

Environment & Climate Regulation

Contributing editors

Carlos de Miguel Perales, Uría Menéndez

Per Hemmer, Bech-Bruun



2019

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Environment & Climate Regulation 2019

Contributing editors

Carlos de Miguel Perales, Uría Menéndez

Per Hemmer, Bech-Bruun

Reproduced with permission from Law Business Research Ltd
This article was first published in November 2018
For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018
No photocopying without a CLA licence.
First published 2015
Fourth edition
ISBN 978-1-78915-020-9

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between September and October 2018. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Environment

Brazil 5

Simone Paschoal Nogueira, Iris Zimmer
and Marina Vieira Freire
Siqueira Castro – Advogados

China 12

Shen Jinzhong
Winners Law Firm

Denmark 17

Jacob Brandt and Håkun Djurhuus
Bech-Bruun

Dominican Republic 25

Giselle Pérez-Reyes and Fabio J Guzmán-Saladín
Guzmán Ariza

Germany 31

Jochen Terpitz
Jochen Terpitz – Rechtsanwalt

Korea 37

Tong Keun Seol and Sangmin Kim
Lee & Ko

Mexico 43

Mariana Herrero, Carlos A Escoto, Lucía Manzo Flores,
Erika J Alarcón García and Lourdes Lozano
Galicia Abogados, SC

Portugal 50

João Louro e Costa and Gonçalo Andrade e Sousa
Uría Menéndez – Proença de Carvalho

Spain 58

Carlos de Miguel Perales and Jesús Andrés Sedano Lorenzo
Uría Menéndez

United Kingdom 64

Tallat Hussain
White & Case LLP

United States 72

Toby Chun, Ali Zaidi and Ty’Meka Reeves-Sobers
Kirkland & Ellis LLP

Climate

Introduction and overview 77

Per Hemmer, Johan Weihe and Rania Kassis
Bech-Bruun

Brazil 83

Simone Paschoal Nogueira, Iris Zimmer
and Marina Vieira Freire
Siqueira Castro – Advogados

China 91

Shen Jinzhong
Winners Law Firm

Denmark 96

Per Hemmer, Johan Weihe and Rania Kassis
Bech-Bruun

Germany 105

Jochen Terpitz
Jochen Terpitz – Rechtsanwalt

Korea 112

Tong Keun Seol and Sangmin Kim
Lee & Ko

Mexico 117

Mariana Herrero, Carlos A Escoto, Lucía Manzo Flores,
Erika J Alarcón García, Lourdes Lozano and
Luis Manuel Rosendo
Galicia Abogados, SC

Portugal 123

João Louro e Costa and Gonçalo Andrade e Sousa
Uría Menéndez – Proença de Carvalho

Spain 128

Carlos de Miguel Perales and Jesús Andrés Sedano Lorenzo
Uría Menéndez

Turkey 133

M Feridun İzgi
Firat İzgi Attorney Partnership

United Kingdom 138

Tallat Hussain
White & Case LLP

United States 145

Toby Chun and Ali Zaidi
Kirkland & Ellis LLP

Preface

Environment & Climate Regulation 2019

Fourth edition

Getting the Deal Through is delighted to publish the fourth edition of *Environment & Climate Regulation*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, Korea and a new Climate article from the Dominican Republic.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Carlos de Miguel Perales of Uría Menéndez and Per Hemmer of Bech-Bruun, the contributing editors, for their continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
October 2018

United Kingdom

Tallat Hussain

White & Case LLP

Main climate regulations, policies and authorities

1 International agreements

Do any international agreements or regulations on climate matters apply in your country?

The UK has ratified the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement. It has signed up to the voluntary second commitment period agreed by some states under the Kyoto Protocol between 2013 and 2020.

As an EU member state, the UK is covered by the EU's Nationally Determined Contribution for the reduction of greenhouse gases (GHGs) under the Paris Agreement. This commits the EU to a 40 per cent reduction in GHGs by 2030 compared to 1990 levels.

The UK is currently bound by EU climate change legislation, including the EU Emissions Trading System, the Renewable Energy Directive (Directive 2009/28/EC) and the Energy Efficiency Directive (Directive 2012/27/EU). The EU's climate and energy package requires member states to achieve (with targets in place for both 2020 and 2030):

- reductions in GHG emissions from 1990 levels via the EU Emissions Trading Scheme (EU ETS);
- increases in the share of energy from renewable sources; and
- improvements in energy efficiency and savings.

Under the EU Effort Sharing Decision, annual emission targets for the period 2013–2020 are also set for member states to cover sectors not in the EU ETS, (housing, agriculture, waste and transport (excluding aviation)). These annual emission allocations vary depending on member states' levels of wealth.

In 2019, the UK will formally exit the European Union. Following exit, the UK will need to ensure that it meets its international climate change commitments independently. However, in May 2018, the government announced that the UK will seek to remain a member of the EU ETS until the end of 2020.

There is a suite of domestic legislation and policy that implements international and EU climate change agreements and regulations as well as domestic climate policy. This is discussed further below.

2 International regulations and national regulatory policies

How are the regulatory policies of your country affected by international regulations on climate matters?

International and EU-level regulations on climate matters heavily influence UK regulatory policy. The UK played a prominent role in the Paris Agreement negotiations and has introduced a raft of regulation and policy to support global efforts to reduce GHG emissions and address the impacts of climate change. The government states that it supports the work of the Intergovernmental Panel on Climate Change (IPCC) and recognises its assessments as the most authoritative view on the science of climate change available.

3 Main national regulatory policies

Outline recent government policy on climate matters.

Clean Growth Strategy

The main piece of UK climate change policy is the 2017 Clean Growth Strategy, which outlines the policies that are intended to meet the UK's

fourth and fifth statutory carbon budgets (described in question 4) for the mid-2020s and early 2030s.

Key policies in the Clean Growth Strategy are:

- accelerating clean growth through developing world-leading green finance capabilities;
- improving business and industry efficiency (through initiatives such as a package of measures to support businesses to improve energy productivity by at least 20 per cent by 2030, an Industrial Energy Efficiency scheme, deployment of carbon capture usage and storage at scale, and other innovations);
- improving the efficiency of homes and rolling out low-carbon heating;
- accelerating the shift to low-carbon transport (including ending the sale of new conventional petrol and diesel cars and vans by 2040, investing further in electric vehicle infrastructure, accelerating uptake of zero emissions taxis and buses);
- delivering clean, smart, flexible power (including the phase out of unabated coal in energy production by 2025 and improving the route to market for renewable technologies such as offshore wind);
- enhancing the benefits of the UK's natural resources (through waste strategy and funding large-scale woodland and forest creation);
- leading in the public sector (with tighter targets for 2020 for central government); and
- government leadership in driving clean growth (including annual reporting on performance).

Sector action plans

In 2017, the Department for Business, Energy and Industrial Strategy (BEIS) published action plans setting commitments from government and industry to reduce GHG emissions and improve energy efficiency in seven energy intensive sectors: cement, ceramics, chemicals, food and drink, glass, oil and refining, and pulp and paper.

Carbon Reduction Commitment Energy Efficiency Scheme

The UK has had a Carbon Reduction Commitment Energy Efficiency Scheme (CRC Energy Efficiency Scheme) in place since 2010. It applies to large energy users in the public and private sectors across the UK not already covered by the EU ETS. This includes supermarkets, hotels, water companies, banks, local authorities and all central government departments. This is a compulsory emissions trading scheme, requiring qualifying businesses to monitor and report on their energy emissions and to purchase and surrender allowances.

In 2016, the government announced that it will close the CRC Energy Efficiency Scheme following the 2018–19 compliance year and replace it with an increase in the climate change levy (discussed below). Organisations will report under the CRC for the last time by the end of July 2019 and surrender allowances for emissions from energy supplied in the 2018–19 compliance year by the end of October 2019.

Climate change levy

The climate change levy (CCL) was introduced in 2000. This tax is levied on non-domestic consumers of certain energy supplies and aims to encourage businesses to use less energy and obtain energy from renewable sources. The main regulations governing the scheme are the Climate Change Levy (General) Regulations 2001 (SI 2001/838).

The CCL rates were increased in line with RPI from April 2017 and 2018. Further increases will be introduced in 2019 following closure of the CRC Energy Efficiency Scheme. Some tax relief is available from the CCL, including exemptions for energy used in metallurgical and mineralogical processes and a mixed-use exemption for solid fuels used in certain gasification processes. Until 2015, renewable energy generation was exempt from the CCL but is now subject to the levy.

Carbon price floor

Since 2013 a carbon price floor mechanism has been in place to encourage the generation of low-carbon energy by supporting and increasing the price paid for emitting carbon dioxide. The CCL rate is determined by the carbon price support rate, which is the difference between the future market price of carbon and the floor price. This carbon price floor does not currently apply in Northern Ireland.

Capital allowances

Businesses can claim capital allowances on some energy and water efficient equipment, which reduce the amount of tax payable. This applies to some vehicles with low CO₂ emissions, energy-saving equipment, plant and machinery for gas refuelling stations, gas, biogas and hydrogen refuelling equipment and new zero-emission goods vehicles.

Recent developments

In April 2018 the Minister for Energy and Clean Growth announced a review of the UK's long-term target for GHG emissions to consider how to align UK legislation with the Paris Agreement and taking into account the findings of the IPCC's Special Report on Global Warming of 1.5 °C, published in late 2018.

In July 2018, Defra published the government's second National Adaptation Programme (2018 to 2023) (NAP) under the Climate Change Act 2008. The NAP sets out objectives, policies and timescales for adapting to the impacts of climate change, until 2023. The NAP applies primarily to England, but also covers UK reserved matters.

4 Main national legislation

Identify the main national laws and regulations on climate matters.

Climate Change Act 2008

The Climate Change Act is the main piece of climate change legislation and sets the UK's overall emissions target – to reduce annual emissions by at least 80 per cent by 2050 compared with 1990 levels.

The Act creates a system of five-yearly carbon budgets, which set limits with a view to meeting both the overall 2050 target and the UK's European and international obligations. Each carbon budget is split into traded and non-traded sectors. At present, the UK is in the third budget period (2018–2022), set at 2,544 MtCO₂e.

Emissions from international aviation or international shipping are not counted for the purposes of the UK's 80 per cent reduction target. The government has to date deferred the decision on whether to include international aviation and shipping emissions in the UK's carbon budgets. However, there is some limited regulation of shipping emissions under other legal regimes (discussed further in question 7).

The Climate Change Act gives the government powers to introduce new national emissions trading schemes. It also requires government reporting on climate change impact and proposals for adaptation. Renewable transport fuel obligations, energy performance in buildings and charges for single use plastic bags were also introduced through the Act.

Energy Act 2011

The Energy Act 2011 introduced several provisions for energy efficiency. This included the 'Green Deal', which provided access to finance for energy efficiency measures in domestic and non-domestic properties. The Green Deal has since been put on hold. In July 2018, BEIS confirmed that it will consult on proposals to reform the framework in stages. In the interim, the government intends to simplify the Green Deal Code of Practice in early 2019 to incorporate revisions and improve the operation of the framework.

Alongside the Green Deal, the Energy Act 2011 introduced energy efficiency obligations for buildings and energy suppliers.

Energy Act 2013

Several new initiatives were contained in the Energy Act 2013, including an obligation for the Secretary of State to set annual decarbonisation targets. It also included a range of measures for electricity market reform, including contracts for difference, capacity market rules, and the renewables obligation. The Energy Act 2013 also introduced an emissions performance standard, which imposes annual carbon dioxide emissions limits on operators of fossil fuel power plants.

Company law

The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (SI 2013/1970) and Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) impose requirements on certain companies to report on their GHG emissions.

In 2018, BEIS consulted on a new energy and carbon reporting regime and published the draft Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018. If approved by Parliament in their current form, the regulations will come into force in April 2019 and require additional reporting on emissions, energy consumption and energy efficiency action by quoted companies, large unquoted companies and large limited liability partnerships.

5 National regulatory authorities

Identify the national regulatory authorities responsible for climate regulation and its implementation and administration. Outline their areas of competence.

BEIS is the government department responsible for functions related to climate change and energy policy.

The UK also has an independent Committee on Climate Change (CCC) to advise the government on building a low-carbon economy and preparing for the effects of climate change. The CCC carries out independent analysis into climate change science, economics and policy and monitors progress in reducing emissions and achieving carbon budgets and targets.

The Department for Environment, Food and Rural Affairs (Defra) is responsible for domestic climate change adaptation policy. In addition, regulators in Scotland, Wales and Northern Ireland also have roles with respect to climate change regulation and energy efficiency.

With regard to energy more generally, Ofgem is an independent body that regulates the pricing, transmission and production of energy in the UK. The Oil & Gas Authority is another independent body, responsible for regulating and promoting the UK oil and gas industry.

General national climate matters

6 National emissions and limits

What are the main sources of emissions of greenhouse gases (GHG) (or other regulated emissions) in your country and the quantities of emissions from those sources? Describe any limitation or reduction obligations. Do they apply to private parties in your country?

BEIS published provisional UK GHG emission statistics for 2017 in early 2018. In brief, these statistics indicate that the UK's total GHG emissions for 2017 were 456 MtCO₂e (of which, 367 Mt was carbon dioxide emissions), being a 3 per cent reduction on 2016 emissions and a 43 per cent reduction on 1990 levels.

The Clean Growth Strategy states that the biggest sources of emissions in the UK come from:

- business and industry (25 per cent);
- transport (24 per cent);
- power (21 per cent);
- natural resources (15 per cent);
- homes (13 per cent); and
- the public sector (2 per cent).

7 National GHG emission projects

Describe any major GHG emission reduction projects implemented or to be implemented in your country. Describe any similar projects in other countries involving the participation of government authorities or private parties from your country.

The UK has implemented several national GHG emission reduction projects, including the CRC Energy Efficiency Scheme, CCL and a carbon price floor mechanism. The UK also has regulations in place restricting the manufacture, use, import and export of fluorinated greenhouse gases (F-gases). Ozone-depleting substances (ODS) are regulated directly through the EU Regulation on Ozone-Depleting Substances 2009 (Regulation (EC) No 1005/2009) and further through the Ozone-Depleting Substances Regulations 2015 (SI 2015/168), which create offences and penalties for breaches of the EU Regulations.

The UK participates in the EU ETS, which applies to emissions from power and heat generation, certain energy-intensive industrial sectors (eg, manufacturing facilities, oil refineries and power stations) and aviation. Emissions from land transport, domestic premises and agriculture are currently outside the EU ETS, but some of these sectors are captured in the national mechanisms discussed above. Operators of installations participating in the EU ETS must obtain a greenhouse gas emissions permit (see question 10).

EU ETS is currently in Phase III, in which there are fewer free allowances allocated and decisions as to how many free allowances to allocate are made by the European Commission, not member states. The EU ETS Phase IV Directive 2018 was published on 19 March 2018 (Directive (EU) 2018/410 of the European Parliament and of the Council). Member states are required to implement it by 9 October 2019. The UK government intends to remain within the EU ETS until 2020.

The EU Regulation on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport (Regulation (EU) 2015/757) requires shipowners or operators to monitor, verify and report annually on carbon dioxide emissions from ships over 5,000 gross tonnage during voyages to, from and between EU ports. Ships covered by this Regulation must carry a document of compliance. The UK has imposed related domestic regulations establishing penalties for failure to comply – the Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) and the Port State Control (Amendment) Regulations 2017 (SI 2017/825).

In April 2018 the International Maritime Organization (IMO) agreed a comprehensive strategy to reduce GHGs from international shipping. The UK participated heavily in the development of this strategy, which includes:

- a commitment to phase out GHGs from international shipping as soon as possible during this century;
- a target of at least 50 per cent reduction, and an aim for 100 per cent reduction, in total GHG emissions from shipping by 2050;
- a target of at least a 40 per cent improvement in carbon intensity of ships by 2030, pursuing efforts towards 70 per cent in 2050; and
- possible emission reduction measures, with a commitment to develop a work-plan for implementation before 2023.

Domestic climate sector

8 Domestic climate sector

Describe the main commercial aspects of the climate sector in your country, including any related government policies.

The EU ETS and CRC Energy Efficiency Scheme apply to many large businesses and require organisations to buy and sell emissions allowances. These regimes have created a major commercial element in climate change regulation since their introduction.

The UK renewable energy sector has attracted substantial investment in recent years and continues to develop and mature. It is focused predominantly on renewable electricity assets. There are various incentives for renewable energy investment, although these incentives have been cut back somewhat in recent years. This is discussed further below.

As a global financial centre, London has seen a significant increase in green finance activity to support efforts to address climate change

in the past decade. The City of London Corporation launched a Green Finance Initiative in 2016 with the aim to provide public and market leadership on green finance, advocate for specific regulatory and policy proposals in this area, and promote London and the UK as a leading global centre for green financial services. The London Stock Exchange Group reported in mid-2018 that the London Stock Exchange was home to 78 green bonds, which have raised over US\$24.5 billion. In 2015, the London Stock Exchange was the first major exchange to launch dedicated green bond segments, with admission criteria aligned with the International Capital Market Association's Green Bond Principles. The green loan market in the UK is also expanding and developing rapidly.

The Climate Change Act 2008 and Companies Act 2006 and related regulations impose carbon disclosure and reporting obligations on some organisations in their annual reports.

General GHG emissions regulation

9 Regulation of emissions

Do any obligations for GHG emission limitation, reduction or removal apply to your country and private parties in your country? If so, describe the main obligations.

The Climate Change Act sets the main UK target of an 80 per cent reduction in GHG emissions by 2050 compared to 1990 levels, with medium-term targets set in the carbon budgets.

There are also various other laws and policies in the UK requiring GHG emission limitation, reduction or removal. This includes legislation regulating point-source emissions through the environmental permitting regime and laws regulating ODS and F-gases. The EU ETS, CRC Energy Efficiency Scheme and CCL create trading schemes and tax incentives that are designed to encourage GHG emission limitation and reduction. The electricity market reform scheme (question 19) and related initiatives, such as the renewables obligation, require GHG emission limitation and reduction by requiring electricity providers to supply certain amounts of renewable energy, which will displace energy obtained from non-renewable sources.

The UK government has a National Policy Statement for Fossil Fuel Electricity Generating Infrastructure and an emissions performance standard for fossil fuel power stations. These instruments require any new coal-fired power station to be equipped with carbon capture and storage technology and restrict the total amount of carbon dioxide that can be emitted from fossil fuel power stations.

10 GHG emission permits or approvals

Are there any requirements for obtaining GHG emission permits or approvals? If so, describe the main requirements.

Any business operating in the UK and falling within the EU ETS must hold a greenhouse gas emissions permit. In brief, permit applications must include:

- a description of the installation and site;
- the activities to be carried out including a description of the technology and materials used;
- the sources of specified emissions from the relevant activities;
- a description of planned monitoring and reporting measures;
- a description of any environmental licence issued in relation to the installation; and
- any further information that the applicant wishes the regulator to take into account.

Permits may contain conditions and monitoring and reporting requirements. Failure to comply with the requirements for greenhouse gas emissions permits may attract criminal sanctions.

In addition to greenhouse gas emissions permits, activities involving emissions to air (particularly large combustion plants and waste incineration plants) are also subject to the environmental permitting regime. This regime covers a wide range of activities that relate to emissions to land, air and water and involve waste. The main legislation is the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016/1154). These regulations contain schedules dealing with specific permitting requirements for particular activities or sectors.

11 Oversight of GHG emissions**How are GHG emissions monitored, reported and verified?**

Participants in the EU ETS are required to monitor and report on their emissions each year and surrender enough allowances to cover their annual emissions. There are various EU Regulations setting out the specifics of these requirements, as well as guidance issued by the European Commission. The operator must propose a monitoring plan when applying for a greenhouse gas emissions permit. Annual emissions reports and monitoring will then be verified independently.

Participants in the CRC Energy Efficiency Scheme are also required to monitor their energy use and report annually. Emissions factors are applied to calculate participants' emissions on the basis of the information that they supply. As noted above, this scheme will end in 2019.

12 GHG emission allowances (or similar emission instruments) Regime**Is there a GHG emission allowance regime (or similar regime) in your country? How does it operate?**

Both the EU ETS and CRC Energy Efficiency Schemes provide a regime for emissions allowances.

The EU ETS imposes an EU-wide cap on allowances, and the free allowances issued to participants decrease annually. Participants are required to purchase allowances to cover their emissions through auctions or the emissions trading market. The EU ETS is currently in Phase III, in which there are fewer free allowances allocated to participants and decisions as to how many free allowances to allocate are made by the European Commission, and no longer by member states.

Under the CRC Energy Efficiency Scheme, the government holds two fixed-price sales of allowances per compliance year. Participants must purchase and surrender allowances to cover their annual emissions. As noted above, the CRC Energy Efficiency Scheme will end in 2019.

13 Registration**Are there any GHG emission allowance registries in your country? How are they administered?**

There is a central EU registry for the EU ETS administered by the European Commission. It is an online database that covers all participating countries and holds accounts for stationary installations and for aircraft operators.

There is a CRC Registry for the CRC Energy Efficiency Scheme. After the scheme closes, the government will maintain a record of the information held on the Registry until the end of March 2025.

14 Obtaining, possessing and using GHG emission allowances**What are the requirements for obtaining GHG emission allowances? How are allowances held, cancelled, surrendered and transferred? Can rights in favour of third parties (eg, a pledge) be created on allowances?**

The requirements and processes for obtaining and using GHG emission allowances differ between the EU ETS and the CRC Energy Efficiency Scheme.

The EU ETS requires participants to purchase allowances. There is a limited number of free allowances provided each year. Free allowances are provided to all sectors on a transitional basis except the power sector and CCS installations and pipelines (these sectors became ineligible from 2013). Free allocations are also made to installations in sectors deemed at risk of carbon leakage.

There are no free allowances under the CRC Energy Efficiency Scheme. Allowances must be purchased by participants. The government holds two fixed-price sales during the compliance year, and allowances can also be traded between participants. Participants will have to surrender their allowances for the last time in October 2019. At that time, trading will cease.

Trading of GHG emission allowances (or similar emission instruments)**15 Emission allowances trading****What GHG emission trading systems or schemes are applied in your country?**

The two main emissions trading schemes in the UK are the EU ETS and the CRC Energy Efficiency Scheme. See above for discussion of the operation of these schemes. Businesses can trade EU ETS allowances directly, through intermediaries such as banks or specialist traders, using the services of a broker, or by joining one of the several exchanges that list carbon allowance products.

Continued membership of the EU ETS will be affected by the UK's decision to exit the EU. The UK has announced that it intends to remain part of the EU ETS until 2020, but the extent of its involvement beyond that point is unclear. The CRC Energy Efficiency Scheme will be closed in 2019.

16 Trading agreements**Are any standard agreements on GHG emissions trading used in your country? If so, describe their main features and provisions.**

There are no UK-specific standard form agreements used for GHG emissions trading.

However, some standard form contracts exist internationally, including:

- International Emissions Trading Association (IETA) Master Trading Agreement for Emissions Allowances (version 3);
- International Swaps and Derivatives Association (ISDA) EU Emissions Trading Schedule (Part 6) to their Master Trading Agreement (version 4 (including options) and version 2.5 (not including options) are adapted for Phase 2 delivery); and
- European Federation of Energy Traders (EFET) CO₂ Annexes to their Electricity (version 4) and their gas (version 3) trading contracts.

Sectoral regulation**17 Energy sector****Give details of (non-renewable) energy production and consumption in your country. Describe any regulations on GHG emissions. Describe any obligations on the state and private persons for minimising energy consumption and improving energy efficiency. Describe the main features of any scheme for registration of energy savings and for trade of related accounting units or credits.**

The BEIS Digest of UK Energy Statistics 2018 found that overall, primary energy production rose by 0.4 per cent in 2017. Gross natural gas production was relatively stable although BEIS notes a long-term pattern of decline, with 2017 production levels under 40 per cent of the peak in 2000. Crude oil (including NGL) production in 2017 was 46 million tonnes, which is around a third of the UK's peak in 1999. Coal production was down by 27 per cent to a record low of 3 million tonnes in 2017 compared to 2016.

BEIS Statistics further show that there was a 1.0 per cent drop in the total supply of electricity in the UK in 2017, to 353TWh, as demand fell. However, the UK remained a net importer of electricity. In 2017, domestic renewable generation rose to a record high of 29.3 per cent.

The UK has implemented a number of regulations stemming from both domestic and EU policies to minimise energy consumption, improve efficiency and reduce GHG emissions.

As well as the schemes discussed above, the UK has regulations in place regarding energy efficiency in buildings, products and appliances. This includes schemes for energy ratings and certificates for efficiency.

Further, the Clean Growth Strategy 2017 identifies several future measures for improving energy efficiency, including:

- consultation on improving the energy efficiency of new and existing commercial buildings;
- consultation on raising minimum standards of energy efficiency for rented commercial buildings;

Update and trends

The UK intends to exit the EU in 2019. Following exit the UK will need to ensure that it meets its international climate change commitments independently of the EU and it will also be able to diverge from the EU laws relating to the EU ETS, renewables and energy efficiency.

The European Union (Withdrawal) Act 2018 (EU Withdrawal Act) details procedures for the retention of EU law in the UK on the date that it exits the EU (exit day is expected to be 29 March 2019). The general approach of the EU Withdrawal Act is to retain the EU laws applicable in the UK on exit day, with limited powers granted to government ministers to make amendments to ensure 'operability' and remove or amend references to EU law or institutions. The approach to withdrawal from the EU and its effect on the laws applicable in the UK will also be influenced by the outcome of political negotiations between the UK government and the European Commission. Pending approval by the European Parliament and UK Parliament, the draft withdrawal agreement in March 2018 includes a transition period in which the UK would remain subject to EU law, preserving much of the pre-exit status quo. The final Withdrawal Agreement is anticipated in late 2018 and will require further legislation as well as parliamentary approval.

In May 2018, Minister for Energy and Clean Growth Claire Perry announced that the UK will seek to remain a member of the EU ETS until the end of 2020. This means that there will be no immediate effect on UK organisations that are participants in the EU ETS. However, the UK's future long-term involvement in the scheme is uncertain.

- exploration of voluntary building standards to support improvements in the energy efficiency performance of business buildings, and how we can improve the provision of information and advice on energy efficiency to SMEs; and
- simplification of the requirements for businesses to measure and report on energy use, to help them identify where they can cut bills.

18 Other sectors

Describe, in general terms, any regulation on GHG emissions in connection with other sectors.

The UK environmental permitting regime regulates point-source air emissions from industrial facilities and processes. There are also other regimes in place regulating emissions such as those from ozone-depleting substances.

In the transport sector, the UK has implemented a Renewable Transport Fuels Obligation (RTFO). The RTFO requires suppliers of liquid fossil fuel for use in road transport or non-road mobile machinery to supply a certain amount of sustainable biofuel. Vehicle emissions are also subject to regulation, and there are a number of clean air zones in place in the UK to improve localised air pollution. Various policies and regulations have been put in place to encourage low emissions vehicles.

In the agricultural sector, there is currently a voluntary, industry-led approach to carbon emissions reduction. The CCC stated in its 2018 progress report that this has been insufficient and recommended replacing it with a stronger framework to deliver GHG abatement in the agricultural sector.

Renewable energy and carbon capture

19 Renewable energy consumption, policy and general regulation

Give details of the production and consumption of renewable energy in your country. What is the policy on renewable energy? Describe any obligations on the state and private parties for renewable energy production or use. Describe the main provisions of any scheme for registration of renewable energy production and use and for trade of related accounting units or credits.

The UK has an obligation to ensure that renewable energy accounts for 15 per cent of all electricity, heat and transport fuels under the EU Renewable Energy Directive. This is incorporated into UK law via the

Promotion of the Use of Energy from Renewable Sources Regulations 2011 (SI 2011/243). Each EU member state is also required to ensure that 10 per cent of its transport energy consumption comes from renewable sources by 2020.

BEIS reported in 2018 that electricity generation in the UK from renewable sources increased by 19 per cent between 2016 and 2017 to 99.3TWh. Onshore wind is the leading renewable technology in terms of capacity, at 31.7 per cent. Although solar photovoltaics also increased in capacity, with a 31.5 per cent share. Generation from onshore wind increased by 39 per cent to 29.1TWh with offshore increasing by 27 per cent to 20.9TWh.

The Planning Act 2008 and National Planning Policy Framework provide a regime for developing and consenting infrastructure projects. Some large-scale renewable energy projects may be considered to be 'nationally significant infrastructure projects', in which case they will be considered under special procedures. Those projects not falling within the statutory definition are subject to conventional Town and Country Planning Act 1990 procedures. These projects are also likely to require licences under the Electricity Act 1989.

The UK government has a stated ambition to attract low carbon innovation in the UK economy and invest in innovation in this area. There are several support schemes for renewables. However, government policy in this space can change rapidly. In 2015, the government announced that it will limit renewables support to technologies that have the potential to scale up and to compete in a global market without subsidy.

The schemes currently in place to support renewables include:

- the Renewables Obligation (RO): a scheme providing financial incentives for large-scale renewable electricity generation in England and Wales. It requires all licensed electricity suppliers to produce evidence that they have supplied customers in Great Britain with a certain amount of energy from renewable sources. This is currently being replaced by the Contracts for Difference scheme. New generation from 31 March 2017 is not able to take advantage of the RO;
- Contracts for Difference: a statutory instrument that provides for a contracting mechanism to convert the risk of a variable price for electricity into a fixed price. When the market price is below the strike price, the generator will receive a top-up payment from the counterparty. When the market price is above the strike price, the generator must pay back the difference to the counterparty;
- feed in tariff (FIT) scheme for small-scale renewable electricity generation. However, in July 2018 the government proposed closure of the FIT scheme to new applications from 31 March 2019;
- renewable heat incentive (RHI) – this applies to both domestic and non-domestic projects; and
- Renewable Transport Fuel Obligation (RTFO), promoting the use of biofuels.

The government provides some support for microgeneration – small-scale renewables generating electricity up to and including 50kW or heat with a capacity up to 45kW thermal. As well as FIT and RHI incentives, many microgeneration activities also have permitted development rights, allowing them to be carried out without requiring an application for planning permission.

20 Wind energy

Describe, in general terms, any regulation of wind energy.

In order to construct and operate a wind energy project, a variety of environmental permits will be required. In the offshore context, a marine licence will be necessary and in the onshore context planning permission should be obtained under the Town and Country Planning Act. Land use and access rights will also need to be secured. Larger projects are likely to require an environmental impact assessment. Enhanced community engagement requirements exist for larger developments under the Localism Act 2011.

There are government-led support schemes for wind generation, although these schemes are frequently subject to change as the government develops its energy policy. The previous exemption for renewable energy projects in the CCL has now been removed.

21 Solar energy

Describe, in general terms, any regulation of solar energy.

Solar energy has grown rapidly in the UK's energy mix. In 2017 the UK's first subsidy-free solar photovoltaic (PV) farm was opened in Bedfordshire.

Large-scale solar projects must obtain planning permission and any other necessary environmental permits. Developers must also secure land use and access rights for the substantial land area usually required for large-scale solar farms. Planning permission is commonly granted for a period of 25 years, with requirements for decommissioning and site restoration included as a condition.

Small-scale solar installations may be able to benefit from the support provided for microgeneration. Although the government has recently proposed closure of the FIT scheme to new applications after 31 March 2019.

22 Hydropower, geothermal, wave and tidal energy

Describe, in general terms, any regulation of hydropower, geothermal, wave or tidal energy.

Most hydropower generation activity in the UK occurs in Scotland. There is limited scope for developing new hydropower installations. However, small-scale hydropower has some growth potential. As with wind and solar facilities, hydropower projects require planning permission and environmental permits, particularly with respect to water abstraction and discharges. Flood risk assessment and related permissions may also be required.

In 2018 the European Commission published guidance on the impact of EU habitat and species protection legislation and policy on hydropower projects. The guide emphasises the need to consider biodiversity and ecology issues at an early stage of a project planning process. It also provides examples of best practice and mitigation measures.

There is significant potential for wave or tidal energy in the UK; however, the industry is still in its infancy. There is no specialist regulation in place for this industry, but more general laws addressing marine permitting, marine protected areas and other environmental permits would be required to undertake activities associated with wave or tidal energy generation.

23 Waste-to-energy

Describe, in general terms, any regulation of production of energy based on waste.

There are several Energy from Waste (EfW) plants in the UK. Landfill diversion targets have become increasingly pressing, driven by the EU Landfill Directive (Directive 99/31/EC) and EU Waste Framework Directive (Directive 2008/98/EC), which in turn has driven the development of EfW facilities across the country. EfW processes still generate GHG emissions, but overall are considered preferable to disposal of waste by landfill, as heat energy or electricity is recovered in the process. Defra has published 'Energy from waste: a guide to the debate',

which highlights the key environmental, technical and economic issues at play.

EfW activities require environmental permits, planning permission, Electricity Act licences and will also be subject to laws regulating emissions to air.

The UK government provides opportunities for financial support for community heating programmes that can be fulfilled through EfW processes. EfW projects providing heat may also be able to benefit from the RHI.

24 Biofuels and biomass

Describe, in general terms, any regulation of biofuel for transport uses and any regulation of biomass for generation of heat and power.

Biofuels

Under the EU Renewable Energy Directive, 10 per cent of the UK's transport energy consumption must come from renewable sources by 2020. The UK also has obligations to reduce life-cycle GHG emissions from transport fuel under the EU Fuel Quality Directive (Directive 2009/28/EC).

The RTFO is the primary way that the government incentivises and supports biofuels in transport, requiring fuel suppliers to provide a certain proportion of biofuels alongside fossil fuels. In April 2018, the government announced changes to the RTFO, increasing the proportion of biofuel required. Under these new requirements, owners of transport fuel who supply at least 450,000 litres a year or more must make sure the mix is at least 9.75 per cent biofuel in 2020 and 12.4 per cent biofuel by 2032. The RTFO applies to refiners, importers and any other suppliers of fossil-based road transport fuel (hydrocarbon oil) in the UK.

Biomass

Biomass generation is regulated in a similar way to other industrial emissions installations. In addition, all bioliquids and stations equal to or larger than 1MW using solid biomass or biogas fuels must meet sustainability reporting requirements relating to the land from which the biomass is sourced and the life cycle GHG emissions of the biomass.

The government announced that it would launch an initiative to promote heat energy investment – the Heat Network Investment Project – in autumn 2018. This follows a successful pilot initiative in 2016 and 2017 in which local authority-led heat network projects received £24 million to provide heat to 5,000 domestic customers and 50 non-domestic buildings. Several of these projects involved biomass boilers.

25 Carbon capture and storage

Describe, in general terms, any policy on and regulation of carbon capture and storage.

The UK government has affirmed its commitment to supporting carbon capture, usage and storage (CCUS), with the aim of being able to deploy CCUS at scale during the 2030s. This includes establishing the

WHITE & CASE

Tallat Hussain

thussain@whitecase.com

5 Old Broad Street
London
EC2N 1DW
United Kingdom

Tel: +44 20 7532 2376
Fax: +44 20 7532 1001
www.whitecase.com

CCUS Cost Challenge Taskforce to advice on steps to reduce the cost of deploying CCUS in the UK. BEIS has committed to support industry and CCUS innovation and deployment in the UK.

However, the Business, Energy and Industrial Strategy House of Commons select committee launched an inquiry into the government's plans for CCUS policy in May 2018. In particular, the inquiry is investigating how essential CCUS is for the UK to meet its emission reduction target for 2050, how the government should set targets for cost reduction in CCUS, what a realistic level of cost reduction might look like, and what alternatives the government might consider if CCUS costs do not come down 'sufficiently'.

Climate matters in transactions

26 Climate matters in M&A transactions

What are the main climate matters and regulations to consider in M&A transactions and other transactions?

Climate matters can arise in corporate transactions in a variety of ways. Buyers and lenders should be aware of and understand aspects of the target's business affected by climate change policy or legislation.

Through the due diligence process, a buyer or lender will need to consider whether the target is subject to any emissions schemes such as the EU ETS and CRC Energy Efficiency Scheme (to the extent that it

is still applicable after October 2019) or required to comply with other climate change related legislation. If the target business requires permits for carbon emissions or more general planning and environmental permits, these details should be investigated, as should permit compliance. If the target business is required to participate in an emissions trading scheme then details of the target's emissions, the allowances it holds, and projected emissions should also be considered.

Government support schemes may also be relevant to the target business. However, this policy landscape can also change quickly. Climate policy changes may impact things like the target's valuation. This uncertainty may mean that parties require specific warranties and indemnities in transaction documents, clawbacks against the purchase price, or arrangements such as protective exit structures.

Green finance has grown substantially in the past decade, and the role for finance in tackling climate change is undisputed. Significant investment is required to fund the transition to a low-carbon economy required in order to meet the targets set under international climate agreements. 'Green' labelled or certified financial instruments are also an increasingly attractive way to fund projects or activities related to climate change or renewables and are popular with many investors and lenders. Initiatives such as the Green Bond Principles and Green Loan Principles issued by the International Capital Markets Association indicate that the sophistication and maturity in this market will continue to rise.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com