



Climate Change and Holyrood

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Making a difference

- International climate agreements attract the attention
- But achieving results requires change at local and individual level
- Requires policy and law at different layers
 - International
 - EU (for now)
 - UK
 - Scotland
- For Scotland:
 - Climate Change Act 2008
 - Climate Change (Scotland) Act 2009
 - Climate Change (Emissions Reduction Targets) (Scotland) Bill/Act 2019



Enabling progress and removing obstacles – 2009 Act

- Energy performance of buildings
 - certificates
 - government buildings aim for top quartile
- Relax planning laws for micro-generation
- Waste – powers to introduce regulations
 - use of recycled materials
 - packaging reduction, including charge on carrier bags and deposit & return scheme
- Property rules
 - climate-related obligations can bind successive owners of land
 - insulation counts as “maintenance” of tenements – harder for anyone to obstruct
- Duties of Forestry Commission (now restructured)
- Local tax discounts when improve energy efficiency of buildings



Legal Features

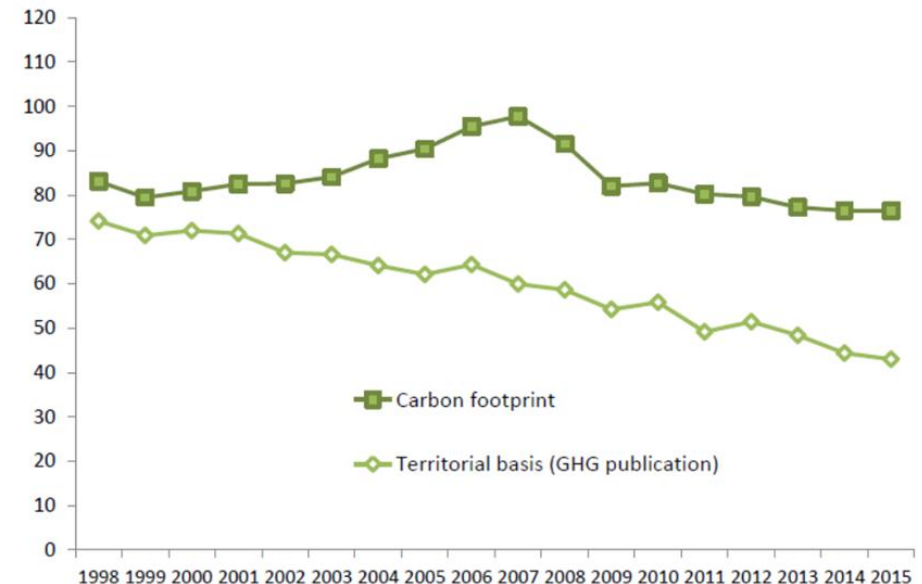
- Legally binding targets
- Reporting obligations
- Duties on public authorities
- Producing strategies
- Reference to principles/concepts
- Citizens assembly



Targets – what to count?

- Emissions produced in state?
- Emissions related to consumption?
- Former adopted
 - International standards
 - Comparable
 - Less contested methodology
- But also requirement to report on emissions attributable to consumption in Scotland
 - 2019 Act requires further identification of the goods and services that contribute most

Chart 9. Comparison of Scotland's Carbon Footprint with its territorial greenhouse gas emissions: 1998 to 2015. Values in MtCO₂e



Targets



- 2009 Act – emissions 80% below baseline by 2050
- 2019 Act – net zero emissions by 2045
- Interim targets for 2020 (56%), 2030 (75%) and 2040 (90%)
- Annual targets calculated as progress to these

- Duty: “Scottish Ministers must ensure that ...”
- Unusual as an “outcome duty”
 - law specifies outcome to be achieved not just steps to be taken
 - familiar in EU law (enforced externally) but not in UK law



Legal Targets

Status as legal duties

- capable of judicial enforcement?
 - who can sue?
 - eased by *AXA* and *Walton*
 - when can one sue?
 - possibly more demanding in view of statutory time-limits
 - what remedy?
 - what consequences on whom if breach?
 - 2019 Act extends specific reporting obligation from annual targets to all targets
 - – does this provide alternative remedy?
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- What does recent Brexit litigation tell us about courts' willingness to intervene?



Reporting

- Heavy reliance on reporting as means of calling to account
- Coupled with advice and independent reporting from Committee on Climate Change
- Annual reports to Parliament on progress
 - increased detail prescribed in 2019 Act
 - special reports if targets not met
- Report direct and indirect impact of budget
 - also infrastructure investment plans
- Reports required from others as well
 - public bodies
- Reports on progress with plans and strategies



Public Bodies

- General duty to act
 - in way best calculated
 - - to contribute to delivery of targets
 - - to deliver adaptation programme
 - in way it considers most sustainable
- Specific duty to report on compliance with climate change duty
 - detailed *pro forma* to be completed
- Consultation on refinements
 - target date for net zero emissions
 - reducing indirect emissions



Plans and Strategies

- Public engagement strategy
- Adaptation programme
- Energy efficiency
- Land use
- Renewable heat

- 2019 Act requires Climate Change Plan every five years
 - policies for different sectors, e.g. energy supply, transport, agriculture
 - some specific proposals needed, e.g. carbon capture and storage, housing, emissions from consumption



Principles and concepts

- Increasingly being referred to in legislation
- Environmental principles promised for new Continuity Bill
 - were part of UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill
 - part of Environment Bill at Westminster
- 2019 Act
 - “sustainable development” includes achieving the UN sustainable development goals
 - includes reference to “climate justice” and “just transition” principles
 - must have regard to these in preparing Climate Change Plan



Citizens Assembly – 2019 Act

- Panel “made up of such persons as the Scottish Ministers consider to be representative of the general populace of Scotland”
- Consider how to prevent, minimise, remedy or mitigate effects of climate change and to reduce emissions
- Detailed arrangements reported to Parliament before first meeting
- Report by 28 February 2021

The Future

- Programme for Government 2019-20



- First chapter is *Ending Scotland's Contribution to Climate Change*
 - wide range of proposals across full range of government activity
 - funding for developments, e.g. low carbon heating, greener buses
- Continuity Bill (with environmental principles)
- Heat Networks Bill
 - support and facilitate district and communal heating systems
- Circular Economy Bill
 - re-use of materials, reduction of waste and action against single-use plastics
- Good Food Nation Bill
- Transient Visitor Levy Bill
- Rural Support Bill



The Future

- BREXIT

- October 2019 Withdrawal Agreement less precise on environmental commitments than “Mrs May’s deal”
- European Union (Withdrawal) Act 2018
 - passed without legislative consent from Scottish Parliament
 - wide powers for UK Ministers even in some devolved areas
- European Union (Withdrawal Agreement) Bill
 - Scottish Government recommending no consent
 - likewise gives UK Ministers wide powers
- Environment Bill at Westminster
 - resource efficiency and air quality
 - Office for Environmental Protection





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