NEW EIA GUIDANCE FOR ASSESSING SCOPE 3 EMISSIONS IN UK OFFSHORE OIL AND GAS PROJECTS

On 19 June 2025, the Department for Energy Security and Net Zero (DESNZ) published supplementary guidance for environmental impact assessments (EIAs) on assessing the effects of downstream scope 3 emissions on climate from offshore oil and gas projects (Guidance). The Guidance aims to clarify how such emissions should be addressed in EIAs and enables the resumption of the EIA process for offshore production projects, which had been paused since the landmark UK Supreme Court decision in *Finch*. This briefing outlines the key elements of the Guidance and considers its implications for developers.

Background

In *Finch* (June 2024), the UK Supreme Court concluded that downstream GHG emissions from the combustion of extracted oil was an indirect effect of the project and must be considered in the EIA (see our previous briefing). Although *Finch* concerned an onshore development, its interpretation of the EIA Directive also applies to offshore projects. This led to a successful legal challenge to the Jackdaw and Rosebank projects, and prompted the Government to pause the EIA process for offshore oil and gas projects in August 2024, pending the publication of new guidance. That Guidance has now been published and sets out a number of expectations for assessing scope 3 emissions in light of *Finch*.

The Guidance

The Guidance sets expectations across seven key areas of the Environmental Statement ("**ES**"), including defining the scope and baseline, identifying and estimating scope 3 emissions, evaluating their significance, and identifying suitable mitigation measures. In particular, the Guidance sets the following key expectations:

Scope and baseline scenario

An ES must consider scope 3 emissions from downstream activities associated with the production of hydrocarbons over the full lifetime of the proposed project. Substitution arguments (i.e. that hydrocarbons extracted

Key issues

Guidance

- Guidance on assessment of Scope 3 emissions on offshore oil & gas projects issued
- Scope 3 emissions must be assessed on the presumption that all extracted hydrocarbons will be combusted.
- Substitution cannot be used to exclude scope 3 emissions; it may only be used to contextualise them, with strong supporting evidence.
- Scope 3 emissions should be assessed in relation to global emissions-reductions pathways rather than total global greenhouse gas (GHG) emissions.
- Mitigation measures for scope 3 emissions must not be speculative, and emissions removal measures are currently considered to be the most appropriate.

Implications

- The EIA process for offshore oil and gas production projects has now resumed.
- The Guidance is likely to constitute a material planning consideration for other types of development, such as onshore oil and gas projects.
- Applying the Guidance may increase the time and cost of the EIA process.
- Greater legal risk, especially over the adequacy of scope 3 emissions assessments and the credibility of proposed mitigation measures.

replace hydrocarbons that would otherwise be extracted elsewhere) should not be used to exclude any scope 3 emissions from consideration in an ES.

The effects of scope 3 emissions are global and therefore a global baseline scenario of GHGs must be considered, including a reasonable future estimate of global GHGs affecting climate over the lifetime of the project. This represents a significant departure from the traditional approach to EIAs where baseline scenarios are usually determined based on factors at, or in the vicinity of, the location of the proposed development.

Estimating scope 3 emissions

Scope 3 emissions estimates should present the highest production case and start from the rebuttable presumption that all extracted hydrocarbons will eventually be combusted. For transparency and comparability, this scenario should be presented even where the developer provides sufficient evidence to rebut the presumption of full combustion and/or presents a scenario for non-combustion use.

A developer may break down scope 3 emissions into different downstream categories (as provided in the GHG Protocol); however, where they do so they must provide evidence to justify such categorisation and to support how emissions have been quantified, and must in any case also present the full-combustion scenario.

The Guidance does not prescribe any one methodology for estimating scope 3 emissions, but whichever methodology is adopted should be: explained and justified in the ES; current, credible, and widely accepted; utilised consistently throughout the assessment; and in accordance with best practice guidance.

Evaluating the significance of the likely effects

Assessment methodologies used to determine the significance of the likely effects of scope 3 emissions on the environment are expected to consider the sensitivity of the receptor against the magnitude of the impact. Given the global effect of GHG emissions, the current state of the climate and concentration of carbon dioxide and other GHGs in the atmosphere, the expectation is that the sensitivity of climate as a receptor will be high.

ESs are expected to consider how GHG emissions associated with a proposed project will impact climate at a global and national level, involving both an assessment of the project's emissions against global climate objectives and in cumulation with other global projects, and an assessment against national objectives and targets, where appropriate.

Importantly, when considering impacts at a global level:

- Scope 3 emissions from a project should be assessed in relation to the current state of climate and global emissions-reductions pathways to determine their significance, rather than by comparing project emissions numerically against total global GHG emissions.
- An ES must consider the cumulative effects of the proposed project in conjunction with other relevant existing and planned projects, within a global context. This may involve using global-reduction pathways, or global oil and gas datasets and inventories. Given the reference to oil and gas datasets and inventories, and the existence of sector-specific emissions-reduction pathways, it is reasonable to assume that relevant projects are those within the oil and gas sector, although this is not explicitly stated.

If a developer wishes to use substitution to help contextualise scope 3 emissions, the developer should provide evidence to demonstrate that (i) hydrocarbons from the project will result in substitution of international hydrocarbon supplies into the UK and (ii) there is no other demand for the international hydrocarbon supplies substituted by the project. These high evidentiary thresholds, combined with the Guidance's stance that substitution cannot exclude emissions from assessment, may render such arguments largely ineffective. This marks a significant development, as substitution was expected to be a key issue in EIAs post-*Finch,* although such arguments may still weigh on the decision to grant approval.

Mitigation Measures

Where the assessment of GHG emissions identifies a likely significant adverse effect from a proposed project, the developer must consider suitable mitigation measures. For scope 3 emissions, such measures are expected to be limited as the developer is unlikely to have direct control over these emissions. The Guidance does not recommend or discount any specific mitigation measures for scope 3 emissions but emphasises that any proposals must not be speculative. Developers are expected to be accountable and responsible for mitigation measures and a delivery plan must be included in the ES.

OPRED (the Offshore Petroleum Regulator for Environment and Decommissioning) currently considers emissions removal measures to be the most appropriate means of mitigating likely significant effects from scope 3 emissions. The Guidance states that such measures must be transparent, easily verifiable at a project level, and permanent. It is not clear, in the context of scope 3 emissions, what emissions removal measures are envisaged.

While the Guidance states that "*the Government sees a clear and appropriate role for the responsible voluntary use of high integrity carbon credits by companies"*, OPRED's current view is that the purchase of carbon credits is unlikely to be an effective mitigation measure for the purposes of offshore oil and gas EIAs. In taking this view, OPRED notes the position set out in the UK Government's Principles for High Integrity Voluntary Carbon and Nature Markets (published 15 November 2024) ("**Principles**") that "*credits should only be used in addition to ambitious action within value chains, consistent with a science-aligned pathway to domestic and global climate and environmental goals*".

During consultation on the draft Guidance, some respondents noted that offsetting (including geological storage of equivalent carbon) was the only conceivable means of mitigating scope 3 emissions. As such, the current position on mitigation measures could, in practice, make it very difficult to obtain development consent for offshore oil and gas projects where scope 3 emissions are assessed as having a likely significant adverse effect. However, the Guidance also notes that the Government is still consulting on the implementation of the Principles, and OPRED's position on the use of carbon credits may therefore evolve. The Government's consultation response also notes that its removal standards are still being developed.

When does the Guidance apply?

The Guidance is intended to apply in three specific scenarios:

- Projects which require a mandatory ES, such as commercial oil and gas extraction, installations for the storage of oil or the capture or storage of carbon dioxide, and certain transportation pipelines, provided the relevant

thresholds are met (i.e. Schedule 1 projects). The Guidance should be applied when preparing the ES.

- Projects which require a screening direction to determine whether an ES is required (i.e. Schedule 2 projects). The Guidance should be considered when providing information on scope 3 emissions in the screening application, and subsequently applied if an ES is required.
- Where a consented project seeks to amend its daily production rate and such a change would alter the total amount of hydrocarbons produced over the project's lifetime, the ES or screening application should include an assessment of the resulting scope 3 emissions in accordance with the Guidance.

Beyond offshore oil and gas projects, it is likely that the Guidance will be treated as a material planning consideration in other development contexts, such as onshore oil and gas projects. Ultimately, it will be up to the courts to decide the materiality of this Guidance to other projects and this will depend on the specific circumstances.

The Guidance does not mean that offshore oil and gas projects will necessarily have to be refused development consent. Likewise, where the Guidance is considered material for other projects, it does not necessarily follow that consent will be refused unless the EIA adheres to it in full.

Does the Guidance provide clarity post-*Finch*?

While the Guidance sets out clear expectations for the content of ESs, it also recognises that:

- The significance of environmental effects must be considered on a case-by-case basis. It is therefore not intended to be prescriptive.
- Alternative approaches may be possible or even preferable, either now or as approaches and scientific understanding develop over time.
- A range of methodologies exist to estimate scope 3 emissions, and the Guidance does not require any one methodology to be used.

As a result, the Guidance may not provide the level of certainty that some developers in the oil and gas sector are seeking. It may also introduce additional complexity and cost for developers, particularly in relation to data requirements, modelling, and mitigation planning. The potential for legal challenge also remains where approvals are granted, especially where assessments are perceived to fall short of the expectations set out in the Guidance.

Following *Finch,* we highlighted the risk that the judgment could create uncertainty around whether other types of projects (e.g. transport infrastructure or industrial facilities) might also be required to assess downstream emissions. The Guidance is limited to offshore oil and gas projects and does not resolve this broader uncertainty. However, it does acknowledge that the legal reasoning in *Finch* may apply to other projects where downstream emissions are foreseeable and quantifiable. This leaves open the possibility of future litigation and regulatory reform, and a need for further guidance and/or case law in other sectors.

Next steps and remaining challenges

With the publication of the Guidance, the EIA process for offshore oil and gas production projects has now resumed, though the Government does not expect to make any decisions on applications submitted under the new Guidance until Autumn 2025 at the earliest.

While the Guidance provides clarity on various issues, key challenges remain:

- **Potential uncertainty for developers**: The absence of a mandated methodology provides flexibility but may lead to inconsistent approaches and increased scrutiny.
- **Increased cost and complexity**: Requirements to assess global cumulative effects and develop robust mitigation plans may increase the time and cost of the EIA process.
- **Increased risk of legal challenge**: Projects may face an increased risk of legal challenge over the adequacy of emissions estimates and evaluation, and mitigation measures.
- **Implications for other sectors**: It remains unclear whether similar requirements will apply to other industries.

If you would like to discuss the implications of this for your projects, please contact a member of the team.

Link to the Guidance: Supplementary guidance for assessing the effects of downstream scope 3 emissions

Link to the Consultation Response on the draft guidance: Government Response to the consultation on draft supplementary EIA guidance

CONTACTS

Nigel Howorth
Practice Area Leader

T +44 207006 4076
E nigel.howorth
@cliffordchance.com

Adam Hedley
Partner

T +44 207006 3381
E adam.hedley
@cliffordchance.com

Beatrice Bowles-Bray
Lawyer

T +44 207006 2465
E beatrice.bowles-bray
@cliffordchance.com

Kirsty souter
Senior Associate

T +44 207006 4178
E kirsty.souter
@cliffordchance.com

Katie Kempthorne
Senior Associate

T +44 207006 3143
E katie.kempthorne
@cliffordchance.com

Michael Coxall
Knowledge Director

T +44 207006 4315
E michael.coxall
@cliffordchance.com