

Scope 3 Emissions Regulation of UK Upstream Petroleum Projects

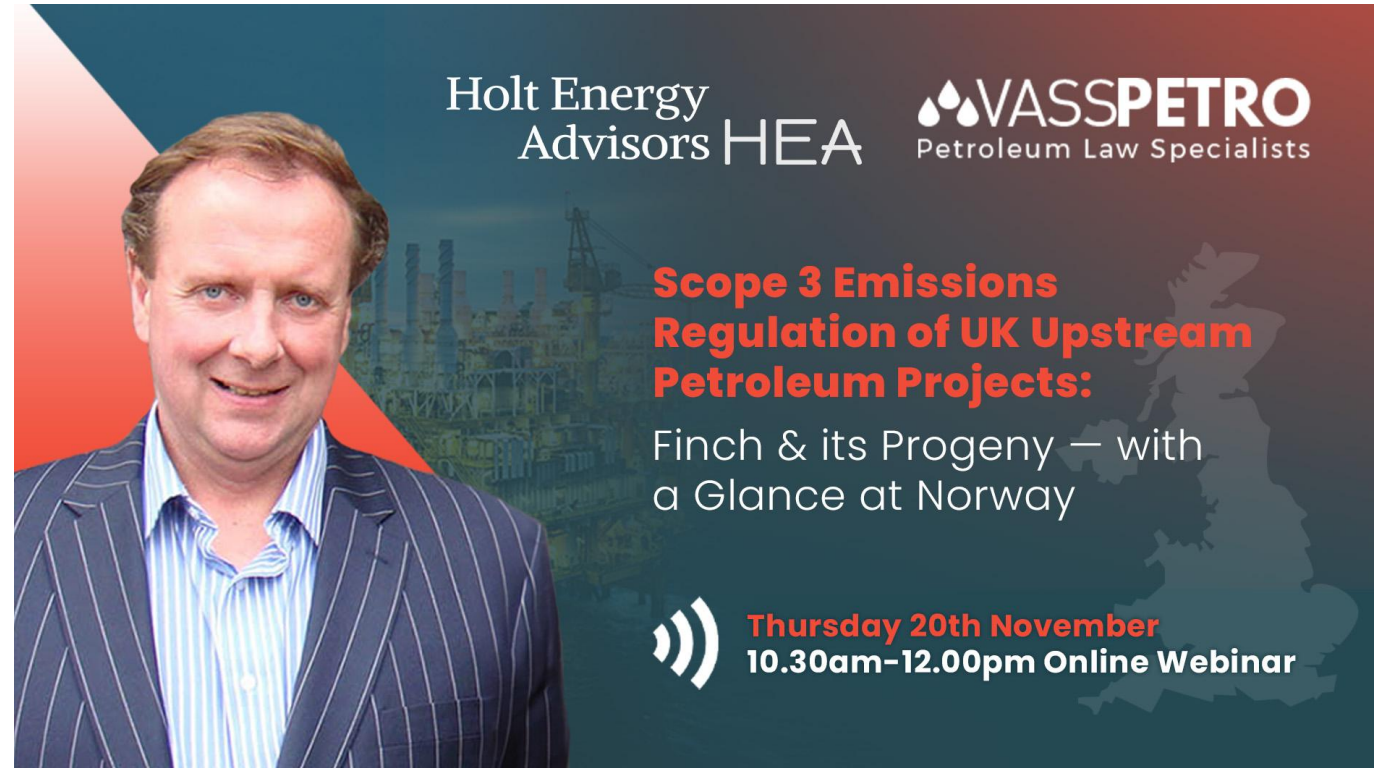
Finch & its Progeny – with a glance at Norway

Uisdean Vass, 20th November 2025

Housekeeping / Contact Details

- Zoom Events Webinar with Q&A at the end.
- A recording, copy of the slides and relevant paper will be circulated to attendees a few days after the event.
- Further information/ Get in touch:

enquiries@holtenergyadvisors.com




Holt Energy
Advisors HEA

VASSPETRO
Petroleum Law Specialists

**Scope 3 Emissions
Regulation of UK Upstream
Petroleum Projects:**

Finch & its Progeny — with
a Glance at Norway

 **Thursday 20th November**
10.30am–12.00pm Online Webinar

Commercial, Legal & Transaction Advisory

Holt Energy
Advisors HEA



LEGAL ADVISORY

HEA provide legal services to our clients which can be procured in combination or independently of HEA's commercial services. HEA legal services cover M&A, upstream contract advisory, petroleum regulations, supply chain and policy and legislation.



COMMERCIAL ADVISORY

HEA provide expert commercial advice to assets and projects helping originate, negotiate and execute key commercial agreements as well as with their ongoing management and administration to ensure commercial risks and opportunities are efficiently managed.



ACQUISITIONS, DIVESTMENTS & DUE DILIGENCE

Through our large global contact network of asset owners and market intelligence we can generate, screen and evaluate acquisition opportunities that meet your criteria and project manage divestments as well as project manage buy and sell side deals and conduct commercial due diligence.



ENERGY SALES & MANAGEMENT

We offer a range of hydrocarbon and energy sales consulting services from optimising day-to-day sales related operational processes to providing guidance for hedging strategies as well as managing sales tendering processes.

HEA can conduct independent commercial reviews of existing sales arrangements and due diligence reviews of offtake agreements associated with any potential asset acquisitions.



ECONOMIC ANALYSIS

The HEA team have extensive economic modelling experience for both petroleum and renewables projects gained in operating companies and the financial services and consulting sectors.

We can provide modelling services based in Excel or proprietary models including Merak PEEP. In addition, we can undertake independent assurance / assumption verification.



STRATEGY CONSULTING

We help our clients when they have difficult decisions to make or a complex problem to solve. We examine their issues from an external and independent point of view without any inherent bias to identify what the critical issues are before considering what the range of possible options are and most importantly how to rank those options. We have assisted with new country entries, opportunity screening and strategy modelling.



Business Area Coverage

	ACQUISITIONS	E&A / PROSPECTING	PRE-DEVELOPMENT	DEVELOPMENT	OPERATION	DECOMISSIONING
ACQUISITIONS		ACQUISITIONS – SEARCH AND SCREEN, BID & AUCTION SUPPORT				
DIVESTMENTS		FARM DOWN/OUT	DIVESTMENT SERVICES / PORTFOLIO MANAGEMENT			
DUE DILIGENCE	COMMERCIAL DUE DILIGENCE – RED FLAG REVIEW, DETAILED DUE DILIGENCE – CORPORATE/ASSET LEVEL					
ENERGY SALES & MARKETING	MARKETS, PRICING		COMMERCIALISATION PLANS, SALES TENDERS, SALES AGREEMENTS, TRANSPORTATION & PROCESSING MANAGEMENT & COMMERCIAL OPERATIONS, DUE DILIGENCE			
COMMERCIAL ADVISORY	DUE DILIGENCE	JOAs, PARTNERSHIPS, DEVELOPMENT OPTION	COMMERCIALISATION & NEGOTIATION	COMMERCIAL MANAGEMENT & OPTIMISATION & RISK MITIGATION		
ECONOMIC ANALYSIS	VALUATION, PROJECT FINANCE SUPPORT	ECONOMICS & FISCAL TERMS	VALUATION, CASH FLOW MODELLING, ECONOMICS, INCREMENTAL ASSET DECISIONS, TAX PLANNING, PORTFOLIO MODELLING			ECONOMIC LIMIT & DECOM SECURITY
LEGAL	M&A, FARMOUTS	UPSTREAM CONTRACT ADVISORY, PETROLEUM REGULATIONS, SUPPLY CHAIN, POLICY AND LEGISLATION				
STRATEGIC CONSULTING	COUNTRY/ AREA ENTRY, OPPORTUNITY IDENTIFICATION, SCREENING, BID ROUNDS		ASSET/HUB OPTIMISATION, PORTFOLIO MANAGEMENT, PARTNERING, JV MANAGEMENT, FINANCING OPTIONS , DISPUTES			

- Two distinct UK oil and gas regulatory systems exist. The Territorial and Continental Shelf being the UKCS, and the land and Internal Sea being onshore. There is no upstream action in Scotland, Northern Ireland or Wales. But there is an active onshore jurisdiction in England with very small production. Onshore England, however, has significant potential especially for unconventional gas.
- The two main offshore regulators are the NSTA and OPRED, an agency of the DESNZ. Offshore field developments must be approved by both NSTA and OPRED.
- In England, NSTA has a major regulatory role onshore, but field developments are approved by the relevant County Councils.

- Directive 2011/92/EU as amended by Directive 2014/52/EU (“**the EU Directive**”)
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571) (“**the Onshore Regulation**”)
- Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment Regulations 2020/1497) (“**the Offshore Regulation**”)

Finch in a Nutshell & EIA Basics

- Simply put, the Supreme Court in Finch held that an oil company seeking to develop a field must state the volume and climate effect of its downstream CO₂ emissions.
- Under the EU Directive, an EIA is required for certain petroleum projects where the daily productive amount is estimated to exceed 500 tonnes of oil or 500,000 cubic metres of gas. Onshore Regulations Schedule 1(14). Horse Hill was a qualifying project.
- The purpose of an EIA is **“to ensure that the environmental impact of a project is exposed to public debate and considered in the decision-making process”**. Finch, para 3. Primarily procedural.
- An EIA must describe **“the likely significant effects of the development on the environment resulting from ... (f) the impact of the project on climate..”** The **“likely significant effects”** includes **“the direct and any indirect [effects] ..”** Onshore Regulations, Schedule 4 (5).
- The decision-maker can still approve a project with “significant effects”, but it must “have regard” to such effects, and its decision must be rational. This is not a very high standard.

- Finch v Surrey County Council (High Court, Court of Appeals and Supreme Court)
- Rosebank/Jackdaw (Outer House, Court of Session)
- EFTA decision in Norway v Greenpeace
- Oslo Court of Appeal's decision in Norway v Greenpeace (14 Nov. 2025)
- Danish Energy Board of Appeal's decision in Hejre Field Case (11 Nov. 2025)

The GHG Protocol

- Scope 1 Emissions
- Scope 2 Emissions
- Scope 3 Emissions
- See also Finch, paras 39 and 40

Case History of Finch

- On 11 Sept. 2019, SCC approved a field development programme (**FDP**) for Horse Hill oilfield which had statements of Scope 1 and 2 emissions in its EIA, but no statement of Scope 3 emissions.
- Finch brought suit on the alleged illegality of the EIA for lack of a statement of Scope 3 emissions.
- In December 2020, the High Court per Justice Holgate (**[2020] EWHC 3566**) dismissed the claim as a matter of law, because Scope 3 emissions with their global warming effect could not be described in law as a “direct or indirect” effect of the project. Scope 3 emissions were too far removed from the project and depended on various subsequent downstream decisions.
- Finch appealed to the Court of Appeal (**[2022] EWCA Civ. 187**) in which her claim was again dismissed. But the 2-1 majority rejected Holgate J’s reasoning, finding instead that it was within the discretion of SCC to determine whether Scope 3 emissions could amount to being an “indirect effect”.
- On 20 June 2024, the UK Supreme Court reversed the Court of Appeal on a 3-2 majority, and entered judgement for Finch, the appellant (**[2024]UKSC 20**). **The opinion of the majority was delivered by Lord Leggatt, and the dissent by Lord Sales.**

Brief Summary of Supreme Court Decision

- The word “environment”, which is undefined, can be construed to cover the whole world. Finch, paras 93, 96 and 97.
- **Because ALL produced petroleum will inevitably be burnt, the resulting CO₂ will certainly pass into the atmosphere and cause global warming. Finch, paras 2, 7, 44, 79, 80, 85, 90, 103, 105, 110, 118, 120, 123, 134, 135, 139, 162 and 166.**
- It is not at all relevant where in the world the Scope 3 emissions accrue. Finch, paras 93 & 97.
- As a matter of legal causation, the production of petroleum at the wellhead is both a necessary and sufficient condition for ultimate global warming and no decisions downstream have any relevance. Finch, paras 80 and 135.
- There must be a uniform rule on Scope 3 emissions for all qualifying projects. Finch, para. 133.
- It is easy to figure out what the volume of the Scope 3 emissions will be. Finch, paras 7, 81 and 127.
- In the case of petroleum extraction, there is no way for the developer to “avoid or reduce the combustion effects and their impact on climate”. Finch, para. 105.
- “Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere”. Finch, para. 2. Ruling out the “substitution” argument.

Guidance on Finch Implementation

- Reaction of OPRED to Finch was to consult on implementation guidance for UKCS projects. Three important documents:
 - Environmental Impact Assessment (EIA) - Assessing effects of scope 3 emissions on climate (October 2024). (**Draft Supplementary Guidance**)
 - Environmental Impact Assessment – Consultation on Draft Supplementary Guidance (**Consultation Document**) (October 2024)
 - Environmental Impact Assessment (EIA) - Assessing effects of downstream scope 3 emissions on climate (**Scope 3 Guidance**) (June 2025)

3 Minds in Two Countries.....

.....focusing on the same legislative problems

- First, Finch
- Second, Scope 3 Guidance (OPRED)
- Third, EFTA court.
- There are major differences between the three.

- On 29 January 2025, the decision of the Outer House of Session (Lord Ericht) issued in the Rosebank and Jackdaw cases (“**Rosebank**”) ([2024]) CSOH 10.
- FDPs for both fields had been approved before the Supreme Court’s decision in Finch. There had been no statement of Scope 3 emissions in the relevant EIAs.
- The field developments had begun but were not finished when Finch issued in June 2024. The FDPs were clearly illegal.
- Lord Ericht, in an important administrative law decision, decided to suspend the quashing of permits to develop until OPRED could rule on new EIAs with the Scope 3 emissions data added.

The Importance of being a Project

- In any analysis of Finch, we must always have in mind that each qualifying project needs its own totally specific FDP and EIA.
- We are not talking about a country.
- We are not talking about an industry.
- We are ONLY talking about the “likely significant effect” of each discrete project.
- There is one exception to this (cumulation) which we will talk about later.
- Also remember that the EU Directive was written to apply to ALL significant environmental effects and not merely those associated with climate change.

Critique of Finch – Flawed Causation - 1

- In Finch, the oil company stipulated that all oil production would be refined and that all of this would be burned for energy.
- “... according to the Court of Appeal ... decisions made downstream would determine how much of the oil would end up being combusted. If true, that might make it impossible to assess what the likely quantity of combustions would be. But it is not true ... It is common ground that all of the oil would be **combusted**”. Finch, para 135. And see also: “**The oil from the well site will not be used in the creation of a different type of object ...**” Finch, para. 123.
- Lord Leggatt forgot about the petrochemical industry.
- Compare Scope 3 Guidance, page 9 (“**A developer may choose to present a scenario(s) for non-combustion use of hydrocarbons ...**”). The same point was agreed in the EFTA case, paras 86 – 89.

Critique of Finch – Flawed Causation - 2

- As a general rule of thumb, about 20 to 25% of produced hydrocarbons as used for petrochemicals, many in the natural gas to natural gas liquid range.
- But any given project could have a much higher (or even 100%) percentage dedicated to petrochemical use.
- And a further problem is that the licensee applying for FDP may have no idea of where its hydrocarbons are going in any case.
- And a further problem, is that a future licensee may change the use profile of its hydrocarbons.
- **Therefore, it is not possible to have a single Scope 3 rule for qualifying projects.**

Critique of Finch – Flawed Causation - 3

- Lord Leggatt also repeatedly insisted that “... once oil is extracted from the ground, the carbon within it will sooner or later be released into the atmosphere as carbon dioxide and so will contribute to global warming”. Finch, para. 2.
- It is common knowledge that the determined policy of recent UK governments (Tory and Labour) and that of many other countries is to institute Carbon Capture & Storage projects which will sequester CO₂ in the subsoil.
- In future this is another unknowable so further undermining the causation holding of Finch.

The Significance of being “Significant” - 1

- There seems no reason why the word “environment” should not be interpreted expansively to cover the whole world.
- But clearly “environment” can also refer to the limited local environment.
- A “significant effect” must relate to its natural environment.
- GHGs have no local effect, only a worldwide effect. Finch, para. 97.
- Thus, the “significant effect” of the GHGs to be released by an oilfield must relate to the worldwide climate.

The Significance of being “Significant” - 2

- Lord Leggatt fully accepted that it could have been argued that the Scope 3 emissions from Horse Hill oilfield might not have been considered to be “significant”, and hence irrelevant, but this argument was never made. Finch, para. 138.
- It is hard to see how the tiny emissions from Horse Hill could ever have had a “significant effect” on the worldwide climate.
- In the Rosebank case, an expert for Greenpeace estimated that the combined total production from Rosebank and Jackdaw would result in a global warming of some 0.00006345 Celsius. Rosebank, para. 19. Nobody would ever be able to notice this change.
- Scope 3 Guidance puts the problem rather directly: **“OPRED’s current view is that characterising scope 3 emissions from a project solely in numeric terms against global GHG emissions would not on its own provide a meaningful expression of the global effect of those scope 3 emissions because of the obvious difference in scale between individual projects and global emissions levels”**. Scope 3 Guidance, page 12.
- Ingenious approach of EFTA court. Just because a project is qualifying means that its emissions “must” be significant. EFTA Case paras 92 and 93.

How to cumulate “cumulative” effects - 1

- According to Offshore Regulations, Schedule 6, para. 4(e) the “**likely significant effects of the project on the environment**” must include a “**cumulation of effects with other existing or approved projects,**”.
- This issue was not considered in Finch.
- The Regulations say nothing about how to construe “cumulation”.
- There are only three ways to construe the language: (a) the cumulation is strictly local; (b) the cumulation is national or jurisdictional; or (c) the cumulation is worldwide.

How to cumulate “cumulative” effects - 2

- The initial approach of OPRED in the **Draft Supplementary Guidance** (cited above) was give a localist example: “if a ... [new oilfield] was being tied back to an existing oil and gas project [Scope 3 emissions would be cumulated] ...” See DSG, page 9.
- But the **Scope 3 Guidance** changes tack: “Given the global effect of GHG emissions, the ES must consider the cumulative effects of the proposed project with other and existing projects, in a global context”. Scope 3 Guidance, page 13.
- The problem is that the Offshore Regulations define the word “project” and “project” can essentially only be a qualifying project in the UKCS. Offshore Regulation, Reg 3 (definition of “**project**”)

Big, Medium and Little Blobs of CO₂!

- The GHG which results from burning hydrocarbons is CO₂.
- All additional CO₂ has a global effect.
- The larger the field the more CO₂, always assuming that the hydrocarbons are burnt and that the emissions are not sequestered.
- So how does a regulator discriminate between fields for this purpose?
- Why reject a 10x field if you are willing to approve 10 1x fields?

The Substitution Argument

- What about the argument that if Horse Hill failed to produce petroleum, the refinery would simply obtain the oil elsewhere?
- Finch rejected this argument simply by reference to the UNEP 2019 Production Gap Report. Finch, para. 2.
- Scope 3 Guidance follows Finch in this respect, citing also the Whitehaven Coal case. Scope 3 Guidance, page 7.
- The EFTA Case, however, agreed that substitution may take place as Norway argued, but that did not affect the obligation to quantify the Scope 3 emissions of the project at hand. EFTA Case, para. 95.

Maximising Economic Recovery (MER)- 1

- UKCS petroleum licensees are bound by the MER statutory obligation, grounded in the Infrastructure Act 2015, the Energy Act 2016 and the MER Strategy of 2021.
- Many UKCS Licences (but not all) also have mandatory work commitments.
- This formidable array of legal obligations requires affirmative investment action, including spending to maximise economic recovery.
- The effect of Finch is to give regulators the discretion to reject field applications based on the “significant” environmental effects arising from Scope 3 emissions.
- The main purpose of produced hydrocarbons is for burning. Thus, the offshore effect of the conjunction of MER and Finch is that licensees can be forced into heavily investing to discover hydrocarbons for energy, only to be refused the option of producing the hydrocarbons because the hydrocarbons will be used to generate energy!
- Arguably, this is a legislative conflict.

Maximising Economic Recovery (MER)- 2

- The issue did not directly arise in Finch because MER does not apply in the onshore jurisdiction. Lord Leggatt did, however, note the existence of MER and the fact that British law favours petroleum production. Finch, para. 145.
- By the time that Rosebank was argued it was too late to raise the MER issue directly because Finch was controlling.

So what do you do with the data anyway?

- In the dissenting judgement, Lord Sales asked the very pertinent question: **“It is difficult to see what in practical terms, a local planning authority is supposed to do with ... [the Scope 3 data] ... Other than to say that in its opinion they are so great that the project ought not to proceed at all...”** Finch, para. 258.
- But this is not realistic in my view.
- County Councils and national regulators will be guided by their political masters, and it will be very difficult to overturn their decisions based on the irrationality standard of Wednesbury. **The final decisions will be political after all.**

The Policy of the Elected Government

LABOUR MANIFESTO 2024, PAGE 52/STATEMENT OF CHANCELLOR

- “We will embrace the future of energy production and storage which will make use of existing offshore infrastructure and the skills of our offshore workforce. **Labour will not revoke existing licences and we will partner with business and workers to manage our existing fields for the entirety of their lifespan. Crucially, oil and gas production in the North Sea will be with us for decades to come, and the North Sea will be managed in a way that does not jeopardise jobs.** And our offshore workers will lead the world in the industries of the future. We will not issue new licences to explore new fields because they will not take a penny off bills, cannot make us energy secure, and will only accelerate the worsening climate crisis”.
- In March 2025 Rachel Reeves confirmed that Rosebank and Jackdaw will go ahead. See <https://www.agcc.co.uk/news-article/chancellor-says-jackdaw-and-rosebank-will-go-ahead>

Please submit questions via the Q&A Function.

Holt Energy Advisors HEA

www.holtenergyadvisors.com

enquiries@holtenergyadvisors.com

Tel +44 (0) 203 916 0101

Fax +44 (0) 844 357 6895

Acquisitions and Divestments (A&D) | Commercial & Legal Consulting | Economic Analysis | Energy Sales & Management | Strategy