

CONSULTATION ON THE OIL AND GAS AUTHORITY'S PROPOSALS FOR  
REVISING THE UK'S STRATEGY FOR "MAXIMISING THE ECONOMIC  
RECOVERY" OF UK PETROLEUM

PLAN B RESPONSE

<https://www.ogauthority.co.uk/media/6501/oga-consultation-on-proposals-to-revise-the-mer-uk-strategy-6-may-2020.pdf>

**A. OVERVIEW**

1. The OGA's proposed central objective fails to promote consistency with Government's own policy commitment to the Paris Agreement temperature limit of 1.5°C and well below 2°C. Such an approach, which erroneously conflates the Government's commitment to the Paris Agreement with the net zero target, was ruled unlawful by the Court of Appeal in *R (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214, [2020] 2 WLUK 372. The central objective should directly require consistency with both the net zero target and the Paris Agreement temperature limit.
2. This is of the utmost significance in the context of the recovery of fossil fuels. The net zero target under the Climate Change Act 2008 relates only to the UK's domestic emissions and therefore does not constrain the extraction of fossil fuels for the international market. The production of fossil fuels for the international market, is however, highly relevant to compliance with the global Paris Agreement temperature limit. The Bank of England has highlighted the danger to the economy of stranded assets and a "carbon bubble"<sup>1</sup>. In these circumstances, maximising the recovery of oil without regard to the global temperature limit is irrational, dangerous and unlawful.
3. The OGA claims at §6 that it has specifically considered the Government's policy commitment to the Paris Agreement:

*"As part of this review, the OGA has considered, amongst other things, the updated net zero greenhouse gas emissions target ("Net Zero Target") in the Climate Change Act 2008, the UK Government's policy of complying with the Paris Agreement, the findings contained in the Committee on Climate*

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<sup>1</sup> <https://www.bbc.co.uk/news/science-environment-44357243>

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*Change's 2019 Net Zero Report<sup>3</sup>, and the general need to maintain confidence in the oil and gas industry.” (emphasis added)*

4. Yet its proposed “central objective” disregards the Paris Agreement altogether.

## **B. APPLICABLE LEGAL AND POLICY FRAMEWORK**

5. The Climate Change Act 2008, section 1, establishes a minimum level of ambition for domestic emissions reduction:

*“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” (emphasis added).*

6. The Paris Agreement requires parties, including the UK, to cooperate in

*“Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”*

7. In January 2018, the Government published “A Green Future: Our 25 Year Plan to Improve the Environment”. In this the Government promised:

*“We will: Provide international leadership and lead by example in tackling climate change...*

*We will use our diplomacy on the international stage to encourage more ambitious global action ...*

*Using our leading role in the UNFCCC, through which the Paris Agreement was established, we will urge the international community to meet the goals enshrined in the text ... This is vital for future environmental security: current global commitments under the Agreement are insufficient to limit average temperature rise to well below 2 °C.”*

8. On 27 March, 2018, the Foreign and Commonwealth Office (“FCO”) Minister, Mark Field MP, was asked the following written question:

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*“What diplomatic steps his Department has taken to support the implementation of the Paris agreement on climate change.”*

9. Mr Field began his response as follows:

*“Climate change is an existential threat ... Our diplomats and Climate Envoy are working, with BEIS [the Department for Business, Energy and Industrial Strategy] and international partners, to ensure international implementation of Paris Agreement commitments”*

10. The Paris Agreement, in other words, obliges parties including the UK to work beyond domestic emissions reduction measures in order to maintain the global temperature limit.

11. In *R (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214, [2020] 2 WLUK 372, the Court of Appeal held that the Secretary of State had acted unlawfully by failing to take into account the UK’s commitments in the 2015 Paris Agreement when he decided to designate a policy formulated to enable the construction of a third runway at Heathrow airport as a ‘national policy statement’ under the Planning Act 2008.

12. The Court emphasised that Government policy relating to climate change includes both the minimum target established by the Climate Change Act s. 1 and the Paris Agreement temperature limit:

*“It is clear, therefore, that it was the Government’s expressly stated policy that it was committed to adhering to the Paris Agreement to limit the rise in global temperature to well below 2°C and to pursue efforts to limit it to 1.5°C”.*

## **C. THE PROPOSED CENTRAL OBJECTIVE TREATS THE PARIS AGREEMENT AS IRRELEVANT**

13. The OGA proposes the following “central objective” at §21:

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

- 1. secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters; and in doing so*

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2. *take appropriate steps to assist the Secretary of State in meeting the Net Zero Target, including by 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.”*

14. Such an approach, which omits reference to the Paris Agreement temperature limit, repeats the error of the Secretary of State for Transport (in relation to Heathrow expansion) of conflating the Government’s commitment to the Paris Agreement with the net zero target established by the Climate Change Act. The Court of Appeal ruled that approach unlawful.

15. In order to comply with the Government’s policy on climate change, the central objective must ensure consistency with both the net zero target and the Paris Agreement temperature limit. Advancing a central objective that refers only to the net zero target will be subject to legal challenge.



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