# OFFSHORE RENEWABLES DECOMMISSIONING GUIDANCE CONSULTATION

## Scottish Government Response to the Consultation

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# Executive Summary

Marine Scotland has consulted on guidance for the decommissioning of renewable energy installations in Scottish Waters and Scottish parts of the Renewable Energy Zone ("the guidance"). The consultation ran from 22 November 2019 until 16 March 2020. Thirty responses were received from a range of consultees which included offshore wind developers, the wave & tidal sector, offshore transmission owners, Government / executive agencies / public corporations, trade organisations, planning authorities, non-departmental public bodies, universities and conservation organisations, as well as some individuals.

Marine Scotland is grateful to all those who took the time and effort to contribute to the consultation exercise.

This document summarises the main issues raised through the consultation and sets out the conclusions which Scottish Ministers have reached and the changes which have been made to the guidance in light of the consultation responses. We have carefully considered all consultation responses. An analysis has been carried out, which is published in a separate report entitled "Offshore Renewables Decommissioning Guidance Consultation - Analysis of Consultation Responses" (subsequently referred to as the "analysis report"). The analysis report should be read alongside this response.

The changes made to finalise the guidance, taking into account the consultation responses, can be summarised as follows:

- The guidance continues to stick as closely as it can to the BEIS guidance. However, where it does have to differ, as much clarity as possible has been given. For example, more detail has been provided on the role of the Finance and Public Administration Committee (which has replaced the previous administration's Finance and Constitution Committee).
- The wording requiring test centre operators to pay for the removal of the assets of their clients where these have failed to be removed has been taken out of the guidance to address concerns raised by the sector.
- The finalised guidance does not change the position on the timing of securities, which reflects the timings in the BEIS guidance and provides protection to tax payers.
- The finalised guidance confirms that Consumer Price Index (CPI) will be used as the inflationary index for financial securities in line with cross-Governmental standards and for consistency with the BEIS guidance. The average inflation rate should be calculated via the average over the years published by the Office of Budget Responsibility (OBR) (starting from the current financial year). Developers will be able to seek guidance from the Scottish Government when preparing costings.
- The guidance ensures estimated decommissioning costs have CPI inflation applied to the point of decommissioning rather than to the end of any subsidy period. This will better reflect the decommissioning costs at the point they are incurred and reduces the financial risk to the Scottish Ministers.

- Parent Company Guarantees may be required as a secondary form of security to provide Scottish Ministers with additional reassurance that the taxpayer is being suitably protected.
- The finalised guidance includes a similar number of reviews during the review schedule of an approved programme. The guidance makes it clear that review timescales for shorter term projects will be considered on a case by case basis.
- A range of comments were made on the draft template, many of which have been taken on board. The template will be kept under review to ensure that it continues to remain fit for purpose.
- The Business and Regulatory Impact Assessment has been updated to take account of the comments received on it through the consultation.
- Text has been added to the guidance to make it clear that it is the responsibility of the responsible person to ensure that all health and safety requirements are met.

The finalised Offshore Renewables Decommissioning Guidance is being published alongside this consultation response and comes into immediate effect.

# Introduction

1. The decommissioning responsibilities and powers for renewables energy installations in Scottish waters and Scottish parts of the renewable energy zone transferred from the Secretary of State to Scottish Ministers in April 2017. Up until that date, the UK Government's Department for Business, Energy and Industrial Strategy (BEIS) was responsible for guidance on decommissioning programmes and securities for such projects.

2. Marine Scotland is seeking to establish robust policies and procedures to cover the decommissioning of offshore renewable energy. A consultation on draft guidance for the decommissioning of renewable energy installations in Scottish Waters and Scottish parts of the Renewable Energy Zone ran from 22 November 2019 until 16 March 2020 to gather views on Scotland’s first industry guidance for the eventual decommissioning of renewable energy installations from industry, regulators and other stakeholders. Thirty responses were received from industry, trade bodies, regulators and other interested parties.

3. This document sets out the conclusions Scottish Ministers have reached and the changes which have been implemented to the guidance as a result of the consultation. We have carefully considered all comments received throughout the consultation process. An analysis of these comments has been carried out and published in a separate document entitled “Offshore Renewables Decommissioning Guidance Consultation - Analysis of Consultation Responses” (subsequently referred to as the “analysis report”). The analysis report should be read alongside this document.

4. The guidance has been amended as described in the following sections of this document. The revised guidance is being published alongside this consultation response and comes into immediate effect.

# Consultation questions

5. As part of the consultation exercise, the following questions were asked:

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

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

# Summary of consultation responses

6. This section summarises the responses to each question and sets out the Scottish Government's response on the issues raised.

**Question 1: We have, where possible, kept this in line with the UK Government's guidance. Do you agree or disagree with this approach?**

7. The majority of respondents welcomed consistency with the BEIS guidance. However, offshore wind developers were keen to point out that **the more stringent timelines and greater security requirements in the draft Scottish guidance would lead to an unfair disadvantage compared to English and Welsh counterparts**, particularly as the deeper waters in Scotland already put Scottish projects at a competitive disadvantage. Some asked for further clarification on the points where the guidance is not aligned with the UK Government's guidance or on the role and timings of the Finance & Constitution Committee involvement, highlighting that Marine Scotland must have sufficient resources to meet the tight timelines that developers will have. Others said that the guidance should be more flexible, so that it is more aligned with the BEIS guidance.

8. The wave and tidal sector responses stated that Scotland is a world-leader in marine renewable energy and should continue to innovate to support the sector's development, whilst ensuring sufficient consistency across the UK. The guidance should explicitly state projects will be assessed on a case-by-case basis and that three months should be sufficient to review decommissioning programmes for small projects.

9. Academics called for the need for projects to be designed to decommission and for feedback loops to be built into the process, whilst one individual called for chemical use and discharge to be considered in the commissioning, production and decommissioning phases of renewable energy development.

10. A mix of other respondents stated that the guidance should apply to all installations and that the Scottish Government should ensure that this is in place, even if there

are variations with other parts of the UK. Some respondents thought that the policy should require the complete removal of all apparatus which has been introduced to the marine or terrestrial environment.

**Response**

11. The Scottish Government recognises that consistency with the BEIS guidance allows developers to be competitive when applying for subsidies. The financial security payment requirements reflect that of the BEIS guidance. However, as explained in the consultation document, there are processes in place in Scotland in relation to financial liabilities which have to be adhered to. This is set out in the Scottish Public Finance Manual and includes full appraisal of proposals in order to protect public funds and also in advance of consideration by the Finance and Constitution Committee. The final guidance provides more detail on the role of the Finance and Constitution committee and the associated timings.

**Question 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 decommissioning programmes for tenants should instead be approved by Scottish Ministers. Do you agree or disagree with this approach?**

12. The majority of respondents agreed with the Scottish Government's approach, with one planning authority stating that this would bring an element of oversight to the process to ensure decommissioning programmes are fit for purpose. One trade organisation stated that nothing should be left on the seabed by test centres or in relation to commercial installations and a conservation organisation stated that it is important to maintain high environmental standards.

13. One suggestion was that test centres should assume responsibility for the cost of the decommissioning in the centre, and factor that into their fees. However, one wave and tidal sector respondent and one trade organisation did not agree with this and raised concerns, namely that making test centres responsible for decommissioning objects deployed at their facilities by tenants, where insufficient or no financial provision has been made, would result in unacceptable financial risk for the test centre and was not acceptable and called for the removal of paragraph 4.11, which states that "*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*". Another point raised was that Scottish Ministers or the seabed owner should take on some of the liabilities. One public sector organisation thought that making test centre tenants provide securities upfront may become a barrier to construction and investment. An offshore wind developer thought that the proposed requirement on test centre tenants to have to follow the full decommissioning programme process seemed excessive and disproportionate and requested clarity on the reason for varying from the BEIS approach.

14. Other points raised were that: more information is required on how Marine Scotland would assess / facilitate the differing agreements that BEIS allow test site and tenants

to hold in respect of agreement on decommissioning responsibility and securities; Marine Scotland could come to mutual agreements with test centres on the decommissioning of tenant offshore renewable energy installation (OREI) innovations, allowing a more informed decision to be made; and the timeframe for approval of decommissioning programmes must be proportional to the consenting and testing timeframe. One individual thought that test centres may be cautious about accepting tenants unless the centre operator is provided with financial security by them. It was suggested that the position is dealt with in the same way as the UK Government guidance with test centres being responsible for the decommissioning of the installations of their tenants; or that the guidance is amended so that that Scottish Ministers agree the programme and financial security package with tenants and take the financial consequences if that security proves to be inadequate.

**Response**

15. Ultimately the financial liability sits with Scottish Ministers and so Scottish Ministers would want to maintain some oversight.

16. The wording at paragraph 4.11, requiring test centre operators to pay for the removal of the assets of their clients where these have failed to be removed, has been removed to address concerns raised by the sector.

**Question 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?**

17. The majority of respondents agreed with the proposed approach, however many comments were received on the details of the approach. Public sector bodies generally agreed that securities should be put in place to ensure future decommissioning activity is carried out and to provide security for the tax payer and Scottish Ministers.

**Timings**

18. Representations on the timings for provision of financial securities varied. Some offshore wind developer / owners felt that securities should not need to be put in place until the end of the subsidy period or the final two years of the subsidy period, rather than accruing from an earlier stage. Additionally, they suggested that the accrual should apply to the final two years of the subsidy period for each phase of phased projects (including OFTOs). Others supported mid-life accrual, though some pointed out that this date will have to be clarified for each project. One offshore wind developer called for a readdressing of the position on projects not supported by subsidy being likely to require payment up front of installation. Another offshore wind developer stated that the guidance should allow projects that secure Power Purchase Agreements (“PPA”) to accrue their securities over the duration of the PPA.

19. Representatives from the wave and tidal sector and Statutory Nature Conservation Bodies stated that a more proportionate approach should be taken for pre-commercial projects, for example early life accrual for projects which receive a

predictable revenue scheme. The wave and tidal sector responses stated that upfront security for novel technologies is onerous, sends the wrong signal to investors.

20. There was also a comment that the timing requirements for offshore wind are more rigid than the requirements for those operating in the offshore oil and gas industry.

**Approach**

21. A number of offshore windfarm developers stated that scrappage income should be permitted in the calculation of securities and called for Value Added Tax ("VAT") not to be included in costings for territorial water projects. They also raised concerns over how commercially sensitive information will be treated, given the commercial risk of sharing it. Some thought that the decommissioning reserve account should remain with the relevant asset owner, who should be able to access it, subject to withdrawal conditions, in order to conduct decommissioning activities.

22. Other points raised by developers were that the guidance places the onus on developers to justify costs for decommissioning, but places overly conservative, restrictive requirements for generating costs based on a high perceived level of risk, whilst allowing little ability for developers to justify realistic costs, or areas for cost reduction. They went on to say that overly conservative assumptions may have a detrimental impact on how investors value projects. One developer stated that commercial scale offshore wind is no longer a developing or novel technology, and this should be reflected in the perceived risk to the tax payer, and translated into acceptable levels of security, as per the BEIS guidance. There needs to be a fair process where developers can justify and defend costs without threat of delays to the start of construction. Greater flexibility will allow developers to look at ways to reduce ultimate costs to consumers. It is unlikely a private entity would share the financial model for review unless undertaken by an advisory entity who are willing to accept reliance and that annual renewal of letters of credit is an overcautious administrative burden.

23. One offshore wind developer did not support the inclusion of 'optimism bias' in calculating securities, stating that optimism bias is not relevant for private sector projects such as windfarms. Conversely, another respondent stated that research suggests a significant underestimate of decommissioning costs in decommissioning programmes, therefore a high optimism bias should be applied to all calculations. They went on to state that the decommissioning cost structure should be in line with the general waste management regulations and the Circular Economy Bill.

24. One offshore wind developer stated that provision 9.17(f) should be deleted so as to provide certainty to companies that securities with the stated features and by an entity with the features (including credit rating) in the guidance will be acceptable. The same respondent thought it would be useful to clarify what is meant by "a limited proportion of the funds" (Section 9.34) may be held back pending a successful decommissioning report.

25. One offshore wind developer called for parent company guarantees to be included as an option for securities, as they are securitised against the business portfolio of

assets, and therefore create economies of scale. They went on to state that they understand the objection to parent company guarantees is that their value can diminish if the credit quality of the parent company were to deteriorate. However, there are well established methods to mitigate this.

26. The points raised in the wave and tidal sector responses were that the requirements for developers / owners to put securities in place should be consistent with other proven generation technologies, and should allow sufficient flexibility so that a projects ability to seek investment or re-finance are not impacted. There is a need to reflect some of the risk that would apply to Scottish Government as residual liability holders.

27. One public sector organisation highlighted that they understand that Scottish Ministers are keen to protect the taxpayer from decommissioning responsibilities should an responsible person dissolve or abandon an asset, but considered that the current Offshore Transmission Owner ("OFTO") regime provides an adequate level of protection to allow OFTOs to be exempt from additional upfront costs. Providing examples of what Marine Scotland consider to be exceptions to the full removal presumption would help to drive down costs within the OFTO regime. This was a sentiment echoed by an offshore wind developer.

**Response**

28. The updated guidance does not change the position on the timing of securities, which reflects the timings in the BEIS guidance and provides protection to tax payers.

29. The Scottish Government understands the issues raised by the wave and tidal sector and industry representatives regarding the difficulties of obtaining funds to provide upfront securities. However, as indicated above, Scottish Ministers need to consider a range of factors to protect taxpayers against the possibility of having to pay for the cost of decommissioning in the event of a company failure. The guidance continues to offer flexibility in this respect and proposals will be considered on a case by case basis.

30. Regarding requests for separate decommissioning regimes for OFTOs and for wave / tidal devices, this is not within the Power of Scottish Ministers and the UK Government has been clear that it considers that there should be a single framework with a risk based approach consistently applied for all offshore renewable energy technologies which fall under the Energy Act 2004.

31. Whilst we note the points raised on parent company guarantees, we remain of the opinion that they would not normally be accepted as a primary source of security. However, the guidance has been amended to recognise that Parent Company Guarantees may be required as a secondary form of security to provide Scottish Ministers with additional reassurance that the taxpayer is being suitably protected.

32. In response to the point on the sharing of financial models, financial models are required to be reviewed in order to assess the viability of proposed financial security arrangements. Financial information relating to decommissioning costs and financial

security arrangements would be provided to the Scottish Government on a confidential basis. The Scottish Government follows strict internal guidelines on the handling of commercially sensitive information but is still subject to Freedom of Information (FOI) and Environmental Information Requests (EIR).

**VAT**

33. Whilst we note the comments in relation to VAT requirements, the purpose of securities is to cover the full cost of removal if this requirement falls to the Scottish Government. As decommissioning is not the Scottish Government’s 'business activity', Scottish Ministers cannot recover any VAT associated with decommissioning. As a result, securities need to include this VAT element, otherwise it will lead to a shortfall of costs falling to the taxpayer if this security is ever required to be used for its intended purpose.

34. In line with BEIS guidance, Section 8.11 of the guidance continues to clarify the treatment of VAT in the calculation of financial security levels as follows:

    • where all the offshore renewable energy installation and infrastructure is within 12 nautical miles of the shore baseline, VAT on all decommissioning elements should be factored into financial securities to be provided to Scottish Ministers;
    • 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 to BEIS;
    • 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.

**Question 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?**

35. There was general support for the use of the Consumer Price Index (“CPI”) as the inflationary index for securities, however some developers / owners pointed out that other public bodies are using Retail Price Index (“RPI”) inflation and that discussions should take place to agree a standard approach. Some developers / owners felt that costs should be linked to actual costs (e.g. as assessed at end of subsidy period) not forecasts, that developers should be able to pursue their own methodology for considering inflation or that methods of applying inflation should be consistent across the UK. One offshore wind developer thought that any ‘cost review’ should supersede the inflationary increases. Others pointed out that there is a need to ensure inflation is not double counted, e.g. in the Crown Estate Scotland (CES) leasing process, and that there is a need for the guidance to advise on how inflation should be calculated beyond published CPI forecasts.

36. The wave and tidal sector raised the point that requiring developers of projects with certain characteristics, e.g. < £300k liability, to provide annual updates on the impact of inflation does not seem proportionate.

**Response**

37. The updated guidance confirms that CPI will be used as the inflationary index for financial securities in line with cross-Governmental standards and for consistency with the BEIS guidance. The average inflation rate should be calculated via the average over the years published by the OBR (starting from the current financial year). Inflation should be applied to the point of decommissioning rather than to the end of any subsidy period. This will better reflect the decommissioning costs at the point they are incurred and reduces the financial risk to the Scottish Ministers. Developers will be able to seek guidance from the Scottish Government when preparing costings.

38. As decommissioning takes place at a future date, actual costs cannot be used to set out decommissioning costs, and therefore inflation must be applied to provide a best estimate and protect public funds.

39. Reviews of the funding required for decommissioning will be undertaken as set out in the guidance and will include updates on elements which derive the costs, including inflation.

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

40. Most developers / owners felt that the proposed review schedule was too frequent and risked being a burden on them. The proposed frequency of reviews varied between developers / owners, with some suggesting a three-year cycle, others preferring a five-year cycle, some proposing reviews in the second half of an asset lifetime, and others proposing no set review cycle at all, but rather "trigger points" for reviews (perhaps based on the points set out in 5.25 of the draft guidance), or some flexibility in the timings. One developer thought that the requirement after the start of the security period for annual developer-lead reviews rather than full approval process each year, is in line with what lenders would expect. Some asked for clarity on the role and timescales envisaged for scrutiny of DPs by the Finance & Constitution Committee and one thought there should be timelines on Ministers when it comes to review and approval of decommissioning programmes. Public bodies, on the other hand, were generally happy with the proposed regular review timescales, which they thought would help to minimise the risk of costs falling to Scottish Ministers and ensure new information and technologies, as well as changes in environmental conditions, are considered.

41. One respondent thought that the timings for review are too short and should be expanded to allow a feedback loop on the design of OREI.

42. There was general agreement that reviews for short-term deployments may require to be discussed and agreed on a case-by-case basis. One wave and tidal sector respondent thought that the expected review schedule should be made clear to the developer on approval of the decommissioning programme, whilst another thought

that review timelines should be flexible and proportionate and suggested amending the text to state that shorter term projects [and those with decommissioning liabilities under £300k] will be considered on a case-by-case basis.

43. Other points raised in responses to this questions included: the need for clarity on who will be consulted during reviews and when, recognition that a developer may need to run two decommissioning programmes in parallel and that the guidance should outline expectations with regards to decommissioning renewable assets, both when their sole purpose is to serve an operating oil and gas asset, and when they also supply electricity to the grid or other users.

**Response**

44. The updated guidance includes a similar number of reviews during the review schedule of an approved programme. Scottish Ministers understand concerns on workload, but it is in the interests of both the Scottish Government and owners to make sure that any changes in decommissioning requirements or financial securities can be managed and as far as possible planned in advance (to reduce the possibility of the Scottish Ministers requiring extra securities at short notice).

45. The guidance makes it clear that review timescales for shorter term projects will be considered on a case by case basis.

**Question 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 programmes in place for removal. How achievable is this for developers? What are the challenges for different types of project?**

46. Public sector respondents who answered this question were generally in favour of having approved programmes in place for all projects prior to construction, as were some other respondents. However, one public sector respondent did suggest that the timing in which decommissioning programmes are submitted may need to vary depending on technology type, scale and location, a sentiment very much echoed by the wave and tidal sector respondents, with one suggesting that the 18 month approval timeframe needs to be nearer three months for wave & tidal projects and another stating that as long as the level of detail required is proportionate to the scale and risk of the development, this should be achievable for developers. However, this would be more challenging and does not seem proportionate if developers of pre-commercial projects are to be expected to complete decommissioning programmes to the same level of detail as commercial developers. It may also put projects in Scotland at a competitive disadvantage compared to installations in England and Wales.

47. Offshore wind developers highlighted that submission of Decommissioning Programmes 18 months prior to construction is very challenging as the required detail would not be available that early on and that costs would be high level estimates. Offshore wind developers were very concerned that a requirement to have the programme approved by Scottish Ministers prior to construction is likely to result in a delay to the construction programme, which could impact on the delivery

obligations under a contract for difference. Others said that this requirement was simply not achievable. One suggestion was to phase the preparation of the decommissioning programme: e.g. draft submitted one year prior to the project reaching financial close. Then final decommissioning programme submitted for approval (including the Confidential Annex) at least six months prior to the commencement of construction. Others called for the timescales to be in line with the UK guidance. One offshore wind developer asked for a defined mechanism that will allow developers to revise security estimates when more detailed project information is confirmed.

48. Other key comments in response to this question were that Scottish Ministers must be adequately resourced and that commitments should be made on response times; there is a need to consider how timings would work for phased projects; the preference is for the seabed to be returned to original state; the presumption for removal should be taken out of the guidance and developers should use the best practicable environmental option; DPs should acknowledge current scarcity of decommissioning infrastructure, current capacity and limitations of 'waste' management technologies, the impact of these current limitations, and the efforts being taken to address these. There was also a call for the Scottish Ministers intention to regulate the requirement for approved decommissioning programmes prior to installation via marine licence conditions to be clearly stated in the guidance and for the process for non-compliance with such a condition to be outlined.

49. Ofgem stated that the level of detail which can be produced and submitted during the early development stages of the project will be limited and the level of cost certainty will only be a range of possible outcomes. In addition, the sale of the OFTO must be completed 18 months from when the whole transmission system has reached full capacity (Generator Commissioning Clause under The Energy Act 2013) and the project completion notice has been issued by National Grid. The preferred bidder is normally in a position to submit their decommissioning programme within the last six months of this deadline. Ofgem are therefore slightly concerned that an additional level of approval to that of the process followed by BEIS (gaining approval from Scottish Ministers), could in turn take much longer - potentially risking a delay to asset transfer and taking the project close to this legislative deadline. Ofgem include within the obligations they set to the preferred bidder on appointment that they are to submit their draft decommissioning programme within 2-3 weeks of them issuing a notice to help alleviate this time constraint. Ofgem would encourage Marine Scotland to bear this in mind when reviewing these proposals. They also encourage regular contact with Marine Scotland to ensure any delays to the approval process can be avoided so as not to put the developer of the project at risk of breaching this legislated deadline.

**Response**

Acknowledge that 18 months is a significant timescale prior to commencement of development, however there are examples where DPs are not in place for projects which are approaching or past the construction phase. We also note calls to follow the same approach as BEIS, however, a written agreement between the Scottish Government and the Scottish Parliament requires Committee approval for contingent

liabilities which do not fall within the normal run of Government business, and where the exposure exceeds £2.5 million, meaning that a different approach must be taken.

**Question 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?**

50. The majority of respondents thought that a template is very useful to ensure consistency in terms of the information and level of detail required. Others thought there should be flexibility for developers to deviate from the structure or wording of the template or to create their own wording and sought clarity on whether they would be penalised for doing so. Some developers / owners thought the template was too prescriptive or that it needed a more simplified / less detailed structure. A number of offshore wind developers stated that much of the detail being asked for in Section 4 is unlikely to be available, certainly 18 months prior, and potentially six months prior to construction. Another offshore wind developer thought the template should be clearer on what information is required in Sections 8 and 9 and what information should be included in a confidential annex.

51. One individual asked for an explicit section on chemical use and discharge to be included in the template, whilst a public body thought a section detailing proposed mitigation measures should be included, whilst another respondent though that each installation should include a bill of materials i.e. how much iron, copper, composite and rare earth element fluid is in each turbine and how will each be recovered and that the template should reflect the opportunity for a circular economy approach, with for a more effective integration (than that used by the oil & gas sector) of the EIA and comparative assessment directly into the decommissioning programme.

52. One NDPB thought that the section on proposed waste management solutions could be made to indicate to developers that they should be considering the decommissioning options of their components at the design stage and recommended that a more streamlined approach to the requirements for EIA and HRA for decommissioning is agreed, perhaps through a review and scoping before the final decommissioning programme is submitted.

53. One offshore wind developer stated that Section 8 provides a template for costs / securities but the application of this is not entirely clear. For example, columns are in place for costs in "todays money" and also for costs "at the point of decommissioning", against each work package.

54. Wave and Tidal respondents also thought that the examples provided within the template should cover all technologies, the requirement for a first draft of the document 18 months ahead of construction is too far in advance and a more proportionate approach should be considered for smaller, low-risk projects.

**Response**

55. The template will be kept under review to ensure that it continues to remain fit for purpose.

**Question 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.**

56. The majority of respondents asked for flexibility on this issue depending on the circumstances. Offshore wind developers felt that this was better dealt with through consent conditions, with some stating that decommissioning is the final phase of an offshore wind farm project's life cycle and does not apply to repairing / replacing individual turbines or parts of arrays during the operational phase. This was not thought to be a problem for small devices which just reverse install. One respondent thought that a life cycle analysis of the step-down approach compared to complete site end of life removal should be considered up front. Disadvantages may include the costs and environmental impacts associated with multiple operations to remove WTG's at different stages.

57. Other views included that a variation to Aids to Navigation, Emergency Response and Co-operation PLAN ("ERCoP") and Notices to Mariners will be important for ensuring safety to vessels and mariners; in general OREIs should be removed all at once to restrict disturbances and that a staged decommissioning programme would be the most appropriate mechanism and reduce risks to other sea users. However, if assets are to remain onsite unused, a guarantee from the assets' owner should be required to ensure the equipment is maintained to a suitable standard.

**Response**

58. The guidance remains flexible on this issue.

**Question 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)?**

59. 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 Constitution 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.

60. 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 is 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.

61. One non-departmental public body raised that there may be resource implications for consultees, although these were not quantified.

**Response**

62. The Business and Regulatory Impact Assessment has been updated to take account of these comments.

**Question 10 – Do you have any further comments on the draft guidance?**

63. A wide range of further comments were provided on the guidance. Common themes in the responses from offshore wind developers included requests for clarity on the process for requesting, and for more detail on the range of, exceptions to full removal; clarification on whether Marine Scotland intend to publish a comparative assessment tailored to the offshore renewables' industry; requests for the guidance to be flexible on post-decommissioning survey / report requirements to allow compatibility with licencing conditions; the application of the guidance should be consistent with the approach taken in England and Wales, in order to enable Scotland to remain competitive within the wind industry in a UK context. There was a request for clarity on which regime will apply to applications beyond the territorial seas limit and for a joined-up approach between CES, TCE, MS and MMO.

64. Offshore wind developers also called for details on how developers / owners can access / draw down the decommissioning funds or how funds are to be released, with one stating that draw down of securities should be possible prior to individual decommissioning activities taking place, or that where future revisions of a projects decommissioning programme demonstrate a decrease in decommissioning costs then a project should be able to draw on that difference immediately.

65. Further comments from wave and tidal sector representatives included: that the current inclusion of paragraph 4.11 makes the proposed process for managing decommissioning responsibilities completely untenable for test centres, if introduced as outlined then this may prevent test centres from continuing to operate; for Scotland to maintain and build upon its world lead, the draft decommissioning guidance should be amended to allow distinctions to be made between (for example) first generation wave devices, pre-commercial tidal arrays and commercial wind farms. Rather than pursuing a two-track approach where up-front payment and mid-life accrual are the only two options, a more proportionate approach is recommended. One that recognises that there are now companies in the tidal energy sector which pose a far lower risk than (for example) the early wave developers, but are not yet at the same level as commercial offshore wind.

66. A number of public bodies and a trade organisation felt that the guidance should be clear that leaving any infrastructure in situ should be a last resort, and that projects should be encouraged to think about decommissioning at the design stage; and that

the framework for assessing whether assets can remain in situ should align more closely with the Habitats Directive (Directive 92/43/EEC) and Conservation Regulations (2017). A number of public bodies asked to be consulted on decommissioning programmes and one thought it would be helpful if the final guidance could signpost: who to engage with and when; how decommissioning activities between the mean high and low water springs and above the mean high water spring mark to be addressed; and that further guidance on repowering and life extension scenarios would be welcome in future guidance updates. Another public sector body highlighted the requirements under the Construction (Design and Management) Regulations 2015 for operators / developers to compile a maintain a health and safety file for as long as it is relevant; whilst another

67. There were also comments about the need for more focus on waste management and ensuring that developments are designed to decommission.

68. Some offshore wind developers questioned what the aims and objectives of post-decommissioning monitoring are, how long will post-decommissioning monitoring be expected to last, and how this will be controlled when CES leases have ended? A number of offshore wind developer again raised the presumption of total removal, with one asking how it can be reconciled against the more likely approach of repowering or upgrading facilities and another stating the presumption for complete removal of structures could become both more costly for Scottish sites and less necessary for protection of navigation as we get to deeper water sites. Another thought that where a recognised exemption applies, it should not be a requirement to provide costings and security for full removal. One also stated that developers should not remain liable indefinitely for infrastructure that is left in situ.

69. One industry body was generally in favour of the guidance and thought that the business of commercial fishing could be wiped out if regulators do not have the power to control the licensing system adequately. In the context of this consultation, if decommissioning fails to occur, the loss of fishing grounds is redoubled and the concurrent loss of protein to the human food chain would be disastrous.

70. More technical requests included:

- Clause 7.5 reference to extreme cost is vague and should be clarified for each type of installation;
- Clause 7.12 - Can MS provide clarification on what they mean by 3rd party involvement in providing evidence that the site has been cleared? This is not included in the BEIS guidance;
- Expand Section 7.15 to account for the risks to aviation and need to notify airspace uses / operators on relevant marine renewable developments that may cause some form of navigational hazard to air traffic;
- The need for definitions of certain terms and for the guidance to reflect further on the current differences between offshore wind (fixed and floating), tidal stream and wave energy converters and how the guidance may need to be revised to reflect the differences between scales in deployment and the hydrodynamic environments in which these operate;
- It is recommend that, in anticipation of a scenario arising where it is most environmentally friendly to keep structures in situ, when planning and installing

OREIs developers / owners must ensure they use material that will not degrade the marine environment if left in it long term;

- To aid consideration of a future carbon price: Individual developers should be encouraged to think about re-use or repurposing at end of life, even if Scottish ministers can't use this information for calculating financial securities;
- It will be important to ensure that where any deferral of the approved decommissioning programme for a scheme is considered, that the need to maintain any ongoing mitigation measures such as the provision of navigational warning lighting or aviation radar mitigation schemes associated with that scheme is taken into account to coordinate the continuation of these measures until decommissioning does occur or a new deployment commences using that infrastructure.
- The Strategic Environment Assessment argues that there is insufficient insight into scale, nature, extent and timescales of future developments to analyse impacts of decommissioning. Believe that efforts can be made to estimate the scale and scope of the challenges, opportunities, impacts and benefits. The University of Leeds, for example, has calculated the volumes of materials currently deployed and permitted to be commissioning in the near future for offshore wind, and this offers a basis to provide such estimates. This would help government and industry to plan for decommissioning. Happy to discuss initial headline results with Marine Scotland;
- Waste is to be brought to shore and re-used, recycled or incinerated. This potentially means that materials could be brought ashore at a suitable port and then transported elsewhere via the strategic road network either by HGV or by abnormal loads. Transport Scotland would generally request that the applicant identifies the port facilities to be used, road routes to be used, the expected volume of any HGV movements and whether any abnormal load movements would be required on the trunk road network;

71. Requests for clarity were sought on:
    - the nature of criminal offences mentioned in the guidance;
    - the role of the Finance and Constitution Committee: whether it will consider plans in private, and what information will be included in the Committee's reports;
    - the likely review period for the guidance? What would be the expected impact of any changes on implementation? For instance, if the decommissioning programme is changed, is it subject to re-approval and what would be the requirements here? If the conditions are always changing, does a developer ever have an approved plan?;
    - how Scottish Ministers would handle the decommissioning of the equipment that is left behind when a company goes into administration or liquidation;
    - the guidance states that if Scottish Ministers have decided relevant objects should be left in situ for environmental reasons, the developer / owner should not be responsible for post-decommissioning monitoring, maintenance and management of the structure. Clarification is needed as to who would be responsible for this, and the consideration of it would be appropriate for the developer to have a time-limited requirement to monitor the remaining installation to ensure the environmental assumptions made are being realised;
    - the geographical scope of the scheme and how the relevant limits of the scope can be identified.

**Response**

72. We recognise that the workload involved in obtaining and updating a decommissioning programme can be particularly onerous for smaller businesses, as can providing securities up front. However, Scottish Ministers need to balance any reduction in requirements against protecting taxpayers against inherited decommissioning costs. To date, a number of projects in Scottish waters have become insolvent. Scottish Ministers do not consider, therefore, that it is appropriate in the current circumstances to introduce a lighter touch regime for smaller projects. We do note, however, that where full decommissioning is proposed (which to date has been the case for most smaller projects) the decommissioning programme would only require relatively brief information on the geography of the site and on risks to safety of navigation

73. A number of developers / owners have asked about the drawdown of financial securities. Securities for longer term projects (normally offshore wind farms and OFTOs) are in the order of £millions per project, and should securities suddenly cease to be in place it would mean a significant exposure to financial risk for Scottish Ministers. The overriding principle in requiring financial securities to be put in place is to protect the taxpayer, so the updated guidance reiterates the default position that once fully accrued, the securities should remain in place until final decommissioning. Where a project changes hands at repowering, the original developer / owner will continue to be held liable for decommissioning until the new developer / owner has an approved programme and fully accrued securities in place. The original developer / owner is recommended to handle this risk in its arrangements for the transfer of the project.

74. The Scottish Ministers understand the industry's concerns that the wording in the guidance on obtaining upfront approval of decommissioning programmes could impact on the timetable for construction and goes further than UK Government guidance. However, it is untenable for Scottish Ministers to be in a position where a decommissioning programme has not been put to committee for approval of the decommissioning liabilities prior to construction, as has happened in a number of cases to date. The approval process will be pursued in a timely fashion within the Scottish Government as long as all required documentation is received per any agreed timetable and subject to Committee availability.

75. Text has been added to the guidance to make it clear that it is the responsibility of the responsible person to ensure that all health and safety requirements are met.

# Next Steps

76. This guidance comes into immediate effect on its publication. Projects in Scottish Waters, or Scottish parts of a Renewable Energy Zone, which have yet to submit decommissioning programmes should use this guidance and those who have already submitted a programme or a draft programme should take forward the next stages of their decommissioning programme under this new guidance.

77. It is our intention that the decommissioning guidance will be monitored by Marine Scotland and the guidance will be reviewed as and when required.