



Energy Act 2008

2008 CHAPTER 32

PART 3

DECOMMISSIONING OF ENERGY INSTALLATIONS

CHAPTER 2

OFFSHORE RENEWABLES INSTALLATIONS

69 Decommissioning notices relating to offshore renewable energy installations

- (1) The Energy Act 2004 (c. 20) is amended as follows.
- (2) In section 105(2) (notices), for “that person” substitute “—
 - (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),”.
- (3) In section 105(3) (consents) for the words from the beginning to “proposals—” substitute—
 - “(3) 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 Secretary of State must be satisfied that at least one of the statutory consents required for giving effect to those proposals—”.
- (4) After section 105 (requirement to prepare decommissioning programme) insert—

“105A Section 105 notices: supplemental

- (1) The Secretary of State 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 Secretary of State—

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- (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 Secretary of State 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
 - (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).”
- (5) In section 108 (reviews of decommissioning programmes), after subsection (3) insert—

“(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)).”

70 Security for decommissioning obligations

- (1) After section 110 of the Energy Act 2004 (c. 20) (failure to carry out decommissioning programme) insert—

“110A 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.
- (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.

110B Section 110A: supplemental

- (1) The Secretary of State 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 Secretary of State 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

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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.”

(2) In section 114(2) of that Act (interpretation), in the definition of “security” after paragraph (c) insert—

“(ca) an insurance policy;”.

71 **Provision of information to Secretary of State**

After section 112 of the Energy Act 2004 (c. 20) (duty to inform Secretary of State) insert—

“112A Power of Secretary of State to require information and documents

(1) The Secretary of State may by notice require a person within subsection (2) to provide the Secretary of State with such relevant information or documents as the Secretary of State may require in connection with the exercise of functions under this Chapter.

(2) Those persons are—

(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

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- (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 Secretary of State under section 107(1) or (4), the notice may require the provision of information or documents which the Secretary of State 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 Secretary of State’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.”