



# 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.

[<sup>F1</sup>(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 [<sup>F2</sup>appropriate Minister] may by notice require<sup>F3</sup>—
- (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) [<sup>F4</sup>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 [<sup>F2</sup>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, <sup>F5</sup>... 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 [<sup>F2</sup>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.

<sup>F6</sup>(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](#)

### [<sup>F7</sup>105A Section 105 notices: supplemental

- (1) The [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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 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 [<sup>F2</sup>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, <sup>F8</sup>... 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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister]; and
- (b) provides that security at such time, and in accordance with such requirements, as may be specified by the [<sup>F2</sup>appropriate Minister].
- (5) Before approving a programme with modifications or subject to conditions, the [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister] rejects a programme submitted to him,
- the [<sup>F2</sup>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, <sup>F9</sup> ... 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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister]'s programme were a programme submitted to him by the person informed and had been approved by the [<sup>F2</sup>appropriate Minister] subject to the conditions specified by the [<sup>F2</sup>appropriate Minister].
- (4) Where the [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister]; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the [<sup>F2</sup>appropriate Minister];
- and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.

<sup>F10</sup>(5) .....

<sup>F10</sup>(6) .....

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- <sup>F10</sup>(7) .....
- (8) The power of the [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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\(d\)\(i\)\(ii\)\(ee\)](#)

#### 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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister], or
  - (b) to modify a condition to which such a programme is subject,
- may be made by the [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>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.

[<sup>F11</sup>(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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister].
- (5) An opportunity of making representations to the [<sup>F2</sup>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 [<sup>F2</sup>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, <sup>F12</sup>... 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 [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister] by the person or persons so specified.
- (10) Where the [<sup>F2</sup>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 [<sup>F2</sup>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 [<sup>F2</sup>appropriate Minister]; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the [<sup>F2</sup>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.

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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](#))
- 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](#))
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#### 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)
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#### Commencement Information

- I4** S. 108 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\(2\)\(b\)](#)