



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.
- (2) The Secretary of State may by notice require that person to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) The Secretary of State may require a person to submit a decommissioning programme in respect of proposals made by that person only if the Secretary of State is satisfied that at least one of the statutory consents required for enabling that person to give effect to those proposals—
 - (a) has been given; or
 - (b) has been applied for and is likely to be given;

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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, wholly or 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 Secretary of State may direct.
- (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.
- (9) A notice under this section may require the recipient of the notice to submit any of the following with the decommissioning programme—
 - (a) such information and documents relating to the place where the relevant object is or is to be situated as may be specified in the notice;
 - (b) such specifications relating to the relevant object as may be specified in the notice;
 - (c) such information and documents relating to the financial affairs of the recipient as may be specified in the notice; and
 - (d) details of the security (if any) that the recipient proposes to provide in relation to the carrying out of the decommissioning programme and for his compliance with any conditions of its approval.

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(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.

106 Approval of decommissioning programmes

- (1) The Secretary of State 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, wholly or 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 Secretary of State 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 Secretary of State; and
 - (b) provides that security at such time, and in accordance with such requirements, as may be specified by the Secretary of State.
- (5) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.
- (6) The power of the Secretary of State 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 Secretary of State—
 - (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.

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- (8) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

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 Secretary of State rejects a programme submitted to him,
- the Secretary of State 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, wholly or 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 Secretary of State 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 Secretary of State's programme were a programme submitted to him by the person informed and had been approved by the Secretary of State subject to the conditions specified by the Secretary of State.
- (4) Where the Secretary of State 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 Secretary of State; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.
- (5) The Secretary of State may by notice require the recipient of a notice under section 105 to provide him with such information and documents as he may require for the purpose of exercising his powers under subsections (1) and (4).
- (6) Information and documents required to be provided under subsection (5) must be provided within such period as may be specified in the notice under that subsection.
- (7) A person who fails, without reasonable excuse, to comply with a notice under subsection (5) is guilty of an offence.
- (8) The power of the Secretary of State 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 Secretary of State prepares his own decommissioning programme, he may recover expenditure incurred by him in,

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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 Secretary of State by virtue of subsection (9) must also pay interest on that sum for the period which—
- (a) begins with the day on which the Secretary of State 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 Secretary of State to be comparable with commercial rates.

108 Reviews and revisions of decommissioning programmes

- (1) The Secretary of State 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 Secretary of State, or
 - (b) to modify a condition to which such a programme is subject,
- may be made by the Secretary of State, 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 Secretary of State, 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),
- may be made by the Secretary of State 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.
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
- (a) if the proposal is the Secretary of State'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 Secretary of State.
- (5) An opportunity of making representations to the Secretary of State 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 Secretary of State, 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, wholly or partly—
- (a) in an area of Scottish waters, or
 - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,

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the Secretary of State must consult the Scottish Ministers.

- (8) Where the Secretary of State 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 Secretary of State 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 Secretary of State by the person or persons so specified.
- (10) Where the Secretary of State 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 Secretary of State 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 Secretary of State; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

Implementation of decommissioning programmes

109 Carrying out of decommissioning programmes

- (1) Where a decommissioning programme is approved by the Secretary of State, 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 Secretary of State, 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 Secretary of State.

110 Default in carrying out decommissioning programmes

- (1) Where—
- (a) a decommissioning programme approved by the Secretary of State is not carried out in a particular respect, or
 - (b) a condition to which the approval is subject is contravened,

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- the Secretary of State 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 Secretary of State 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 Secretary of State by virtue of subsection (5) must also pay interest on that sum for the period which—
 - (a) begins with the day on which the Secretary of State 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 Secretary of State to be comparable with commercial rates.

Decommissioning regulations

111 Regulations about decommissioning

- (1) The Secretary of State 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—

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- (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 Secretary of State 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, wholly or partly—
- (a) in Scottish waters, or
 - (b) in waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (7) Regulations under this section are subject to the negative resolution procedure.

Supplementary provisions of Chapter 3 of Part 2

112 Duty to inform Secretary of State

- (1) A person who becomes responsible for a relevant object must notify the Secretary of State 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 Secretary of State 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.
- (4) A person who notifies the Secretary of State 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

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- (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 Secretary of State.
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section are subject to the negative resolution procedure.
- (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.

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.

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

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—
- “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;
 - (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.