



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—

Status: This is the original version (as it was originally enacted).

- (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—

Status: This is the original version (as it was originally enacted).

“(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)).”