
Guidance notes for industry (in Scotland)
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1. Introduction

1.1 Sections 105 to 114 of the Energy Act 2004 (as amended by the Energy Act 2008 and the Scotland Act 2016) ("the Energy Act") contain statutory requirements in relation to the decommissioning of offshore renewable energy installations and their related electricity lines. Under the terms of the Energy Act Scottish Ministers may require a person who is responsible for these installations or lines in Scottish Waters or in a Scottish part of a Renewable Energy Zone to prepare (and eventually carry out) a costed decommissioning programme for submission to and approval by Scottish Ministers.

1.2 Scottish Ministers have developed this guidance in order to assist developers / owners in understanding their obligations under the Energy Act. The guidance covers the following:

   a) The geographical scope of the decommissioning requirements as they apply in Scotland and the categories of installation / lines included within the Energy Act;

   b) The process for submitting, getting approval for, reviewing and modifying a decommissioning programme submitted in accordance with the Energy Act;

   c) The expected content of decommissioning programmes;

   d) Decommissioning standards – the general requirement to remove installations and lines and any exceptions from this general requirement; how they are to be removed; how waste is to be dealt with; notification and marking of any remains; and monitoring, maintenance and management of the site after decommissioning;

   e) Financial Security – the need for financial security and the forms of financial security which are acceptable;

   f) Residual liability – the residual liability which remains with the owners following decommissioning; and

   g) Industry cooperation and collaboration – the value of industry cooperation and collaboration at the decommissioning stage.

1.3 This guidance should be followed by developers and owners of offshore renewable energy installations and their related electric lines in Scottish waters or in Scottish Waters.
a Scottish part of the Renewable Energy Zone², to which the Energy Act applies. The guidance may also be of interest to other stakeholders, including environmental organisations, navigational interests, the fishing industry and other users of the marine environment.

1.4 This is the first version of this guidance prepared on behalf of Scottish Ministers since the Scotland Act 2016 transferred responsibility for considering offshore renewable energy decommissioning cases in Scottish Waters to the Scottish Ministers. Future updates of this guidance will be carried out as necessary. Any comments on the content of this guidance, including suggestions for improving it, should be sent to:

Marine and Offshore Renewable Energy Branch
Marine Scotland
4th Floor
Atlantic Quay
Glasgow G2 8LU

Email: oredecom@gov.scot

2. How to Use This Guidance

2.1 This guidance has been prepared for developers and owners seeking to deploy renewable energy devices in Scottish waters or in a Scottish part of a Renewable Energy Zone, to explain to them their decommissioning obligations under the statutory decommissioning scheme in the Energy Act.

2.2 The guidance can be used to:

a) decide whether or not a particular installation is included within the scope of the scheme. Chapter 4 (Scope of the Scottish decommissioning scheme) sets out which installations are included. For those installations which are not included in the scheme, this guidance is not directly relevant. However, developers and owners of these installations can still expect to have decommissioning obligations, for example in the terms of any lease with the Crown Estate Scotland or other relevant landowner;

b) understand the processes which must be followed for submission, approval and review of decommissioning programmes (as set out in Chapter 5); and

c) understand what must be included in a decommissioning programme submitted under the scheme. Chapter 6 provides an outline template for decommissioning programmes. The measures proposed in the decommissioning programme should be in line with the standards set out in Chapter 7. Cost estimates of decommissioning should be as set out in Chapter 8 and the financial security proposed in the decommissioning programme should be in line with the principles set out in Chapter 9.
3. Policy and Legislative Framework

Rationale for Decommissioning Scheme

3.1 The decommissioning provisions in the Energy Act reflect the UK Government’s view — taking into account international obligations — that a person who constructs, extends, operates or uses an installation (the “responsible person”) should be responsible for ensuring that the installation is decommissioned at the end of its useful life and should be responsible for meeting the costs of decommissioning, (the “polluter pays” principle).

3.2 The UK Government introduced a legal obligation on developers and owners of offshore renewable energy installations to prepare and carry out a decommissioning programme, and to put financial security in place, through the Energy Act. The aim being to reduce the risk of companies defaulting on their decommissioning liabilities.

3.3 Changes to the Energy Act, brought about by the Scotland Act 2016, provide that the Scottish Ministers, rather than the UK Government Ministers, will exercise functions in relation to the decommissioning of renewable energy installations which are located either wholly in Scottish Waters or in Scottish parts of a Renewable Energy Zone.

3.4 The aim is that, whilst the decommissioning scheme in Scotland may differ from that of the rest of the UK, it will not differ so far that it puts Scottish developers at a competitive advantage or disadvantage. Scottish Ministers wish to implement the scheme in such a way that it does not hinder the development of offshore renewable energy installations, whilst at the same time ensuring that the tax payer is protected against having to organise and fund decommissioning.

Policy Approach

3.5 The Scottish Ministers’ approach is to seek decommissioning solutions which are consistent with our international obligations, as well as UK and Scottish legislation, and which have a proper regard for safety, the environment, other legitimate uses of the sea and economic considerations.

3.6 The Scottish Ministers aim to ensure via publication of this guidance that interested parties are given clear information on the operation of the decommissioning scheme. The intention is that processes for approving decommissioning programmes should be open and transparent, although it is recognised that some financial security information will require to be treated in confidence. Decisions should be taken in an efficient manner, placing as little administrative burden on the parties involved, whilst protecting the public purse.

International Obligations

3.7 International obligations to decommission disused installations have their origins in the United Nations Convention on the Law of the Sea (UNCLOS), 1982. This requires abandoned or disused installations or structures to be removed to...
ensure safety of navigation, taking into account generally accepted international standards\(^3\). International Maritime Organisation (IMO) standards were adopted in 1989.

3.8 Relevant work has also been undertaken under the OSPAR Convention, which guides international cooperation on the protection of the marine environment of the North-East Atlantic. OSPAR Guidance on Environmental Consideration for Offshore Wind Farm development (2008)\(^4\) incorporates ideas on the decommissioning of wind farms in the marine environment.

3.9 This guidance treats the international conventions under UNCLOS and OSPAR as applying both in territorial and internal waters. (‘Internal waters’ refers to waters around estuaries and islands, which may be classified as ‘internal’).\(^5\)

3.10 The International Maritime Organisation’s standards set out that any infrastructure placed in the marine environment should be designed with full removal in mind, and full removal will be the default position for an Offshore Renewable Energy Installation (“OREI”) unless there are strong reasons for any exception. The Scottish Ministers expect decommissioning programmes to provide costings based on total removal. Where, in exceptional circumstances, any infrastructure is to be left in place, costings should be given for both scenarios.

Decommissioning Provisions in the Energy Act (as Amended)

3.11 The key decommissioning provisions in the Energy Act (Sections 105 to 114), are explained in Annex A. In summary, Scottish Ministers have:

- the discretionary power to serve a notice on the responsible person requiring submission of a costed decommissioning programme, including any financial security provisions which the responsible person proposes to provide;
- the power to approve the decommissioning programmes with or without modifications or conditions or, (where the Scottish Ministers consider such programmes to be inadequate);
- the power to reject the decommissioning programme.

3.12 Where the Scottish Ministers reject a decommissioning programme, they may prepare an alternative decommissioning programme themselves and recover the costs of preparing such programmes from the responsible person. The Scottish Ministers are required to review decommissioning programmes from time to time, and have the power to make regulations relating to the decommissioning of renewable energy installations and related electric lines.

Role of the Crown Estate Scotland

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\(^3\) Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone, IMO, 19 October 1989

\(^4\) Guidance on environmental considerations for the development of offshore wind farms
http://www.ospar.org/documents?id=32631

\(^5\) A map showing internal waters, territorial waters and the Renewable Energy Zone is at
3.13 The Scottish Ministers and the Crown Estate Scotland will work together to avoid duplicating decommissioning requirements imposed on developers under the Energy Act. The Scottish Ministers have agreed with Crown Estate Scotland that developers assets covered by statutory decommissioning requirements will only need to prepare one statutory decommissioning programme, which will be submitted to Scottish Ministers.

3.14 Developers covered by the decommissioning requirements of the Energy Act will only need to provide financial security required by the Scottish Ministers and will not need to provide financial security for decommissioning of those relevant assets to the Crown Estate Scotland. Crown Estate Scotland may have additional financial requirements for decommissioning for assets outside the scope of the Energy Act, residual liability issues, third party claims and consequential loss.

3.15 The Scottish Ministers will consult Crown Estate Scotland on decommissioning programmes submitted by developers, and on any proposed modifications to approved programmes, and take due account of the advice of the Crown Estate Scotland.

Compliance with Other Relevant Legislation

3.16 Decommissioning activities will need to comply with all relevant legislation at the time they are undertaken. Developers and owners are responsible for verifying their decommissioning programmes against current legislation.

Finance and Constitution Committee

3.17 One of the roles of the Scottish Parliament’s Finance and Constitution Committee is to scrutinise matters relating to or affecting the revenue or expenditure of the Scottish Administration. Decommissioning programmes may require to be notified to the Committee or sent to them for scrutiny.
4. **Scope of the Decommissioning Requirements in Scotland**

**Geographical Scope**

4.1 The geographical scope of the decommissioning scheme is between the mean low water mark and the seaward limits of the territorial sea, thereby including internal coastal waters and territorial waters) and in Scottish parts of a Renewable Energy Zone constructed (above the initial laying of cabling in advance of construction).

4.2 The UK Government has produced separate guidance to cover decommissioning of installations in English and Welsh waters.

4.3 Responsibility for the decommissioning of cross-border sites will generally be divided between Scottish Ministers and the Secretary of State – each retaining the functions of the Energy Act in respect of the part of the site situated in the waters over which they have responsibility. Each will consult with the other administration on the terms of a draft decommissioning programme in respect of their part of a cross-border site. However, the Secretary of State and Scottish Ministers may agree, in respect of a particular site, that the Scottish Ministers take on the functions of the Energy Act for the whole site.

**Categories of Installation Included in the Scope**

4.4 The decommissioning requirements, as set out in the Energy Act, apply to “relevant objects”, which are defined in Section 105(10) of the Energy Act as including renewable energy installations and their related electric lines. The precise definition of “renewable energy installation” is set out in section 104(3), but inter alia includes offshore installations used for purposes connected with the production of energy from water or winds. The term “offshore installations” is defined in section 104(4) and refers to those installations situated in waters where they:

- a) permanently rest on, or are permanently attached to, the bed of the waters; and
- b) are not connected with dry land by a permanent structure providing access at all times for all purposes.

4.5 This guidance applies to all new offshore renewable energy installations in Scottish waters which fall within the definition above (whatever their generating capacity and whether they are commercial or demonstration devices). For legacy

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6 A cross-border site is where the site of an OREI, or an OREI extension, straddles the marine border between Scottish Waters and other international waters of the UK or, in respect of a Renewable Energy Zone, the marine border between that part over which the Scottish Ministers have functions and the rest of the zone.

7 These purposes are set out in section 104(5) of the Energy Act 2004: (a) the transmission, distribution and supply of electricity generated using water or winds; and (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both.
installations the Scottish Ministers have a memorandum of understanding with BEIS. This sets out the practical arrangements for the transfer of the Secretary of State’s functions under the Energy Act.

Inter-tidal Zone

4.6 The decommissioning requirements, set out in the Energy Act, do not cover the inter-tidal zone (the area of the shore between the high and low tide water marks). However, decommissioning of any infrastructure in the inter-tidal zone should be carried out in accordance with any removal conditions attached to a Marine Licence issued under the Marine (Scotland) Act 2010.

Offshore Renewable Energy Test Centres

4.7 Test centres should submit decommissioning programmes for their own central infrastructure. These decommissioning programmes should set out how they will ensure that the overall site is returned to its natural state at the end of the test centres’ operation and how they will enforce the decommissioning programmes of their tenants. Scottish Ministers do not expect test centre decommissioning programmes to be updated each time a project is installed / decommissioned, this is the responsibility of individual tenants. Scottish Ministers will only require appropriate financial securities for test centre operators to cover centrally owned infrastructure rather than that of their tenants. Securities should be reviewed and updated as per section 5 of this guidance.

Test Centre Tenants

4.8 Scottish Ministers expect that tenants within offshore renewable energy test centres in Scotland must produce their own decommissioning programmes for the approval of Scottish Ministers.

4.9 Test centre tenants must provide Scottish Ministers with appropriate financial security to enable decommissioning of the assets at the end of the operating period in line with the relevant marine licence.

4.10 Developers wishing to deploy their assets at a test centre should engage with Scottish Ministers on this matter at the earliest possible opportunity. Scottish Ministers would expect securities to be in place before the start of any deployment.

4.11 Where financial security is not sufficient or has not been put in place, Scottish Ministers will expect test centre operators to step in and pay for the removal of any assets on its site at the end of the operation period.

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5. Submission, approval and review of decommissioning programmes

Overall Approach

5.1 The intention is that the process leading to the approval of a decommissioning programme should be proportionate, transparent and subject to consultation. It should also take account of the need for modification and review, particularly where considerable time is expected to pass between the time of approval of a decommissioning programme and it ultimately being carried out.

5.2 The aim is, as far as possible, for Scottish Ministers to provide a “one stop shop” in relation to decommissioning. However, there may be occasions when developers will need to enter into a separate dialogue with individual Government Departments or their Agencies or with other bodies (for example, Crown Estate Scotland and Statutory Nature Conservation bodies) if specific matters relating to their areas of responsibility arise. Scottish Ministers reserve the right to request independent technical advice on the draft decommissioning programme.

5.3 For developments wholly in an area of Scottish Waters or an area of waters in a Scottish part of the Renewable Energy Zone, the process in a typical case is expected to be as set out in Table 1 below:

<table>
<thead>
<tr>
<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
<th>Stage 4</th>
<th>Stage 5</th>
<th>Stage 6</th>
<th>Stage 7</th>
<th>Stage 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial discussion between developer and Scottish Ministers</td>
<td>Issue of s.105 notice by the Scottish Ministers requiring a decommissioning programme</td>
<td>Detailed discussions; submission and consideration of a draft programme (including proposed financial security measures)</td>
<td>Consultation with interested parties;</td>
<td>Formal submission of a programme for approval under the Energy Act</td>
<td>Reviews and modifications of decommissioning programme (and any financial security); review or completion of decommissioning Appropriate Assessment (where necessary)</td>
<td>Developer Undertakes approved decommissioning programme</td>
<td>Monitoring of site and report on decommissioning outcomes</td>
</tr>
</tbody>
</table>

5.4 A more detailed flowchart is included at Annex B, setting out how the process of obtaining an approved decommissioning programme will operate in practice.

Stage 1: Preliminary Discussions

5.5 Scottish Ministers would encourage developers to start thinking about decommissioning from the outset to ensure that decommissioning costs are factored in from the start (particularly in relation to funding applications for more novel technologies). In addition, developers/owners should enter into early discussions with Scottish Ministers, to ensure that they understand their decommissioning obligations and can take account of them from an early stage. An indication of the decommissioning proposals should be included as part of the statutory consenting or

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9 Stages 2 and 3 may happen in reverse order for smaller scale or short term installations.
licensing process so that the feasibility of removing the infrastructure can be assessed as part of the application process.

5.6 Scottish Ministers expect that final drafts of decommissioning programmes should be submitted for approval no later than 6 months in advance of construction, and that the first drafts should be submitted about 18 months in advance.

5.7 Where consents or licences are granted they are likely to contain a condition that construction cannot begin until a decommissioning programme has been submitted to and approved by Scottish Ministers.

5.8 Decommissioning programmes will need to cover both the main development and the offshore transmission works, although it would be easier if costs for each are kept separate, given that OFTO licences must be transferred within 18 months of construction.

5.9 To discuss decommissioning requirements further please contact MS.MarineRenewables@gov.scot

Stage 2: Issue of a Decommissioning Notice by Scottish Ministers

5.10 Scottish Ministers will issue a Section 105 (under the Energy Act) notice requiring the developer / owner to submit a decommissioning programme as soon as at least one of the statutory consents for an installation has been issued. Nevertheless developers / owners are encouraged to start discussing requirements with Scottish Ministers as early as possible. Scottish Ministers may issue a Section 105 notice earlier, particularly where there is a tight timescale for project development.

5.11 The requirement to submit a decommissioning programme through service of a Section 105 notice may be imposed on multiple parties. In some instances, the Scottish Ministers may also place liability on an associated corporate body who has control of the ‘main’ developer / owner of the site10.

Stage 3: Draft Decommissioning Programme

5.12 Having discussed the requirements with Scottish Ministers (see stage 1), developers should prepare the draft programme, including proposed financial security provisions, using the template at Annex C as a guide. The measures proposed in the decommissioning programme should be in line with the standards set out in Chapter 7, the estimated decommissioning costs should be set out in line with Chapter 8 and the financial security proposed in the programme should be in line with the principles set out in Chapter 9. The programme should be informed by the wider EIA report submitted with the application for consent. The EIA should be reviewed (and, if necessary, more detailed assessment undertaken) by developers towards the end of the life of the installation, when a final review of the decommissioning programme is undertaken to finalise the decommissioning

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10 Annex A paragraphs 7 and 8 set out how associated corporate bodies can also be held liable for decommissioning under the terms of the Energy Act 2004.
measures proposed. It is expected that the effort expended in preparing and reviewing the EIA should be proportionate to the scale of the decommissioning operation and the potential risks to the environment that it may pose.

5.13 Where the requirement to submit a decommissioning programme has been imposed on more than one person by Scottish Ministers a joint programme should be submitted.

Stage 4: Consultation with Interested Parties

5.14 As a general principle, the process of preparing a decommissioning programme should be open and transparent. The developer / owner is expected to ensure that the public are able to participate in the process by making decommissioning programmes publicly available and undertaking consultations with statutory consultees and interested parties, where appropriate. Details of the statutory consultees will be specified to companies in receipt of a decommissioning notice. The extent of these consultations will be determined by the particular circumstances of the project in question.

5.15 In all cases, the developer / owner should consult with key representatives of parties who may be affected by the decommissioning proposals, such as the fishing industry and other users of the sea. A full list of consultees should be agreed with Scottish Ministers. They are likely to be similar to those consulted in relation to the Marine Licence or Consent application. Consultees should normally be given a minimum of 30 days in which to comment.

5.16 The developer / owner should take account of the comments received from Scottish Ministers, as well as comments received during the developer / owner’s own consultations, in updating the draft decommissioning programme. A table should be included in the Decommissioning Programme setting out the comments that have been received from each consultee (including ‘nil returns’). There should be an explanation (where relevant) of how the comments have been reflected in any updated drafting. The developer / owner should ensure that each consultee named in the section 105 notice issued for the project in question provides at least an acknowledgement of the receipt of the consultation document. The developer / owner should send a further draft of the programme to Scottish Ministers.

5.17 Once the developer / owner has provided a post-consultation updated draft decommissioning programme, Scottish Ministers will consult with relevant Scottish Government Departments, the UK Government (BEIS) (where appropriate) and the Crown Estate Scotland. Scottish Ministers will then send the developer / owner written comments on the draft decommissioning programme. The draft programme should then be updated in line with the feedback received. (This may be the final version submitted for approval as per Stage 5).

Stage 5: Formal Submission and Approval of Decommissioning Programme

5.18 Once the final draft of the decommissioning programme has been agreed with Scottish Ministers, the developer / owner should formally submit it to:
5.19 The Scottish Ministers may then:

a) Approve the submitted programme as it stands;

b) Approve the programme with modifications and/or subject to conditions (after giving the developer / owner an opportunity to make representations on any proposed modifications or conditions);

c) Reject the programme and require a new one; or

d) Prepare a decommissioning programme themselves and recover the expenditure incurred from the owner/developer and, as per Section 107 of the Energy Act, interest incurred from the developer. Recovered costs may include payments made to a third party to draft the decommissioning programme, or any payments made to a specialist contractor to provide a quotation for decommissioning costs.

5.20 Where more than one person has submitted a programme, different conditions (for example, in relation to financial security) may be imposed upon each of the different persons.

5.21 Before granting any guarantees or indemnities, proposals may require to be notified to the Scottish Parliament's Finance and Constitution Committee or sent to them for scrutiny. When scrutinising proposals, the Committee can then approve the proposal, propose an amendment to it or recommend it is rejected. In the latter case, the matter can be referred to the Parliamentary Bureau for debate and it would then be for the Parliament to decide whether to allow it to proceed.

5.22 Once the decommissioning programme has been approved, the responsible person should make it publicly available (for example, on the Internet). Commercially confidential sections on costs and securities may be redacted. Any comments that are submitted by interested parties should be considered when the decommissioning programme is next reviewed.

5.23 Please note that the approved decommissioning programme is expected to be reviewed and if necessary, modified throughout the course of the project. The final version of the approved programme, as modified from time to time, will be the version produced 12-18 months before authorisation (see stage 6).

Stage 6: In-operation Updates and Reviews

5.24 The provisions of the Energy Act (discussed in more detail in Annex A) require the appropriate minister (in this instance Scottish Ministers) to review approved decommissioning programmes from time to time.
5.25 It is in developers’ / owners’ interests to review their decommissioning programmes at regular intervals, to consider whether the likely costs and methods or environmental impact of decommissioning have changed since the decommissioning programme received approval. Developers / owners should, where relevant, modify their programmes to take into account:

- information gathered during the course of construction and operation;
- changes in market conditions, international standards, the regulatory regime;
- knowledge of environmental impacts, including any sediment shift since construction, or new species entering the area;
- new technology;
- any relevant changes in nearby infrastructure / navigational routes; and
- the latest cost estimates and the robustness of the financial security arrangements.

5.26 Developers / owners may also be formally required by Scottish Ministers to modify their financial provision for decommissioning if reviews suggest that the security proposed or available is insufficient to meet their decommissioning liabilities or the risk of default.

5.27 For long term projects (e.g. with asset lives ≥ 15 years) the following review points should be assumed as standard:

- post–construction report to be sent to Scottish Ministers within 1 year of completion of construction. This should involve sending Scottish Ministers any reports / studies / summaries of issues raised during consultation which may impact upon the eventual decommissioning methods and costs;

- a comprehensive review 12 - 18 months before the first security provision is due to identify any changes in assumptions on costs and risks where these might affect the size or timings of financial securities;

- from payment of the first security onward the developer should review its decommissioning programme annually to make sure the financial security provision is on track to meet the expected costs of decommissioning. Any revisions to a decommissioning programme resulting from changes in costs, securities or environmental or safety matters must be submitted for review and approval from Scottish Ministers. In all circumstances written confirmation should be sent to Scottish Ministers for review each year advising that a review has been undertaken, even if no changes are deemed necessary;

- a developer/owner should start the consultation on the environmental impact assessment that will inform the actual decommissioning three years in advance of when the decommissioning is due to start. A final and comprehensive review of the decommissioning programme should begin two years ahead of the start. This early timing allows for environmental and other studies to inform the developer/owner’s proposal to be submitted to the Scottish Ministers to modify the decommissioning programme to its final version prior to decommissioning. Within the two-year period, the Scottish Ministers will need to consider and
consult on the proposal and any iterations to it thereafter (including in relation to the suitability of proposed modifications to financial security provisions). It is possible the Scottish ministers or another relevant body will have to undertake Appropriate Assessments or similar analysis to comply with any environmental legislation in place at the time. Separately, consideration should be given to the timing of any application for a Marine Licence that might be needed to permit the removal of the infrastructure in question. Late submission of such a proposal could result in the Scottish Ministers seeking to modify the approved programme and charging the developer for the cost of doing so.

5.28 Review periods for shorter term projects will be considered on a case-by-case basis. However, for all projects exceeding 12 months, the Scottish Ministers would expect a report/summary of issues discovered during construction which might impact on the decommissioning (this should be provided within 6 months of completion of construction for Scottish Ministers to review), and a review prior to the actual decommissioning of the installation, to finalise the decommissioning measures envisaged.

5.29 For all projects, Scottish Ministers reserve the right to require reviews if significant unexpected events occur (for example changes to the timings of financial securities might be required in the event of a significant failure in performance of the infrastructure, a change in ownership, or a significant change in the financial position of the company). Following the review, Scottish Ministers may propose their own modifications or new conditions.

Changes in Ownership

5.30 Developers/owners may decide to sell all or part of their asset and seek a transfer of decommissioning liabilities to the new owner. Under the Energy Act, there is no automatic change in liability on transfer of ownership. The Scottish Ministers would need to approve any change and would, for example, take account of any potential increase in the risk of default on decommissioning liabilities that might arise from such a change.

5.31 The Scottish Ministers have powers under the Energy Act to require the new developer/owner to decommission the installation in accordance with the approved programme already in place and/or to comply with any new conditions deemed appropriate by the secretary of state. It is important to note that the original developer/owner will remain liable for decommissioning until:

- the Scottish Ministers have approved a variation to the decommissioning programme (or has approved a new decommissioning programme if the old operator did not have an approved version) which places the obligation to provide securities on the new operator(s) of the project in question;
- the new operator has put in place the required securities; and
- written confirmation has been provided by the Scottish Ministers to confirm that the old operator no longer has any obligations under the decommissioning process set out in the Energy Act.
5.32 Please note, changes in ownership will be treated on a case-by-case basis. The Scottish Ministers retain the right to keep the original developer/owner liable for decommissioning until the required securities have been fully accrued.

5.33 Where a change in ownership has arisen because the developer/owner has been voluntarily wound up, the Scottish Ministers will seek in the first instance to make an associated corporate body such as any parent company liable for the decommissioning programme, if they had not previously been made jointly liable.

**Deferral of Decommissioning or Repowering**

5.34 In line with relevant international obligations, the Scottish Ministers will be seeking to ensure that decommissioning of installations, or redundant parts of them, will be carried out as soon as reasonably practicable, and no later than the end of the marine licence. At the same time, it is recognised that in certain circumstances where operation has ended there are likely to be good reasons for the deferral of decommissioning activity to a later date (still within the marine licence or consent period).

5.35 The timing of decommissioning may be influenced by a range of factors including but not limited to: environmental impacts; market and commercial factors; vessel availability; phasing; synergy and co-ordination with other offshore work; and weather windows. In general, though, the Scottish Ministers will not expect decommissioning to be delayed unless a robust case demonstrates definite re-use opportunities or justifiable reasons for deferring. It may for example be appropriate to defer the decommissioning of electricity transmission infrastructure to align it with the decommissioning timetable of the related generation asset.

5.36 The Scottish Ministers require owners to follow the principle that any deferral from an agreed programme should not materially increase risk to the Scottish Government or the tax payer. Additional timescales should be short enough to avoid significantly adding to the risk of corrosion / deterioration of infrastructure that could make removal more onerous. Any deferral from an agreed programme would need to be approved by Scottish Ministers. Amongst the factors to be taken into account in considering the case for deferral will be the condition of the installation, the presence of any hazards, the environmental impact and the impact on other users of the sea.

5.37 In the future, it is possible that certain projects will be repowered (subject to the necessary regulatory consents). Any amendment of decommissioning programmes as a result of a proposed repowering will be considered on a case-by-case basis. Early engagement with Scottish Ministers on such matters is advised.

**Preparation for Post-decommissioning Monitoring Requirements**

5.38 Any redundant infrastructure permanently deposited or buried by exception as part of the decommissioning risks creating residual liabilities. The final version of the approved decommissioning programme should therefore set out the arrangement, made by the developer/owner with their landlord as to how any residual liabilities will be managed in the long-term, in the event that a request for leaving infrastructure in place is successful. This may for example involve the developer/owner:
• conducting a survey to confirm that no previously buried infrastructure has become exposed (and removing any such exposed sections); or
• putting appropriate legal and commercial arrangements in place with their landlord for an extended period of time post-decommissioning and after any post-decommissioning monitoring period. A landlord may, for example, require financial security or participation in an insurance scheme. This would be separate to and distinct from the need to provide financial security to the Secretary of State as part of any approved decommissioning programme.

Stage 7: Undertake Approved Final Decommissioning Programme

5.39 At the end of the installation’s life, a marine licence will be required for removal and an application for this must be made to Scottish Ministers and be in line with the approved decommissioning programme. The developer / owner is then expected to remove the relevant infrastructure in accordance with the approved decommissioning programme.

5.40 Once decommissioning is complete, the person(s) who submitted the programme will also be required, through the Marine Licence, to satisfy Scottish Ministers that the approved programme has been implemented.

5.41 In instances where the project has been operated by a Special Purpose Vehicle (SPV) or other legal arrangement that is intended to be dissolved following decommissioning then Scottish Ministers should be notified in advance about which party or parties will become responsible for the monitoring of the site.

Stage 8: Submission of successful post decommissioning report and conclusion of the Energy Act process

5.42 The final stage requires the developer / owner to implement arrangements for monitoring, maintenance and management of the decommissioned site and any remains of installations or cables that may exist. In Scotland, a post-decommissioning report will be required as part of a Marine Licence granted for the decommissioning of the development. The outcome of monitoring work should be reported to the Scottish Ministers, together with proposals for any maintenance or remedial work that may be shown to be required. Monitoring reports should also be verified by a third party (for example, an independent contractor carrying out the survey for an independent observer), and published by appropriate means (for example, on the Internet). If necessary, the monitoring programme will be adapted with time. Scottish Ministers will agree with the developer / owner when the monitoring programme may cease, taking account of any environmental impacts and risks to navigation or other users of the sea which may be posed by any remaining materials.
5.43 Where a developer / owner fails to submit a decommissioning programme within the required timescale, does not follow their approved financial security programme, or fails to decommission, Scottish Ministers have powers to take remedial action and (where relevant) recover any expenditure incurred (See Annex A). Ultimately, failure to follow the requirements of an approved decommissioning programme could lead to the incurring of a criminal offence.
6. **Content of Decommissioning Programmes**

**A Template for Decommissioning Programmes**

6.1 The precise contents of a decommissioning programme may vary according to the circumstances. However, Scottish Ministers suggest that the programme should be based on the template set out at Annex C.

6.2 The content of the programme should be in line with the detailed guidance on decommissioning standards, cost estimates and financial security set out in the following three chapters of this guidance.

6.3 The detail provided under each heading in a decommissioning programme should reflect the level of uncertainty for that particular issue. For example, prior to construction, it should be possible to provide a detailed description of items to be decommissioned, but the precise time schedule for decommissioning may be subject to some uncertainty. That said, the programme should be sufficiently detailed from the outset, to demonstrate that decommissioning has been fully considered and factored into design decisions, and that a viable decommissioning strategy has been developed. The programme should be informed by an EIA report (initially using the analysis already undertaken for the wider EIA report undertaken and submitted as part of the application for s.36 consent or a marine licence).
7. Environmental and Safety Considerations

Overall Approach

7.1 This chapter covers: the default requirement for full removal of installations, statutory notifications, environmental information and role of the landlord with regard to residual liabilities. It does not contain a prescriptive set of technical requirements for decommissioning, as these will vary according to the installation and location, with best practice in methods expected to develop over time.

7.2 Decommissioning programmes should set out the extent of infrastructure to be removed, methods and processes. They should include a base case of all infrastructure being removed, alongside any alternatives that the operator proposes, backed up by evidence and reasoning for the preferred option.

7.3 It is accepted that for projects with a long operational life, early decommissioning programmes may not be able to make reliably detailed predictions on future environmental sensitivities, technological advances and costs. However, best endeavours should be made to do so, incorporating precautionary assumptions where necessary. Operators should be aware that decommissioning programmes will be subject to review during the operational period and this will provide an opportunity to incorporate new information and challenge previous assumptions.

Presumption for Full Removal

7.4 It is expected that all installations and structures will be fully removed at the end of their operational life to minimise residual liabilities and that approval of decommissioning programmes will be based on this assumption.

7.5 The standards for the removal of offshore installations should not fall below those set by the International Maritime Organisation (IMO) in 1989\(^\text{11}\) (or successor standards). Scottish Ministers will consider exceptions from full removal in line with those standards, only on presentation of compelling evidence that removal would create unacceptable risks to personnel or to the marine environment, be technically unfeasible or involve extreme costs. Operators should note that in certain circumstances, such as in proximity to navigational routes, the IMO does not grant exceptions. IMO guideline 3.13 states that nothing should go in the water unless it has been designed for full removal. The Scottish Ministers endorse the principle that OREI infrastructure should be designed and constructed to facilitate full removal.

7.6 Exceptions will be considered on a case by case basis and the case must be put forward as part of the decommissioning programme, taking on board environmental conditions, the balance of risk, cost and technological capabilities at that time. This is likely to be subject to third party verification.

\(^{11}\) IMO Guidelines and standards for the removal of offshore installations and structures on the continental shelf and in the exclusive economic zone.
7.7 In all cases, evidence should be presented in decommissioning programmes to allow a costed evaluation of decommissioning options, including full removal, and advice sought from the relevant statutory bodies.

7.8 If making arguments for exceptions to full decommissioning, developers / owners should take the following points into account:

- arguments should be tailored to the individual site and should set out whether the risks of buried cables etc are equal across all parts of the site (for example, are some areas of the site more prone to sediment shift?);
- arguments should be relative to the effect of conducting the activity during construction;
- the IMO exception for ‘extreme cost’ is not normally expected to be accepted where it is the sole reason being cited for partial decommissioning;
- where safety concerns are being cited, this is likely to be given greater weight if written evidence from a third party (such as the Health and Safety Executive or a known decommissioning contractor) can be provided;
- the developer/owner is encouraged to consider using the ‘Comparative Assessment Framework’ set out in the UK Government’s decommissioning guidance for the Oil and Gas sector when determining and setting out their position.¹²

7.9 Where less than full decommissioning is proposed, developers/owners will need to engage with Scottish Ministers in respect of Marine Licences, the Maritime and Coastguard Agency and the General Lighthouse Authority in connection with navigational risk and their landlord on the acceptability of the proposals. They should also ensure compliance with the terms of their lease and make suitable arrangements with their landlord for any post-decommissioning monitoring that they require.

Sea-bed Clearance

7.10 Following decommissioning, it will be important for the developer / owner to confirm that, where full removal of installed infrastructure has been stipulated, the site has been cleared, in accordance with the approved decommissioning programme, and to provide evidence that this has been achieved (see paragraphs 7.29 – 7.32).

7.11 The area covered for debris clearance will be decided on a case-by-case basis, taking account of the guidance for oil and gas installations which specifies a 500m radius around any installation as the minimum area to be covered for debris clearance. (It is recognised, though, that the nature and size of offshore renewable energy installations differs from that of oil and gas installations).

7.12 The Scottish Ministers would expect to see an element of independent, third party involvement in providing evidence that the site has been cleared. Decommissioning programmes should set out the developer’s proposals for achieving this. There are various forms of evidence which may be presented, subject to the outcome of the relevant Appropriate Assessment. Examples might include over-trawling of the site or the presence of an independent observer during site clearance operations.

Method of Removal

7.13 The guidance here is not prescriptive about the method which should be used to remove an installation, which will be influenced by, for example, the nature of the installation and the site. Removal techniques are also likely to evolve as experience (including experience of removing oil and gas installations) is gained and technology advances.

7.14 Thus, our guidance specifies general principles to be followed. The method of removal should have regard to:

a) Best Practicable Environmental Option (BPEO), that is the option which provides the most benefit or least damage to the environment as a whole, at an acceptable cost, in both the long and short term. (In essence, the choice made should involve balancing the reduction in environmental risk with the practicability and cost of reducing the risk);^{13}

b) safety of surface and subsurface navigation;

c) other uses of the sea; and

d) health and safety considerations

Risks to Mariners and Notifications

7.15 Requirements in relation to notification and marking of any remains will be contained within project specific marine licenses, as will requirements for navigational aids and marking during the removal process.

On-land Management of Waste

7.16 Waste from decommissioning should be reused, recycled or incinerated with energy recovery in line with the waste hierarchy, with disposal on land as the last option. Scottish Ministers do not consider disposal of waste at sea to be acceptable. Waste management must be carried out in accordance with all relevant legislation at the time, including control of any hazardous wastes.

^{13} The concept of BPEO is similar to that of BATNEEC – Best Available Technique not Entailing Excessive Cost – in that both criteria involve balancing the reduction in environmental risk with the practicability and cost of reducing the risk
Post-decommissioning Survey / Report

7.17 Scottish Ministers use removal licences to ensure that sufficient surveys are completed following removal of infrastructure. Typically developers will be required to undertake a survey following decommissioning to enable identification and subsequent recovery of any debris located on the sea-bed which may have arisen from the developer’s/owner’s activities and which may pose a risk to navigation, other users of the sea or the marine environment.

7.18 A post decommissioning report should be submitted, within a timescale agreed with Scottish Ministers, following completion of decommissioning works. This should be in the format proposed in the approved decommissioning programme. The report should include:

- Independent third-party verification that decommissioning took place in accordance with the approved decommissioning programme (e.g. statement from a third-party contractor or an independent observer);
- Evidence (e.g. photographic evidence of infrastructure out of the water, or survey footage of the seabed) that all infrastructure that was due to be removed, according to the decommissioning programme, has been removed;
- If infrastructure is left in situ, evidence that it has been cut off/buried/otherwise treated in accordance with the decommissioning programme;
- References to compliance with relevant environmental impact assessment/appropriate assessments;
- References to any future monitoring and maintenance set out in the decommissioning programme; and
- A cost breakdown to enable Scottish Ministers to understand the actual cost of decommissioning compared to the predicted cost.

7.19 The Scottish Ministers will review the post-decommissioning report and decide whether to accept it as evidence that the decommissioning has been carried out in accordance with the decommissioning programme.

Post-decommissioning, Monitoring, Maintenance and Management of Site

7.20 Where an installation is not removed entirely, some post-decommissioning monitoring will generally be expected. The objective of the monitoring is to identify any new or increased risks to navigation or other users of the sea which may be posed by remaining materials (for example, where cables or foundations may have become exposed due to natural sediment dynamics). Appropriate action should be taken to mitigate the risks.

7.21 If necessary, the monitoring regime may be adapted over time (as agreed with Scottish Ministers). Relevant data from construction, operation and decommissioning of the site should be considered in determining whether and how to adapt the monitoring regime.

7.22 In general, the frequency of monitoring is likely to reduce with time (though this may not always be the case if the initial monitoring reveals more significant risks than originally envisaged). The Scottish Ministers will agree with the developer /
owner when the monitoring programme may cease, taking account of any risks to
navigation or other users of the sea which may be posed by remaining materials.

7.23 An example of a monitoring regime, for elements left in situ beneath the sea-
bed, might be a post-decommissioning survey at the time of completion of
decommissioning work, with further surveys at, for example, three years and eight
years after final decommissioning activity. (Requirements would always be
considered on a case-by-case basis, however, taking account of the specific risks
posed in each case.) Whether there was a need for further monitoring would be
considered in the light of the results of these surveys. Monitoring arrangements for
wave and tidal demonstrator projects are normally expected to be limited, or not
required at all if full removal is involved and any post-decommissioning survey shows
this has been achieved.

7.24 Monitoring reports should be submitted to Scottish Ministers, together with
proposals for any maintenance or remedial work that may be required. The reports
should also be published by appropriate means (for example, on the Internet).

7.25 If a developer / owner has proposed to remove an object entirely, but the
decision has been taken by the Scottish Ministers that it should be left in situ (for
example, for environmental reasons), then the developer / owner would not be
expected to be responsible for post-decommissioning monitoring, maintenance and
management of this object.

7.26 Monitoring reports should be submitted to the Scottish Ministers, together with
proposals for any maintenance or remedial work that may be required. The reports
should also be published by appropriate means (for example on the internet).
8. **Cost Estimates**

8.1 Decommissioning programmes should set out a comprehensive breakdown of cost by category. The standard format for this is set out in Annex C.

8.2 The programme should explain who provided the costings, and how the accuracy of the figures has been assessed (for example via third party verification or an internal assurance process).

8.3 Costs should be calculated according to present day methods and technologies and should not include any learning rate assumptions. (Developers/owners may propose to modify the programme at a later date where methods and expected costs have changed over time).

8.4 Developers / owners of offshore renewable energy installations should ensure that they take account of the most up to date evidence in framing their estimates for the costs of decommissioning their devices.

8.5 Please note that the estimated decommissioning costs will inform the financial security levels that are required to be made available to the Scottish Ministers. The purpose of the financial security is to enable the Scottish Ministers to decommission should the owner fail to do so and where there are no other parties liable for decommissioning. This means that the cost estimate and financial security levels will need to cover the amount it would cost Scottish Ministers to organise and fund decommissioning. This may not necessarily be the same cost that the developer/owner would pay. For example, an owner of an OREI may be planning on reducing costs through use of their own vessel or via preferential rates from an existing commercial relationship but those options would not be available to Scottish Ministers. Developers/owners are encouraged to speak to Scottish Ministers about what to include or exclude from financial securities and what assumptions can be made.

8.6 The following sections provide advice on how to calculate / set out costs:

**Contingency**

8.7 All decommissioning programmes should include a contingency sum (for example to cover bad weather and/or extra costs arising from corrosion of infrastructure) unless you can provide evidence that this is already factored into existing cost estimates (for example where a contractor has incorporated contingency into a fixed price contract). Where the calculation is not provided by a third party, you should explain why the assumptions made on weather down-time or corrosion etc are specific to your project.

**Re-use of Infrastructure**

8.8 We do not expect the default position in the decommissioning programme submitted at the start of the project to be that infrastructure will be re-used. Scottish Ministers would not be able to re-use infrastructure in the event that
decommissioning fell to the Scottish Ministers, and to date it has not been common practice to re-use infrastructure after a project ends. Cost estimates should therefore include any recycling or disposal costs. Should it later be confirmed that the project is to be refitted and extended, a proposal can be made to Scottish Ministers under section 108 of the Energy Act to revise the decommissioning programme and financial security levels to reflect this. Where the project is being sold, please refer to paras 5.28 - 5.31, which sets out when Scottish Ministers would confirm that the original owner no longer has a role under the Energy Act.

**Vessels and lifting equipment**

8.9 Rates should be based on equipment which is currently available and should not make assumptions on savings that might occur as a result of future improvements in design. However, developers/owners can write to BEIS under section 108 of the Energy Act proposing a review of the costs as and when changes in technology have reached the stage of commercial viability.

**Value Added Tax**

8.10 Unlike developers / owners, the Scottish Ministers have no ability to recover VAT should it fall to them to decommission. Therefore, to allow for the possibility of the Scottish Ministers having to decommission infrastructure in internal waters and/or the territorial sea, VAT will have to be factored into financial securities where the VAT regime applies.

8.11 The VAT regime only applies within territorial waters (i.e. up to 12 nautical miles from the shore baseline). Therefore:

- where all the OREI infrastructure is within 12 nautical miles of the shore baseline, VAT on all decommissioning elements should be factored into financial securities;
- for sites fully outside of 12 nautical miles of the shore baseline (i.e. relevant offshore windfarms which have sold off their transmission network), no VAT should be factored into financial securities;
- Some projects (such as tidal arrays or OFTOs) may be partially or primarily based outside 12 nautical miles of the shore baseline but would need to conduct a portion of decommissioning within 12 nautical miles (for example to remove export cabling). In such cases, VAT should be factored into financial securities for all decommissioning activity that takes place within 12 nautical miles of the shore baseline and excluded from all decommissioning activity that takes place outside 12 nautical miles of the shore baseline.

8.12 Any changes to VAT rates or their application to decommissioning activities should be identified in decommissioning programme reviews throughout the life of the project.

**Inflation**

8.13 Developers / owners should ensure that inflation across the lifetime of the project is included within the security. The rate at which inflation should be assessed
is the Office of Budget Responsibility’s (“OBR”) forecast for inflation as measured by the Consumer Price Index (CPI). This should be done in several stages:

1. the cost of decommissioning should be calculated in the present day value;

2. when submitting the pre-construction decommissioning programme, developers/owners should forecast inflation up to the end of any subsidy period, using the CPI inflation rate;

3. if the current OBR forecast does not go up to the end of any subsidy period then an average inflation figure should be assumed for the years not yet covered by OBR forecasts;

4. after the end of any subsidy period, developers/owners should continue to review on an annual basis whether estimated decommissioning costs have changed. This may require modifications to the level of securities provided so that the total decommissioning fund matches the revised costs.

Scrapage

8.14 Developers/owners should not offset scrapage value from their total cost assumptions. The Scottish Ministers do not consider that it is possible to rely on estimates of scrap value as a form of security because the value can fluctuate substantially and therefore is not reliable. Whilst the Scottish Ministers understand that developers may wish to rely on an assumption of scrapage reducing net commissioning costs for their internal rate of return calculations etc, this is a private matter for the company and not a relevant consideration in respect of decommissioning costs that might fall to the Scottish Ministers.

OFTOs

8.15 This guidance applies the same rules on calculating the level of costs and securities to each technology. OFTO owners should therefore take care in early discussions with Ofgem to check that any agreements on revenue streams will take into account the full costs of decommissioning as required by any approved decommissioning programme.

Independent Audit

8.16 Independent audit of estimated decommissioning costs (and of the financial security proposed or available to meet them) may be required, either directly of developers / owners or by Scottish Ministers appointing independent third party experts. The need for, timing and frequency of such audits will be determined on a case-by-case basis.
9. Financial Security

Overall Approach

9.1 Scottish Ministers want to make sure that developers / owners have taken account of their decommissioning liabilities at the beginning of their projects and made adequate provision to ensure that sufficient funds will be available to meet their liabilities. The Scottish Ministers general approach is that the “polluter pays” and that the business responsible for the installation is best placed to manage and mitigate the costs and risks associated with decommissioning. Developers should take account of decommissioning issues from the outset of the project, from the concept and design stage through to the contractual arrangements and warranties associated with construction and operation.

9.2 The Scottish Ministers also wish to seek to reduce, to an acceptable level, the risk of liabilities falling to the public purse in the event of default by developers / owners by requiring, and ensuring that appropriate securities are put in place. Certain securities will require approval by the Finance and Constitution Committee of the Scottish Parliament, which will take account of the particulars of the ask and associated risk analysis.

Risk to Scottish Ministers

9.3 Where a developer / owner fails to organise decommissioning, it may fall to Scottish Ministers as funder of last resort to decommission and (where necessary) to meet any outstanding costs of decommissioning. This does not automatically mean that Scottish Ministers will be the first port of call should the owner fail to decommission. Taxpayer intervention will be in exceptional cases only and the Scottish Ministers will always explore where an associated corporate body such as a parent company, the landlord or administrator (or others) may potentially be in line to decommission before the risk passes to the Scottish Ministers and the taxpayer.

9.4 To mitigate against the risk to tax payers materialising developers / owners are required to:

- Include details in their decommissioning programme of how they intend to finance their proposed approach to decommissioning; and
- Put in place acceptable security arrangements to protect the taxpayer against the possibility of having to pay for decommissioning in the event the developer / owner defaults on their obligations.

9.5 It is possible for the finance and security arrangements to be one and the same thing. The Scottish Ministers will however only consider the developer / owner’s financing arrangements to be an acceptable form of security if the money being reserved is ring fenced for decommissioning and from others that have a financial interest in the project. The Scottish Ministers must be made the sole beneficiary of any financial security arrangement for it to be acceptable.

9.6 This guidance is not intended to be prescriptive as to how a developer / owner reserves for or pays for the cost of decommissioning unless reserving is proposed as
a form of security. There are many different ways for a company to make sure that the money is made available at the appropriate time. The preferred approach of the developer / owner should be clearly set out in the decommissioning programme for review by the Scottish Ministers. This will provide reassurance to the tax payer that the industry is financially well prepared to decommission an offshore renewable energy asset at the end of its operational life, and that the funds will be available should the Scottish Ministers ultimately need to decommission.

9.7 For any security to be acceptable, appropriate arrangements must be in place to assure the Scottish Ministers that such funds will be available to the Scottish Government if needed. This may be through a funding deed which ring fences funds, a trust arrangement or other mechanism depending on the type of security. If there is not confirmation at the outset that funds will remain protected in the event of insolvency Scottish Ministers will not accept the arrangement. If security is in the form of cash (upfront or accrual) once the cash has been put aside for securities, developers / owners need to reflect the payment in their annual returns, so that any potential investors are able to clearly see that money is being put aside for decommissioning and that this capital cannot be accessed for any other purpose.

Guiding Principles

9.8 Under the Energy Act’s decommissioning provisions, it is for the responsible person to submit details of the security they propose to provide with their decommissioning programme. To guide industry Scottish Ministers have established some principles to provide a policy framework against which financial security decisions can be taken:

a) developers / owners are expected to meet the costs of decommissioning and be responsible for the liabilities they have created (the “polluter pays” principle);

b) the Scottish Ministers have a duty to ensure that the taxpayer is not exposed to an unacceptable risk of default in meeting costs associated with decommissioning;

c) the Scottish Ministers will expect to see that effective and transparent arrangements are in place to ensure the performance of decommissioning obligations;

d) the Scottish Ministers will wish to consider the viability of recovering expenditure incurred in carrying out a decommissioning programme (if necessary under Section 110(5) of the Energy Act, and the likely extent of the costs involved) – See Annex A on Energy Act powers.

Examples of Acceptable Security

9.9 There may be a number of acceptable forms of security. The type of security likely to be acceptable will depend on a number of factors, including but not limited to the maturity of the technology, the financial strength of those responsible for decommissioning and other commercial factors. The timing of security arrangements
will be dependent on similar factors including revenue certainty over time and acceptable subsidy period. The undernoted proposals are securities Scottish Ministers would generally accept as being satisfactory, however each programme will be assessed on a case-by-case basis.

Cash Deposit

9.10 Upfront cash security paid into an escrow account or direct to a Scottish Government account, only accessible by the Scottish Government prior to commencement of construction is likely to be the most acceptable form of security for pre-commercial deployment where the risks to the taxpayer are the greatest.

9.11 For more established technologies, cash security paid into an escrow account only accessible by the Scottish Government is likely to be acceptable. The securities would have to be fully accrued by the end of the Contract for Difference (“CfD”), or equivalent guaranteed income stream, subsidy period with actual amounts set aside agreed following Scottish Ministers review of the financial model.

9.12 Cash would need to be held in an account where deductions could not be made without the prior approval of Scottish Ministers, or officials on their behalf. (Please note that Scottish Ministers cannot pay interest on funds held).

9.13 Where the owner of a project has provided upfront cash as security to the Scottish Ministers, the withdrawal of funds to pay for the costs of decommissioning will be on the production of evidence that the funds are being used for decommissioning costs, and on the basis of satisfactory evidence that the remaining cash balance covers the residual cost of the (e.g. provision of invoices / signed contracts for decommissioning). Scottish Ministers may hold back a limited proportion of funds pending a successful post-decommissioning report (in case further works are required) on a case by case basis according to the risks of each project.

Irrevocable Draw Down Letters of Credit / Bank Guarantees / Performance Bonds

9.14 From the perspective of the Scottish Ministers, wishing to insulate the taxpayer from the risk of having to pay for decommissioning costs a standby letter of credit, bank guarantee and a performance bond are all broadly similar instruments, and it is the substance rather than the precise form which is relevant.

9.15 To be fully accrued by the end of the CfD subsidy period, with actual amounts set aside agreed following Scottish Ministers review of the financial model. The Letter of Credit / Performance Bond must be renewed annually. A number of circumstances, including for example the operator not fulfilling its liability to annually renew or the bank's rating falling below a given level, will give the Scottish Ministers the right to draw on the Letter of Credit / Performance Bond and put the guarantee amount in the bank as security for future possible liability for decommissioning.

9.16 If the letter of credit/surety bond cannot be renewed, then the Scottish Ministers will draw down all sums and hold this as a cash security against decommissioning costs.
9.17 The key features expected of any proposed security include:

a) The beneficiary of the proposed security must be the Scottish Ministers
b) The security is issued by either (i) the UK branch of a bank established in an OECD country, or (ii) a UK authorised insurer (i.e. regulated by the Prudential Regulation Authority) or European Economic Area (“EEA”) authorised insurer operating in the UK;
c) The issuer has a long term rating of at least either A- or better by S&P Global Ratings (Standard & Poor’s) or A3 or better by Moody’s Investors Service or an equivalent rating by another recognised ratings agency. The security can be drawn in full if the issuer fails to maintain the required credit rating;
d) The security is irrevocable and payable on demand;
e) The security is for a fixed term either for the full duration of the decommissioning obligations or for a shorter term (typically 1-3 years) with a ‘pay or renew’ provision; and
f) Notwithstanding the above expected features, the security must in any case be issued by an entity acceptable to the Scottish Ministers as appropriate in the circumstances.

9.18 As further guidance the Scottish Ministers would also generally expect (i) payment of any demand to be made within no more than 5 business days (ii) the form of demand notice to be provided (iii) partial and multiple demands to be allowed (iv) the expiry date and renewal provisions to be clear (v) the security amount to be denominated in GBP (vi) the security proposed is subject to the latest relevant rules14; (vii) security to be governed by and construed in accordance with the law of Scotland; (viii) the parties submit to the exclusive jurisdiction of the courts of Scotland in respect of any dispute without recourse to arbitration.

Term and Renewal

9.19 In order to ensure continuous renewal of the security with no lapse, each security shall be required to be extended or replaced at least one month in advance of its expiration date.

9.20 Decommissioning obligations need to be discharged before the expiry date set out in the marine licence. Therefore there is a synergy between the licence, the decommissioning programme and the security provision. It is the developer / owner’s responsibility to ensure that these instruments are aligned.

9.21 As set out in chapter 7, the owner should submit a post-decommissioning report within 4 months of completion of decommissioning works. The Scottish Ministers will then review the report and decide whether to accept it as evidence that decommissioning has been carried out in accordance with the decommissioning programme. Security must remain in place until the Scottish Ministers confirm that the decommissioning programme is accepted as being complete.

14 The Uniform Customs and Practice for Documentary Credits (UCP) is a set of rules on the issuance and use of letters of credit. A Bank Guarantee I considered a “Demand Guarantee” and as such is governed by the International Chamber of Commerce (ICC) Uniform Rules for Demand Guarantees (URDG).
Examples of Unacceptable Security

9.22 The following would normally be unacceptable.

Parent Company Guarantees (PCGs)

9.23 Security for decommissioning is covering long-term liabilities and accepting PCGs would mean assessing and monitoring the financial standing of the parent company on a regular basis.

9.24 A PCG is not a primary contractual obligation and is dependent on an underlying duty. There is therefore a risk that the guarantor might dispute the basis on which the obligation in the underlying contract has arisen or has not been complied with, which could result in litigation.

9.25 Even though EU legislation allows for recognition of UK judgements in foreign courts there is a concern that decommissioning security cannot be enforced as it relates to public law matters and only private law judgements can be enforced. There is therefore a concern over the difficulty in recovering decommissioning costs from overseas parent companies.

9.26 If PCGs from non-UK companies are not acceptable then PCGs from UK based companies cannot be accepted either as there is a concern of discrimination on the basis of nationality which is prohibited under EU treaties.

Insurance Schemes

9.27 In general insurance will not be an acceptable security for decommissioning liabilities. It might be possible for an insurer to underwrite cost uncertainty in respect of a known event i.e. a decommissioning obligation defined in an approved programme, but the Scottish Ministers are cautious about the potential complexity of such proposals and the associated terms and conditions. Whilst this has not been completely ruled out as an option, the Scottish Ministers are unlikely to judge that an insurance proposal will provide sufficient certainty to the taxpayer in the event that a developer / owner defaults on their decommissioning obligations.

Timing of Securities

9.28 Securities will generally be expected to be paid up front of the commencement of construction for pre-commercial and short-term projects. Short-term projects would include parts of longer term projects which will only be deployed for a limited period of time.

9.29 For large scale commercial deployments that receive a predictable revenue stream (such as from a CfD or OFTO fixed term revenue stream) and involve a proven technology with low operating risk, a secure, segregated decommissioning fund that accrues by the end of the subsidy period is acceptable. The earlier payments are made and completed, the better the Scottish Government is insulated from risk, since reserving would occur when there is a guaranteed revenue stream. A
decommissioning programme which accrues late into the operating life of the installation will not be acceptable.

9.30 Scottish Ministers will consider the timing of securities on a case-by-case basis, taking into account the guiding principles set out in paragraph 9.8 above, and the risk profile of the individual project. Whilst the following should not be taken as a definitive list, considerations will include:

- whether there is a reliable long term (e.g. 15 or 20 years) income stream in place for the project, such as a CfD or OFTO fixed term revenue agreement;
- the financial strength of the company and its linked parent / group (the Scottish Ministers may require financial information to be submitted to help inform their considerations);
- whether there is evidence to suggest that technology has a proven track record of operating reliably on a commercial, post-testing basis; and
- whether the project has the necessary lease, consent and/or licence in place covering the full time period up to the proposed decommissioning date.

9.31 Each project will be considered according to its individual circumstances, but if the above questions cannot be answered with a ‘yes’, it is unlikely that mid-life accrual will be acceptable to Scottish Ministers. ‘No’ answers are more likely to result in a requirement for payment upfront of installation, or no later than 3 months from the approval of the decommissioning programme.

9.32 The table below summarises when a mid-life accrual of securities, if considered acceptable, should commence based on the revenue support a particular offshore renewable project might receive:

<table>
<thead>
<tr>
<th>Subsidy support mechanism</th>
<th>For projects with a ‘renewables obligation certificate’, mid-life accruals should start no later than year 10 and be completed by year 20.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renewable Obligation:</td>
<td>For projects with a 15 year ‘contract for difference’, mid-life accruals should start no later than year 10 and be completed by year 15.</td>
</tr>
<tr>
<td>Contract for Difference:</td>
<td>For OFTO projects with a 20 year licence ‘mid-life’ accruals should start no later than year 10 of the licence and be completed by year 20.</td>
</tr>
<tr>
<td>OFTO Revenue:</td>
<td></td>
</tr>
</tbody>
</table>

9.33 Full security covering the entire cost of decommissioning the offshore renewable energy asset must be maintained from the end of subsidy support to after the Scottish Ministers have reviewed the post decommissioning report and confirmed that the programme is accepted as being complete. Full security will need to be maintained if final decommissioning is deferred for whatever reason (for the avoidance of doubt this includes scenarios where there is an extension of the asset life or repowering).
Draw-down on securities for decommissioning

9.34 Where the owner of a project has provided cash as security with the Scottish Ministers, any withdrawal of funds to pay for the costs of decommissioning will be on the production of evidence that the funds are being utilised for decommissioning costs, and on the basis of satisfactory evidence that the remaining cash balance covers the residual cost of decommissioning remaining infrastructure (e.g. provision of invoices for draw-down, and contractor estimates setting out the remaining decommissioning costs for anything still to be removed). As stated above, the Scottish Ministers may hold back a limited proportion of funds pending a successful post-decommissioning report (in case further works are required) on a case by case basis according to the risks of each project.
Summary of Energy Act 2004 decommissioning provisions

Note
1. This summary is intended to provide a helpful description of the key decommissioning provisions in the Energy Act 2004 (as amended) (the “Act”), as they apply to installations in Scottish territorial waters or in Scottish parts of a Renewable Energy Zone. It should not be relied upon to be a comprehensive description of the legislation and developers / owners should seek their own legal advice.

Introduction
2. The Energy Act sets out a comprehensive statutory scheme for the decommissioning of offshore renewable energy installations. The scheme applies to territorial waters in or adjacent to England, Scotland and Wales (between the mean low water mark and the seaward limits of the territorial sea) and to waters in a Renewable Energy Zone (including that part adjacent to Northern Ireland territorial waters) and gives the ‘appropriate minister’ certain functions regarding decommissioning. The Scottish Ministers are the ‘appropriate minister’ for the purposes of Part 2, Chapter 3 in relation to renewable energy installations and electric lines which are located in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone. The Scottish Ministers and the Secretary of State may also agree that the Scottish Ministers are the ‘appropriate minister’ in relation to the whole of a renewable energy installation. As the ‘appropriate minister’, the Scottish Ministers have powers under the Energy Act with regard to the decommissioning of those offshore renewable energy installations. This summary will focus purely on those powers.

Requirement to prepare decommissioning programmes (Section 105)
3. Under the terms of the Energy Act, the Scottish Ministers may require a person who is proposing to construct, extend, operate or use an offshore renewable energy installation (or is already doing so) (the “responsible person”) to submit a decommissioning programme for the installation. The Scottish Ministers must also consider how they will exercise their decommissioning powers in determining whether to give a consent for an offshore generating activity under Section 36 of the Electricity Act 1989.

4. The requirement to submit a decommissioning programme may be imposed on more than one person, in which case a joint programme must be submitted. Before the Scottish ministers can requires the submission of a decommissioning programme, the Scottish Ministers must be satisfied that at least one of the statutory consents, licences or approvals required for the installation has been given or has been applied for and is likely to be given.

5. The Scottish Ministers may require specified consultations to be carried out before the decommissioning programme is submitted.
6. The decommissioning programme submitted must include:
   
a) measures to be taken for decommissioning the relevant object (for the purposes of Chapter 3, ‘relevant object’ means the whole or any part of a renewable energy installation or a related electric line);
   
b) an estimate of the expenditure likely to be incurred in carrying out those measures;
   
c) provision for determining the times at which, or the periods within which, those measures will have to be taken;
   
d) provision about restoring the place to the condition that it was in prior to the construction of the relevant object (where it is proposed that the installation or line will be wholly or partly removed); and
   
e) where it is proposed that the relevant object will be left in position or will not be wholly removed, provision about the continuing monitoring and maintenance that will be carried out.

7. The Scottish Ministers may also require other information to be submitted with the decommissioning programme. This may include details of the (financial) security (if any) that the person proposes to provide.

Information Supplemental to Section 105 Notices)

8. This section details the circumstances in which the Scottish Ministers can issue a section 105 notice to an associate company. This can only be done (where the Scottish Ministers have already served a notice on a person listed in section 105(2)(a) and if, having done so, the Scottish Ministers are not satisfied that adequate arrangements have been made by the recipient of that notice to carry out the decommissioning programme satisfactorily. A section 105 notice can also be served on an associate company if there has been a failure by the person with primary responsibility for the installation to comply with a notice served under section 105(2), or, the Scottish Ministers have rejected a programme submitted by such a person pursuant to such a notice.

9. The provisions in sections 105A(3) to (8) set out the test for determining whether one body corporate is associated with another. In essence, one body corporate is associated with another if one of them controls the other or if a third body corporate controls both of them. The tests for determining control in various different situations are contained in subsections (4) to (8). The principal cases dealt with are where the body controlled is a company (subsection (4)) and where the body controlled is a limited liability partnership (subsection (5)). There is however a catch all definition of what ‘control’ means in subsection 7 of the Energy Act.
Approval of Decommissioning Programmes (Section 106); Failure to Submit or Rejection of Decommissioning Programmes (Section 107)

10. The Scottish Ministers may: approve the programme as it stands; approve the programme with modifications and/or subject to conditions (after giving the person who submitted it an opportunity to make representations about the proposed modifications and/or conditions); reject the programme and require a new one; or reject the programme and prepare one themselves and recover the expenditure incurred from the person concerned.

11. The Scottish Ministers may approve a programme subject to a condition that the person who submitted the programme provides security in relation to the carrying out of the programme, at such time and in accordance with such requirements as the Scottish Ministers may specify.

12. Where more than one person has submitted a programme, the Scottish Ministers may impose different conditions (for example, in relation to financial security) upon different persons.

13. The Scottish Ministers must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

14. If there is a failure to comply with a section 105 notice, the Scottish Ministers may prepare a programme and impose it on the person concerned. That programme is then treated as if it had been submitted and approved in the usual way and can require the provision of financial security. The Scottish Ministers may also recover any expenditure incurred in preparing the programme, together with any applicable interest, from the person concerned.

15. Under section 106, the Scottish ministers can reject an entire draft decommissioning programme. Where this happens, the Scottish Ministers may request production of a new programme by the developer or may under section 107 prepare and approve a programme to be imposed on the responsible person.

Reviews and Revisions of Decommissioning Programmes (Section 108)

16. The Scottish Ministers must, from time to time, conduct such reviews of a decommissioning programme as they consider appropriate. Either the Scottish Ministers or the person who submitted the programme may propose modifications to it, including modifications to any conditions attached to the programme (for example, relating to financial security). The decision is made by the Scottish Ministers, after considering any representations made to them by the people concerned.

17. Either the Scottish Ministers or the person who submitted the programme may propose to relieve a person of their duty to carry out the decommissioning programme or to impose that duty upon a new person (either in addition to or in substitution for another person, including in relation to a body corporate associated with a responsible person). (This might happen when there is a change in ownership of the installation). The decision is made by the Scottish Ministers, after considering
any representations made to them by the people concerned. When the duty is imposed upon a new person, that person may be required to provide security.

Carrying Out of Decommissioning Programmes (Section 109); Default in Carrying Out Decommissioning Programmes (Section 110)

18. The person who submitted the decommissioning programme (or any new person upon whom the duty has been imposed) must ensure that the programme is carried out. Where there is an approved decommissioning programme in place it is an offence for a person to take any decommissioning measures unless in accordance with the approved programme or with the agreement of the Scottish Ministers.

19. The Scottish Ministers may require remedial action if the programme is not carried out in any particular respect. If this is not done, the Scottish Ministers may secure the remedial action and recover the expenditure, including any interest, incurred from the person concerned.

Security for Decommissioning Obligations (Sections 110A and 110B)

20. Section 110A applies to any security which has been provided in relation to the carrying out of an approved decommissioning programme or for compliance with the conditions of its approval. This is designed to ensure that, in the event of insolvency of a person responsible for decommissioning an OREI, the funds set aside for meeting those liability remain available for decommissioning and are not available to the general body of creditors. This protection applies where funds have been set aside in a secure way (such as a trust or other arrangement) for meeting obligations under a decommissioning programme.

21. To enable this, section 110A(3) states that the security is to be used in accordance with the trust or other arrangements under which the security has been set up. Section 110A(4) disapplies any provision of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law where its operation would prevent or restrict the security being used for the purpose for which it was set up (meeting decommissioning liabilities).

22. Section 110B is intended to ensure that creditors and potential future creditors of a person responsible for a decommissioning programme are aware of any decommissioning funds protected by section 110A. The Scottish Ministers may direct that information regarding relevant security arrangements is published by the person responsible for the decommissioning programme (for example, in the financial pages of that person’s website). This will ensure that informed decisions can be made by creditors and potential future creditors. Section 110B(3) enables the Scottish Ministers, or a creditor of the person responsible for a decommissioning programme, to apply for a court to ensure compliance with a direction under section 110B(4), the court may order the security provider to take steps to comply with the direction. Sections 110B(5) and (6) provide definitions of the terms “the protected assets”, “security provider”, and “the court” for the purposes of this section.
Regulations about Decommissioning (Section 111)

23. The Scottish Ministers may make regulations relating to decommissioning of offshore renewable energy installations in Scottish waters or Scottish parts of the Renewable Energy Zone. Regulations may include, for example, prescribed standards and safety requirements for decommissioning, provision about the security that a person may be required to provide, the provision for inspections and provision for the prevention of pollution.

Duty to Inform Scottish Ministers (Section 112)

24. When a person becomes responsible for an installation (or related electric line) they must notify the Scottish Ministers. This would happen when, for example, a person makes a proposal to construct, extend, operate or use an installation, (or becomes party to such a proposal), or begins to construct, extend, operate, use or decommission an installation. (This would apply whether it was a proposal for a new installation or whether the person was acquiring an existing installation.) In the case of a new installation, notification is not required until after at least one of the statutory consents, licences or approvals has been given or applied for.

Power of the Scottish Ministers to Require Information and Documents (Section 112A)

25. The Scottish Ministers can require persons who are, or may in future be, subject to decommissioning obligations to provide relevant information or documents to assist the Scottish Ministers in exercising their functions under Chapter 3 of Part 2 of the Energy Act (decommissioning of OREIs). These functions include making a judgement on the sustainability and financial viability of the proposals contained in a decommissioning programme, for example financial projections, banking models and electricity generation forecasts.

26. Under section 112A(2), the Scottish Ministers can require “relevant” information or documents to be provided by the person on whom notice to submit a decommissioning programme has been served under section 105(2)(a) of the Energy Act (those with principal responsibility for the installation, such as the developer), a body corporate associated with such person, or a person who has been made subject to the duty under section 109(1) of the Energy Act to carry out a decommissioning programme and comply with all conditions.

27. Under subsection (3) of section 112A, information or a document is “relevant” if it relates to:

- the place where the relevant object is or will be situated;
- the relevant object itself;
- where the recipient of a notice to submit a decommissioning programme is an associated corporate entity, details of that associated corporate entity;
- the financial affairs of the person receiving the notice to submit a decommissioning programme and, where the recipient of a notice to submit a decommissioning programme is an associated corporate entity, the financial affairs of that associated corporate entity;
• the proposed security in relation to the carrying out of the decommissioning programme; and
• where the recipient of a notice to submit a decommissioning programme is an associated corporate entity, the name or address of any person whom the recipient of the notice believes to be an associated body corporate.

28. Subsection (4) of new section 112A allows the Scottish Ministers to require the provision of additional information or documents which the Scottish Ministers consider are necessary or expedient for the purpose of exercising their functions under sections 107(1) or (4) of the Energy Act. Those provisions allow the Scottish Ministers to prepare their own decommissioning programme where one has not been submitted or has been rejected, and to require the responsible person to provide security in relation to the carrying out of the programme.

29. Under subsections (5) and (6) of section 112A, the notice requiring the information must specify the documents or information (or the description of documents or information) to which it relates. The recipient of the notice is required to provide the information within the period specified in the notice.

30. Subsection (9) of section 112A makes it an offence to disclose information obtained by virtue of a notice issued under section 112A of the Energy Act, unless the disclosure is:

• made with the consent of the person who provided the information; or
• for the purpose of the Scottish Ministers exercising their functions under Part 2, Chapter 3 of the Energy Act, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998; or
• required by or under another piece of legislation.

Offences Relating to Decommissioning Programmes (Section 113)

31. A person guilty of an offence is liable: on summary conviction, to a fine not exceeding the statutory maximum; on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both. In any proceedings against a person for default in carrying out a decommissioning programme, it would be a defence to show that they exercised due diligence to avoid the contravention in question.

Use of Energy Act 2004 Enforcement Powers

32. Scottish Ministers expect that the final draft of a decommissioning programme should be submitted no later than 6 months prior to construction, and that deadlines given by Scottish Ministers will be met. Where it is likely that this deadline will be missed Scottish Ministers may consider using powers under the Energy Act to gather information to impose their own decommissioning programme.

33. Developers / owners are strongly encouraged to speak to Scottish Ministers informally at an early stage, so that the draft decommissioning programme can be submitted in accordance with the timetable set out in the section 105 notice.
34. Scottish Ministers expects to implement a strict approach to the timely payment of expected securities. Where expected payments are missed, a ‘section 110 notice’ would be sent within several weeks re-affirming the requirements to make the payment. Failure to comply with a section 110 notice can incur an offence, carrying a risk of a fine or up to 2 years imprisonment.
Flowchart of Decommissioning Programme Process

Stage 1
Developer initiates discussions with Marine Scotland and outlines planned timetable for project

Stage 2
Scottish Ministers issue s.105 notice requiring decommissioning programme once/if statutory consent or licence is granted

Stage 3
Detailed discussions take place between developer and Marine Scotland, leading to submission of draft programme

Stage 4
Marine Scotland comments on draft programme
Developer updates draft, checking revised draft with Marine Scotland, then issue public consultation

Stage 5
Developer sends updated decommissioning programme to Marine Scotland, incorporating log of consultation comments and updates
Marine Scotland consult other Scottish Government departments, Crown Estate Scotland and BEIS
Marine Scotland prepares decommissioning Appropriate Assessment (where required under EU Habitats and Birds Directives)
Written Marine Scotland comments on draft sent to developer
Developer sends final draft incorporating comments and outcome of consultations
Scottish Ministers / Finance Committee approve programme

Stage 6
Developer makes first securities to SG (if required upfront)
Accrual of securities (individual payments may be varied according to outcomes of reviews)
Reviews of decommissioning programme (Projects with CFDs/ROCs; likely to be every 5 yrs, final review 2 yrs before decommissioning. Earlier if demo projects

Stage 7
Decommissioning carried out in accordance with the programme by end of marine licence
Send decommissioning report to Marine Scotland

Stage 8
Responsible person carries out post-decommissioning monitoring, maintenance and management of the site
Final return of securities
Decommissioning Programme Template

Version Number: 0

Date issued:

Decommissioning Programme Template

For Offshore Renewable Energy Installations
Document Control

Insert Tables of Document Revisions as per example below

Approvals

<table>
<thead>
<tr>
<th>Name</th>
<th>Signature</th>
<th>Date</th>
</tr>
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Prepared by
Reviewed by
Approved by

Revision Control

<table>
<thead>
<tr>
<th>Revision No</th>
<th>Reference</th>
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<tr>
<td>0</td>
<td>First draft</td>
<td></td>
<td></td>
</tr>
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<td>1</td>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>…</td>
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<td></td>
</tr>
<tr>
<td>…</td>
<td>Final Version</td>
<td></td>
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</table>
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| 6 Environmental Impact Assessment | |
| 7 Consultations and Interested Party Consultations | |
| 8 Costs                     |      |
| 9 Financial Security        |      |
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| 11 Project Management and Verification |   |
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Appendix 1 – Consultee Responses

Figures and Tables

Include a table or list of Figures and Tables used in the document.

Terms and Abbreviations

Include a table of the terms and abbreviations used in the document (examples in blue below).

<table>
<thead>
<tr>
<th>Term / Abbreviation</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CfD</td>
<td>Contract for Difference</td>
</tr>
<tr>
<td>EIA Report</td>
<td>Environmental Impact Assessment Report</td>
</tr>
</tbody>
</table>

Delete options and brackets where appropriate. Remove red help text throughout document and replace blue example text with actual content.
1. Executive Summary

A summary should be provided, highlighting the essential features of the proposed decommissioning programme.

This document has been prepared by <insert name of company> and contains the decommissioning programme(s) for <insert overview of what the decommissioning programme covers>.

This decommissioning programme is being submitted for approval in accordance with the requirements of the Energy Act 2004 and in accordance with condition <insert relevant condition number> of the Section 36 Consent and condition <insert relevant condition number> of the <list relevant marine licences> marine licence(s).

In conjunction with public, stakeholder and regulatory consultation, the decommissioning programme(s) is submitted in compliance with national and international regulations and Scottish Government guidelines. The schedule outlined in this document is for a <insert number> year decommissioning project programme due to begin in <insert date that decommissioning is currently envisaged to begin>.

2. Introduction

A brief introduction should be included in the initial programme and updated when the programme is reviewed. The introduction should state the companies that are party to the programme and describe their ownership status.

3. Background Information

Relevant background information should be provided, supported by diagrams, including:

- The layout of the infrastructure to be decommissioned;
- The relative location, type and status of any other adjacent facilities (e.g. telephone cables, pipelines and platforms) which would have to be taken into consideration;
- Information on prevailing weather conditions, sea states, currents, sea-bed conditions, water depths, etc, relevant to consideration of the proposed decommissioning programme;
- Any fishing, shipping and other activity in the area;
- The names and locations of an Special Areas of Conservation (“SAC”) or candidate SAC (under the Habitats Directive) and/or Special Protection Areas (“SPA”) or proposed SPA (under the Birds Directive) that may be affected by the decommissioning programme;
- Any other background information relevant to consideration of the draft decommissioning programme.

The <insert development name> wind farm / tidal array /wave device is located at <location>. It was <granted consent under Section 36 of the electricity Act 1989 / a marine licence in>
<month & year>. The development was installed in and was commissioned in <insert dates>. Production of electricity is due to cease in <year>.

<Development name> is a <insert number of devices and maximum capacity or a description of the development> situated in <insert m> water depth. Electricity was exported from the development to <insert location>. <Add a description of any other features of the development>

Following public, stakeholder and regulatory consultation, the decommissioning programme is submitted in full compliance with Scottish Ministers guidelines. The decommissioning programme explains the principles of the removal activities and is supported by an environmental impact assessment (and information to inform a habitats regulations appraisal, if required).
4. Description of items to be decommissioned

A full description should be provided, supported by diagrams, of all items associated with the generating station to be decommissioned, including:

a) Renewable Energy Installations

- Renewable energy devices / test devices, including any foundations, support structures, towers, anchor blocks, turbines and ancillary equipment;
- Offshore substations, including foundations, support structures, topside structures and ancillary equipment;
- Meteorological masts; and
- Materials which may have been placed on the sea-bed, for example for scour protection, including rock, grout bags, sandbags and mattresses.

Table 4.1: Renewable Energy Installations and Stabilisation Features

<table>
<thead>
<tr>
<th>Installations* including Stabilisation Features</th>
<th>Number</th>
<th>Size/Weight (Te)</th>
<th>Location(s)**</th>
<th>Comments/Status***</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;Wind/wave/tidal &gt;Turbine(s)</td>
<td>&lt;X&gt;</td>
<td>&lt;X&gt; Tonnes each</td>
<td></td>
<td>e.g. All turbines are currently operational but will be… The turbines are attached to X with X&gt;</td>
</tr>
<tr>
<td>Meteorological Masts</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foundation(s) - &lt;type – e.g. Jacket, pin pile, gravity base etc.&gt;</td>
<td>&lt;X&gt;</td>
<td>&lt;X&gt; Tonnes each</td>
<td></td>
<td>structure is piled to seabed by X steel piles&gt;</td>
</tr>
</tbody>
</table>
b) Related lines

- <List and describe all Electric lines/cables, including inter-turbine cables, inter-substation cables and export cables>

Table 4.2 Subsea Cables

<table>
<thead>
<tr>
<th>Description</th>
<th>Cable Number (as per X)</th>
<th>Diameter (inches)</th>
<th>Length (km)</th>
<th>Description of Component Parts</th>
<th>From – To End Points</th>
<th>Burial Status</th>
<th>Cable Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inter-array cable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Trenched with 7m section exposed</td>
<td></td>
<td>Operational</td>
</tr>
<tr>
<td>Export cable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Surface laid</td>
<td></td>
<td>Operational</td>
</tr>
<tr>
<td>Inter-substation cable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Trenched and buried</td>
<td></td>
<td>Operational</td>
</tr>
</tbody>
</table>
Table 4.3: Subsea Cable Stabilisation Features

<table>
<thead>
<tr>
<th>Stabilisation Feature</th>
<th>Total Number</th>
<th>Weight (Te)</th>
<th>Location(s)</th>
<th>Exposed/Buried/Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concrete mattresses</td>
<td>5</td>
<td>6 tonnes each</td>
<td></td>
<td>buried</td>
</tr>
<tr>
<td>Concrete mattresses</td>
<td>20</td>
<td>10 x 6 tonnes, 10 x 8 tonnes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grout bags</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formwork</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frond Mats</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rock Dump</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (describe briefly)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5. Description of Proposed Decommissioning Measures

This section should set out the proposed measures to be taken for decommissioning the installation. The level of detail provided may be improved upon over time. However, the programme should be sufficiently detailed, from the outset, to demonstrate that the decommissioning has been fully considered and factored into design decisions and that a valuable decommissioning strategy has been developed. This section should cover:

- **Any planned phasing integration**

  Consideration may be given to the potential for beneficial phasing/integration of decommissioning activity between operators in order to realise any economies of scale that may be possible.

- **Proposed method of removal**

  This should have regard to:

  - Best Practicable Environmental Option (BPEO),
  - Safety of surface and subsurface navigation; - other uses of the sea;
  - Health and safety considerations

- **Proposed waste management solutions**

  This section should specify:

  - Which elements of the installation will be taken back to land for reuse, recycling, other recovery (e.g. incineration with energy recovery) or disposal;
  - Which (if any) materials from the installation are likely to be reused at sea

- **Details of any items which may be left in situ following decommissioning**

  Decommissioning programmes should start from the presumption of total removal. Where, in exceptional circumstances, non-removal or partial removal of items is proposed, the programme must state why this is considered to be the best option, through evaluation of the following matters (drawn from the IMO standards as set out in chapter 7):

  **Predicted degradation, movement and stability of any remains.**

  This section should be completed in line with the principles set out in chapter 7 (Decommissioning Methods) of this guidance
6. Environmental Impact Assessment

This section should be informed by the EIA report submitted with the original application for consent/marine licence and should be proportionate to the activities proposed. Further, it should be updated nearer the actual time of decommissioning if appropriate.

Mitigation measures should also be outlined here.

Environmental Sensitivities (Summary)

<table>
<thead>
<tr>
<th>Environmental Receptor</th>
<th>Main Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation interests</td>
<td></td>
</tr>
<tr>
<td>Seabed</td>
<td></td>
</tr>
<tr>
<td>Fish</td>
<td></td>
</tr>
<tr>
<td>Fisheries</td>
<td></td>
</tr>
<tr>
<td>Marine Mammals</td>
<td></td>
</tr>
<tr>
<td>Birds</td>
<td></td>
</tr>
<tr>
<td>Other Users of the Sea (risks to human health, cultural heritage, accidents and disasters)?</td>
<td></td>
</tr>
<tr>
<td>Atmosphere</td>
<td></td>
</tr>
<tr>
<td>&lt;add additional rows for site specific issues&gt;</td>
<td></td>
</tr>
</tbody>
</table>
7. Consultations and Interested Parties

The decommissioning programme should describe the consultation process employed. It should provide a summary table (as per that set out below) of the consultations undertaken with interested parties (Scottish Ministers would recommend using the same or equivalent consultees used for the marine licence application, some example consultees are listed below in blue) and explain the extent to which their views have been taken into account in the programme or influenced the decision making process (in the action taken column). Relevant correspondence (including copies of the public notice and correspondence from consultees) should be annexed to the programme.

Table 7.1 Summary of Stakeholder Comments

<table>
<thead>
<tr>
<th>Who</th>
<th>Comment</th>
<th>Action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Fishermen’s Federation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Natural Heritage (SNH)</td>
<td></td>
<td></td>
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<tr>
<td>SEPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Historic Environment Scotland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Maritime and Coastguard Agency</td>
<td></td>
<td></td>
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<tr>
<td>The Northern Lighthouse Board</td>
<td></td>
<td></td>
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<tr>
<td>Public</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Government departments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crown Estate Scotland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Secretary of State*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* where Section 105 (1C) applies
8. Costs

Developers will be expected to provide a confidential annex setting out the following:

- The Scottish Ministers will require financial models as approved via the developer / operators’ governance structure, including payments of debt financing/financing structure prior to construction commencing, in order to assess financial security requirements;
- 3 years of accounts for all operators involved in the OREI, including Parent Companies;
- The business plan for the project;
- Full funding model, detailing when the senior lenders will be paid back;
- A cash flow for the life of the project; and
- A robust overall cost estimate in line with chapter 8, in £ sterlin, of the proposed decommissioning measures. It should explain the basis on which the estimate is made, including a breakdown into major component parts.

Developers/operators must complete the tables below when submitting decommissioning programmes. If decommissioning is assumed to be taking place over multiple years, costs should be set out per individual year.

<table>
<thead>
<tr>
<th>Work Package</th>
<th>Year 20X6 £’000</th>
<th>Year 20X7 £’000</th>
<th>Description of work to be undertaken (including for example vessel day rates, number of turbines etc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation of Assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of generators</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of Foundations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of offshore substations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decommissioning of cables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seabed clearance and restoration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recycling and Waste Management 15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monitoring</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VAT*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange Rate Fluctuation**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inflation***</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Optimism Bias****</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingency*****</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>** This should include the costs of dealing with marine growth on structures / equipment.</td>
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</tbody>
</table>
Costs should be reviewed in line with decommissioning review timelines and altered as required. This includes any changes to the VAT rate, exchange rate and inflation.

Developers/owners should not offset scrappage value from their total cost assumptions.

*VAT

Unlike the developers/owners, the Scottish Government has no exemption from VAT should it fall to them to decommission. Therefore, to allow for the possibility of the Scottish Government having to decommission infrastructure in internal waters and/or the territorial sea, VAT will have to be factored into financial securities.

The VAT regime only applies within territorial waters (i.e. up to 12 nautical miles from the shore baseline). Projects primarily located outside of territorial waters will therefore need to set out how they have calculated VAT for a limited proportion of their decommissioning costs (for example removal of cables within territorial waters, and any on-land recycling or disposal costs).

<table>
<thead>
<tr>
<th>Costs within territorial waters</th>
<th>VAT (20%) Cost</th>
<th>Costs outwith territorial waters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs within territorial waters</td>
<td>VAT (20%) Cost</td>
<td>Costs outwith territorial waters</td>
</tr>
</tbody>
</table>

** Exchange Rate Fluctuations

For any decommissioning works to be undertaken outwith the sterling area/paid for in non-sterling currency, exchange rate hedging should be applied. Guidance is included within HM Treasury’s Managing Public Money.

Steps taken to manage exchange rate fluctuations

Text here

*** Inflation Calculator

Developers should ensure that inflation across the lifetime of the project is included within the security. The rate at which inflation should be assessed is the Office of Budget Responsibility’s (“OBR”) forecast for inflation as measured by the Consumer Price Index (CPI).
Inflation should be forecast until the proposed date for decommissioning. If the current OBR forecast does not go up to the end of the subsidy period then an average inflation figure should be assumed for the years not yet covered by OBR forecasts.

Inflation should be charged against the total cost of decommissioning (excluding Optimism Bias and Contingency).

<table>
<thead>
<tr>
<th>Year</th>
<th>20XX</th>
<th>20X1</th>
<th>20X2</th>
<th>20X3</th>
<th>20X4</th>
<th>20X5</th>
<th>20X6</th>
<th>20X7</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Inflation Rate (%)</td>
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<tr>
<td>Inflation Uplift Per Annum (%)</td>
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<tr>
<td>Total costs to apply to inflation (£’000)</td>
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<tr>
<td>Inflation cost (£’000)</td>
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</table>

****Optimism Bias

HM Treasury *Green Book* guidance should be utilised in the calculation of optimism bias. Optimism bias should be applied to the full cost of security, including exchange rate and inflation rate costs. Varying optimism bias rates can be applied to the different elements of decommissioning, based on the extent to which contributory factors are mitigated.

<table>
<thead>
<tr>
<th>Work Package</th>
<th>Work package Cost (£’000)</th>
<th>Optimism Bias Rate Applied (%)</th>
<th>Optimism Bias Cost £’000</th>
<th>Reason for rate used including mitigation factors</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

*****Contingency

Contingency percentage applied should reflect the sum of measured risk.
It is recognised that there will be concerns about including commercially sensitive cost and securities data in a decommissioning programme, and placing such data in the public domain. Therefore it is proposed that this section (8) and Section 9 on securities are provided as confidential annexes to Scottish Government only.

9. Financial Security

The programme should set out the financial security which the companies that are party to the programme propose to provide. Financial securities should follow the guidelines on inclusion of VAT, inflation and accrual timescales etc. set out in chapter 8.

10. Schedule

Details of the proposed decommissioning time scale should be provided, including a schedule (preferably in Gantt chart form) showing the dates at which the various stages of the decommissioning are expected to start and finish. Final details of the timing are only required towards the end of the life of the installation, when a review of the decommissioning programme is undertaken to finalise the decommissioning measures proposed, though must conclude by the end of the marine licence. The original decommissioning programme (prepared prior to construction) should set out, as far as possible, when decommissioning is expected to take place and explain how the decommissioning schedule will eventually be determined.

11. Project Management and Verification

The programme should provide information on how the Operator will manage the implementation of the decommissioning programme and provide verification to Scottish Ministers concerning progress and compliance. This should include a commitment to submit a report, detailing how the programme was carried out. As a guideline, this report should generally be submitted within four months of completion of the decommissioning work. This section of the decommissioning programme is only required towards the end of the life of the installation, when a review of the decommissioning programme is undertaken to finalise the decommissioning measures proposed. It need not be included in the original decommissioning programme (prepared prior to construction). An example is set out in blue below.

A Project Management team will be appointed to manage suitable sub-contractors for the removal of the installation. Standard procedures for operational control and hazard identification and management will be used. The Management team will monitor and track the process of consents and the consultations required as part of this process. Any changes in detail to the offshore removal programme will be discussed and agreed with Scottish Ministers.
12. Sea-bed clearance

This section should set out proposals for confirming that, following decommissioning, the site has been cleared. Typically this will involve carrying out appropriate surveys, upon completion of decommissioning. See paragraphs 7.23–7.26. An example is set out in blue below.

A post decommissioning site survey will be carried out around \( X \) m radius of installation sites and \( X \) m corridor along each existing cable route. Any seabed debris related to offshore renewable energy activities will be recovered for onshore reuse, recycling or disposal in line with existing guidelines. Independent verification of seabed state will be obtained by trawling the installation sites and cable routes. This will be followed by a statement of clearance to all relevant Scottish Government departments and non-governmental organisations.

13. Restoration of the Site

The programme should describe how it is proposed to restore the site, as far as possible and desirable, to the condition that it was in prior to construction of the installation.

14. Post-decommissioning Monitoring, Maintenance and Management of the Site

Where any remains are to be left in place, the programme should include a description of the proposed post-decommissioning monitoring, maintenance and management of the site. This should be similar to the example in green below. There should be a commitment to report the outcome of this work to Scottish Ministers.

A post decommissioning environmental seabed survey, centred around sites of the \( X \) and \( X \), will be carried out. The survey will focus on chemical and physical disturbances of the decommissioning and be compared with the pre decommissioning survey. Results of this survey will be available once the work is complete, with a copy forwarded to Scottish Ministers. All cable routes and installation sites will be the subject of surveys when decommissioning activity has concluded. After the surveys have been sent to Scottish Ministers and reviewed, a post monitoring survey regime will be agreed by both parties.

15. Supporting Studies

Provide a list of supporting documents / studies (and supporting diagrams, graphics or other material) referenced in the programme(s) which are not presented in the Appendices. See examples in blue below.

Table 15.1: Supporting Documents

<table>
<thead>
<tr>
<th>Document Number</th>
<th>Title</th>
<th>Electronic copies available at</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>EIA Report</td>
<td>&lt;insert link&gt;</td>
</tr>
<tr>
<td>2</td>
<td>Comparative Assessment</td>
<td>&lt;insert link&gt;</td>
</tr>
</tbody>
</table>