



Climate Change & The Law: The Basics



Cornerstone Climate Month



1. 1-5-24 (am) Climate Change and the Law: The Basics #1
2. 7-5-24 (am) Policy Making: How to Plan for Net Zero
3. 8-5-24 (am) Real estate and ESG
4. 9-5-24 (am) Climate as a material planning consideration
5. 10-5-24 (am) Ecocide and Greenwashing

6. 13-5-24 (am) The Energy Transition: Renewables
7. 15-5-24 (am) An Update on the UK's Progress towards Net Zero

8. 20-5-24 (am) Power to the People: renewable energy from source to user
9. 21-5-24 (pm) Carbon Capture and Storage
10. 22-5-24 (am) From Old to Gold: challenges in retrofitting
11. 23-5-24 (pm) Climate Change and the Law: The Basics #2: the international perspective

12. 28-5-24. (am) Financing the Green Transition
13. 29-5-24 (am) Climate and the right to protest
14. 29-5-24 (pm) Climate litigation in the civil courts
15. 30-5-24 (pm) Climate Change and Human Rights

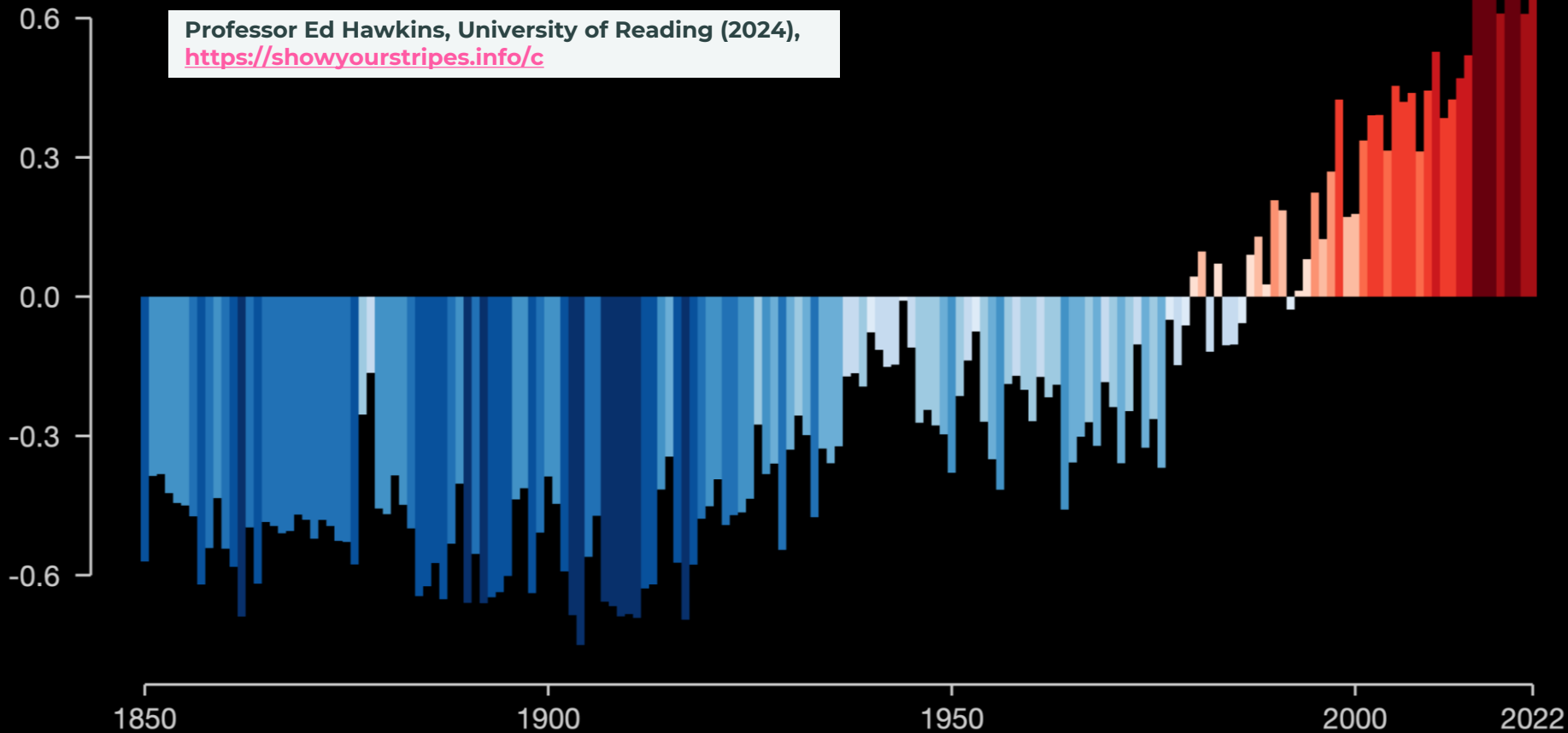
Climate Change & the Law



Global temperature change

Relative to average of 1971-2000 [°C]

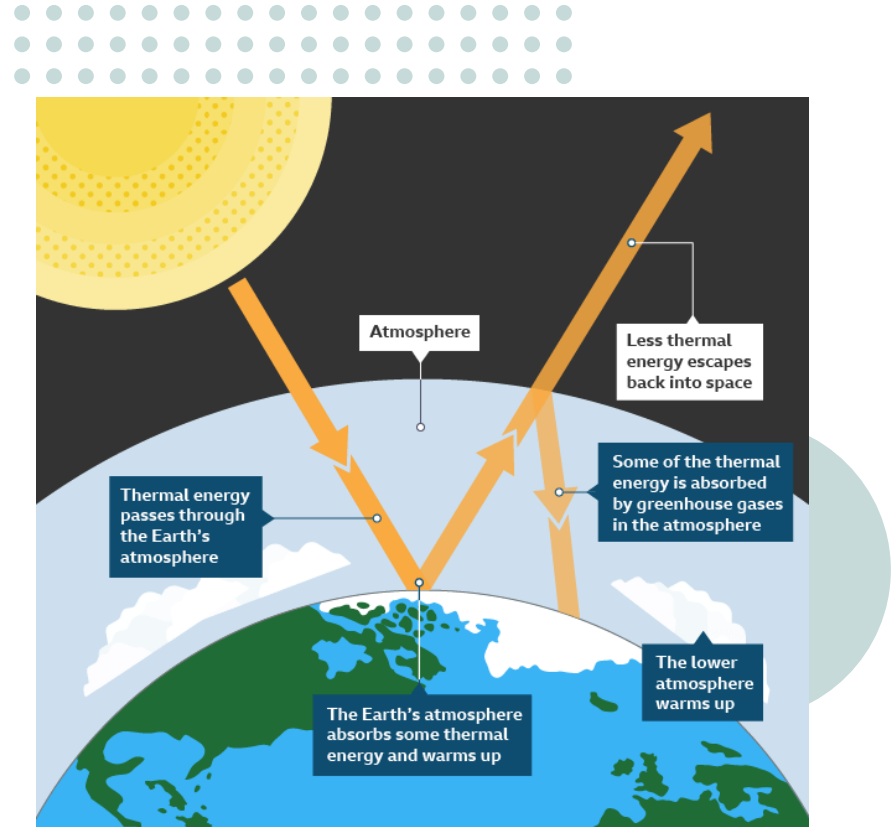
Professor Ed Hawkins, University of Reading (2024),
<https://showyourstripes.info/c>



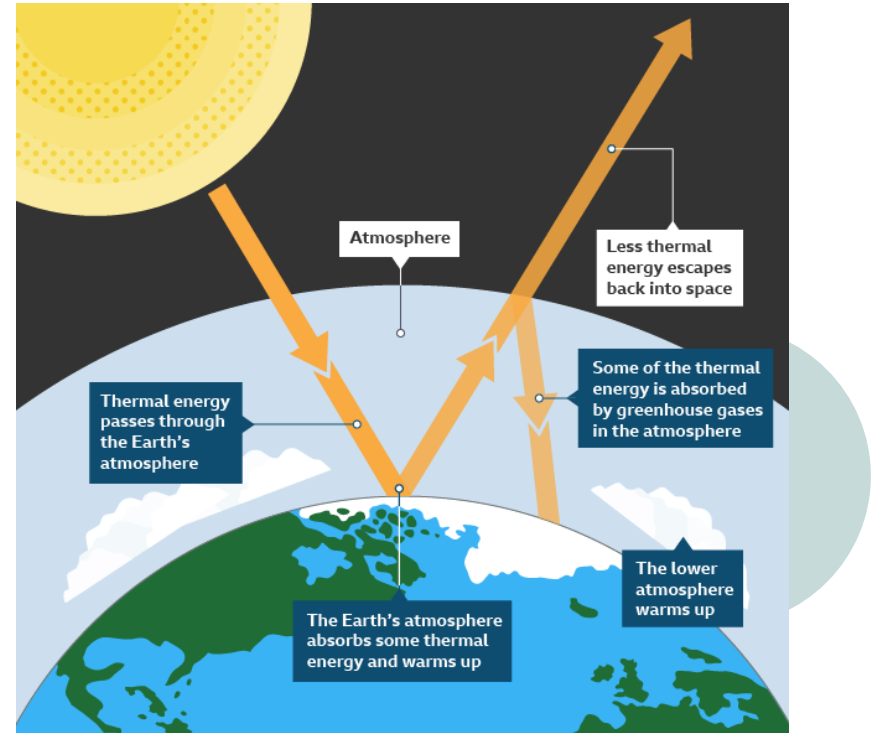
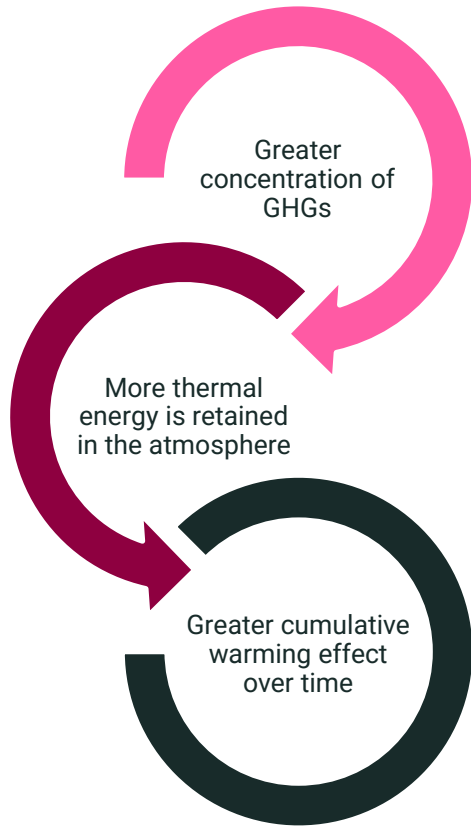


Greenhouse gases?

- Water vapour, methane, nitrous oxide but most significantly:
 carbon dioxide (CO₂)
- Released by burning fossil fuels such as coal, oil and natural gas made of decomposed plants and animals in the Earth's crust
- CO₂_e – carbon dioxide equivalent warming effect of different greenhouse gases



<https://www.bbc.co.uk/bitesize/articles/zq2m2v4#z3727yc>



<https://www.bbc.co.uk/bitesize/articles/zq2m2v4#z3727yc>

Further key definitions

**Climate
emergency**
?

Renewables
?

**Carbon
capture &
storage**
?

**Climate
mitigation**
?

**Climate
justice**
?

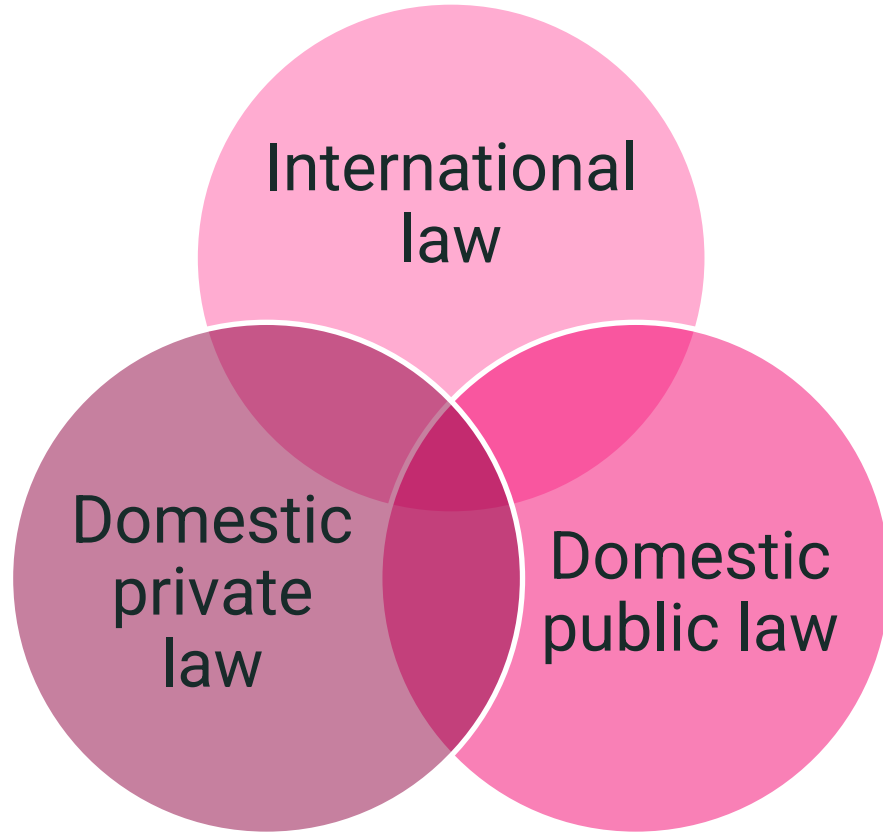
Decarbonisation
?



No such thing as 'Climate Law'

...we are **all** climate lawyers now!





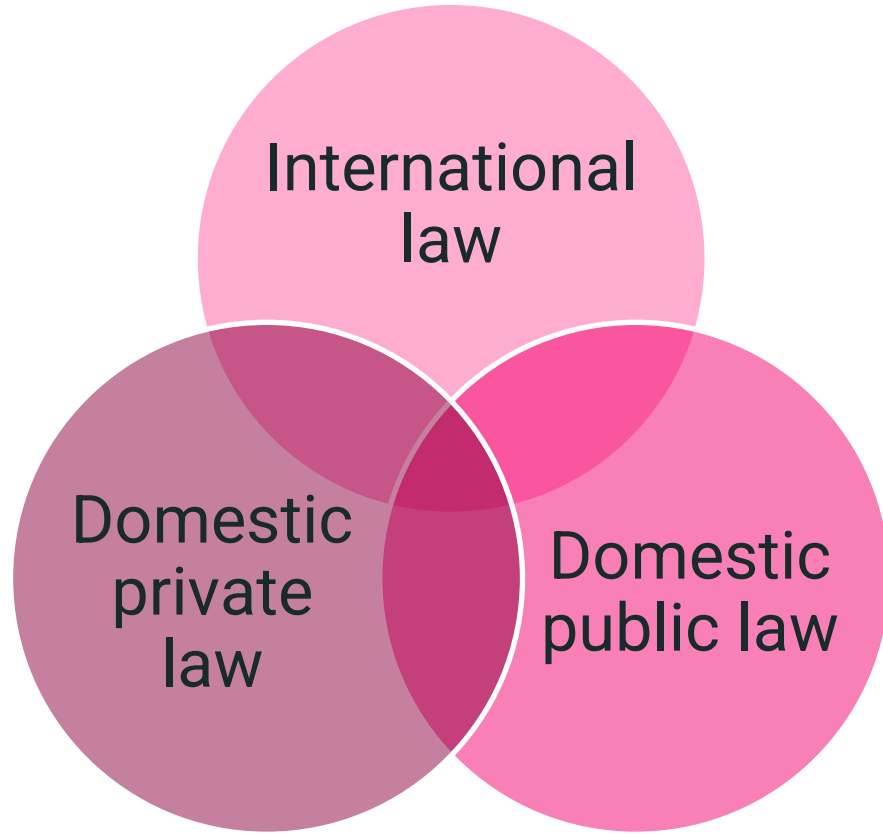
THE PARIS AGREEMENT



United Nations
Framework Convention on
Climate Change

International law

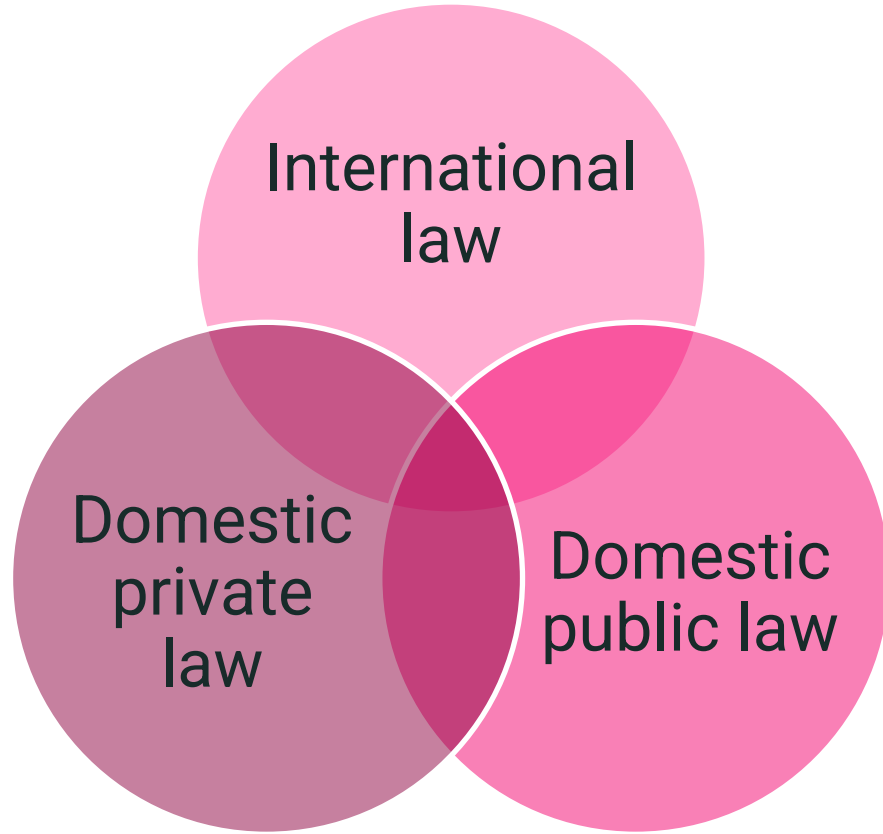






Domestic public law


- Planning and Environmental Law – decisions about land use, pollution control, environmental prosecution
 - Human rights – freedom of expression in relation to environmental protest
 - Administrative law – material considerations, rationality
 - Regulatory law – building safety, agriculture, food, professional standards
- 



International
law

Domestic
private
law

Domestic
public law

- 
- Corporate governance – UK Corporate Governance Code 2018, Climate-related financial disclosure
 - Property law e.g. conservation covenants over land
 - Pension funds and fiduciary duties



Domestic
private
law



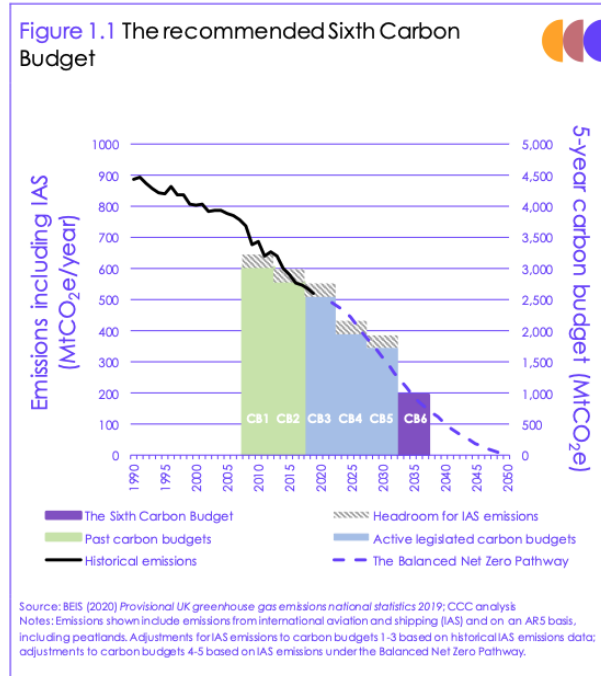


The Climate Change Act 2008



Statutory target of Net Zero by 2050

- 'Net zero' by 2050
 - Section 1(1) CCA 2008 (as amended in 2019): it is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline
- 'Carbon budgets' every five years – section 4
 - CB1 – 2008 – 2012, CB2 – 2013 – 2017 etc
 - Most recent set: Sixth Carbon Budget for 2033 - 2037
 - Duty to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget
- First carbon budget to include international aviation and shipping emissions ("IAS emissions")



June 2023

Progress in reducing
emissions
2023 Report to Parliament


 Climate
Change
Committee



The role of the Climate Change Committee

- Independent advisory body established by s. 32 and Schedule 1 to the CCA 2008
- Mandatory duty under s.36 to lay before Parliament and devolved legislature an annual report setting out:
 - a) The progress that has been made towards meeting the carbon budgets that have been set;
 - b) The further progress that is needed to meet those budgets and that target; and
 - c) Whether those budgets and that target are likely to be met.
- Duty to provide, “*at the request of a national authority*”, advice, analysis, information or other assistance to the authority in connection with the authority’s functions under the CCA 2008

Duties to prepare & report on proposals for meeting climate budgets

- 
- Sections 13 and 14 CCA 2008

Mandatory duty to *“prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met”*

- Successful High Court challenge to Net Zero Strategy

Friends of the Earth & others v SSBEIS [2022]
EWHC 1841 (Admin)

- Revised strategy – Carbon Budget Delivery Plan – further challenge heard February 2024



The planning system

National and local policy, plan-making and development management



Planning: the front line of the UK's climate response

Achieving sustainable development

Direct & strategic responses

The Planning System

Mitigation & adaptation

Local and national

The Framework: achieving sustainable development

PURPOSE:

achieving
sustainable
development

OBJECTIVES:

economic, social &
environmental

DELIVERY:

plans & decisions

Meeting the challenge of climate change



- “The planning system should **support the transition to a low carbon future** in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that **contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources**, including the conversion of existing buildings; and **support renewable and low carbon energy and associated infrastructure.**”
Framework, ¶157
- Cf. ***M&S v SoSLUHC*** [2024] EWHC 452 (Admin) at [55] per Lieven J: “very general policy aspirations”
- Plan-making (¶158), new development (¶159) and decision-making (in particular, see ¶164)

Climate Emergency Declarations

- Local authorities and devolved assemblies
- Limited impact as successful basis for challenging local authority decision-making to date:
 - Challenges to plan-making: see ***Bioabundance CIC v South Oxfordshire District Council*** [2021] EWHC 1188 (Admin)
 - Development management and consequential actions: see ***LB Islington v Wells*** [2021] EWHC 528 (Ch).
- Greater prominence in future?





Climate litigation



Climate litigation – key themes

01

Corporate challenges

ClientEarth v Shell Board of Directors
[2023] EWHC 1897 (Ch)

02

Growth in framework challenges

R (Friends of the Earth Ltd) v SoSBEIS [2022]
EWHC 1841 (Admin) & 'Net Zero 2'

03

Combined strategies targeting full life-cycle of high-emitting activity

R (Friends of the Earth Ltd) v SoSIT [2023]
EWCA Civ 14

04

Regressive cases

Shell UK Ltd v Persons Unknown [2023] EWHC 1229

See: J. Setzer and C. Higham, Grantham Research Institute on Climate Change and the Environment, '[Global Trends in Climate Change Litigation: 2023 snapshot](#)' (06/2023)



Thank you

Any questions?