

2017 No. 300 (C. 28)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

The Scotland Act 2016 (Commencement No. 4, Transitional and Savings) Regulations 2017

<i>Made</i> - - - -	<i>7th March 2017</i>
<i>Laid before Parliament</i>	<i>9th March 2017</i>
<i>Coming into force</i> - -	<i>1st April 2017</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 71(1)(b) and (5) and 72(4)(e) and (6) of the Scotland Act 2016(a).

Citation and commencement

1. These Regulations may be cited as the Scotland Act 2016 (Commencement No. 4, Transitional and Savings) Regulations 2017 and shall come into force on 1st April 2017.

Interpretation

2. In these Regulations—

“the 2004 Act” means the Energy Act 2004(b);

“the 2016 Act” means the Scotland Act 2016;

“approved decommissioning programme” means a decommissioning programme approved in accordance with section 106 of the 2004 Act (approval of decommissioning programmes);

“existing installation” has the meaning given in regulation 5 (meaning of existing installation);

“existing statutory consent” means a consent, licence or approval required by or under any enactment and issued in relation to the offshore installation, or part of that installation, before 1st April 2017;

“financial security” means any security to be provided in relation to the carrying out of a decommissioning programme in accordance with section 106(4) of the 2004 Act; and

“relevant date” has the meaning given in regulation 6 (determination of relevant date).

(a) 2016 c.11.

(b) 2004 c. 20. Chapter 3 of Part 2 is amended by the Energy Act 2008 (c. 32) sections 69 to 71, 107 and 108 and Schedule 5, paragraphs 16 and 17 and Schedule 6.

Coming into force of section 62 of the 2016 Act

3.—(1) Subject to paragraph (2), section 62 of the 2016 Act (offshore renewable energy installations) comes into force on 1st April 2017.

(2) Paragraph (1) is subject to the transitional and savings provisions in regulation 4 (transitional and savings provisions for existing installations).

Transitional and savings provisions for existing installations

4.—(1) Subject to paragraph (2), Chapter 3 of Part 2 of the 2004 Act (decommissioning of offshore installations) shall continue to have effect in relation to an existing installation as if it had not been amended by section 62(9) to (15) of the 2016 Act.

(2) Paragraph (1) ceases to apply in relation to an existing installation if that installation reaches its relevant date.

Meaning of existing installation

5.—(1) In regulation 4, an existing installation is an offshore installation (or part of such an installation) which is the subject of an existing statutory consent and for which as at 1st April 2017—

- (a) construction has started, and
- (b) either paragraph (2) or (3) applies.

(2) This paragraph applies where the installation has a decommissioning date before 1st January 2023.

(3) This paragraph applies where the installation has a decommissioning date on or after 1st January 2023 and either—

- (a) there is no approved decommissioning programme in place relating to that installation; or
- (b) the approved decommissioning programme relating to that installation was approved subject to the provision of financial security by a prescribed date, and the prescribed date has passed and the security has not been provided.

(4) In this regulation—

- (a) for the purposes of paragraph (1)(a), construction has not started on an installation where the only work carried out is the laying of cables in anticipation of construction;
- (b) “decommissioning date” means the end date of the marine licence issued in relation to the offshore installation or to part of that installation;
- (c) “marine licence” means a licence issued under either—
 - (i) Part 2 (deposits in the sea) of the Food and Environmental Protection Act 1985(a),
 - (ii) Part 4 (marine licensing) of the Marine and Coastal Access Act 2009(b), or
 - (iii) Part 4 (marine licensing) of the Marine (Scotland) Act 2010(c); and
- (d) “offshore installation” has the meaning given in section 104 (interpretation of chapter 2 of part 2) of the 2004 Act.

Determination of relevant date

6. In regulation 4, the relevant date in respect of an existing installation is—

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- (a) 1985 c. 48. Relevant amending instruments are the Environmental Protection Act 1990 (c. 43), section 146(1), (2)(b) and (c)(ii), section 162 and Schedule 16 Part VIII; the Petroleum Act 1998 (c. 17), section 50, Schedule 4, paragraph 20; the Energy Act 2008 (c. 32), Schedule 1, paragraphs 1, 2(a) and (b); the Marine and Coastal Access Act 2009 (c. 23), section 112(1), Schedule 8, paragraphs 2(1), (2)(a), (e) to (g), 4(a) and (b) and 5(a) and (b) and part 2 of Schedule 22; and S.S.I. 2011/202.
 - (b) 2009 c. 23. A relevant amending instrument is S.I. 2015/374.
 - (c) 2010 asp 5. Part 4 is amended by the Regulatory Reform (Scotland) Act 2014 (asp 3), section 54(1) and (2).

- (a) in the case of an installation to which regulation 5(2) applies, the date on which all of the following criteria are satisfied—
 - (i) an approved decommissioning programme relating to the installation is in place and the financial security required as a condition of approval is either—
 - (aa) provided; or
 - (bb) to accrue over time in accordance with the programme;
 - (ii) on or after 1st April 2017, any existing statutory consent is varied or a new statutory consent is issued in relation to the installation; and
 - (iii) a notice is issued under section 108 of the 2004 Act (reviews and revisions of decommissioning programmes) proposing to modify the approved decommissioning programme in light of the new or varied statutory consent;
- (b) in the case of an installation to which regulation 5(3)(a) applies—
 - (i) where an approved decommissioning programme relating to the installation requires, as a condition of that approval, financial security to accrue over time in accordance with the programme, and the requirement in sub-paragraph (ii) does not apply, the date of its approval; or
 - (ii) where an approved decommissioning programme relating to the installation requires, as a condition of approval, all or part of the financial security to be provided by a prescribed date which is within four weeks of the date of its approval, the date that security is provided; and
- (c) in the case of an installation to which regulation 5(3)(b) applies, the date the security is provided.

David Mundell
Secretary of State
Scotland Office

7th March 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force section 62 of the Scotland Act 2016 (c.11) (“the Act”) which relates to—

- a) safety zones around offshore renewable energy installations (see subsections (1) to (8) and (16) to (20) of section 62); and
- b) decommissioning in respect of offshore installations (as defined in section 104 of the Energy Act 2004 (c. 20) (interpretation of chapter 2 of part 2)) (see subsections (9) to (15) of section 62).

The commencement of subsections (9) to (15) of section 62 of the Act is subject to savings and transitional provisions applicable to existing offshore installations. As a result, Chapter 3 of Part 2 of the Energy Act 2004 (c. 20) (decommissioning of offshore installations) will continue in force in respect of these installations as if it had not been amended by section 62, unless or until an installation meets certain specified criteria.

These Regulations are the fourth commencement Regulations to be made in respect of the commencement of the Act.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Scotland Act 2016 (c.11) have been brought into force by commencement Regulations made before the date of these Regulations:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 13	30th November 2016	2016/1161
Section 20	1st April 2017	2016/1178
Section 21	1st April 2017	2016/1178
Section 22(3) and subsection (1) of that section in so far as it relates to subsection (3)	5th September 2016	2016/759
Section 23(3) and subsection (1) of that section in so far as it relates to subsection (3)	5th September 2016	2016/759
Section 24	5th September 2016	2016/759
Section 26	5th September 2016	2016/759
Sections 28 to 35	5th September 2016	2016/759
Section 65	18th August 2016	2016/759
Section 67	1st April 2017	2016/1161

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