

The United Kingdom Precedent

“The Climate Change Act’s real purpose is not to cut global greenhouse gas emissions. Rather it is to demonstrate British climate leadership. While politicians flatter themselves as climate saviours, the costs are borne in worsened business competitiveness and squeezed household budgets that weigh most heavily on the poorest in society. In one regard though, the CCA has succeeded in its aim as a demonstration project. No other serious country will do anything quite so foolish in the name of saving the climate.”¹

The UK Climate Change Act of 2008 is the sole precedent for the “Zero Carbon Bill” currently before the New Zealand Parliament.

It was passed a year before the Copenhagen conference (COP15), after it had become apparent that the Kyoto Protocol could not significantly slow the growth of global emissions. In the absence of any effective multilateral effort under the UNFCCC, the UK’s unilateral demonstration project was intended to provide leadership for the rest of Europe, and thereafter the world. At that time countries were competing to ‘set the standard’ in climate policy.

After the failure of COP15, however, unilateral action fell from favour. While the UK precedent has been widely discussed and even lauded, no country anywhere has so far chosen to follow it.²

Now, the Paris Agreement has changed everything. As a leading participant in devising its multilateral concepts, unilateralism is now unthinkable for New Zealand, and the outdated UK Act no longer has much utility as a precedent. A consensus standard has been set and climate policy has become a team sport. With no aspiration to follow in the UK’s footsteps, we should now consider only cherry-picking those limited aspects of the UK precedent that seem to have worked and are fitted to our time and space.

Leadership

“Leadership” was the avowed purpose of the UK Act and is the first over-arching purpose of the New Zealand Bill. It embraces the conceit that one (small, Anglo) emitter has been endowed with special insights into how other countries should behave, or how foolhardy (or virtuous) other governments ought to be in addressing the shared but complex challenge of decarbonising the modern world.

During the passage of the UK Bill, only five (Conservative) MPs demurred: “*There is, of course, merit in setting an example and taking a lead, but what if no one follows?*” the Hon Peter Lilley stated, “*We should at the very least ensure it has binding effect only if a sufficient number of developed countries follow us – and that, I think, is unlikely to happen*”.³ Andrew Tyrie declared it

¹ Rupert Darwall – *The Climate Change Act at Ten* (2018) : [GWPF Report 31](#)

² The Committee, somewhat dubiously, claims that Sweden has followed aspects of the 2008 UK Act.

³ Hansard, House of Commons debates, 9 June 2008, Col. 95–96 <https://publications.parliament.uk/pa/cm200708/cmhansrd/cm080609/debtext/80609-0015.htm>.

“a profound mistake to take the unilateralist route... the Bill would raise industry’s costs and enable China to take over Britain’s industrial base.”

The Conservative shadow minister, Greg Clark, supported the Bill, declaring: *‘I am a multilateralist. I do not believe that Britain should act alone, but this Bill provides for the Secretary of State to give leadership in our international negotiations and, at all times, to have the flexibility to ensure that other countries come with us.’*⁴ He was mistaken — no such flexibility existed in the UK Act. Nor does it exist in the New Zealand Bill.

By definition, the “leadership” ambition implies that the Rate of Change in the UK will consistently *exceed* that of other developed countries. However, that intention is at best ambivalent. The UK’s post-legislation impact assessment⁵ found (p.6) *“The economic case for the UK continuing to act alone where global action cannot be achieved would be weak... This highlights the central importance of co-operative and co-ordinated international action on climate change.”*

Similarly, the New Zealand government’s economic modelling is based on a key assumption that its major trading partners will adopt a Rate of Change that is comparable to New Zealand’s pathway under the Bill. Were it otherwise, our international competitiveness would be damaged, perhaps seriously, resulting in a sharp drop in our relative living standards. The Government is yet to explain how the apparently conflicting goals of leadership and comparability can both be achieved at the same time.

A critic, Rupert Darwall, takes strong exception to the UK leadership goal:

“If Britons think they are making sacrifices to reduce global emissions, they are mistaken. The Bill is principally about using them as guinea pigs for a radical, unprecedented experiment in the rapid transformation of a carbon-based economy which the rest of the world is meant to follow. It provides no get out of jail card if the world takes no notice.”

The Climate Change Committee

All of New Zealand’s political parties seem attracted by the device of having the complexities, disputes, fashions and passions of climate change filtered through an independent non-political vehicle, before they are finally called upon to bite the high-risk political bullets. There is much to like about this approach.

“Independent” or “non-political” in relation to the proposed New Zealand Commission is taken to mean that it will be patently evidence-driven and widely perceived as impartial or even quasi-judicial in deliberating upon the contentious issue of the current and pending Rates of Change.

This non-political perception has never applied to the UK Committee. Like the Act that gave it birth, the Committee has presented itself as a cheer-leader for ever-faster increases in Ambition Levels and Pain Appetites. Like Professor Flannery of the erstwhile Australian Commission, Lord Deben

⁴ Hansard, House of Commons debates, 28 October 2008, Col.836 <https://publications.parliament.uk/pa/cm200708/cmhansrd/cm081028/debtext/81028-0021.htm>.

⁵ DECC, Climate Change Act 2008 Impact Assessment (March 2009)

has relentlessly courted publicity as the face of Britain's climate-change-fighters, rather than being the neutral adjudicator or well-grounded assessor wading through the conflicting evidence.

The Act envisaged that the Committee would *balance* ambition with a thorough understanding of the potential economic pain in store. Unlike the New Zealand Bill, the criteria for membership of the UK Committee leans very strongly in favour of economic and business nous rather than academic distinction or environmental expertise. Specifically, Schedule 1 of the UK Act calls for experience and knowledge in:

- (a) *Business competitiveness.*
- (b) *Climate change policy at national and international level, and in particular the social impacts of such policy.*
- (c) *Climate science, and other branches of environmental science.*
- (d) ... [not relevant to NZ]
- (e) *Economic analysis and forecasting.*
- (f) *Emissions trading.*
- (g) *Energy production and supply.*
- (h) *Financial investment.*
- (i) *Technology development and diffusion.*

Unfortunately, the UK outcome has been somewhat different from the legislative intention, with a high proportion of professorial members of the Committee.

Budgeting

The Committee's obligations to advise on five-year budgets have provided a precedent for the New Zealand Bill. However, the Bill takes up only some of the areas that must be "taken into account" in the UK, notably omitting (a) fiscal circumstances; (b) energy policy; (c) sectoral competitiveness and (d) fuel poverty, while adding the amorphous "inter-generational equity".

The UK Act has a mandatory requirement that both the Committee in making its recommendations and the Minister in making his decision must take into account nine (potentially conflicting) factors:

- (a) *Scientific knowledge about climate change.*
- (b) *Technology relevant to climate change.*
- (c) *Economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy.*
- (d) *Fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing.*
- (e) *Social circumstances, and in particular the likely impact of the decision on fuel poverty.*
- (f) *Energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy.*
- (g) ... [not relevant to NZ]
- (h) *Circumstances at European and international level.*
- (i) *The estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question.*

The UK Secretary may amend budgets (s 22), after advice from the Committee, "if there have been significant changes affecting the basis on which the previous decision was made." In the New

Zealand Bill, the Minister may not make any amendment without a prior recommendation for change by the Commission. This impediment to the elected Government's authority is both inconsistent and wrong in principle.

As with the New Zealand Bill, the Minister is required (ss13,14) to prepare and report upon a five-year operating plan (policies and proposals) designed to ensure that the budgeted reductions will be met. Unlike the local Bill, the UK Committee has no formal role in the planning process.

Has the UK Act succeeded?

The UK Act inexplicably ignores the fact that its decarbonisation objectives were already being pursued under the EU-wide cap-and-trade system and that its emission targets had already been set by the EU Commission. The New Zealand Bill could fall prey to the same defects if it does not mesh the new framework with its existing ETS – and recognise that the nation has already committed to a formal and politically binding Nationally Determined Contribution under the Paris Agreement.

In 2017, one of the world's most highly-regarded energy economists, Oxford's [Dieter Helm](#), was appointed by the UK Government to review the compliance costs of the 2008 Act. The findings of the "*Cost of Energy Review*" are summarised on Professor Helm's [website](#).

The Review's starting point is that the cost of energy is profoundly influenced by the detail of energy policy. Helm notes that the lowest-cost way of meeting emission-reduction targets is to set a universal carbon price on a common basis across the economy. However, rather than a straightforward carbon tax or ETS, a host of interventions now place state departments as the central arbiters:

*"The implication of the state determining all investments is that the state – and not the consumer – is now the major client. Energy policy has been partly captured, with the result that our decarbonisation is slower and more costly than it need be; our security of supply is weaker than it should be; and households and industry pay too much for their energy."*⁶

The sheer number of interventions is so great, Helm says, that hardly anyone who should – ministers, officials, regulators and investors – can understand them all. In practice, the complexity and inconsistency of current interventions that has built up as a result of a sequence of ad hoc policies is a major source of inefficiency and has created excessive costs.

In the words of OECD economist Nick Johnstone, 'using "two stones to kill one bird" is not usually a sensible policy prescription.'⁷ In a 2003 report, Johnstone concluded that:

"In many cases the use of a mix of policies will be at best redundant and at worst counter-productive. If a particular instrument is an economically efficient and environmentally

⁶ Dieter Helm, [Cost of Energy Review](#) (October 2017), p. 3.

⁷ N Johnstone, *Efficient and Effective Use of Tradable Permits in Combination with other Policy Instruments*, OECD (2003), p. 4.

effective means of meeting a given environmental objective, there is little sense in introducing an additional instrument.”⁸

Where more than one instrument is used, Johnstone warns that:

- the objective of each instrument must be clearly defined, and the relationship between the two instruments must be properly understood.
- each must meet a legitimate policy objective which cannot be met more efficiently through a tradable permit system.

The New Zealand ETS (like the EU version) was designed as the country’s single decarbonisation policy instrument, so as to use *the market* to find the lowest-cost way to cut emissions. It introduces an equalised marginal abatement cost across all sources (and sinks) of long-lived gas emissions.

Conflicting ad hoc policies such as the government’s 100% renewable energy policy, the oil and gas exploration ban, freeing EVs from road user charges, subsidies for rail and public transport, etc., muddy the water to the point of defeating the original objective. This reflects the historically-disastrous performance of politicians and civil servants when picking winners.

The “Guidance for Departments” (**5ZL**) clause in the Bill suggests that a multiplicity of instruments will not only be tolerated but are actively intended to proliferate over the 30-year life of the planning framework. As noted above, this is the antithesis of sound policy-making. The clause should be replaced by a direction that the “policies and strategies” in 5ZD–F will be limited to variations in ETS settings unless the Minister directs otherwise.

Planning hubris

In his summary (paras 12-15), Helm notes the pending challenges of supplying a more highly-digitalised economy, along with the coming of electric transport, with smart decarbonised electric energy at ever-lower cost. He warns that the future cannot be accurately predicted by planners:

*“Tempting though it is to many observers to predict how this transformation is going to take place, and profitable to many lobbyists to persuade government that their specific technologies and projects are the right answers, the design of energy policy and the interventions to achieve the objectives should be **driven by the uncertainty** about the detailed shape of the decarbonisation path. In order to achieve the prize, **it is important not to try to pick winners, and to focus on the framework** within which the private sector brings new ideas, new technologies and new products to the end-user. Avoiding detailed intervention is a key to keeping down the cost of energy.”* (emphasis added)

An appropriate process has the Minister taking political responsibility for the forward Rate of Change (and therefore the aggregate economic pain at the macro level) through the Budgeting process, while the “cap” effect of a well-calibrated ETS is capable of delivering the results required

⁸ N Johnstone, *The Use of Tradeable Permits in Combination with Other Environmental Policy Instruments*, OECD (7 July 2003), p. 4.

by those approved Budgets⁹. The Minister will tighten the volume of NZU's in circulation¹⁰, causing a rise in the 'carbon price' and therefore energy prices. The consequent reduction in energy demand depends upon fuel price-elasticity at various levels – which is difficult to predict but (to a large extent) will be inversely proportional to disposable income.

Then, billions of individual decisions taken by energy consumers and producers will ensure that those aggregate welfare losses are minimised. Nobody can or should be required to predict the eventual future outcomes of all those decisions, as they will be incrementally determined over time. All that can be said with any confidence is that they will be different from what we now expect.

Welfare-maximisation (or cost-minimisation) ought to be spelled out in the Bill as the objective of the 5-year Plans. Once Budgets are set, the major role of the Government is not to augment the work of the “cap”, but to ameliorate and re-distribute its harsh and regressive consequences.

Helm also has concerns about the unprovably pessimistic assumptions that have been built into the Rate of Change by the Climate Committee. At [para 14](#), he suggests that technological transformations over the coming decades are likely to produce ever-cheaper clean energy that could well over-shoot the statutory target:

“The CCC .. argues that any new technologies will have to be deployed before 2030 if they are to make much impact before 2050. This, together with the assumption that gas prices will rise by 30% by 2030, is a key rationale for the roughly linear profile of emissions reductions from now through to 2030. If the objective is limited to the CCA 2050 target, then the carbon budgets over-egg the early stages, and make the trajectory between now and 2050 more expensive than it needs to be. Indeed, with such early action in the linear trajectory, it may turn out that decarbonisation is achieved much faster.”

In the New Zealand case, this concern about early planning pessimism and “over-egging” is sharpened by the over-ambitious target of 2050 being set for full decarbonisation.

⁹ This is the process anticipated by the Productivity Commission. The ETS energy pricing instrument is analogous to the OTC interest pricing instrument – after the Government has set the inflation ‘budget’ through the PTA.

¹⁰ Possibly by reducing the s 86 allocations to vulnerable industries.