².

The CCA provides for the possibility of modifying the already-adopted budget under several conditions – *i.e.* only if it appears to the Secretary of State that, since the budget was originally set (or previously altered), there have been significant changes affecting the basis on which the previous decision was made⁶³.

⁶⁰ Cambridge Econometrics, *op. cit.*, p. 38.

⁶¹ This trajectory also considers, *inter alia*, anticipated changes in the emission inventory method.

⁶² Depending on whether emissions from international aviation and shipping are considered.

⁶³ Section 21.2 of the CCA.

Such an amendment requires the acceptance in the previously described affirmative procedure, and thus the active approval of both Houses of Parliament. Considering the aforementioned CCA amendment of 2019, it seems that this most important premise has been met. However, when deciding on the sixth carbon budget level, the UK government at the same time resolved⁶⁴ that the already-adopted, but not yet started, carbon budgets would remain at the current level, despite the fact that both the Scottish and the Welsh governments were of the opposite opinion⁶⁵.

The UK government's decision is consistent with the CCC's position. Although the Committee noted that in an ideal scenario all existing carbon budgets would be adjusted to the new trajectory, at the same time it stated that the modification is not necessarily required⁶⁶. In this context, the CCC expects that the government's adoption of the sixth carbon budget and the NDC at the recommended level will make the new GHG reduction trajectory (i.e. aforementioned Balanced Net Zero Pathway) de facto binding for the government now. This is due to the statutory obligation to set out proposals and policies to meet the net zero target and all already-adopted carbon budgets⁶⁷.

In this situation, the UK will have two formally binding and mismatched GHG reduction targets in 2030, i.e. NDC and the one resulting from the level of the fifth carbon budget. Such a situation may potentially lead to increased political tensions, especially since the CCC announced⁶⁸ that progress towards achieving the fifth carbon budget will now be assessed according to the new reduction trajectory, not the one in force at the time of adoption of that budget. In practice, this means that instead of the permissible average of 345 MtCO₂e per year over the period of this budget, the CCC will accept the permissible average annual emissions of 317 MtCO₂e.

Considering the state of the ongoing mismatch between the actual measures and the assumed goals, it seems optimistic that the mere establishment of the sixth carbon budget at the level recommended by the CCC will force the adoption of an appropriate package of initiatives in the years 2028–2032. This pose, in particular, a potential threat to the prospects of meeting more ambitious, international goal resulting from the NDC.

⁶⁴ *Impact Assessment for the sixth carbon budget*, Department for Business, Energy & Industrial Strategy, 2021, p. 16, https://www.legislation.gov.uk/ukia/2021/18/pdfs/ukia_20210018_en.pdf, accessed: 15.03.2022.

⁶⁵ *Ibidem*, p. 76.

⁶⁶ Committee on Climate Change, *The Sixth...*, p. 433.

⁶⁷ Section 13 and 14 of the CCA.

⁶⁸ Committee on Climate Change, *The Sixth...*, p. 433.

The CCA's provisions do not provide for any legal sanctions for failure to achieve the long-term goal and carbon budgets, thus suggesting more political than legal liability⁶⁹. It is indicated that “judges might (...) be reluctant to read the Act as imposing absolute duties to meet targets and budgets at all. Since the government cannot in practice guarantee that its policies will produce the required emission reductions, it might rather be interpreted as simply creating a duty to use best endeavours”⁷⁰. In this context, the commitment under the Paris Agreement appears to be additionally slightly weaker than the one under the CCA. Rajamani and Brunneé point out that the Parties to the Paris Agreement “do not have binding obligations of result in relation to their NDCs”. They further state that “in practical terms (...) a party could fall short of its NDC without the consequences that attach to breaches of a legal obligation under the law of state responsibility”⁷¹.

On the margins of these considerations, it should also be noted that the presumptive fulfilment of the NDC goal would in this case likely involve a significant surplus in the fifth carbon budget, which, in accordance with the previously described possibility of transferring it to the next accounting period, may be theoretically used for the purposes of the sixth carbon budget. In this way, the credibility risk would be transferred from the international to the national level.

SUMMARY

The CCA has undoubtedly had a great influence on the development of the British climate policy. As Fankhauser points out, the CCA “has transformed the tone of the climate change debate in Britain. There is still

⁶⁹ A similarly sceptical position regarding the enforcement of the CCA's provisions in court was expressed by many scholars, e.g. P. McMaster, *Climate Change – Statutory Duty or Pious Hope?*, “Journal of Environmental Law” 2008, vol. 20, issue 1, pp. 115–119; S. Brunner, C. Flachsland, M. Marschinski, *Credible commitment...*, p. 263; D. Feldman, *Legislation Which Bears No Law*, “Statue Law Review” 2016, vol. 37, issue 3, p. 222. However, for a dissenting opinion, see: J. Church, *op. cit.*, who argues that under certain conditions the CCA provisions may be enforced in court.

⁷⁰ A. McHarg, *op. cit.*, p. 478.

⁷¹ L. Rajamani, J. Brunneé, *The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement*, “Journal of Environmental Law” 2017, vol. 29, issue 3, p. 542. See also: D. Helm, *Net Zero. How We Stop Causing Climate Change*, William Collins, London 2020, pp. 54–55.

climate scepticism at the feral end of public opinion, but the constructive debate is no longer about the targets, but instead about how to meet them”⁷². It is also worth emphasizing that the CCA has left its mark on the policies adopted by other countries in this regard. The UK act not only inspired other countries to introduce legislation in an unregulated area but also constituted a kind of testing ground, which was used at the stage of designing solutions adapted to the realities of individual countries⁷³.

The experience of over a decade of the CCA’s use offers insight into the positive and negative aspects of building a functional and credible model of climate policy, adapted to the long-term nature of the climate change problem. Considering that national climate policy is often a derivative of conditions existing at the international level, it should be noted that during this period, the CCA regulations have not been weakened. On the contrary, as indicated above, the long-term emissions reduction target was raised to a level of at least 100% by 2050. However, it would apparently be justifiable to look at the functioning of the CCC with a degree of disappointment, as its political position has so far not allowed it to realistically affect the improvement of the situation in relation to the policy gap problem.

Against this background, it may be necessary to further modify the CCA by introducing new tools that could strengthen the existing model⁷⁴. As Lockwood points out, while solutions based on building cross-party agreements may be successful in the countries of continental Europe, they do not have good prospects in the UK due to the electoral system in force. In this situation, perhaps the solution would be to implement a mechanism ensuring a greater role for local governments or even greater social participation in the creation and implementation of climate policy⁷⁵.

⁷² S. Fankhauser, *Do Climate targets work?*, “Carbon Management” 2011, vol. 2, issue 5, p. 495.

⁷³ P. Taylor, K. Scanlen, *The UK Climate Change Act. An act to follow?*, “Policy Quarterly” 2018, vol. 14, issue 3, pp. 66–73, <https://ojs.victoria.ac.nz/pq/article/view/5106/4544>, accessed: 15.03.2022.

⁷⁴ Such proposals began to be put forward in parliament – see e.g. Climate and Ecology Bill presented by Caroline Lucas MP, <https://bills.parliament.uk/bills/2772>, accessed: 18.10.2022.

⁷⁵ This is especially important in the context of shifting the gravity of the British economy transformation from energy sector to more politically sensitive sectors of the economy, such as hearting or transport – see: M. Lockwood, *Routes to...*, p. 1243. It should also be noted that such provisions are included in the Climate Change (Scotland) Act 2009 – see section 91, <https://www.legislation.gov.uk/asp/2009/12>, accessed: 15.03.2022.

There is some hope in the increasing British public interest in the issue of climate change⁷⁶: “In the UK general election of 12 December 2019 the environment and climate change gained much greater prominence compared to previous elections, yet ultimately they were of marginal importance during the campaign and exerted limited impact on voting behaviour”⁷⁷. It is worth remembering, however, that the last general election was dominated by the topic of the UK leaving the European Union. Since the UK’s return to the EU is no longer an issue, it is likely that climate change issues and political parties’ proposals in this area will determine preferences in the next general election to a much greater extent.

The emissions gap is defined as the difference between the projected global GHG emissions with full implementation of the declared NDCs, and the emissions allowed under the reduction trajectories consistent with the Paris Agreement objective to limit the increase in the average global temperature to a level significantly lower than 2°C above the pre-industrial level and making efforts to limit the temperature increase to 1.5°C above the pre-industrial level. This gap is still significant and reaches a dozen or so GtCO₂e worldwide, depending on the adopted scenario⁷⁸. Thus, it is evident that meeting the goals of the Paris Agreement requires the states to be even more ambitious in terms of NDCs and, above all, make real efforts to implement them.

A possible failure to achieve the emissions reduction targets set in the UK or loss of credibility of the UK climate policy model will most probably have a negative impact on climate policy internationally. While the UK is currently responsible for only about 1% of global GHG emissions⁷⁹, it is at

⁷⁶ This is evidenced by, inter alia, the increase in social movements such as Extinction Rebellion or the growing number of councils that have declared a climate emergency – see: <https://www.climateemergency.uk/blog/list-of-councils>, accessed: 15.03.2022. See also the results of quarterly public opinion polls conducted by the Department for Business, Energy and Industrial Strategy: BEIS Public Attitudes Tracker, <https://www.gov.uk/government/collections/public-attitudes-tracking-survey>, accessed: 15.03.2022.

⁷⁷ N. Carter, M. Pearson, *A ‘climate election’? The environment and the Greens in the 2019 UK general election*, “Environmental Politics” 2020, vol. 29, issue 4, p. 746.

⁷⁸ *Emissions Gap Report 2021*, United Nations Environment Programme, Nairobi 2021, pp. 29–37, <https://wedocs.unep.org/bitstream/handle/20.500.11822/36990/EGR21.pdf>, accessed: 15.03.2022.

⁷⁹ P. Bolton, *UK and global emissions and temperature trends*, “House of Commons Library”, <https://commonslibrary.parliament.uk/uk-and-global-emissions-and-temperature-trends/>, accessed: 15.03.2022.

the forefront of the list of countries in terms of its historical contribution to global warming⁸⁰. To a large extent, its importance and responsibility lies in the global system of climate negotiations⁸¹. The failure or even a high probability of failure of the British climate policy may therefore be a strong political signal and strong argument against raising goals or implementing climate projects in countries deemed less ambitious in terms of climate policy. Of particular importance in this context is the fact that – as the British government itself admits – the British reduction target resulting from the sixth carbon budget, although very ambitious on a global scale, is less ambitious than if global efforts were shared with historical contributions to emissions taken into account.⁸²

Three decades after the signing of the United Nations Framework Convention on Climate Change, the problem of global warming remains one of the greatest challenges for the entire international community. Despite political efforts and successive initiatives adopted as part of the Conference of Parties (COP) meetings⁸³, the concentration of carbon dioxide in the atmosphere has been rising steadily for many years⁸⁴, and the problem of climate change is becoming an increasingly important part of the political agenda. It is difficult to consider the Convention's results to date as satisfactory. The Paris Agreement is currently the main tool at the global level for changing this state of affairs. It is therefore particularly important for individual states to place emphasis on the implementation of their obligations and to develop credible frameworks and transformation programmes in line with the Paris Agreement's objectives. Otherwise, the Paris Agreement's spirit and the global climate policy will most likely be undermined. The risk of wasting even more years will then increase immeasurably.

⁸⁰ D. Matthews, T. Graham, S. Keeverian, C. Lamontagne, D. Seto, T. Smith, *National contributions to observed global warming*, "Environmental Research Letters" 2014, vol. 9, issue 1, p. 5.

⁸¹ The UK's responsibility in the global fight against climate change in the context of the country's historic emissions was also mentioned by Prime Minister Boris Johnson – see: *PM speech at COP26 launch: 4 February 2020*, <https://www.gov.uk/government/speeches/pm-speech-at-cop-26-launch-4-february-2020>, accessed: 15.03.2022.

⁸² Department for Business, Energy & Industrial Strategy, *Impact Assessment...*, p. 10.

⁸³ The COP is the supreme decision-making body of the Convention.

⁸⁴ As of February 2022, concentration of carbon dioxide reached 418 ppm (parts per million).

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BRITISH CLIMATE POLICY UNDER THE CLIMATE CHANGE ACT

Abstract

The British Climate Change Act created the world's first long-term institutional and legal system aimed at reducing domestic greenhouse gas emissions. Following its 2019 amendment, the UK also became the first G7 and G20 country to commit to climate neutrality. The Act, described as one of the most advanced legal acts in the field of climate policy, is still a reference point and source of inspiration for many countries around the world. The model established by it, however, struggles with the credible commitment problem, and the structural problems arising, inter alia, from the aforementioned amendment and the departure of the UK from the European Union may in the future additionally weaken its credibility and have a negative impact not only on British but also on global climate action. The aim of this article is to present the main elements of the British model of climate policy and to signal future challenges to its credibility against the background of the previous experience with the implementation of the Act and the latest emissions reduction targets announced at the end of 2020 and in the first half of 2021.

Key words: Climate Change Act, carbon budget, climate policy, climate change, United Kingdom

BRYTYJSKA POLITYKA KLIMATYCZNA W ŚWIETLE USTAWY CLIMATE CHANGE ACT

Streszczenie

Brytyjska ustawa Climate Change Act stworzyła pierwszy na świecie długoterminowy system instytucjonalno-prawny mający umożliwić redukcję krajowych emisji gazów cieplarnianych. Po jej nowelizacji z 2019 r. Wielka Brytania stała się także pierwszym krajem grupy G7 i G20, który zobowiązał się do osiągnięcia neutralności klimatycznej. Ustawa, określana jako jeden z najbardziej zaawansowanych aktów prawnych w obszarze polityki klimatycznej, do dzisiaj stanowi punkt odniesienia i inspirację dla wielu krajów na świecie. Ustanowiony nią model zмага się jednak z problemem

wiarygodności zobowiązań, zaś problemy strukturalne wynikające m.in. ze wspomnianej nowelizacji oraz wyjścia Wielkiej Brytanii z Unii Europejskiej, mogą w przyszłości dodatkowo osłabić jego wiarygodność oraz negatywnie wpłynąć nie tylko na brytyjską, ale również światową politykę klimatyczną. Artykuł ma na celu przedstawienie głównych założeń brytyjskiego modelu polityki klimatycznej oraz zasygnalizowanie przyszłych wyzwań dla jego wiarygodności na tle dotychczasowych doświadczeń implementacji ustawy oraz najnowszych celów redukcji emisji ogłoszonych w końcu 2020 r. oraz pierwszej połowie 2021 r.

Słowa kluczowe: Climate Change Act, budżet węglowy, polityka klimatyczna, zmiany klimatu, Wielka Brytania

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