

FINAL 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 in March 2019 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. Early 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, a consultation took place between 22 November 2019 and 16 March 2020. One of the consultation questions referred to the partial business and regulatory impact assessment that was published along with the consultation and asked about any financial, regulatory or resource implications that the guidance would have. This final Business and Regulatory Impact Assessment has taken the comments received on board.

Business

9. The Scottish Government contacted trade associations (Scottish Renewables and RenewableUK) and key businesses engaged in applications for consent which are likely to be impacted on by the proposals and invited them to a consultation event on 31 January 2020. This was in addition to the published, written consultation and took the form of a meeting where the Scottish Government presented details of its intentions and invited discussion and feedback on the proposals. A summary of the consultation event was sent to all those who attended.

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 showed 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 Public Administration 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 Public Administration 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 Public Administration 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 Public Administration Committee.

Scottish Firms Impact Test

21. A number of offshore wind developers stated that the proposals in the guidance document have inherent financial, regulatory and resource implications. In summary these relate to the timing of financial securities, timescales for approval and review of decommissioning programmes, extensive requirements relating to provision of costs information, confidentiality of financial information and the role and involvement of the Finance and Public Administration Committee. The obtaining of approval prior to offshore construction could lead to increased construction and commissioning costs for projects through any delays to the construction programme.
22. For the wave and tidal sector: up-front payment or the accrual of securities poses a significant financial cost to developers and the requirement to submit draft decommissioning programmes 18 months in advance of works commencing was viewed as disproportionate for small projects and will lead to increased construction and commissioning costs for projects through delays to the construction programme. Such financial and consenting restraints also arguably run contrary to the Scottish Government's declaration of a climate emergency, given their potential to restrict and delay the development of renewable projects.
23. One non-departmental public body raised that there may be resource implications for consultees, although these were not quantified.

Competition Assessment

24. 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?
25. 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

26. A draft decommissioning programme template was attached as an annex to the guidance and consultees were asked for comment on it. Amendments have been made to the template to clarify what is required, and so that the examples given are across the technology types. Use of the template will be monitored to ensure that it remains fit for purpose.

Legal Aid Impact Test

27. 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.

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

Enforcement, sanctions and monitoring

29. 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

30. It is intended that the guidance will be published in Q3 2022.

Post-implementation review

31. The intention is to review the guidance as and when required.

Summary and recommendation

32. Option 2, introducing new guidance for ORE decommissioning in Scottish waters, is being recommended. The consultation responses were clear that decommissioning guidance is required for Scottish offshore renewable energy projects. 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 Public Administration Committee.