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## LEGAL SUMMARY:

### THE KING ON APPLICATION OF THE LIFESCAPE PROJECT

V

### SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO

November 20, 2023

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#### SUMMARY

1. The UK government published its Biomass Strategy on 10 August 2023, signalling a clear decision to continue to support the combustion of biomass for energy, including forest biomass, in the short, medium and long term as a “*low carbon*” energy source that will support the UK’s ambitions to achieve net zero greenhouse gas emissions by 2050. The Biomass Strategy promotes bioenergy with carbon capture and storage (BECCS) as a way of generating negative emissions.
2. On 10 November 2023 The Lifescape Project<sup>1</sup> filed an application for judicial review of the Secretary of State’s decision to adopt the Biomass Strategy on the following three grounds:
  - **Ground 1:** The Secretary of State acted irrationally and/or failed to undertake adequate enquiry and/or to take into account relevant considerations by adopting the Biomass Strategy without conducting an adequate analysis of the extent to which her continued support for the combustion of biomass, including forest biomass, will achieve genuine reductions in carbon emissions, or otherwise contribute to the net zero target.
  - **Ground 2:** Further or alternatively, her failure to conduct such an analysis constitutes a failure to discharge the requirements of s.13 of the Climate Change Act 2008 (the “CCA 2008”).
  - **Ground 3:** The consultation that preceded the adoption of the Biomass Strategy was unfair because key components of the analysis now relied upon within the Biomass Strategy were not disclosed to consultees.

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<sup>1</sup> <http://www.lifescapeproject.org/>

3. Lifescape is asking the Court for an order quashing the Biomass Strategy on one or more of the grounds.

#### **LEGISLATIVE BACKGROUND AND RELEVANT CASE LAW**

4. Lifescape's case relies on the Paris Agreement, which was adopted by the United Kingdom on 17 November 2016, and section 13(1) of the CCA 2008, which provides that the Secretary of State "*must 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*".
5. Lifescape also relies on the recent case brought by Friends of the Earth (**Friends of the Earth (and others) v SSBEIS** [2022] EWHC 1841 (Admin), [2023] 1 WLR 225) in which the High Court held that the Secretary of State had failed to comply with s.13 CCA 2008 in relation to the Government's Net Zero Strategy because s.13 CCA imparts a number of mandatory considerations which the Secretary of State in that case had failed to take into account. These can be summarised as: consideration of the risk to delivery of the individual policies and proposals, consideration of the timescales over which the proposed policies would contribute to meeting relevant targets, and a quantitative assessment of how the Net Zero Strategy would enable the carbon budgets to be met. Lifescape contends that the same s.13 duty applies to the Secretary of State in relation to the Biomass Strategy, which is a *proposal or policy* to which s.13(1) CCA 2008 applies because it is a policy that the Secretary of State considers will enable the carbon budgets and the Net Zero Target to be met.

#### **FACTUAL BACKGROUND**

6. Prior to the publication of the Biomass Strategy, the government published a "Call for Evidence" in 2021 on "*The Role of Biomass in Achieving Net Zero*". Following this Call for Evidence, the government published its Biomass Policy Statement in November 2021, which proposed heavy reliance on woody biomass feedstocks, which includes forest biomass.<sup>2</sup> As part of the Forest Litigation Collaborative<sup>3</sup> (a joint undertaking with the Partnership for Policy Integrity<sup>4</sup>), Lifescape responded to the Call for Evidence and also

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<sup>2</sup> "Woody" biomass includes all wood burned for energy, including sawdust from sawmills and other wood residues that are byproducts of a manufacturing process where the main product is not wood for energy. "Forest" biomass refers to biomass sourced directly from forests. It includes trees and also includes "forest residues," meaning tops, limbs, stumps, and other wood left over after harvesting for any purpose.

<sup>3</sup> <http://www.forestlitigation.org/>

<sup>4</sup> <http://www.pfpi.net/>

wrote to the Secretary of State following publication of the Biomass Policy Statement, outlining concerns about the continued reliance on forest biomass.

7. In June 2021 the Sixth Carbon Budget (“CB6”) was adopted for the period 2033-2037. On 30 March 2023 the Government published the 2023 Carbon Budget Delivery Plan (“CBDP”) which identifies the proposals and policies which have been prepared by the Secretary of State to enable Carbon Budgets 4, 5 and 6 to be met. The Biomass Strategy is included in the CBDP as one such quantified proposal or policy.
8. In August 2023, the Biomass Strategy was published alongside a report by a group of advisers referred to as the “Task and Finish Group” (“T&F Group”). This group was convened by the Department for Energy Security and Net Zero Chief Scientific Adviser, and its purpose was “*to establish an evidence-based position on the validity of BECCS [bioenergy with carbon capture and storage] as a GGR [greenhouse gas removal] option to deliver negative emissions*”.<sup>5</sup>
9. Prior to filing its application for judicial review, Lifescape engaged in pre-action correspondence with the government and submitted various requests for information.

## **EXPLANATION OF GROUNDS**

### **Ground 1**

10. In summary, Lifescape argues that the Secretary of State was required to undertake a quantified analysis as to how the forest biomass being burned for energy in the UK currently and in the future will contribute to Net Zero. No such analysis exists in the Biomass Strategy nor was it forthcoming in response to pre-action information requests by Lifescape.
11. The Biomass Strategy characterises biomass as “*low carbon*” and/or capable of delivering “*genuine GHG removals*” (when used as part of BECCS) when it is sourced sustainably. The Strategy explains that a significant part of the biomass currently being burned for energy in the UK is forest biomass from managed forests in North America and this will continue in the future. The Strategy explains that forest biomass provides low carbon energy because its inherent energy comes from the sun; biomass absorbs carbon dioxide as it grows and it can regrow in a relatively short time; and the carbon released on combustion was sequestered recently from the atmosphere compared to fossil fuels. The Strategy also specifies that to be

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<sup>5</sup> An analysis of the responses to its April 2021 Call for Evidence was also published alongside a document entitled ‘Public Dialogue on the Role of Biomass in Achieving Net Zero: Final Report’.

“*low carbon*”, woody biomass must comply with the UK sustainability criteria and/or future sustainability criteria, which will be more stringent. The T&F Report separately explains that it will depend on the facts as to whether forest biomass from managed forests can be low carbon.

12. The international protocol for counting greenhouse gas emissions is set by the Intergovernmental Panel on Climate Change in guidelines published in 2006 and partially updated in 2019. These rules dictate that emissions from harvesting wood are counted in the land sector of the country of origin, and thus to avoid double-counting of emissions, emissions from burning the wood are counted as “zero” in the energy sector (for a more detailed explanation, please see our science briefing<sup>6</sup>). Although the Biomass Strategy does not itself reference the IPCC bookkeeping convention, the government’s response to Lifescape’s pre-action correspondence suggested that they do rely on the IPCC’s zero-rating for biomass in the energy sector to justify characterising biomass as “*low carbon*”. This would mean that any biomass (regardless of whether or not it complies with sustainability criteria) would automatically count as “*low carbon*”. In its legal grounds, Lifescape explains that this approach is inconsistent with the government’s claims in the Biomass Strategy that only biomass from “sustainable” sources can be “*low carbon*”.
13. In its legal arguments, Lifescape argues the Government was required to conduct an analysis of whether the forest biomass currently consumed in the UK, and the biomass to which it can expect to have access in the short and medium term, is genuinely low carbon *before* deciding to continue to support and facilitate the use of forest biomass for energy and for BECCS. The fact that no such quantitative analysis was undertaken means the Secretary of State cannot be satisfied that the forest biomass being burned in the UK now and in the future will not increase, rather than decrease, global carbon emissions, contrary to the fundamental aims of the Paris Agreement and CCA 2008, and the stated objectives of the Biomass Strategy. It is important to note that although Lifescape does not agree that the UK sustainability criteria are capable of ensuring that forest biomass energy is low carbon, this does not form part of the judicial review.

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<sup>6</sup> <https://forestlitigation.org/wp-content/uploads/2023/11/The-Case-Against-Negative-Emissions-Nov-13-2023.pdf>

## ***Ground 2***

14. Lifescape argues that the Secretary of State's failure to conduct the inquiry or analysis described under Ground 1 also (or alternatively) breached s. 13 CCA 2008. If the Court agrees that the s. 13 duty is engaged in relation to the Biomass Strategy, Lifescape will argue that in deciding to adopt the Biomass Strategy, the Secretary of State had to be satisfied that the policy would enable a quantified contribution to the carbon budgets to be met (as established by the Friends of the Earth case).
15. The Friends of the Earth case established that in order to comply with s. 13 CCA 2008, in relation to a relevant strategy, the Secretary of State must:
  - take proper account of any **risks to delivery** of the carbon savings intended to be achieved by the relevant strategy;
  - undertake an adequate or sufficient assessment of the **time scales** over which the constituent proposals in the relevant strategy will take effect; and
  - undertake the necessary **quantitative analysis** to assess the contribution that the constituent proposals of the relevant strategy would make to meeting the carbon budgets.
16. Lifescape argues that the Secretary of State failed to comply with any of these obligations in relation to the Biomass Strategy.

## ***Ground 3***

17. Lifescape's argument is that fairness required the Government to disclose the T&F Report to consultees for comment before deciding, on the basis of its findings, to continue to support and facilitate the use of BECCS to deliver negative emissions as part of its strategy for reaching net zero. Without this disclosure, Lifescape had no opportunity to test the robustness of the report's conclusions or address their relevance to the Government's proposed strategy. The witness evidence submitted in support Lifescape's application identifies important observations that the Forest Litigation Collaborative would have made on various aspects of the T&F Report, had there been an opportunity for review.