

Marine Scotland

Consultation on Draft Offshore Renewables Decommissioning Guidance

November 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

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Why are we consulting?

Scottish Ministers are now responsible for approving decommissioning programmes for renewable energy installations in Scottish waters following changes to the Energy Act 2004.

We're seeking views on our draft new guidance on the decommissioning of offshore renewable energy installations.

This consultation applies to Scotland, but we welcome responses from organisations or individuals based elsewhere who have views on how the proposed changes may impact the offshore renewable energy industry.

This is the first version of this guidance published specifically to cover Scotland, as powers passed from UK Government on 1 April 2017. This Scottish guidance covers many of the issues covered in the UK Government's guidance for installations in English and Welsh waters. It focuses in particular on issues relating to the provision of decommissioning cost estimates and associated financial security, to assist and inform developers.

We want views on this first draft from industry, regulators, and other interested parties, on the potential impacts - for example on the offshore renewables sector, the environment, or on other users of the sea.

Seeking your views

Scottish Ministers would welcome your comments and suggestions on the draft guidance. Your views and evidence will help inform the final guidance document.

Your response would be most helpful if it is framed in response to the questions below, however additional comments and any evidence are also welcome. Please also ensure that you fill in the accompanying Respondent Information Form.

Questions

Please answer the following questions.

1. This is the first version of the guidance for decommissioning offshore renewable energy installations in Scottish waters. We have, where possible, kept this in line with the UK Government's guidance. Do you agree or disagree with this approach?

Agree Disagree

Please explain your view.

2. The main proposed variation from the UK Government’s approach is in relation to test centres. The BEIS guidance states that test centres remain responsible for ensuring decommissioning of tenants. The Scottish Government is proposing that plans for tenants should instead be approved by Marine Scotland. Do you agree or disagree with this approach?

Agree Disagree

Please explain your view.

3. Do you agree or disagree with the proposed approach and timings in relation to financial securities set out in Section 9 of the draft guidance?

Agree Disagree

Please explain your view.

4. We are proposing to include a requirement for developers to set out inflation on their securities up to the end of the project lifetime, as set out in the draft guidance document at section 8.8-8.11. Do you have any comments on this proposal?

Please explain your view.

5. Do you agree or disagree with the proposed timescales for review of decommissioning programmes set out in sections 5.24 – 5.29?

Agree Disagree

Do you have any further comments on these suggested review schedules?

6. We aim to ensure that all future offshore renewable energy installations have an approved decommissioning programme in place prior to construction, as this will help to manage the risk of projects going into the water without proper plans in place for removal. How achievable is this for developers? What are the challenges for different types of project?

Please explain your view.

7. We have provided a draft template for a decommissioning programme as this was something that was highlighted as good practice from the oil and gas sector. Do you think that a template is useful?

Yes No

Do you have any suggestions on how it could be improved?

8. It seems likely that there will be cases where part of a windfarm or array may reach the end of its lifetime earlier than others, for example where the turbines at the edge wear out more quickly than those at the centre. We would be interested to hear views on how decommissioning might work in these scenarios, for example whether non-functioning turbines could or should be left in situ until the rest of the windfarm or array can be decommissioned, and what the risks of this approach might be, or any other risks or opportunities relating to the idea of “step-down” decommissioning.

Please explain your view.

9. In relation to the Partial Business and Regulatory Impact Assessment, do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?

Yes No

If so please explain these.

10. Do you have any further comments on the draft guidance?

Please explain your view.

Impact Assessments

Business and Regulatory Impact Assessment

A Partial Business and Regulatory Impact Assessment (“BRIA”) is attached at Annex A. We would welcome your views on the partial BRIA. A Final BRIA will be published prior to publication of the final version of the guidance.

Strategic Environmental Assessment

The SEA completed for previous leasing rounds and the emerging Sectoral Marine Plan for Offshore Wind Energy have considered potential environmental impacts arising during the decommissioning phase of such development, based on the guiding principles included in this draft Decommissioning Guidance. At present, there is not sufficient certainty regarding the scale, nature, extent and timescales of any future development to undertake a detailed assessment of the potential impacts of decommissioning activity beyond that undertaken in the SEA.

Responding to this Consultation

We are inviting responses to this consultation by **16 March 2020**.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/marine-scotland/offshore-renewables-decommissioning-guidance>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 16 March 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Marine and Offshore Renewable Energy Branch
Marine Scotland
Scottish Government
4th Floor
5 Atlantic Quay
150 Broomielaw
Glasgow, G2 8LU

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to oredecom@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex A - Partial Business and Regulatory Impact Assessment

Title of Proposal

1. Marine Scotland Offshore Renewables Decommissioning Guidance

Purpose and intended effect

Background

2. Section 62 of the Scotland Act 2016 transfers to Scottish Ministers powers under the Energy Act Part II Chapter 2, to require developers of offshore renewable energy projects in Scottish Waters and the Scottish part of a Renewable Energy Zone, to prepare a decommissioning programme. These powers constitute the regulatory functions of decommissioning including: powers for Scottish Ministers to approve such a programme; to require financial security for a programme to be put in place by responsible persons; and, should that responsible party default, to ensure that the decommissioning programme is carried out. Scottish Ministers also have the power to determine their own approach to decommissioning including the form, timing and size of financial securities.
3. Under the statutory scheme, the appropriate Minister may require those persons with an interest in such installations to produce a fully costed Decommissioning Programme detailing how they intend to remove the installation when it comes to the end of its useful life and how the costs of doing so will be funded.

Objective

4. The objective of this guidance is to set out how the scheme (as set out in the Energy Act 2004) will be implemented in Scotland.

Rationale for Government intervention

5. Guidance for the rest of the UK was recently updated and no longer covers Scotland. Therefore we need to provide our own guidance on what will be expected of developers in relation to decommissioning programmes and associated financial securities in Scotland.
6. The proposal contributes to the following objectives of the National Performance Framework:
 - We value and enjoy our built and natural environment and protect it and enhance it for future generations
 - We realise our full economic potential with more and better employment opportunities for our people.

Consultation

Within Government

7. Marine Scotland; the Directorate for Energy and Climate Change; Scottish Government Finance and Legal Advisors have been involved in formulating these policy proposals. Discussions have also taken place with UK Government BEIS and Crown Estate Scotland. Their input has supported the formulation of the policy proposals and has helped to refine their scope.

Public Consultation

8. Stakeholder workshops were held in Edinburgh, the first of which targeted developers, whilst the second sought lessons learned from regulators and other sectors (e.g. oil & gas). In addition, it is our intention to use this 12 week public consultation to produce a final BRIA, using this partial BRIA as the starting point.

Business

9. The Scottish Government is proposing to contact trade associations (Scottish Renewables) and key businesses engaged in applications for consent which are likely to be impacted on by the proposals. This would be in addition to the published, written consultation and would take the form of a meeting where the Scottish Government would present details of its intentions and invite discussion and feedback on the proposals. Any feedback will be summarised and recorded.

Options

Option 1: Do nothing

10. This would result in a gap in guidance for developers because the guidance produced at a UK level no longer covers Scotland as powers to require and approve decommissioning programmes and associated financial security for developments in Scottish waters now sit with Scottish Ministers.

Option 2: Introduce new guidance for ORE decommissioning in Scottish waters

11. This would fill the gap left following the publication of the UK Government's guidance, which no longer covers Scotland. It would set out that control is likely to be through consent condition and provide details of what is expected in terms of outline plans and decommissioning securities.

Sectors and groups affected

12. The groups that we anticipate to be affected by the proposed changes are largely those developing or operating offshore renewable energy installations in Scottish waters. These are the developers of electricity generating stations

proposals and developers of overhead line proposals. However, other users of the sea, including fishermen will have an interest in the consultation.

Benefits

Option (1)

13. There are limited benefits to doing nothing as UK guidance would no longer apply to Scotland and it would be unclear what would be required of developers and other stakeholders by way of the provision of decommissioning programmes and securities.

Option (2)

14. The proposed guidance would make it clear to developers and other stakeholders what is expected of them when producing a decommissioning programme and will advise on what securities and timings of payments of securities will be acceptable to Scottish Ministers.

15. Where applicable, developers will be able to understand the process in relation to the Finance and Constitution Committee's consideration of their proposed financial securities.

16. The guidance will help to ensure that Scottish Ministers have enough information to make a robust determination and will provide robust checks for the Finance and Constitution Committee.

17. This option also demonstrates a professional approach to risk management.

Costs

Option (1)

18. The potential costs of not producing guidance are that decommissioning programmes are not fit for purpose or that financial provisions are not put in place prior to construction, increasing financial risk to tax payers.

19. This option could also lead to Scottish Ministers and potentially the Finance and Constitution Committee not having enough information to make a determination in relation to submitted decommissioning programmes and securities.

Option (2)

20. The costs to businesses will be directly related to the difference in procedures between UK Government and Scottish Government procedures. For that reason the aim is to differ as little as possible, other than where operating procedures vary, for example in relation to certain spends having to be reported to or considered by the Finance and Constitution Committee.

Scottish Firms Impact Test

21. A Scottish Firms Impact Test will be carried out following wider consultation and consideration of the responses to the published consultation.

Competition Assessment

22. The Scottish Government has considered the following questions to assess whether the proposals will have an impact on competition:

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

23. We consider the answer to each question is no and on that basis no in-depth competition assessment is required. This is due to the proposal being guidance only.

Test run of business forms

24. A draft decommissioning programme template is attached as an annex to the guidance and consultees will be asked for comment on it.

Legal Aid Impact Test

25. As far as we are aware these proposals do not create a new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal, or any change of policy or practice which may lead people to consult a solicitor.

26. The proposal is not likely to result in additional people seeking legal assistance or being taken through the courts.

Enforcement, sanctions and monitoring

27. These proposals themselves do not contain enforcement, sanctions or monitoring requirements. These are required by the legislation and planning conditions, rather than by this stakeholder guidance.

Implementation and delivery plan

28. Subject to the outcome of the consultation, it is intended that the guidance will be published by the end of 2019.

Post-implementation review

29. The intention is to review the guidance within 3 years.

Summary and recommendation

30. Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No benefit	Potential risk of inadequate decommissioning of ORE installations, with costs falling to Scottish Ministers as funder of last resort.
2	Safeguards put in place to mitigate risk to taxpayers, whilst allowing adequate flexibility for developers to decommission.	Enough information to make an informed decision on whether proposed securities are adequate. Robust checks for Finance and Constitution Committee.



Annex B

Respondent Information Form

CONSULTATION ON DRAFT OFFSHORE RENEWABLES DECOMMISSIONING GUIDANCE

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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