



21 MAY 2009

## **RESPONSE DOCUMENT ON THE DEPARTMENT OF ENERGY AND CLIMATE CHANGE'S CONSULTATION ON THE TERM 'CARBON NEUTRAL': ITS DEFINITION AND RECOMMENDATIONS FOR GOOD PRACTICE**

### **INTRODUCTION**

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics.
3. UKELA Climate Change Working Party makes the following comments on the Consultation.

### **PART 4**

#### **QUESTION 1. IS IT APPROPRIATE FOR THE GOVERNMENT TO PRODUCE A DEFINITION OF THE TERM CARBON NEUTRAL AND RECOMMENDATIONS ON USING THE TERM? IF NOT, WHY NOT?**

It is appropriate for the two reasons implicit in the consultation document:

- (i) the Government uses the term itself and needs to give clarity as to what its own targets mean;
- (ii) the term is increasingly used by companies and individuals without any clear or common understanding of what the term means.

'Carbon neutral' is a nebulous term. Consumers will naturally assume that a product, service, company or activity described as 'carbon neutral' is genuinely beneficial for the environment (or at least benign and not harmful). If this turns out not to be the case, and all sorts of products and activities are described as carbon neutral, then, in addition to potential misrepresentation and possible trade misdescription, people will grow apathetic to the term and assume it is 'greenwash'.

It is valuable that consumers are given information about carbon impacts in order to make informed choices – provided that they can have confidence in the reliability of that information.

Promoting a common approach, at the very least, enables consumers to have something akin to a benchmark against which the difference between a representation and a misrepresentation can be assessed.

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**QUESTION 2. DO YOU AGREE WITH THE GOVERNMENT'S BROAD APPROACH? IF NOT, WHAT ALTERNATIVE WOULD YOU PROPOSE?**

The approach is too broad and does not go far enough to ensure that consumers are given sufficiently 'accessible' information to guide their choices.

There is clearly a balance to be drawn between promoting simplicity in the presentation of information and ensuring that the underlying methodology is sound and is capable of allowing comparisons to be made between products, services, etc. A traffic light system, for example, akin to that used for food labelling, could radically simplify the communication of information relevant to carbon footprint. The groundwork for such a scheme appears to have already been laid with the development of PAS 2050 methodology. However, for such a system to work in this context, it would need to be based on a universally applied methodology to assessment (including in terms of 'boundaries' – i.e. the extent to which the assessment looks up the supply chain and down into use and disposal).

Although some consumers are competent in assessing detailed information about a particular carbon footprint, most would be bewildered by the complexity of that information and would not possess broad enough knowledge of comparators. Consequently, the proposed broad approach – which does not appear to be advocating a common system of upstream (let alone downstream) assessment may lead to no less confusion – simply greater accuracy. Ensuring that information is accurate, without ensuring that it is clear and comparable, is unlikely to lead to any reduction in carbon emissions.

**PART 5**

**QUESTION 3. DO YOU AGREE THAT BASING THE MEASUREMENT OF EMISSIONS, INCLUDING RECOMMENDATIONS ON GOOD PRACTICE, ON THE GHG PROTOCOL IS APPROPRIATE? IF NOT, WHAT ALTERNATIVE(S) WOULD YOU PROPOSE?**

The GHG Protocol would make a good starting point that could be refined over time, as appropriate. In light of the issues raised in our response on question 2, Scope 3 appears to offer the greatest value.

**QUESTION 4. DO YOU AGREE THAT USERS OF THE TERM CARBON NEUTRAL SHOULD RETAIN FLEXIBILITY OVER EXACTLY WHICH EMISSIONS TO MEASURE? SHOULD ORGANISATIONS BE ABLE TO PURSUE CARBON NEUTRALITY ONLY FOR CERTAIN PARTS OF THE ORGANISATION?**

Organisations should be free to pursue carbon neutrality for certain parts of the business provided that they do not make misleading claims about their carbon credentials. Following Scope 3 of the GHG Protocol would appear to reduce the scope for misleading claims provided the part of a business making the claim would have to account for related activities 'outsourced' whether to another part of, or outside, the business group.

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**QUESTION 5. ARE THE PROPOSED RECOMMENDATIONS ON GOOD PRACTICE FOR MEASURING EMISSIONS CLEAR AND APPROPRIATE? ARE RECOMMENDATIONS NECESSARY?**

The recommendations are necessary, are reasonably clear and are a good starting point. They ought to be developed over time as measuring becomes easier and available for a greater variety of activities.

**QUESTION 6. DO YOU BELIEVE THAT USERS OF THE TERM SHOULD BE ABLE TO CHOOSE WHETHER TO MEASURE ALL KYOTO GHGS IN (CO<sub>2</sub>E) OR ONLY EMISSIONS OF CO<sub>2</sub>? OR SHOULD THE DEFINITION SPECIFY MEASUREMENT OF ALL GHGS?**

The full range of Kyoto greenhouse gases should be included in the definition of carbon neutral, because:

- (i) a consistent standard should be adopted by users of the term - a 'pick and choose' system is inappropriate, particularly when the term is used for branding purposes;
- (ii) this is in line with the Climate Change Act, the Kyoto Protocol and the UNFCCC; and
- (iii) the emphasis should be on reducing overall GHG emissions and this is necessary if the UK is to make deep emissions cuts.

**QUESTION 7. DO YOU BELIEVE THE TRANSPARENCY ELEMENTS ON MEASURING EMISSIONS TO BE CORRECT AND/OR SUFFICIENT?**

There should be one consistent and objective standard that applies to all organisations making these claims. The fact that the means, timescale and size of the footprint are made publicly available will not necessarily give consumers sufficient information on which to base their purchasing decisions. In order to inform consumers and enable informed choice, this requires consumers to have access to comparable information in relation to each purchasing option.

If the transparency requirements on measuring emissions are not binding on organisations which use the term, then they are not sufficient, and will not enable comparisons to be made.

**QUESTION 8. DO YOU AGREE THAT PAS 2050 (OR THE FULL LIFE CYCLE OF THE PRODUCT USING ISO 14044) SHOULD BE USED AS THE BASIS FOR CALCULATING THE CARBON FOOTPRINT OF PRODUCTS FOR CARBON NEUTRALITY PURPOSES? IF NOT, WHAT ALTERNATIVE(S) WOULD YOU PROPOSE?**

Agree. PAS 2050 appears to be a robust standard for measuring the carbon neutrality of products. But the Government should go farther and require companies to give consumers more information about the greenhouse gas intensity of all products – potentially, using the traffic light system outlined at 2.

**PART 6**

**QUESTION 9. DO YOU AGREE THAT EMISSIONS REDUCTIONS FORM A NECESSARY PART OF THE DEFINITION? IF NOT, WHY NOT?**

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Emissions reductions should form a necessary part of the definition, and this accords with common sense. Although a unit of CO<sub>2</sub> saved has the same climate change benefit wherever it occurs in the world, there may be a greater degree of confidence in the robustness of domestic emissions reductions. Emissions reductions at home show good carbon management and demonstrate that the UK is taking leadership on climate change.

**QUESTION 10. SHOULD THE GOVERNMENT DEFINITION AND/OR GOOD PRACTICE RECOMMENDATIONS SPECIFY A REDUCTION REQUIREMENT AND/OR TIMEFRAME FOR DELIVERY OF EMISSIONS REDUCTIONS? IF SO, WHAT WOULD YOU PROPOSE?**

Probably, yes, for the reason given at 9. Following the same logic, emissions reductions should probably account for a high percentage of the definition. There should also be a timeframe for delivery of additional emissions reductions. This would help organisations to plan and focus their efforts. However, different timeframes may be more or less suitable for different organisations depending on size/sector/etc.

**QUESTION 11. ARE THE RECOMMENDATIONS ON GOOD PRACTICE FOR REDUCING EMISSIONS CLEAR?**

For the reason given at 9, the proposal - to deliver an emissions reduction (without specifying a target or what measures should be used or a timeframe for delivery) - is too broad to be meaningful. On this basis, a company could claim to be carbon neutral even though it may have reduced emissions by less than 1% and offset the rest. Of course, a minimum percentage of domestic emissions reductions would avoid this.

If companies are making carbon neutral claims as part of marketing material, they should also be made to display information about the basis of that claim in a prominent place so that consumers are able to access it quickly and easily. The information should be presented plainly. It should not form part of 'the small print' in a hard-to-access part of the website.

**QUESTION 12. DO YOU AGREE THAT EMISSIONS REDUCTIONS CAN BE MEASURED IN EITHER ABSOLUTE OR RELATIVE TERMS? IF 'NO', WHAT WOULD YOU PREFER? IF 'YES', DO YOU SUPPORT THE USE OF THE RELATIVE MEASURES RECOMMENDED (PER UNIT OF TURNOVER, PER REVENUE EXPENDITURE AND PER FUNCTIONAL UNIT) OR WOULD YOU PROPOSE OTHER SPECIFIC MEASURES?**

The UK needs to make deep cuts in emissions. Therefore, the focus should be on making absolute cuts in emissions because, even if emissions are decreasing in relative terms, they may still be growing overall if organisations are expanding. However, the concept of relative cuts recognises, for example, that a successful company which is carbon efficient (in relative terms) may increase its market penetration even though its absolute emissions may rise. Overall, an environmental benefit may be gained the more efficient producer displaces products or services provided by a less efficient (in relative terms) competitor. Consequently, there is a need to recognise emissions per unit of output. By the same token, a company that is carbon inefficient should not be seen as environmentally preferable simply

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because absolute emissions have fallen where the reason is loss of market share and not increased efficiency.

In our view, there is merit in reporting both absolute and relative emissions.

**QUESTION 13. DO YOU BELIEVE THE TRANSPARENCY ELEMENTS ON REDUCING EMISSIONS TO BE CORRECT AND/OR SUFFICIENT?**

See comments above at 10 - 12.

**PART 7**

**QUESTION 14. DO YOU AGREE THAT CARBON OFFSETTING IS A FUNDAMENTAL ELEMENT OF ACHIEVING CARBON NEUTRAL STATUS?**

For most organisations, offsetting is currently essential for achieving carbon neutrality. The risk is that too heavy reliance on offsetting diverts attention away from the deep cuts that need to be made in the UK, sending a message that business as usual is acceptable provided that you pay a small sum of money. Therefore, there is clear benefit in including a minimum domestic reductions % (or maximum offsetting) – per our response to question 10.

**QUESTION 15. GIVEN THAT THE GOVERNMENT CURRENTLY ONLY FEELS ABLE TO VOUCH FOR THE QUALITY OF KYOTO-COMPLIANT CREDITS UNDER THE QUALITY ASSURANCE SCHEME, SHOULD THE DEFINITION ONLY INCLUDE THE USE OF SUCH CREDITS? OR WOULD YOU PROPOSE OTHER TYPES OF RESTRICTIONS ON THE TYPES OF CREDITS ALLOWED?**

There needs to be confidence in any offsetting allowed into the definition. The Quality Assurance scheme is one approach although currently restricted to compliance units. If the Quality Assurance scheme is used as the reference point, then, as the scheme considers and expands to good quality VERs, the carbon neutral definition should follow. Offsetting also provides an important opportunity to finance projects that contribute not only to GHG reductions but also broader sustainability (per the CDM process, although capable of improvement), including assisting those most likely to be worst affected by climate change, in the developing world.

**QUESTION 16. DO YOU AGREE THAT, BECAUSE OF THE DIFFICULTIES INHERENT WITH DOMESTIC OFFSETTING, SUCH OFFSETTING SHOULD NOT TEND TO BE PURSUED AS PART OF BECOMING CARBON NEUTRAL? IF NOT, WHY NOT? CAN YOU SUGGEST OTHER WAYS OF SUPPORTING AND ENCOURAGING VALUABLE DOMESTIC ACTION THAT DOES NOT QUALIFY AS CARBON OFFSETTING?**

See our response to 15. It seems logical that, if there is sufficient confidence in VERs (including domestic) to recognise them in the Quality Assurance scheme, they should be allowed into the carbon neutral definition.

**QUESTION 17. ARE THE DRAFT RECOMMENDATIONS ON GOOD PRACTICE FOR OFFSETTING CLEAR?**

See comments above re offsets.

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**QUESTION 18. DO YOU BELIEVE THE TRANSPARENCY ELEMENTS ON CARBON OFFSETTING TO BE CORRECT AND/OR SUFFICIENT?**

See comments above re offsets. Adopting the Quality Assurance reference point allows a degree of confidence in the compliance units or, in the future, VERs. The key is to ensure that whatever assurance scheme is referenced, it provides a high level of confidence in true additionality. There is clearly scope for improvement and a need for continuing work in this regard.

**PART 8**

**QUESTION 19. DO YOU BELIEVE THAT THE PROPOSED DEFINITION AND RECOMMENDATIONS CAN WORK IN PRACTICE?**

Yes, and it is appropriate that the Government take action now 'carbon neutral' claims are increasing common and increasingly confusing and unreliable. However, as described above, the current definition requires additional content in order to help consumers make informed judgements as to environmental claims.

**QUESTION 20. DO YOU BELIEVE THE GOVERNMENT SHOULD REGULATE THE USE OF THE TERM CARBON NEUTRAL? IF SO, WHY AND HOW? HOW COULD REGULATION BE ENFORCED?**

A regulated approach may be appropriate. It could be regulated by a Government body or an independent body. Alternatively, there could be a model similar to the Soil Association. The Soil Association is a UK membership body which certifies products as organic. The latter model seems preferable as it reduces the need for State involvement.

It is important that there is some kind of regulation or oversight/certification of the term when businesses use it for marketing reasons.

**QUESTION 21. DO YOU BELIEVE THAT THE GOVERNMENT SHOULD DEVELOP A DEFINITION OF CARBON NEUTRAL THAT WOULD ALLOW MORE DIRECT COMPARISON BETWEEN USES OF THE TERM? IF SO, WHAT MEANS OF DELIVERING THIS WOULD YOU PROPOSE?**

Yes, absolutely. Consumers should be able to make simple decisions based on the greenhouse gas intensity of the consequence of their decision.

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**QUESTION 22. DO YOU AGREE THAT USERS OF THE TERM CARBON NEUTRAL SHOULD RETAIN THE FLEXIBILITY TO DECIDE WHAT TYPE OF VERIFICATION IS APPLIED? OR SHOULD THE GOVERNMENT MAKE RECOMMENDATIONS ON EXTERNAL VERIFICATION? IF SO, WHAT SHOULD THEY BE?**

There should be an objective and rigorous verification process. Users of the term should not be able to decide what this is. See answer at 20. A UK membership body could be set up to monitor standards.

**QUESTION 23. IN ADDITION TO ANY GUIDANCE OFFERED BY GOVERNMENT UNDER THE CLIMATE CHANGE ACT LATER IN 2009, SHOULD GOVERNMENT MAKE RECOMMENDATIONS ON HOW TO COMMUNICATE CARBON NEUTRALITY STATEMENTS? OR ARE THE TRANSPARENCY RECOMMENDATIONS MADE IN PARTS 5, 6 AND 7 SUFFICIENT.**

Government should ensure that statements made relating to carbon neutrality are not misleading. Information as to what the claim is based on should be easily accessible, concise and drafted in plain English.

**QUESTION 24. SHOULD THE GOVERNMENT MAKE SPECIFIC RECOMMENDATIONS FOR GOOD PRACTICE ON REVIEWING CARBON NEUTRALITY STATUS? IF SO, WHAT WOULD YOU PROPOSE?**

Reviews should be carried out to ensure that a organisation claiming to be carbon neutral genuinely is carbon neutral. For example, the Soil Association inspects farms to test that they meet organic standards on an annual basis, spot checks and unannounced visits are also carried out. The same model could work for users of the term carbon neutral.

**QUESTION 25. IF YOU AGREE THAT THE GOVERNMENT SHOULD MAKE RECOMMENDATIONS ON CARBON NEUTRALITY, SHOULD THEY TEND TOWARDS GOOD PRACTICE OR BEST PRACTICE? HOW OFTEN SHOULD THE RECOMMENDATIONS BE REVIEWED?**

It would seem sensible to review the recommendations on an annual basis, with a view to improving standards over time.

**QUESTION 29. ALTHOUGH THE CARBON NEUTRAL TARGETS SET BY GOVERNMENT FOR ITS OWN PURPOSES ARE NOT THE SUBJECT OF THIS CONSULTATION, DO YOU AGREE THAT THE GOVERNMENT SHOULD APPLY THIS DEFINITION TO THOSE TARGETS? ARE THERE ANY OTHER ISSUES RELATING TO THOSE TARGETS FOR GOVERNMENT TO CONSIDER?**

Yes. It would seem sensible that the Government use the same standard, or a more rigorous standard.

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Thank you for letting us respond to the Department of Energy and Climate Change Consultation on Carbon Neutrality. We would be happy to be involved more in this consultation going forward.

Special thanks to Melanie Strickland for all her work on this response.

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