



Energy Act 2004

2004 CHAPTER 20

PART 2

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

CHAPTER 3

DECOMMISSIONING OF OFFSHORE INSTALLATIONS

Decommissioning programmes

105 Requirement to prepare decommissioning programmes

(1) This section applies where—

- (a) there is a proposal by a person to construct a relevant object in waters regulated under this Chapter, or to extend a relevant object in such waters;
- (b) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
- (c) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission such an object.

[^{F1}(1A) In this Chapter “appropriate Minister”—

- (a) in relation to a renewable energy installation, means the Scottish Ministers—
 - (i) if the installation is to be or is wholly in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas,
 - (ii) if sub-paragraph (i) has ceased to apply to the installation because of an extension or proposed extension, and subsection (1B) applies, or
 - (iii) to the extent that the installation is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy

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- Zone, if sub-paragraph (i) has ceased to apply because of an extension or proposed extension, and subsection (1B) does not apply;
 and otherwise means the Secretary of State;
- (b) in relation to an electric line which is or has been a related line, means—
- (i) the Scottish Ministers, to the extent that the line is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone;
 - (ii) otherwise, the Secretary of State.
- (1B) This subsection applies to an installation if there is an agreement in force between the Secretary of State and the Scottish Ministers providing for the Scottish Ministers to be the appropriate Minister in relation to the whole of the installation.
- (1C) Where subsection (1B) applies, the Scottish Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.]
- (2) The [^{F2}appropriate Minister] may by notice require^{F3}—
- (a) a person falling within subsection (1)(a), (b) or (c), or
 - (b) if a person to whom paragraph (a) applies is a body corporate, a body corporate associated with that person (subject to section 105A),]
- to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) [^{F4}Before requiring a person to submit a decommissioning programme in respect of proposals made by a person within paragraph (a) or (b) of subsection (1), the [^{F2}appropriate Minister] must be satisfied that at least one of the statutory consents required for giving effect to those proposals—]
- (a) has been given; or
 - (b) has been applied for and is likely to be given;
- but for this purpose it is immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied.
- (4) Where there is more than one person to whom a notice under this section may be given—
- (a) it may be given to any one or more of them; and
 - (b) where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly.
- (5) Before giving a notice under this section in relation to a relevant object which is to be or is, ^{F5}... partly—
- (a) in an area of Scottish waters; or
 - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (6) A notice under this section must either—
- (a) specify the date by which the decommissioning programme is to be submitted; or
 - (b) require it to be submitted on or before such date as the [^{F2}appropriate Minister] may direct.

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(7) A notice under this section may require the recipient of the notice to carry out the consultations specified in the notice before submitting the programme required of him.

(8) A decommissioning programme—

- (a) must set out measures to be taken for decommissioning the relevant object;
- (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
- (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
- (d) if it proposes that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
- (e) if it proposes that the relevant object will be left in position at a place in waters regulated under this Chapter or will not be wholly removed from a place in such waters, must include provision about whatever continuing monitoring and maintenance of the object will be necessary.

^{F6}(9)

(10) In this Chapter—

“relevant object” means the whole or any part of—

- (a) a renewable energy installation; or
- (b) an electric line that is or has been a related line;

“waters regulated under this Chapter” means—

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters in a Renewable Energy Zone.

(11) In this section—

“related line” means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act); and

“statutory consent” means a consent, licence or approval required by or under any enactment.

Textual Amendments

- F1** S. 105(1A)-(1C) inserted (1.4.2017) by Scotland Act 2016 (c. 11), ss. 62(9), 72(4)(e); S.I. 2017/300, reg. 3 (with regs. 4-6)
- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by Scotland Act 2016 (c. 11), ss. 62(10)(11), 72(4)(e); S.I. 2017/300, reg. 3 (with regs. 4-6)
- F3** Words in s. 105(2) substituted (6.4.2009) by Energy Act 2008 (c. 32), ss. 69(2), 110(2); S.I. 2009/45, art. 4(b)(ii)
- F4** Words in s. 105(3) substituted (6.4.2009) by Energy Act 2008 (c. 32), ss. 69(3), 110(2); S.I. 2009/45, art. 4(b)(ii)
- F5** Words in s. 105(5) omitted (1.4.2017) by virtue of Scotland Act 2016 (c. 11), ss. 62(11)(12), 72(4)(e); S.I. 2017/300, reg. 3 (with regs. 4-6)
- F6** S. 105(9) repealed (6.4.2009) by Energy Act 2008 (c. 32), s. 110(2), Sch. 5 para. 17, Sch. 6; S.I. 2009/45, art. 4(d)(i)(ii)(ee)

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Commencement Information

II S. 105 in force at 1.10.2005 by [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

[^{F7}105A Section 105 notices: supplemental

- (1) The [^{F2}appropriate Minister] may not give a notice under section 105(2)(b) to a body corporate associated with a person (“the responsible person”) within section 105(1) (a), (b) or (c) unless the [^{F2}appropriate Minister]—
 - (a) has given a notice to the responsible person under section 105(2)(a), and
 - (b) is not satisfied that adequate arrangements (including financial arrangements) have been made by the responsible person to ensure that a satisfactory decommissioning programme will be carried out.
- (2) Subsection (1) does not apply if—
 - (a) there has been a failure to comply with a notice under section 105(2), or
 - (b) the [^{F2}appropriate Minister] has rejected a programme submitted in compliance with such a notice.
- (3) For the purposes of this section and section 105, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and subsections (4) to (8) set out the circumstances in which one body corporate (“A”) controls another (“B”).
- (4) Where B is a company, A controls B if A possesses or is entitled to acquire—
 - (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (5) Where B is a limited liability partnership, A controls B if A—
 - (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (6) In subsection (5)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (7) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (8) In determining whether, by virtue of subsections (4) to (7), A controls B, A is to be taken to possess—
 - (a) any rights and powers possessed by a person B as nominee for it, and

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- (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph.)]

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(10\)\(11\), 72\(4\)\(e\)](#); S.I. 2017/300, [reg. 3](#) (with [regs. 4-6](#))
- F7** S. 105A inserted (6.4.2009) by [Energy Act 2008 \(c. 32\), ss. 69\(4\), 110\(2\)](#); S.I. 2009/45, [art. 4\(b\)\(ii\)](#)

106 Approval of decommissioning programmes

- (1) The [^{F2}appropriate Minister] may either approve or reject a programme submitted to him under section 105.
- (2) Before approving or rejecting a decommissioning programme relating to a relevant object which is to be or is, ^{F8}... partly—
 - (a) in an area of Scottish waters, or
 - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,the Secretary of State must consult the Scottish Ministers.
- (3) If the [^{F2}appropriate Minister] approves a programme, he may do so—
 - (a) with or without modifications; and
 - (b) either subject to conditions or unconditionally.
- (4) His power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme—
 - (a) provides such security in relation to the carrying out of the programme, and for his compliance with the conditions (if any) of its approval, as may be specified by the [^{F2}appropriate Minister]; and
 - (b) provides that security at such time, and in accordance with such requirements, as may be specified by the [^{F2}appropriate Minister].
- (5) Before approving a programme with modifications or subject to conditions, the [^{F2}appropriate Minister] must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.
- (6) The power of the [^{F2}appropriate Minister] to approve a programme subject to conditions includes power, where more than one person submitted it, to impose different conditions in relation to different persons.
- (7) If he rejects a programme, the [^{F2}appropriate Minister]—
 - (a) must inform the person who submitted it of his reasons for doing so; and
 - (b) may exercise his power under section 105 to require the submission of a new one.
- (8) The [^{F2}appropriate Minister] must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

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Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), [reg. 3](#) (with [regs. 4-6](#))
- F8** Words in s. 106(2) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 62(11)(12)**, 72(4)(e); [S.I. 2017/300](#), [reg. 3](#) (with [regs. 4-6](#))

Modifications etc. (not altering text)

- C1** S. 106 applied (with modifications) (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), [arts. 1, 42\(4\)\(5\)\(a\)](#) (with [arts. 51, 53](#))

Commencement Information

- I2** S. 106 in force at 1.10.2005 by [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

107 Failure to submit or rejection of decommissioning programmes

- (1) Where—
- (a) a notice given under section 105 is not complied with, or
 - (b) the [^{F2}appropriate Minister] rejects a programme submitted to him,
- the [^{F2}appropriate Minister] may himself prepare a decommissioning programme in relation to the relevant object in question.
- (2) Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, ^{F9} ... partly—
- (a) in an area of Scottish waters, or
 - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (3) Where the [^{F2}appropriate Minister] prepares a decommissioning programme under this section—
- (a) he must give notice informing the recipient of the notice given under section 105 that he has done so; and
 - (b) this Chapter shall have effect subsequently as if the [^{F2}appropriate Minister]'s programme were a programme submitted to him by the person informed and had been approved by the [^{F2}appropriate Minister] subject to the conditions specified by the [^{F2}appropriate Minister].
- (4) Where the [^{F2}appropriate Minister] informs a person under subsection (3) that he has prepared his own decommissioning programme, he may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with its conditions (if any), as may be specified by the [^{F2}appropriate Minister]; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the [^{F2}appropriate Minister];
- and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.

^{F10}(5)

^{F10}(6)

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- ^{F10}(7)
- (8) The power of the [^{F2}appropriate Minister] to impose requirements under this section includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons.
- (9) Where, having given a notice under section 105, the [^{F2}appropriate Minister] prepares his own decommissioning programme, he may recover expenditure incurred by him in, or in connection with, the exercise of his powers under this section from the recipient of the notice.
- (10) A person liable to pay a sum to the [^{F2}appropriate Minister] by virtue of subsection (9) must also pay interest on that sum for the period which—
- (a) begins with the day on which the [^{F2}appropriate Minister] notified him of the sum payable; and
 - (b) ends with the date of payment.
- (11) The rate of interest shall be a rate determined by the [^{F2}appropriate Minister] to be comparable with commercial rates.

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), **reg. 3** (with [regs. 4-6](#))
- F9** Words in s. 107(2) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 62(11)(12)**, 72(4)(e); [S.I. 2017/300](#), **reg. 3** (with [regs. 4-6](#))
- F10** S. 107(5)-(7) repealed (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), s. 110(2), Sch. 5 para. 18, **Sch. 6**; [S.I. 2009/45](#), **art. 4(d)(i)(ii)(ee)**
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Commencement Information

- I3** S. 107 in force at 1.10.2005 by [S.I. 2005/877](#), **art. 2(2)**, **Sch. 2**

108 Reviews and revisions of decommissioning programmes

- (1) The [^{F2}appropriate Minister] must, from time to time, conduct such reviews of a decommissioning programme approved by him as he considers appropriate.
- (2) A proposal—
- (a) to modify a decommissioning programme approved by the [^{F2}appropriate Minister], or
 - (b) to modify a condition to which such a programme is subject,
- may be made by the [^{F2}appropriate Minister], or by the person who submitted the programme or (if there is more than one of them) by all of them acting jointly.
- (3) A proposal—
- (a) to relieve a person of his duty under section 109(1) in relation to a decommissioning programme approved by the [^{F2}appropriate Minister], or
 - (b) as respects such a programme, to impose that duty upon a person not previously subject to it (whether in addition to or in substitution for another person),

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may be made by the [^{F2}appropriate Minister] or by the person for the time being subject to that duty or (if there is more than one person subject to that duty) by any one or more of them.

- [^{F11}(3A) A proposal under subsection (3)(b) may, in particular, be made in relation to a body corporate associated with a person who has a duty under section 109(1) (and for this purpose “associated” is to be construed in accordance with section 105A(3) to (8)).]
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
- (a) if the proposal is the [^{F2}appropriate Minister]'s, to every person whose duty under section 109(1) in relation to the programme would be affected or relieved under the proposal or who would become subject to such a duty; and
 - (b) in any other case, to the [^{F2}appropriate Minister].
- (5) An opportunity of making representations to the [^{F2}appropriate Minister] about a proposal of his under this section must be given by him to every person to whom notice of the proposal is required to have been given.
- (6) It is to be for the [^{F2}appropriate Minister], after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under this section.
- (7) Before making a determination under subsection (6) with respect to a proposal in relation to a decommissioning programme relating to a relevant object which is to be or is, ^{F12}... partly—
- (a) in an area of Scottish waters, or
 - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (8) Where the [^{F2}appropriate Minister] makes a determination under subsection (6), he must give notice of his determination, and of his reasons for it, to—
- (a) every person who, before the determination, had a duty under section 109(1) in relation to the programme; and
 - (b) every person who will become subject to such a duty as a result of the determination.
- (9) Where the [^{F2}appropriate Minister] gives notice under subsection (8) in respect of a proposal, this Chapter shall have effect after the giving of that notice—
- (a) in the case of a proposal under subsection (2), as if the programme in question had been approved subject to the modifications specified in the determination; and
 - (b) in the case of a proposal under subsection (3), as if that programme had been submitted to the [^{F2}appropriate Minister] by the person or persons so specified.
- (10) Where the [^{F2}appropriate Minister] gives notice under subsection (8) to a person that he is to become subject to a duty under section 109(1) in relation to a programme, the [^{F2}appropriate Minister] may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the [^{F2}appropriate Minister]; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the [^{F2}appropriate Minister];

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and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), [reg. 3](#) (with [regs. 4-6](#))
- F11** S. 108(3A) inserted (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 69(5)**, 110(2); [S.I. 2009/45](#), [art. 4\(b\)\(ii\)](#)
- F12** Words in s. 108(7) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 62(11)(12)**, 72(4)(e); [S.I. 2017/300](#), [reg. 3](#) (with [regs. 4-6](#))

Modifications etc. (not altering text)

- C2** S. 108 applied (with modifications) (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), [arts. 1, 42\(4\)\(5\)\(b\)](#) (with [arts. 51, 53](#))

Commencement Information

- I4** S. 108 in force at 1.10.2005 by [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

Implementation of decommissioning programmes

109 Carrying out of decommissioning programmes

- (1) Where a decommissioning programme is approved by the [^{F2}appropriate Minister], it shall be the duty of the person who submitted the programme to secure—
- (a) that it is carried out in every respect; and
 - (b) that all the conditions to which the approval is subject are complied with.
- (2) Where a relevant object is subject to a decommissioning programme approved by the [^{F2}appropriate Minister], it is an offence for a person to take any measures for decommissioning that object unless he does so—
- (a) in accordance with the programme; or
 - (b) with the agreement of the [^{F2}appropriate Minister].

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), [reg. 3](#) (with [regs. 4-6](#))

Modifications etc. (not altering text)

- C3** S. 109(1) applied (with modifications) (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), [arts. 1, 42\(4\)\(5\)\(c\)](#) (with [arts. 51, 53](#))

Commencement Information

- I5** S. 109 in force at 1.10.2005 by [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)

110 Default in carrying out decommissioning programmes

- (1) Where—

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- (a) a decommissioning programme approved by the [F²appropriate Minister] is not carried out in a particular respect, or
 - (b) a condition to which the approval is subject is contravened,
- the [F²appropriate Minister] may, by notice, require a person subject to the duty under section 109(1) in relation to the programme to take such remedial action as may be specified in the notice.
- (2) Remedial action required by a notice under this section must be taken within such period as may be specified in the notice.
 - (3) A person who fails to comply with a notice given to him under this section is guilty of an offence.
 - (4) In proceedings against a person for an offence under this section it is a defence for him to show that he exercised due diligence to avoid the contravention in question.
 - (5) If a notice under this section is not complied with, the [F²appropriate Minister] may—
 - (a) himself secure the carrying out of the remedial action required by the notice; and
 - (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given.
 - (6) A person liable to pay a sum to the [F²appropriate Minister] by virtue of subsection (5) must also pay interest on that sum for the period which—
 - (a) begins with the day on which the [F²appropriate Minister] notified him of the sum payable; and
 - (b) ends with the date of payment.
 - (7) The rate of interest shall be a rate determined by the [F²appropriate Minister] to be comparable with commercial rates.

Textual Amendments

F2 Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(10\)\(11\), 72\(4\)\(e\)](#); [S.I. 2017/300, reg. 3](#) (with [regs. 4-6](#))

Modifications etc. (not altering text)

C4 S. 110 applied (with modifications) in part (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), arts. 1, [42\(4\)\(5\)\(d\)](#) (with arts. 51, 53)

Commencement Information

I6 S. 110 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

[F¹³110A Protection of funds held for purposes of decommissioning

- (1) This section applies where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.

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- (3) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (4) For the purposes of subsection (3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
 - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (5) In subsection (4) “enactment” includes an instrument made under an enactment.

Textual Amendments

F13 Ss. 110A, 110B inserted (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), ss. [70\(1\)](#), [110\(2\)](#); S.I. 2009/45, art. [4\(b\)\(ii\)](#)

Modifications etc. (not altering text)

C5 S. 110A applied (with modifications) (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), arts. [1](#), [42\(4\)\(5\)\(e\)](#) (with arts. [51](#), [53](#))

110B Section 110A: supplemental

- (1) The [^{F2}appropriate Minister] may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
 - (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the [^{F2}appropriate Minister] or a creditor of the security provider may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
 - “the protected assets” has the same meaning as in section 110A;
 - “security provider” means a person who has provided security in relation to which that section applies.
- (6) In subsections (3) and (4) references to “the court” are references—
 - (a) to the High Court, in relation to an application in England and Wales or Northern Ireland, or
 - (b) to the Court of Session, in relation to an application in Scotland.]

Changes to legislation: *Energy Act 2004, Chapter 3 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), **reg. 3** (with **regs. 4-6**)
- F13** Ss. 110A, 110B inserted (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 70(1)**, 110(2); [S.I. 2009/45](#), **art. 4(b)(ii)**

Modifications etc. (not altering text)

- C6** S. 110B applied (with modifications) (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), **arts. 1, 42(4)(5)(f)** (with **arts. 51, 53**)

Decommissioning regulations

111 Regulations about decommissioning

- (1) The [^{F2}appropriate Minister] may make regulations relating to the decommissioning of relevant objects in waters regulated under this Chapter.
- (2) The provision that may be contained in regulations under this section includes, in particular—
 - (a) provision prescribing standards in respect of decommissioning;
 - (b) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
 - (c) provision about the security that a person may be required to provide under this Chapter;
 - (d) provision for the prevention of pollution;
 - (e) provision for inspections, including provision as to the payment of the costs of inspections.
- (3) Regulations under this section may include provision making it an offence to contravene provisions of the regulations.
- (4) Where the regulations under this section create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for regulations under this section—
 - (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum; or
 - (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (5) Before making regulations under this section, the [^{F2}appropriate Minister] must consult—
 - (a) organisations appearing to him to be representative of persons who will be affected by the regulations; and
 - (b) any other persons he considers appropriate.
- (6) Before making regulations under this section containing provision that relates to the decommissioning of relevant objects which are to be or are, ^{F14} ... partly—
 - (a) in Scottish waters, or
 - (b) in waters in a Scottish part of a Renewable Energy Zone,

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the Secretary of State must consult the Scottish Ministers.

- (7) Regulations under this section^[F15]—
- (a) if made by the Secretary of State,] are subject to the negative resolution procedure^[F16];
 - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).]

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(10\)\(11\), 72\(4\)\(e\)](#); S.I. 2017/300, [reg. 3](#) (with [regs. 4-6](#))
- F14** Words in s. 111(6) omitted (1.4.2017) by virtue of [Scotland Act 2016 \(c. 11\), ss. 62\(11\)\(12\), 72\(4\)\(e\)](#); S.I. 2017/300, [reg. 3](#) (with [regs. 4-6](#))
- F15** Words in s. 111(7) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(13\)\(a\), 72\(4\)\(e\)](#); S.I. 2017/300, [reg. 3](#) (with [regs. 4-6](#))
- F16** S. 111(7)(b) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(13\)\(b\), 72\(4\)\(e\)](#); S.I. 2017/300, [reg. 3](#) (with [regs. 4-6](#))

Commencement Information

- I7** S. 111 in force at 1.10.2005 by [S.I. 2005/877, art. 2\(2\), Sch. 2](#)

Supplementary provisions of Chapter 3 of Part 2

112 Duty to inform [^{F2}appropriate Minister]

- (1) A person who becomes responsible for a relevant object must notify the [^{F2}appropriate Minister] that he has become so responsible.
- (2) For the purposes of this section a person becomes responsible for a relevant object if—
- (a) he makes a proposal to construct the object in waters regulated under this Chapter;
 - (b) he makes a proposal for the extension or decommissioning in such waters of the object;
 - (c) he makes a proposal to operate or use the object on completion of its construction in such waters;
 - (d) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
 - (e) he becomes a party to a proposal mentioned in paragraphs (a) to (d);
 - (f) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
 - (g) he begins to participate in any of the following activities carried on in such waters, the construction, extension, operation or use or decommissioning of the object.
- (3) A person is not required to notify the [^{F2}appropriate Minister] that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents required for enabling effect to be given to the proposal has been given or applied for.

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- (4) A person who notifies the [^{F2}appropriate Minister] under this section that he has made a proposal, or has become a party to a proposal—
- (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and
 - (b) must notify him subsequently whenever such a consent or application is given or made.
- (5) A notification under this section must be given within such period after the obligation to give the notification arises as may be prescribed by regulations made by the [^{F2}appropriate Minister].
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section [^{F17}—
- (a) if made by the Secretary of State,] are subject to the negative resolution procedure [^{F18};
 - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).]

(8) A reference in this section to participation in activities does not include a reference—

 - (a) to participation on behalf of another person; or
 - (b) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities.

(9) In this section “statutory consent” has the same meaning as in section 105.

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(10\)\(11\), 72\(4\)\(e\); S.I. 2017/300, reg. 3](#) (with [regs. 4-6](#))
- F17** S. 112(7)(a) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(14\)\(a\), 72\(4\)\(e\); S.I. 2017/300, reg. 3](#) (with [regs. 4-6](#))
- F18** S. 112(7)(b) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(14\)\(b\), 72\(4\)\(e\); S.I. 2017/300, reg. 3](#) (with [regs. 4-6](#))

Modifications etc. (not altering text)

- C7** S. 112 applied (with modifications) in part (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 42\(4\)\(5\)\(g\)](#) (with [arts. 51, 53](#))

Commencement Information

- I8** S. 112 in force at 1.10.2005 by [S.I. 2005/877, art. 2\(2\), Sch. 2](#)

[^{F19}112A Power of [^{F2}appropriate Minister] to require information and documents

- (1) The [^{F2}appropriate Minister] may by notice require a person within subsection (2) to provide the [^{F2}appropriate Minister] with such relevant information or documents as the [^{F2}appropriate Minister] may require in connection with the exercise of functions under this Chapter.
- (2) Those persons are—

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- (a) a person who has been, or may be, given a notice under section 105(2)(a) in relation to a relevant object,
 - (b) where a person falling within paragraph (a) is a body corporate, a body corporate associated with that person,
 - (c) a person not within paragraph (a) or (b) who by virtue of provision made under section 108(3)(b) is subject to the duty under section 109(1) in relation to a decommissioning programme relating to a relevant object.
- (3) Information or a document is “relevant” if it relates to—
- (a) the place where the relevant object is or is to be situated,
 - (b) the relevant object,
 - (c) where the recipient of the notice is a body corporate falling within subsection (2)(c) or section 105(2)(a), details of an associated body corporate,
 - (d) the financial affairs of the recipient of the notice or, where the recipient is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), an associated body corporate,
 - (e) the security that the recipient proposes to provide in relation to the carrying out of a decommissioning programme relating to the relevant object or for the recipient's compliance with any conditions of the programme's approval, or
 - (f) where the recipient of the notice (“R”) is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), the name or address of any person whom R believes to be an associated body corporate.
- (4) But if a notice under subsection (1) requires information in connection with a function of the [F2appropriate Minister] under section 107(1) or (4), the notice may require the provision of information or documents which the [F2appropriate Minister] considers are necessary or expedient for the purpose of exercising those functions (whether or not they are of a kind specified in subsection (3)).
- (5) A notice under subsection (1) must specify the documents or information, or the description of documents or information, to which it relates.
- (6) Information or documents required to be provided under this section must be provided within such period as is specified in the notice under subsection (1).
- (7) In this section, “associated”, in relation to a body corporate, is to be construed in accordance with section 105A(3) to (8).
- (8) A person who fails, without reasonable excuse, to comply with a notice under subsection (1) is guilty of an offence.
- (9) A person who discloses information obtained by virtue of a notice under this section is guilty of an offence unless the disclosure—
- (a) is made with the consent of the person by or on behalf of whom the information was provided,
 - (b) is for the purpose of the exercise of the [F2appropriate Minister]'s functions under this Chapter, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998, or
 - (c) is required by or under an enactment.]

Changes to legislation: Energy Act 2004, Chapter 3 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F2** Words in Pt. 2 Ch. 3 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(10)(11)**, 72(4)(e); [S.I. 2017/300](#), **reg. 3** (with **regs. 4-6**)
- F19** S. 112A inserted (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 71**, 110(2); [S.I. 2009/45](#), **art. 4(b)(ii)**

Modifications etc. (not altering text)

- C8** S. 112A applied (with modifications) in part (E.W.S.) (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\)](#), **arts. 1, 42(4)(5)(h)** (with **arts. 51, 53**)

113 Offences relating to decommissioning programmes

- (1) A person guilty of an offence under a provision of this Chapter is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) No proceedings for a decommissioning offence shall be instituted in England and Wales or Northern Ireland except—
 - (a) by the Secretary of State;
 - (b) by a person authorised in that behalf by the Secretary of State; or
 - (c) by or with the consent of the Director of Public Prosecutions or (as the case may be) the Director of Public Prosecutions for Northern Ireland.
- (3) Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person who was purporting to act in any such capacity,
 he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where such an offence—
 - (a) is committed by a Scottish firm, and
 - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
 he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (5) Where a decommissioning offence is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for a decommissioning offence.
- (7) In this section—

“decommissioning offence” means an offence under—

 - (a) a provision of this Chapter; or
 - (b) regulations made under section 111;

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“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Commencement Information

19 S. 113 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

114 Interpretation of Chapter 3 of Part 2

- (1) Expressions used in this Chapter and in Chapter 2 of this Part have the same meanings in this Chapter as in that Chapter.
- (2) In this Chapter—
 - [^{F20}“appropriate Minister” has the meaning given by section 105(1A);]
 - “decommissioning programme” has the meaning given by section 105(2);
 - “extend” and “extension”, in relation to an electric line, have the same meanings as they have in Chapter 2 of this Part and this Chapter in relation to a renewable energy installation;
 - “recipient”, in relation to a notice under section 105, means the person or any one or more of the persons to whom that notice was given;
 - “relevant object” has the meaning given by section 105(10);
 - “security” includes—
 - (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (ca) [^{F21}an insurance policy;]
 - (d) a letter of credit; and
 - (e) a letter of comfort;
 - “waters regulated under this Chapter” has the meaning given by section 105(10).
- (3) References in this Chapter to providing a security include references—
 - (a) to securing its maintenance or renewal; and
 - (b) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given.
- (4) References in this Chapter to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them.
- (5) Provision made by or under this Chapter in relation to places outside the United Kingdom—
 - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
 - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom.

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Textual Amendments

- F20** Words in s. 114(2) inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 62(15)**, 72(4)(e); S.I. 2017/300, **reg. 3** (with **regs. 4-6**)
- F21** Words in s. 114(2) inserted (6.4.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 70(2)**, 110(2); S.I. 2009/45, **art. 4(b)(ii)**
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Commencement Information

- I10** S. 114 in force at 1.10.2005 by [S.I. 2005/877](#), **art. 2(2)**, **Sch. 2**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)