



July 2020

# Consultation on proposals to revise the MER UK Strategy

ClientEarth response

---

## Introduction

1. ClientEarth is a non-profit environmental law organisation based in London, Brussels, Berlin, Warsaw, Madrid, New York and Beijing. ClientEarth's Climate Accountability Initiative has expertise in international and national laws and policies concerning climate change, energy and major infrastructure.
2. This document sets out ClientEarth's response to the current consultation by the Oil and Gas Authority (OGA) on its proposals to revise the Maximising Economic Recovery (MER) UK Strategy (the **Strategy**) to "fully integrate" the UK's net zero target "into everything [the OGA does]".<sup>1</sup>
3. In addition to providing the responses to the consultation questions set out below, ClientEarth requests that the OGA make publically available the full evidence base (including data, assumptions and analysis) informing the approach it has taken in the proposed revised Strategy to integrating net zero and responding to other climate-related risks and impacts, including those associated with downstream emissions in the UK and globally. At present, the consultation documents merely assert that the proposed changes to the Strategy are adequate, and the other data and information published by the OGA on net zero does not include any analysis of the impacts of the proposed Strategy, including its implications for meeting the carbon budgets and 2050 target under the Climate Change Act 2008.<sup>2</sup>
4. Please do not hesitate to contact Sam Hunter Jones ([shunterjones@clientearth.org](mailto:shunterjones@clientearth.org)) or Sophie Marjanac ([smarjanac@clientearth.org](mailto:smarjanac@clientearth.org)) for further information on anything contained in this response.

## Q1. Do you have any comments on the proposed changes to the Introduction?

5. Proposed paragraph (b) should be amended to replace "encourages and supports" with "requires". This change is required to reflect the fact that the Strategy places binding obligations on relevant persons in this context (see e.g. the Central Obligation, at para 2(b)).
6. Proposed paragraph (c) should be amended to delete the phrase "to enable maximising economic recovery of petroleum". Good ESG practices should be maintained in plans and daily operations irrespective of whether it enables the maximising of petroleum recovery. The same applies for the requirement to consider operators' social licence to operate.
7. Proposed paragraph (d) should be deleted or, alternatively, amended to read:

"compliance with the Strategy is intended to lead to investment and operational activities that, on an expected basis, add net value overall to the UK, so far as consistent with keeping within safe environmental limits and meeting the net zero target"

---

<sup>1</sup> OGA consultation document, 6 May 2020, available at: <https://www.ogauthority.co.uk/media/6501/oga-consultation-on-proposals-to-revise-the-mer-uk-strategy-6-may-2020.pdf>.

<sup>2</sup> See, e.g., <https://www.ogauthority.co.uk/the-move-to-net-zero/>.

8. This change is required to acknowledge that compliance with the Strategy may not lead to increased investment and operational activities, including for reasons of ensuring consistency with the net zero target and any environmental limits (including those introduced in ClientEarth's revised Central Obligation, discussed below).

## Q2. Do you have any comments on the proposed changes to the Central Obligation?

9. The proposed Central Obligation should be amended as follows:

“Relevant persons must, in the exercise of their relevant ~~activities~~functions, take the steps necessary to:

(a) secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters while ensuring that the volume of petroleum recovered or expected to be recovered is within limits consistent with the 1.5°C temperature goal under the Paris Agreement, the net zero target and minimising future decommissioning costs borne by the public; and, in doing so,

(b) take all appropriate steps to assist the Secretary of State in meeting the net zero target, including by securing adequate reductions of ~~reducing as far as reasonable in the circumstances~~ greenhouse gas emissions from sources such as flaring and venting and power generation, and supporting carbon capture and storage projects.”

10. These changes to the Central Obligation are required to ensure that Strategy enables the MER principal objective to be met in a way that complies with the Secretary of State and the OGA's duties under human rights law, in addition to supporting the delivery of the net zero target.<sup>3</sup> As is recognised by both the existing Safeguards and the aims of this consultation in integrating the net zero target,<sup>4</sup> the Strategy must enable MER to be met in a way that complies with any applicable legislative and common law requirements.
11. Under the Human Rights Act 1998 and the European Convention on Human Rights (**ECHR**), the UK government and public bodies such as the OGA have an obligation to uphold and protect the right to life (under Article 2) and a range of other rights that may be engaged by the negative impacts of climate change, including the right to respect for private and family life (under Article 8).<sup>5</sup> In meeting this obligation, the UK is required to have in place an administrative framework “designed to provide effective deterrence” against threats to human

---

<sup>3</sup> As reflected in the revised text, it is important that the Central Obligation continues to apply to the OGA as a “relevant person” given its obligations under s9B of the Petroleum Act 1998. The reference to “functions” in the Central Obligation should therefore also be maintained given the continuing application to both operators and the OGA. See below, under Question 6, for further discussion of the proposed change to the definition of “relevant person”.

<sup>4</sup> See, e.g., <https://www.dentons.com/en/insights/articles/2020/july/20/proposed-extension-of-obligations-under-the-oga-strategy-beyond-mer-uk>.

<sup>5</sup> Section 6 of the Human Rights Act 1998 provides that “[i]t is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

rights as well as to take steps to minimise these risks.<sup>6</sup> This obligation therefore extends to requiring that the OGA assess and minimise the full climate and human rights impact of oil and gas extraction on the UKCS, including the downstream emissions when that oil and gas is burnt whether in the UK or globally and not only territorial emissions associated with extraction operations. The revised Strategy should therefore expressly allow for such steps to be taken by the OGA, including through the setting of limits on production, as per the above change to the text of the Central Obligation.<sup>7</sup>

12. The assumption in the proposed Strategy and consultation that the UK should only be concerned with operational emissions is therefore not correct. As recognised by the UN 2019 Production Gap Report,<sup>8</sup> increased oil and gas extraction not only locks in high carbon energy at the national level, it also leads to increased emissions from the downstream combustion of oil and gas. In particular, the report finds that:

“[g]overnments are planning to produce about 50% more fossil fuels by 2030 than would be consistent with a 2°C pathway and 120% more than would be consistent with a 1.5°C pathway. ...

Oil and gas are also on track to exceed carbon budgets, as countries continue to invest in fossil fuel infrastructure that “locks in” oil and gas use. The effects of this lock-in widen the production gap over time, until countries are producing 43% (36 million barrels per day) more oil and 47% (1,800 billion cubic meters) more gas by 2040 than would be consistent with a 2°C pathway. ...

Indeed, though many governments plan to decrease their emissions, they are signalling the opposite when it comes to fossil fuel production, with plans and

<sup>6</sup> For example, this obligation was upheld by the European Court of Human Rights in *Kolyadenko and others v Russia* (Applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05): “...the positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 ...entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life... (para 157). The Court explained that this duty applies “...in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous. In the particular context of dangerous activities special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity...” (para 158). Equally, in *Mučibabić v Serbia* (Application no. 34661/07), the Court found that whenever a state: “undertakes or organises dangerous activities, or authorises them, it must ensure through a system of rules and sufficient control that the risk is reduced to a reasonable minimum” (para 126). And in *Brincat and others v Malta* (Applications nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11), the Court held that: “in the context of dangerous activities ... the positive obligation under Article 8 requires the national authorities to take the same practical measures as those expected of them in the context of their positive obligation under Article 2 of the Convention” (para 102).

<sup>7</sup> Given the scope of the OGA’s legal obligations (and of the Safeguards in the Strategy), the OGA would be required to take action to assess and minimise these risks irrespective of whether the above change is made to the Central Obligation. However, including an express obligation to this effect is clearly preferable in terms of certainty and clarity as to what these obligations require in practice and is in any event required as a matter of legal obligation to ensure that the steps the OGA has taken to revise the Strategy are compatible with ECHR rights.

<sup>8</sup> SEI, IISD, ODI, Climate Analytics, CICERO, and UNEP, ‘The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C’, 2019, available at: <https://www.unenvironment.org/resources/report/production-gap-report-2019#:~:text=The%20Production%20Gap%20Report%20%E2%80%93%20produced,of%20coal%2C%20oil%20and%20gas,pp%204,5,9%20and%2013.>

projections for expansion. This hinders the collective ability of countries to meet global climate goals, and it further widens not just the production gap, but the emissions gap as well.”<sup>9</sup>

13. The interlinkages between climate change and human rights have been well documented by academics and recognised by both governments and major inter-governmental organisations. The UN Special Rapporteur on Human Rights and the Environment makes clear in his 2019 ‘Safe Climate’ report that “a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being.”<sup>10</sup> In particular:

“[c]limate change interacts with poverty, conflict, resource depletion and other factors to cause or exacerbate food insecurity, loss of livelihoods, infrastructure breakdown and loss of access to essential services including electricity, water, sanitation and health care.”<sup>11</sup>

14. The report goes on to explain that:

“[m]eeting the Paris Agreement target of 1.5°C could save millions of lives every year, providing trillions of dollars in health and environmental benefits. Replacing fossil fuels with renewable energy, energy storage and energy efficiency would create unprecedented economic opportunities.”<sup>12</sup>

15. In the specific context of the right to life, the report explains that:

“[i]n order to uphold the right to life, States have an obligation to take effective measures to mitigate climate change ...

Climate change has many direct and indirect effects on the full enjoyment of the right to life. Climate-related deaths are caused by extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution. Globally, at least 150,000 premature deaths annually have been linked to climate change. The heat wave that struck western Europe in 2003 caused approximately 70,000 premature deaths.”<sup>13</sup>

16. The Committee on Climate Change (**CCC**) has also recently emphasised the severe risks posed by increased climate change to people in the UK:

“[t]he impacts of climate change on the UK, today and in the future, remind us that adapting to the changing climate is not just an issue for the Southern Hemisphere or small island nations. It is also not just a local issue: global supply chains will continue to be essential, for example to ensure everyone has access

---

<sup>9</sup> Ibid, p. 4.

<sup>10</sup> In its conclusions and recommendations, the report recommends that developed states should demonstrate leadership by prohibiting further exploration for additional fossil fuels (because not all reserves can be burned while meeting the commitments of the Paris Agreement) and that any other expansion of fossil fuel infrastructure should be rejected (ibid, para 78).

<sup>11</sup> UN Special Rapporteur on Human Rights and the Environment, ‘Safe Climate’, October 2019, available at: <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/Report.pdf>.

<sup>12</sup> Ibid, para 95.

<sup>13</sup> Ibid, paras 28-29.

to a healthy and varied diet, access that is resilient to climate shocks and other crises...”<sup>14</sup>

17. In terms of direct climate impacts, the UK’s latest Climate Change Risk Assessment in 2017 warned that heat-related deaths in the UK could more than triple to 7,000 a year by the 2050s due to climate change.<sup>15</sup> It also warned that increased flooding will lead to a wide variety of severe impacts on people in the UK (“loss of life, injury and ill health, damage to buildings and structures, and disruption to critical infrastructure”), while water deficits will also increase due to drier summers.<sup>16</sup> There are also a raft of potentially catastrophic systemic risks caused by climate change, as well as risks from more frequent and intense extreme weather events and new vector-borne diseases.
18. Levels of oil and gas extraction on the UKCS should therefore be regulated to ensure that they remain at levels consistent with limiting global heating to 1.5°C above pre-industrial levels to avoid the most severe and potentially catastrophic impacts of climate change on human welfare. Indeed, the Intergovernmental Panel on Climate Change (IPCC) has warned that “warming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C.”<sup>17</sup>
19. In view of all of the above, it is critical that the Central Obligation expressly states MER as being subject to limits on the volumes of oil and gas extracted that are consistent with the 1.5°C temperature goal under the Paris Agreement. As explained below, such limits are also required to support compliance with the carbon budgets and 2050 target under the Climate Change Act 2008.

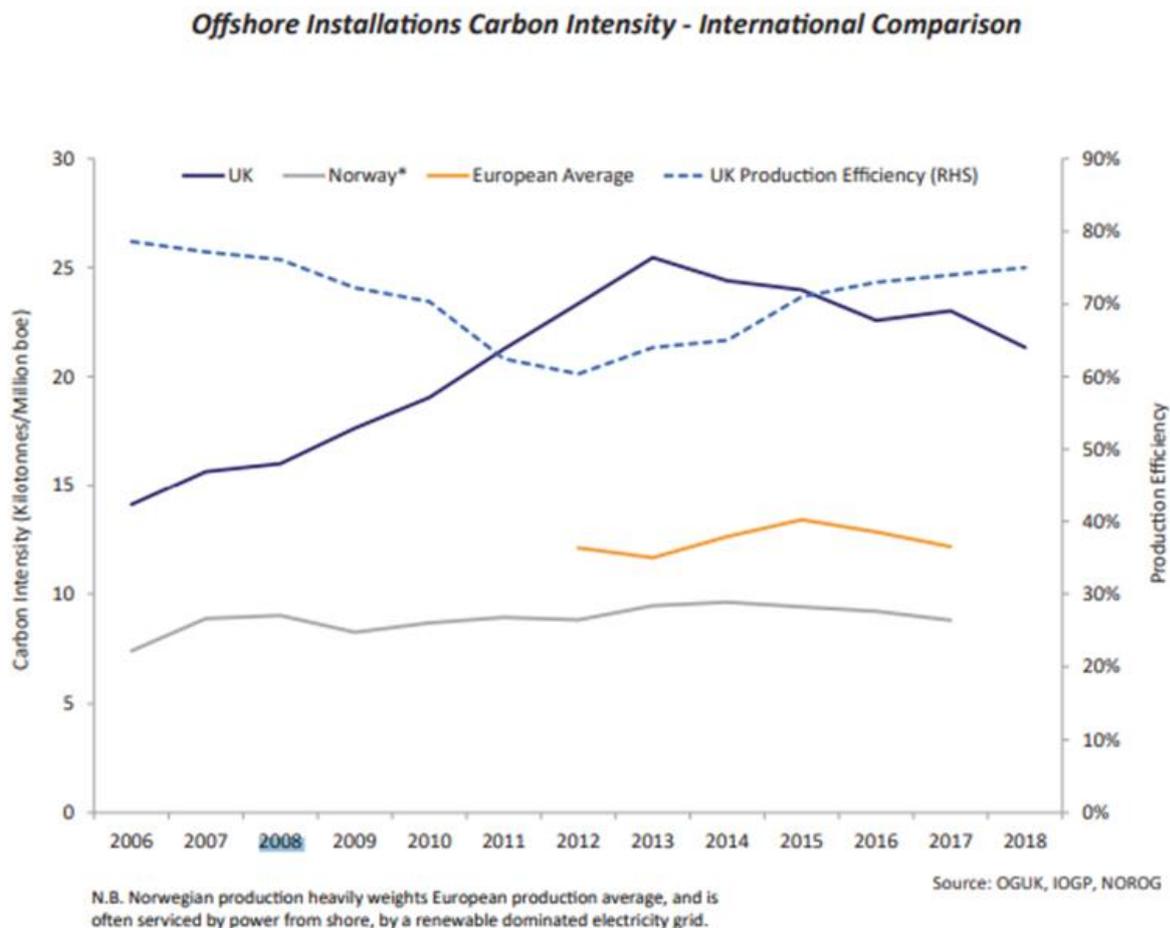
<sup>14</sup> <https://www.theccc.org.uk/publication/letter-adaptation-in-the-uks-nationally-determined-contribution/>.

<sup>15</sup> <https://www.theccc.org.uk/wp-content/uploads/2016/07/UK-CCRA-2017-Chapter-5-People-and-the-built-environment.pdf>.

<sup>16</sup> <https://www.theccc.org.uk/wp-content/uploads/2016/07/UK-CCRA-2017-Synthesis-Report-Committee-on-Climate-Change.pdf>, p. 32 (“Improved flood defences will not be possible or affordable in every area, and with climate change a greater disparity in risk between protected and non-protected areas may emerge. Some individual coastal communities are vulnerable to coastal erosion and sea level rise. More action is needed to support communities facing increasing risks, especially in areas where formal flood defences are unlikely and long term viability is at risk.”); p. 34 (“Heatwave events such as in 2003 are projected to become the norm in the UK by the 2040s. For a 2°C rise in global mean temperature, the increase in temperatures under heatwave conditions in Europe is projected to increase by between 1.4 - 7.5°C. The proportion of the UK population aged over 75 is projected to increase from 8% in 2015 to 18% by 2085. Older people are more likely to be adversely affected by high temperatures, but above 35°C, all age groups are at risk of health impacts ... In the absence of adaptation, annual UK heat-related mortality is projected to increase by two-thirds by the 2020s, by around 250% by the 2050s, and by more than 500% by the 2080s from a current baseline of 2,000 heat-related deaths per year.”); p. 36 (“By the 2050s under high climate change and high population growth scenarios, demand for water could be more than 150% of the available resource in many catchments across the UK. The analysis shows that in numerous catchments ... it will not be possible to abstract water up to 25% of the time without causing ecological damage.”); and p. 63 (“According to research conducted to support the CCRA, at present an estimated 1.8 million people are living in areas of the UK at significant risk of river, surface water or coastal flooding. The population living in such areas is projected to rise to 2.6 million by the 2050s under a 2°C scenario and 3.3 million under a 4°C scenario, assuming low population growth and a continuation of current levels of adaptation. As well as risks to life and property, flooding causes long term damage to health, wellbeing, livelihoods, and social cohesion.”).

<sup>17</sup> IPCC, ‘Special Report on Global Warming of 1.5°C’, October 2018, available at: [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Full\\_Report\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf). See also CCC, ‘Net Zero – The UK’s contribution to stopping global warming’, May 2019, available at: <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>, pp 58-65.

20. Among other things,<sup>18</sup> the OGA’s approach to setting limits consistent with 1.5°C should take into account the relatively high emissions intensity of oil and gas production on the UKCS, compared to other countries’ production and competing sources of supply, as illustrated by the below graphic produced by Oil and Gas UK (OGUK).<sup>19</sup>

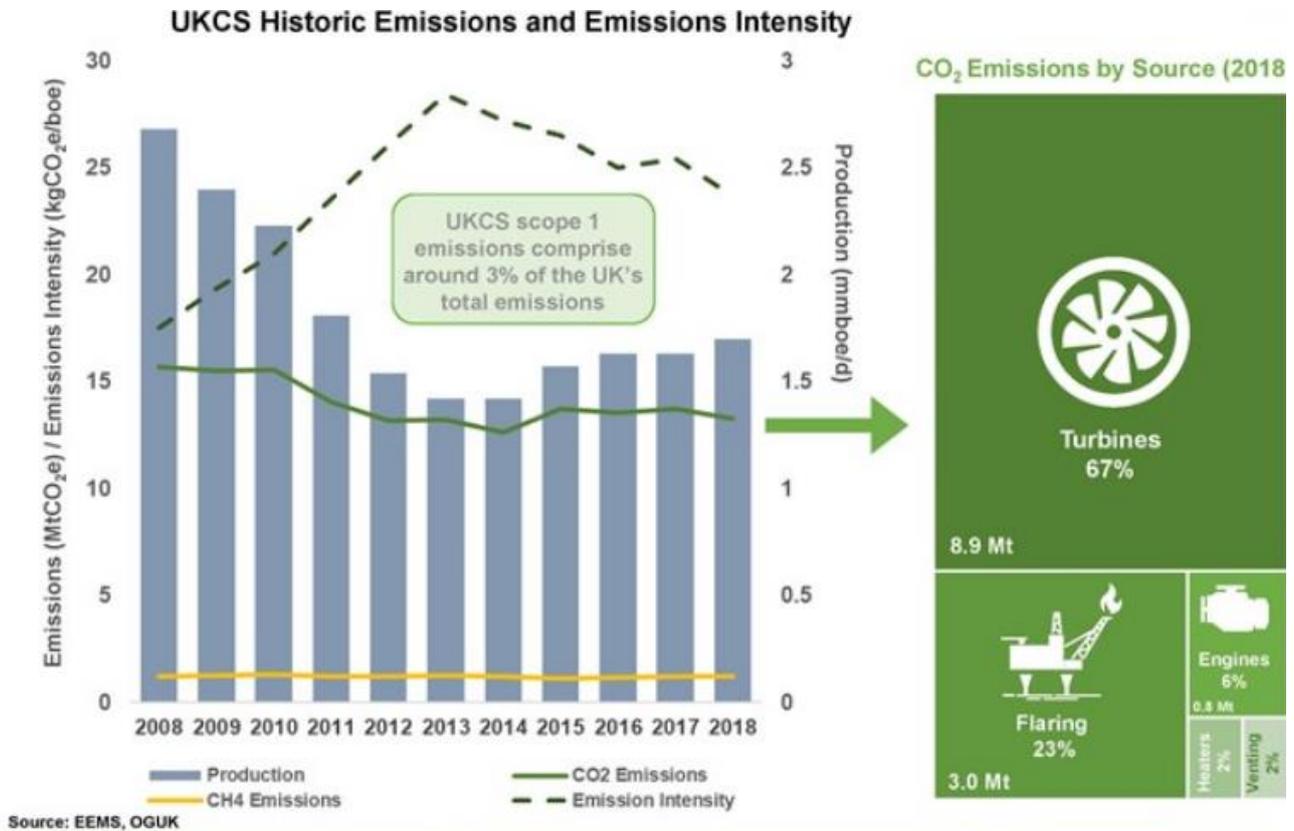


21. As indicated in the above changes to the proposed text, limits on oil and gas production are also necessary to support compliance with the UK’s domestic emissions commitments under the Climate Change Act 2008. In this respect, the level of production consistent with the net zero target and the intermediate carbon budgets depends on the emissions intensity of such production. This interrelationship is demonstrated by the fact that overall greenhouse gas emissions have remained broadly flat despite recent decreases in average emissions intensity, as shown in the OGA graphic below.<sup>20</sup>

<sup>18</sup> In setting Paris-consistent limits, no reliance should be placed on CCS or negative emissions technologies until, and to such extent as, such technologies are actually operational at commercial scale in relevant downstream markets (not least given that such advances would be – to quote the UN Production Gap report (p. 8) – “dramatic” and “unexpected”). In the event that such technologies do become operational at commercial scale, any reliance placed on them should be proportionate to their actual use and full lifecycle emissions impact.

<sup>19</sup> OGUK, ‘Pathway to a Net-Zero Basin: Production Emissions Targets’, available at: <https://oilandgasuk.co.uk/wp-content/uploads/2020/06/OGUK-Production-Emissions-Targets-Report-2020.pdf>.

<sup>20</sup> <https://www.ogauthority.co.uk/the-move-to-net-zero/benchmarking-and-analysis/>.



22. The OGA should therefore set limits on production that take into account current emissions intensities and the future reductions in absolute emissions levels required on the UKCS in view of future carbon budgets and the 2050 target. In this context, the analysis of future emissions reductions in the offshore sector by the CCC in its net zero report relies on diminishing levels of production out to 2050,<sup>21</sup> and the OGA itself also appears to assume declining future production levels.<sup>22</sup>

### *Decommissioning costs borne by the public*

23. The more wells that are worked on the UKCS with a view to increasing oil and gas production, the greater the scale of decommissioning liabilities that will need to be met, including out of public funds. These costs may be exacerbated by a disorderly decline in the oil and gas industry and asset values, whether due to the transition to clean energy or to other economic shocks,<sup>23</sup> with the public exposed to the risk of widespread decommissioning default by

<sup>21</sup> CCC, 'Net Zero – Technical Report', May 2019, p. 116. See also Element Energy, 'Assessment of Options to Reduce Emissions from Fossil Fuel Production and Fugitive Emissions', 2019, available at: <https://www.theccc.org.uk/publication/net-zero-technical-report/>, p. 41.

<sup>22</sup> <https://www.ogauthority.co.uk/the-move-to-net-zero/overview/> ("Managing the declining production ... from the UKCS ...").

<sup>23</sup> See, e.g., <https://www.ft.com/content/95efca74-4299-11ea-a43a-c4b328d9061c> ("A sudden drop in asset value could bring a disorderly decline for all oil and gas stocks."); Carbon Tracker, 'Decline and Fall: The Size & Vulnerability of the Fossil Fuel System', June 2020, available at: <https://carbontracker.org/reports/decline-and-fall/>

operators. These costs and risks should therefore be assessed by the OGA in setting limits on levels of oil and gas production, as reflected in the suggested changes to the Central Obligation above.

### *Revision of OGA policy and guidance*

24. In addition to making changes to the Strategy to reflect the net zero target, the OGA will also need to ensure that all of its existing and future guidance, plans, practices and policies are consistent with the Strategy and Central Obligation, including in the context of its licensing and consenting functions.<sup>24</sup>
25. The OGA has the power under the Energy Act 1976 to set conditions on the quantities of gas to be disposed of by venting under an operator's consent.<sup>25</sup> In the OGA's guidance, the OGA sets the thresholds under which it will typically not examine applications for consents for venting and flaring in detail.<sup>26</sup> The OGA should be actively using its available powers to ensure that emissions from venting and flaring are kept to levels consistent with the net zero target. Emissions limits will need to become increasingly stringent over time to meet the net zero target and intermediate carbon budgets. The Strategy should set out a clear mandate for the OGA to take the net zero target and carbon budgets into account when granting licences and setting conditions, and should make provision for the OGA to set binding, generally applicable emissions intensity limits to ensure sufficient progress and that the least carbon-intensive fields are prioritised.
26. In addition to updating relevant policies and requirements under new consents, the OGA must monitor and enforce compliance with owners and operators' emissions intensity obligations. In particular, owners and operators should be required to demonstrate how they are ensuring that emissions are reduced "as far as reasonable", even if they fall below maximum emissions intensity limits specified by the OGA, and these requirements should be subject to rigorous review and monitoring by the OGA.

---

fall ("The entire [energy] system is being disrupted by the forces of cheaper renewable technologies and more aggressive government policies. In one sector after another these are driving peak demand, which leads to lower prices, less profit, and stranded assets. ... As demand peaks and starts to fall, high-cost assets are no longer required and become stranded. This is a structural shift, not another cycle."). See also Platform, Oil Change International, Friends of the Earth Scotland, 'Sea Change: Climate Emergency, jobs and managing the phase-out of UK oil and gas extraction', May 2019, p. 3 ("... the UK and Scottish Governments face a choice between two pathways that stay within the Paris climate limits: 1. Deferred collapse: continue to pursue maximum extraction by subsidising companies and encouraging them to shed workers, until worsening climate impacts force rapid action to cut emissions globally; the UK oil industry collapses, pushing many workers out of work in a short space of time. Or: 2. Managed transition: stop approving and licensing new oil and gas projects, begin a phase-out of extraction and a Just Transition for workers and communities, negotiated with trade unions and local leaders, and in line with climate change goals, while building quality jobs in a clean energy economy.")

<sup>24</sup> We note that the OGA is currently undertaking a review of its flaring and venting regime: <https://www.ogauthority.co.uk/the-move-to-net-zero/flaring-and-venting/>.

<sup>25</sup> Energy Act 1976, s12A(5).

<sup>26</sup> OGA, 'Flaring and venting during the production phase', available at: <https://www.ogauthority.co.uk/media/2467/flaring-and-venting-during-the-production-phase-1016.pdf>, p. 4.

## *Safeguards*

27. In respect of the proposal to move the Safeguards to the end of the Strategy document, ClientEarth welcomes the clarification that this is not intended to reduce the importance or priority given to such Safeguards and expects such an approach to be applied in practice.<sup>27</sup> However, as the need to make this clarification demonstrates, there is a risk that moving the Safeguards will nevertheless be interpreted as reducing their importance or priority, with such risk far outweighing any detriment to the “flow” of the document (which is not accepted). The Safeguards, and the existing references to them in the Central Obligation and Supporting Obligation sections, should be maintained in their existing positions in the text (i.e. at the front of the document, next to the Central Obligation).

## **Q3. Do you have any comments on the proposed changes to the Supporting Obligations to embed the proposed Net Zero limb of the Central Obligation?**

### *Development*

28. Proposed paragraph 8 should be amended to read:

“Relevant persons must plan, commission and construct infrastructure in a way that meets the optimum configuration for maximising the value of economically recoverable petroleum that can be recovered from the region in which the infrastructure is to be located while contributing to meeting the net zero target, including by reducing greenhouse gas emissions.”

29. This change is required given the importance of ensuring that infrastructure is configured in a way that reduces emissions and supports delivery of the net zero target.

### *Asset stewardship*

30. Proposed paragraph 10 should be amended to read:

“The owners and operators of infrastructure must ensure that it is maintained in such a condition and operated in such a manner, including undertaking relevant and measurable metering and measurement activities, that it will:

- a. achieve optimum levels of performance, including production efficiency, energy efficiency and cost efficiency, for the expected duration of production;
- b. reduce as far as reasonable in the circumstances greenhouse gas emissions resulting from sources such as flaring and venting, and power generation, and in all circumstances to levels below the maximum emissions intensity specified by the OGA from time to time; and,

---

<sup>27</sup> OGA consultation document, para 60.

c. achieve optimum potential for the re-use or re-purpose of that infrastructure taking account of the Secretary of State meeting the net zero target,

taking into consideration the stage of field, reservoir and asset development, technology and geological constraints. Owners and operators of infrastructure must also have environmental management systems in place in line with international standards and ensure that they respect human rights throughout their operations, activities and supply chains, both in the UK and internationally (including by assessing the human rights impacts of new investments and production increases)."

31. To reflect the changes to the Central Obligation set out above, proposed paragraph 11 should also be amended to read:

"Owners and operators of infrastructure must ensure that it is operated in a way that facilitates the reduction of greenhouse gas emissions and the recovery of the maximum value of economically recoverable petroleum ...."

### *Setting maximum emissions intensities*

32. The above change to proposed paragraph 10 allowing for the OGA to set maximum operational emissions intensities is required for the OGA to support the delivery of the net zero target. The CCC has made clear that, given the UK's current emissions reductions trajectory, the UK will struggle to meet both its carbon budgets and the 2050 net zero target.

33. In its 2020 Progress Report to Parliament, the CCC highlights that the UK is not on track to meet its fourth and fifth carbon budgets (up to 2027 and 2032 respectively).<sup>28</sup> It also notes that "[as] the existing carbon budgets were set on a cost-effective path to achieving an 80% reduction in UK greenhouse gas emissions by 2050, a more ambitious long-term target is likely to require outperformance of the carbon budgets legislated to date."<sup>29</sup>

34. To reach the net zero target, there will need to be deep emissions cuts on an economy wide basis, and in the context of offshore oil and gas production the CCC specifically recommends that policies to significantly reduce the emissions intensity be adopted this year.<sup>30</sup> Such policies are said to be needed given that "[e]missions from fossil fuel production have barely fallen since 2008, while emissions from flaring and venting are up over the same period",<sup>31</sup> as is also shown by the OGA graphic reproduced above.<sup>32</sup>

### *Environmental Management Systems*

35. A proposed change to paragraph 10, requiring operators and owners to have in place an Environmental Management System (**EMS**), is needed to align with international good practice. EMSs are currently voluntary for offshore oil and gas operations in the UK. However,

<sup>28</sup> CCC, 'Reducing UK Emissions: Progress Report to Parliament', June 2020, available at: <https://www.theccc.org.uk/publication/reducing-uk-emissions-2020-progress-report-to-parliament/>, pp 51, 53.

<sup>29</sup> Ibid, p. 52.

<sup>30</sup> Ibid, p. 30. See also p. 181.

<sup>31</sup> Ibid, p. 181.

<sup>32</sup> <https://www.ogauthority.co.uk/the-move-to-net-zero/benchmarking-and-analysis/>.

UK Export Finance (**UKEF**) is a signatory of the Equator Principles (**EP**), and under EP III<sup>33</sup> (which is currently in force), all Category A<sup>34</sup> projects are required to have an EMS. An EMS will be required for all Category A and Category B<sup>35</sup> projects under EP 4 (applicable for new financings after 1 October 2020). Major oil and gas projects are typically classed as Category A projects, due to the scale and nature of the environmental and social risks that they pose. Clearly, environmental management standards in the UK should be as stringent as those required for UKEF-financed projects abroad.

### *Obligation for operators and owners to respect human rights*

36. The UK has committed to implementing the UN Guiding Principles on Business and Human Rights (2011).<sup>36</sup> These principles explain that businesses have a duty to respect internationally-recognised human rights throughout their activities and relationships, with such duty applying over and above compliance with national laws and regulations.<sup>37</sup> The revision of the Strategy therefore provides an opportunity for these standards to be incorporated into the offshore regulatory regime and doing so may also serve to address the OGA's stated concern for the industry's social licence.<sup>38</sup>

37. As indicated in ClientEarth's proposed change to paragraph 10, owners and operators should, among other things, be required to assess the human rights impacts caused by, or linked to, their operations (including climate-related impacts associated with any increase in oil and gas production or new infrastructure investments). Owners and operators must then ensure that they take adequate measures for the prevention, mitigation and remediation of such impacts.

## **Q4. Do you have any comments on the proposed clarifications to the Supporting Obligations to reflect stewardship and other changes in the United Kingdom Continental Shelf?**

38. N/A.

---

<sup>33</sup> Equator Principles III, available at: [https://equator-principles.com/wp-content/uploads/2017/03/equator\\_principles\\_III.pdf](https://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf).

<sup>34</sup> Category A: "Projects with potential significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented".

<sup>35</sup> Category B: "Projects with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures".

<sup>36</sup> [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf). See also <https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update>.

<sup>37</sup> UN Guiding Principles on Business and Human Rights, 2011, Chapter II.

<sup>38</sup> See, e.g., OGA consultation document, paras 3 and 37.

## Q5. Do you have any comments on the proposed changes to the Required Actions?

39. Proposed paragraph 28 should be amended to read:

“The obligation in paragraph 26 applies in all other circumstances where relevant persons decide not to ensure the recovery of the maximum value of economically recoverable petroleum from their licences or infrastructure. This includes where there are technical or other non-economic reasons. However, the obligation in paragraph 26 will not apply if (i) so directed by the OGA or (ii) a relevant person’s intention not to ensure maximum recovery is approved by the OGA.”

40. This change is intended to allow for the decommissioning of assets where oil and gas is still economically recoverable, including to keep levels of extraction within applicable climate limits or where appropriate emissions intensities cannot be achieved (in accordance with the revised Central Obligation above and / or the legal Safeguards in the Strategy).

## Q6. Do you have any comments on the proposed changes to the Definitions?

### *Relevant persons*

41. The proposed definition of “relevant persons” should be amended to read:

“Relevant persons’ means the OGA and the persons listed in section 9A(1)(b) of the Petroleum Act 1998.”

42. The proposed changes to the existing definition of “relevant persons” involve removing the OGA from the definition so that it refers only to the persons listed in section 9A(1)(b) of the Petroleum Act 1998, i.e. licence holders, operators, owners of petroleum infrastructure / offshore installations and persons planning and carrying out commissioning of upstream petroleum infrastructure.

43. Given that the OGA is required to exercise its functions in accordance with the Strategy under section 9B of the Petroleum Act 1998, the definition of “relevant persons” should continue to refer to the OGA. Removing the OGA from the definition of relevant person under the Strategy creates uncertainty as to the extent to which the obligations under the Strategy apply to the OGA. It could suggest, for example, that the OGA is simply required under section 9B to have regard to the obligations owed by e.g. operators and licence holders when exercising its functions, rather than needing itself to comply with such obligations when exercising its functions. Such uncertainty cannot be of benefit to the OGA, the industry or the public.

44. The existing definition of “relevant functions” (as opposed to “relevant activities”), and the references to “relevant functions” throughout the existing Strategy, should therefore also be maintained in its entirety to reflect the continuing application of the Strategy to a range of stakeholders including the OGA under the Petroleum Act 1998. Again, the proposed narrowing

of the application of the Strategy to only those activities listed under section 9C of the Act risks creating uncertainty as to the extent to which the obligations under the Strategy apply directly to the OGA's functions.

### *Net zero target*

45. The proposed definition of "net zero target" should be amended to read:

"Net zero target' means the net UK carbon account for the year 2050, as set out in section 1 of the Climate Change Act 2008 (as amended), and any intermediate carbon budgets set under section 4 of the Act;"

46. This change is required to clarify, for the avoidance of doubt, that references to the net zero target in the Strategy include any applicable carbon budgets set under section 4 of the Climate Change Act 2008, in respect of which the Secretary of State is required "to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget".

## **Q7. On what do you base your forecasts of future carbon prices?**

47. N/A.

## **Q8. Do you have quantitative evidence of any specific impacts of the proposed revisions to the Strategy that you would like us to consider?**

48. Nothing further to the evidence referred to above.

Sam Hunter Jones

Lawyer, Climate Accountability

020 7749 5975

[shunterjones@clientearth.org](mailto:shunterjones@clientearth.org)

[www.clientearth.org](http://www.clientearth.org)

Sophie Marjanac

Climate Accountability Lead

020 7749 5975

[smarjanac@clientearth.org](mailto:smarjanac@clientearth.org)

[www.clientearth.org](http://www.clientearth.org)



**Brussels**

60 Rue du Trône (3ème étage)  
Box 11, Ixelles, 1050 Bruxelles  
Belgique

**Berlin**

Albrechtstraße 22  
10117 Berlin  
Germany

**Warsaw**

ul. Mokotowska 33/35  
00-560 Warszawa  
Polska

**Beijing**

1950 Sunflower Tower  
No. 37 Maizidianjie  
Chaoyang District  
Beijing 100026  
China

**London**

Fieldworks  
274 Richmond Road  
Martello St. Entrance  
E8 3QW  
United Kingdom

**Madrid**

García de Paredes  
76 duplicado  
1º Dcha  
28010 Madrid  
Spain