

Conditions for a resilient recovery in the UK

This position statement is directed at all those responsible for ensuring a resilient recovery in the UK

As a country and as part of the global community, the UK faces an extended period of economic uncertainty due to the effects of Covid-19, whilst also being in the midst of the climate emergency.

This statement sets out ClientEarth's view on the conditions that the Government should attach to the receipt of public support under its recovery package to ensure a resilient recovery and to work towards a just transition to a net zero economy.

Proposed conditions

In light of the Government's legal and international commitments, we propose that all companies¹ that are listed in the UK or have an annual turnover greater than £45 million that receive support under the recovery package must make a legally enforceable commitment to the following conditions:

1. To **report in line with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD)**² in their annual reports, commencing this financial year.
2. To **achieve net zero**³ **emissions (scope 1, 2 and 3 emissions) by 2050 or earlier** depending on the sector, with staged interim reduction targets.
3. To disclose, within a maximum of 12 months after receipt of the support, **a credible business plan, which includes clear measures for transparency and accountability, that is aligned with the goals and timelines of the Paris Agreement**⁴ (i.e. a "Paris-aligned business plan") and report annually on progress against the plan's targets.⁵
4. To **link management and director remuneration and incentives** to achieving the targets set out in the Paris-aligned business plan.
5. In order to ensure long-term company health and workers' interests are prioritised in the context of a just transition, to **impose restrictions on executive pay (including bonuses) and capital distributions (including share buy-backs and dividends)** for the duration of the receipt of government support.

The Government should undertake to monitor compliance with these conditions and, as would be expected when acting as steward of public monies, the Government should have and use the power to impose sanctions where non-compliance is identified.

¹ Or where the company receiving the support is a subsidiary, one of (i) the subsidiary, (ii) its parent company or (iii) another group entity that will benefit from the support, meets the criteria.

² <https://www.fsb-tcf.org/>

³ Without relying unreasonably on unproven or uncosted negative emissions technology or offsets.

⁴ https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

⁵ The plan should include short, medium and long term emission reduction targets (covering scope 1, 2 and 3 emissions) and capital expenditure plans to achieve the net zero commitment.

Background

The year 2020 marks the start of the defining decade for climate action. The UK was well-placed to take on a vital leadership role, poised to host COP26 in November 2020 (now delayed until November 2021) and to take action towards its legally binding commitments under the Paris Agreement – which includes the aim to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development⁶ – and under the Climate Change Act 2008 to achieve net zero emissions by 2050.⁷ The Covid-19 crisis has meant that the immediate health and resilience of the UK's people, healthcare system and economy has necessarily taken centre stage.

The Government will be introducing a recovery package with the aim of boosting economic growth, which will go far beyond the emergency measures put in place to date. It is vital that the Government ensures that the recovery increases the country's resilience, not only so the UK can recover from the Covid-19 crisis, but so that it will prove resilient in the face of the impending crisis that stems from climate change.

The Government cannot put on hold its response to climate change while it deals with the Covid-19 crisis. According to the Bank of England, "*the window for an orderly transition to a carbon-neutral economy is finite and closing.*"⁸ Each day of delay leaves one day fewer to successfully manage the transition to a net zero economy.

The Covid-19 recovery is a chance for the Government to show leadership, both at home and abroad, by seizing the opportunities presented by the transition to a net zero economy to revitalise our economy, society and environment. It presents an opportunity to realise the "*inclusive growth story of the 21st century*" as described by Lord Stern; a story that harnesses innovation, discovery, investment and growth.⁹ The Government should focus on identifying recovery measures that will deliver both economic growth and the necessary emissions reductions to lead to a net zero economy.¹⁰

Why these conditions

As stated by Mark Carney, "*every company ultimately has to have a plan for a transition and what the opportunities are and where the risks are... For [COP26 in] Glasgow that must be well on the path. That that is the norm. That the question doesn't even have to be asked because companies are answering that question as part of their strategy.*"¹¹

⁶ https://unfccc.int/files/essential_background/convention/application/pdf/english_pari_agreement.pdf at article 2.1(c).

⁷ <http://www.legislation.gov.uk/ukpga/2008/27/section/1>

⁸ <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/the-2021-biennial-exploratory-scenario-on-the-financial-risks-from-climate-change.pdf>

⁹ <http://www.lse.ac.uk/GranthamInstitute/news/speech-by-lord-stern-at-the-global-climate-action-summit-in-san-francisco-on-13-september-2018/>

¹⁰ See for example <https://www.smithschool.ox.ac.uk/publications/wpapers/workingpaper20-02.pdf>; and <https://www.smithschool.ox.ac.uk/publications/wpapers/workingpaper20-01.pdf>

¹¹ <https://www.reuters.com/article/climate-change-boe-carney/corrected-interview-boes-carney-says-business-must-come-clean-quickly-on-climate-idUKL8N2AE20U>

It is clear that businesses cannot seize the opportunities presented by the net zero transition or mitigate climate-related risks when they have not yet identified what they are or developed a plan to do so.

The above conditions are the necessary preparatory steps that all businesses must take, but we ask that the Government uses the recovery package as a way to kick-start this process within the companies it is assisting through taxpayer money and public support.

This will help to set these businesses and the wider economy up for success as the net zero transition gathers pace globally, with the UK leading the way.

The Government's role as steward of public monies

The Government must also remember that it is acting as steward of the UK taxpayer's money when providing public support through its recovery package and that it must be a responsible investor. It is incumbent upon the Government to take steps to actively engage with the companies it is supporting, particularly in light of the UK's climate commitments, and to encourage an orderly and just transition to a net zero economy.

The starting point is to impose the above conditions on companies that are to receive support and, to ensure transparency, the Government should publicly disclose details of the support provided and the conditions attached on a company-by-company basis. Given that the recovery process will continue over time, the Government should report annually on changes to the support provided and whether recipient companies are meeting the conditions imposed.

ClientEarth is a charity that uses the power of the law to protect people and the planet. We are international lawyers finding practical solutions for the world's biggest environmental challenges. We are fighting climate change, protecting oceans and wildlife, making forest governance stronger, greening energy, making business more responsible and pushing for government transparency. We believe the law is a tool for positive change. From our offices in London, Brussels, Warsaw, Berlin and Beijing, we work on laws throughout their lifetime, from the earliest stages to implementation. And when those laws are broken, we go to court to enforce them.