

BRIEFING – NEW LEGAL CASE

Net Zero Strategy and Heat and Building Strategy

The Climate Change Act 2008

NOTICE: This briefing contains a summary of a Friends of the Earth legal case, which was filed on 12 January 2022 in the High Court. A copy of our press release is also enclosed.

PURPOSE: This briefing is provided for your information, but you can also contact us.

KEY POINTS

- Friends of the Earth is taking the Government to court, alleging it has breached the Climate Change Act 2008 (CCA). The CCA was devised by Friends of the Earth, and came into force following its hugely successful [REDACTED] campaign.
- In this court case, Friends of the Earth is challenging two government strategies, published together in October 2021:
 - the Net Zero Strategy (NZS), which is the Government's economy-wide decarbonisation strategy. We will argue that Secretary of State for Business Energy and Industrial Strategy (Kwasi Kwarteng) has failed to comply with his duties under the CCA.
 - the Heat and Buildings Strategy (HBS), on the basis that no assessment was done of its impact on protected groups, as required by the Equality Act 2010.
- On 1 March 2022, the High Court granted Friends of the Earth permission to proceed on all of its grounds.

WHY IS FRIENDS OF THE EARTH BRINGING THIS CASE?

- We're bringing the case because a rapid and fair transition to a safer future is not yet guaranteed and the Government strategies do not match what is needed.
 - The NZS contains some ambitious targets, and *theoretical* pathways, but lacks the detail needed to assess whether or not the proposed policies can deliver the emissions reductions set by the carbon budgets under the CCA. The lack of that basic working-out is inexcusable in the context of a climate emergency and, we say, unlawful.
 - The lack of this essential information also does not allow Parliament and the public to hold the Government to account because we cannot assess how good or bad the Net Zero plan is. This defeats the purpose of the CCA legally requiring the government to present a report that sets out how it will meet the carbon budgets.
 - The HBS was never assessed for its impact on the more vulnerable and protected groups in society, under the Equality Act 2010. It's not possible to plan for the fair or just transition that is needed if you do not consider the possible disproportionate impact on vulnerable groups.

- The alleged legal failures are very serious given the urgency of the climate crisis and the need for a just and fair transition that is inclusive. That's vital, because we know that both the causes and effects of climate breakdown are not distributed fairly – with those doing least to cause it often the hardest hit.
- Inequalities should be at the forefront of policy-makers' minds when designing the climate transition. For example, in heat and buildings, we know that the impacts of fuel poverty affect some worse than others. A report¹ by Friends of the Earth in November 2021, found that people of colour are twice as likely to be living in areas of fuel poverty than white people. It also found that areas with high numbers of disabled residents were more likely to be rated in the worst category of fuel poverty.
- But the Government's strategy for our homes and heating didn't consider protected groups, such as age, race and disability when setting out policy for the future.
- Transitioning to a zero-carbon economy is an opportunity to redress existing inequalities and secure a safer, fairer future for all. But this can only be achieved by designing policy with marginalised or vulnerable people in mind. Otherwise we risk not only missing this opportunity, but exacerbating the inequalities that already exist. That risk is heightened when the Government does not – as here – identify and consider their specific needs, as required by the Equality Act 2010.

THE LEGAL CASE

We filed our case on 12 January 2022, and permission to proceed was granted by the High Court on 1 March 2022. The judge concluded that all of our grounds have a realistic prospect of success, and merit investigation at a full hearing.

We anticipate that this legal challenge could be a landmark climate case against the Government.

We are challenging the Government on the basis that:

Ground 1 – BEIS failed to include in the NZS the basic information required to give effect to section 14 of the CCA, including: the basis for concluding that the proposals and policies would meet the carbon budgets; a quantified estimate for emissions reductions from each proposal and policy; and, the relevant timescales for their implementation and effect.

Ground 2 – BEIS misunderstood the statutory objective when preparing policies and proposals for section 13 CCA.

Ground 3 – BEIS did not have the information necessary to enable the conclusion to be made that the policies and proposals under s13 would enable the carbon budgets to be met.

■ [REDACTED]

Ground 4 – BEIS failed to discharge the ‘public sector equality duty’ and did not assess the HBS strategy against the particular needs of protected groups, such as age, race, sex and disability.²

The environmental charity ClientEarth³ and the not-for-profit campaign organisation the Good Law Project have also filed separate challenges in relation to the NZS. Their claims have also been granted permission to proceed.

Friends of the Earth was the first party to file its case, and is the only party challenging the Heat and Buildings Strategy as well.

WHAT WE HOPE TO ACHIEVE

- A Net Zero Strategy that contains a more credible and worked out plan that shows we will meet the carbon budgets set in law.
- Greater transparency, so the Government can be held accountable for any shortfall.
- Strengthen the operation of the CCA.
- Force the Government to consider the most vulnerable in society and how best to meet their need in the transition to Net Zero, particularly with regards to the HBS.

NEXT STEPS

- We will now be preparing our case for the substantive hearing, and will be coordinating with ClientEarth and the Good Law Project.
- We estimate that the hearing could take place in Autumn/Winter 2022.

FURTHER INFORMATION

For any further information about the legal case please contact Katie de Kauwe katie.dekauwe@foe.co.uk; or Will Rundle will.rundle@foe.co.uk.

Case documentation will be legally privileged and may not be disclosable.

If you wish to help us amplify what we are doing and campaign with us, please contact Tony Bosworth tony.bosworth@foe.co.uk.

For press work or enquiries please contact our press team media@foe.co.uk

2 March 2022
Friends of the Earth

² [REDACTED]

³ ClientEarth are claiming breach of the Climate Change Act 2008. ClientEarth lawyers will also argue that failing to have sufficient policies in place for meeting carbon budgets is not compatible with human rights law. They argue this would exacerbate the already severe risks posed to today's young people and future generations, including by risking the need for more drastic measures in future.

Friends of the Earth Press Release

Embargoed until 00.01 Wednesday 12th January 2022

"Shocking" and "lacklustre" commitments not enough: Friends of the Earth takes government to court over weak and inadequate climate strategies

- The Net Zero Strategy (NZS), published in October 2021, does not comply with requirements under the Climate Change Act 2008 [1]
- The Heat and Buildings Strategy, published at the same time and referred to in the NZS, did not consider impact on legally protected groups under the Equality Act 2010

Friends of the Earth is taking the government to court over two of its woefully inadequate climate strategies, and is filing papers today [2]. The Judicial Review, brought to the High Court by the environmental campaign group, will challenge both the government's Net Zero Strategy (NZS) and its Heat and Buildings Strategy. It will do so on the basis that the NZS does not comply with the Climate Change Act 2008, which Friends of the Earth was central to devising and securing. The group also contends that the Heat and Buildings Strategy should have considered the impacts of its policies on protected groups, as part of ensuring a fair energy transition where climate action aligns with social responsibility.

Friends of the Earth claims the pathways to reach net zero in the NZS are theoretical, because they are not supported by government policy which shows how they can be fulfilled. This means that the Net Zero Strategy is not lawful, and crucially, does not allow parliament and members of the public to hold government accountable for any failures.

Friends of the Earth also claims that the government totally failed to consider the impact of its Heat and Buildings Strategy, published at the same time as the NZS, on protected groups. Factors such as age (both the elderly and the very young who will live with the greatest future climate impacts), sex, race, and disability can make people more vulnerable to climate impacts. This unaddressed inequality needs transparency and political accountability.

A refusal so far to disclose its equality impact assessment for the Net Zero Strategy has raised similar concerns.

The environmental group is concerned that people in these groups can be unfairly and disproportionately impacted by a badly planned transition to low carbon living. Yet the government has not identified and considered their specific needs as required by the Equality Act 2010.

Previous government research has shown that more than three million people live in fuel poverty across England. Those considered fuel poor are typically people on a low income and living in poorly insulated homes.

[Friends of the Earth previously found](#) [3] that people of colour are twice as likely to be living in fuel poverty as white people, while areas identified by the government as having a high number of residents with disabilities or other health needs are more likely to be rated in the worst category for fuel poverty.

The government did not consider these factors which is why the environment group is today taking legal action.

The need for a fair and just transition away from reliance on damaging fossil fuels makes these collective legal failures all the more serious.

Katie de Kauwe, lawyer at Friends of the Earth, said: "With characteristic sleight of hand the government has set out an imaginary pathway for reducing carbon emissions but no credible plan to deliver it.

“A rapid and fair transition to a safer future requires a plan that shows how much greenhouse gas reduction the chosen policies will achieve, and by when. That the plan for achieving net zero is published without this information in it is very worrying, and we believe is unlawful.

“We know that those who do least to cause climate breakdown are too often the hardest hit. Climate action must be based on reversing these inequalities, by designing the transition with the most vulnerable in mind. Not even considering the implications of the Heat and Building Strategy on groups such as older and disabled people, and people of colour and ethnic minorities is quite shocking, given these groups are disproportionately impacted by fuel poverty, for example.

“Housing is a good example because people who need to consume the smallest amount of energy due to cost find themselves trapped in reliance on gas heating in cold, leaky homes. And now people across the country are facing an energy price crisis, with gas prices expected to double compared to just two years ago.

“The bottom line is that the government’s vision for net zero doesn’t match the lacklustre policy that is supposed to make it possible. We are very concerned at the potential consequences of such a strategy for people in this country, and across the world, given the climate emergency. This is why we are taking this legal action today.”

Rowan Smith, solicitor at Leigh Day, said: “Under the Climate Change Act 2008, the Secretary of State has a legal obligation to set out how the UK will actually meet carbon reduction targets. Friends of the Earth considers that the Net Zero Strategy lacks the vital information to give effect to that duty, and so any conclusion, that targets will be achieved on the basis of the policies put forward, is unlawful. Friends of the Earth is concerned that this places future generations at a particular disadvantage, because current mistakes are harder to rectify the closer we get to 2050. That is why this legal challenge is so important.” ENDS

For more information and interview requests contact the Friends of the Earth press office on 020 7566 1649 or email [REDACTED]

Notes to editors

[1] Secretary of State for BEIS – Kwasi Kwarteng to produce policies that will enable the carbon budgets to be met (sections 13 and 14 of the Climate Change Act).

[2] Friends of the Earth Limited today filed papers in the High Court challenging the government’s Net Zero Strategy on the basis that it has breached the Climate Change Act 2008, an act which Friends of the Earth campaigned for through its [REDACTED]. The organisation is also challenging the government’s Heat and Buildings Strategy and is arguing that it has not complied with the Equality Act 2010, as it did not assess the impacts of this strategy on protected groups, such as disabled people and the elderly, people of colour and other ethnic minorities.

[3] Analysis by Friends of the Earth in November 2021 mapped out regional differences in fuel poverty across England. Its findings included that (i) people of colour are twice as likely to be living in fuel poverty as white people and (ii) that areas identified as having a high number of disabled residents, or people with other health needs, are more likely to be rated in the worst category for fuel poverty.

- Friends of the Earth is being represented by David Wolfe QC of Matrix Chambers and Catherine Dobson of 39 Essex Chambers, and by the law firm Leigh Day LLP.
- ClientEarth have also announced a legal case today challenging the lawfulness of the Net Zero Strategy. In addition to claiming breach of the Climate Change Act 2008, ClientEarth lawyers argue that failing to have sufficient policies in place for meeting carbon budgets is not compatible with human rights law. They argue this would exacerbate the already severe risks posed to today’s young people and future generations, including by risking the need for more drastic measures in future.
- **About Friends of the Earth:** Friends of the Earth is an international community dedicated to the protection of the natural world and the wellbeing of everyone in it. We bring together more than two million people in 75 countries, combining people power all over the world to transform local actions into global impact. For more information visit: [REDACTED] follow us at @friends_earth, or like our Facebook page. Save paper and send an e-card today by visiting [REDACTED]