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DECOMMISSIONING OFFSHORE ENERGY INSTALLATIONS

A Consultation Document

JUNE 2007

DECOMMISSIONING OFFSHORE ENERGY INSTALLATIONS

Consultation on changes to the offshore decommissioning regimes for oil and gas installations in the Petroleum Act 1998 and for renewable energy installations in the Energy Act 2004

Offshore energy installations have an important role in supplying the nation's future energy needs, meeting our objectives for security of supply and in the case of offshore renewables helping reduce greenhouse gas emissions. Exploitation of the offshore energy resource also brings with it international obligations to decommission installations at the end of their life in order to ensure safety of navigation, whilst taking account of fishing and protection of the marine environment. Both the oil and gas and offshore renewable energy industries therefore operate under statutory decommissioning regimes: the Petroleum Act 1998 for oil and gas installations and the Energy Act 2004 for offshore wind, wave and tidal installations.

Whilst the offshore renewable sector is at an early stage of development, and the eventual need to decommission installations is likely to lie a long way into the future, the oil and gas sector is a mature one where decommissioning of installations has already begun. First-hand experience of offshore decommissioning in the oil and gas sector - and experience in consulting on and beginning to implement the recently published guidance[1] for offshore renewable decommissioning - has highlighted areas where legislative changes would be desirable to ensure the effectiveness of the statutory schemes, in particular to minimise the risk of liabilities falling to the exchequer in the event of default by an offshore operator.

This consultation therefore seeks comments primarily from organisations and individuals with an interest in decommissioning offshore energy installations.

Energy is a reserved matter except in relation to Northern Ireland. It is proposed that the amendments to the offshore oil and gas decommissioning regime will apply, like the original provisions of the Petroleum Act 1998 to all of the UK territorial waters and the UK Continental Shelf (UKCS). The offshore renewable energy decommissioning scheme applies to territorial waters in or adjacent to England, Scotland and Wales and to waters in the UK Renewable Energy Zone (including that part adjacent to Northern Ireland territorial waters). The consultation therefore applies to the whole of the UK but decisions relating to issues that affect Northern Ireland's devolved responsibilities will be subject to consultation with the Northern Ireland Assembly.

Issued 21 June 2007 *Respond by* 13 September 2007

[1] Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004, Guidance Notes for Industry, December 2006 available at www.dti.gov.uk/energy/sources/renewables/policy/offshore/page22500.html

Enquiries to

John Swift (renewables)	Kimberley Boyd (oil and gas)
Department of Trade and Industry	Department of Trade & Industry
Bay 2115, 1 Victoria Street,	Atholl House, 86-88 Guild Street,
London SW1H 0ET	Aberdeen AB11 6AR
Tel: 020 7215 6076 (John) or	Tel 01224 254026
Email: john.swift@dti.gsi.gov.uk	Email: kimberley.boyd@dti.gsi.gov.uk

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Executive summary

1.1. This consultation relates to proposed changes to the statutory decommissioning regimes for offshore oil and gas installations and pipelines and offshore renewable energy installations and related electric lines.

1.2. Part IV of the Petroleum Act 1998 (Sections 29-45) sets out statutory provisions for the abandonment of offshore oil and gas installations and pipelines. Under the terms of the Act, the Secretary of State may require a person, or persons jointly, to submit and carry out an abandonment programme for an installation or pipeline. The Act consolidated earlier abandonment provisions from the Petroleum Act 1987. Guidance is available on the DTI website.[2]

1.3. Sections 105 to 114 of the Energy Act 2004 set out the statutory decommissioning scheme for offshore renewable energy (wind, wave and tidal) installations and related electric lines. Under the terms of the Act, the Secretary of State may require a person, or persons jointly, to submit (and eventually carry out) a decommissioning programme for the installation. Guidance on the new scheme was published in December 2006.[3]

1.4. The Government is seeking to make changes to the operation of these abandonment or decommissioning schemes, including legislative amendments to the Petroleum Act 1998 and the Energy Act 2004. The objective is to strengthen the government's ability to require - and operators' ability to safeguard - appropriate financial security for the costs associated with decommissioning these facilities. The aim is to minimise the risk that companies default on their obligations leaving the exchequer to meet the costs, whilst continuing to encourage the development of the industries. The proposed changes cover the following issues:

Safeguarding Decommissioning Funds – ensuring funds set aside as financial security for decommissioning are safe for that purpose in the event of insolvency (i.e. they do not fall to the insolvency office-holder and creditors).

Widening the categories of persons on whom decommissioning obligations can be placed – replicating the oil and gas installation provisions to enable the Secretary of State to place decommissioning obligations (including financial security) on parent or associate companies for offshore renewable energy installations in specified circumstances; on certain additional parties in limited circumstances for oil and gas; and extending both the oil and gas and renewable statutory decommissioning schemes to cover associates of Limited Liability Partnerships (LLPs).

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[2] Decommissioning of Offshore Installations and Pipelines under the Petroleum Act 1998, Guidance Notes for Industry, September 2006 available at http://www.og.dti.gov.uk/regulation/guidance/decommission.htm

[3] Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004, Guidance Notes for Industry, December 2006 available at www.dti.gov.uk/energy/sources/renewables/policy/offshore/page22500.html

Providing for earlier issue of Notices and earlier provision of decommissioning security - at the start of a development or any subsequent stage - for offshore oil and gas installations and pipelines, as is already the case for offshore renewable energy installations.

Information – ensuring the Secretary of State has access to appropriate information to enable him to carry out his functions under the offshore oil and gas and renewable energy decommissioning schemes.

Potential for Cross-industry cooperation and collaboration – the value of cross-industry cooperation and collaboration at the decommissioning stage.

1.5. This consultation paper sets out, and seeks views on, the proposed legislative changes and policy on all these matters. We welcome comments on all or any aspects of the proposals.

1.6. The consultation is expected to be of interest to businesses responsible for the development and operation of offshore oil and gas and offshore renewable energy generating stations, as they will be responsible for submitting decommissioning programmes, providing financial security when required, and, eventually, implementing their programmes. The consultation is also expected to be of interest to financial bodies, insolvency and company law practitioners, environmental organisations, navigational interests, the fishing industry and other users of the marine environment.

2. *How to respond*

2.1. Responses can be submitted by letter, fax or e-mail (e-mail is preferred) to:

John Swift (renewables)	Kimberley Boyd (oil and gas)
Department of Trade and Industry	Department of Trade & Industry
Bay 2115, 1 Victoria Street,	Atholl House, 86-88 Guild Street,
London SW1H 0ET	Aberdeen AB11 6AR
Tel: 020 7215 6076 (John) or	Tel 01224 254026
offshoredecommissioning@dti.gsi.gov.uk	offshoredecommissioning@dti.gsi.gov.uk

2.2. You may find it helpful to use the response form which is provided with the consultation paper on the website at http://www.dti.gov.uk/consultations/page39781.html

2.3. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents.

2.4. Please feel free to answer as many or as few questions as you wish. It is helpful if you can explain your views as fully as possible, especially where you disagree with the proposals set out in this consultation paper.

2.5. Responses must be received no later than *13 September 2007*. We will confirm receipt of your response.

2.6. Depending on the level of interest, we are proposing to run two seminars during the consultation period, to explain the proposals and facilitate discussion, one in Aberdeen (on 4 July) and one in London (on 25 July). Both seminars will cover the same range of policy issues. If you would be interested in attending a seminar, please send an e-mail to offshoredecommissioning@dti.gsi.gov.uk or telephone Fiona Livingston on 01224 254015.

2.7. We would also be happy to have additional meetings to discuss ideas during the consultation period, either with individual stakeholders or with groups of stakeholders. Please contact John Swift, e-mail john.swift@dti.gsi.gov.uk, tel 020 7215 6076, or Kimberley Boyd, e-mail kimberley.boyd@dti.gsi.gov.uk, tel 01224 254026.

2.8. A list of those organisations consulted is at Annex F. We would welcome suggestions of others who may wish to be involved in this consultation process.

3. Additional copies

3.1. You may make copies of this consultation without seeking permission. Printed copies of the consultation document can be obtained (quoting reference *URN 07/1114)* from:

DTI Publications Orderline
ADMAIL 528
London SW1W 8YT

Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030
Web: http://www.dti.gov.uk/publications/

3.2. An electronic version can be found at:
http://www.dti.gov.uk/consultations/page39781.html

3.3. Separate Partial Regulatory Impact Assessments (RIAs) have been produced for the two industry sectors. A partial RIA for offshore oil and gas is included at Annex A; a partial RIA for offshore renewables is at Annex B.

4. *Confidentiality and data protection*

4.1. Your response may be made public by DTI. If you do not want your name or all or part of your response made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

4.2. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are principally the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

4.3. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

4.4. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

5. Help with queries

5.1. Questions about the policy issues raised in the document can be addressed to:

John Swift (renewables)	Kimberley Boyd (oil and gas)
Department of Trade and Industry	Department of Trade & Industry
Bay 2115, 1 Victoria Street,	Atholl House, 86-88 Guild Street,
London SW1H 0ET	Aberdeen AB11 6AR
Tel: 020 7215 6076 (John) or	Tel 01224 254026
Email: john.swift@dti.gsi.gov.uk	Email: kimberley.boyd@dti.gsi.gov.uk

5.2. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Kathleen McKinlay
Consultation Coordinator
Department of Trade and Industry
Better Regulation Team
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 2811
Fax: 020 7215 2235
Email: Kathleen.McKinlay@dti.gsi.gov.uk

5.3. A copy of the code of practice on consultations is at Annex G.

6. *Consultation questions*

6.1 The following chapters set out the policy background to the offshore energy decommissioning schemes, with consultation questions highlighted beneath the relevant proposed changes. All questions are listed here for ease of reference. Views are invited on any aspect of the proposed policy and proposed changes to the decommissioning legislation for offshore oil and gas and offshore renewable energy installations, in particular on the following. Please feel free to answer as many or as few questions as you wish:

Scope

Question 1. Do you agree that the proposed changes affecting oil and gas installations and pipelines should be applied to all existing and future installations and pipelines?

Question 2. Do you agree that the proposed changes affecting offshore renewable energy installations should be applied to all existing and future offshore wind, wave and tidal energy installations to which the Energy Act 2004 scheme applies? Please explain your reasons.

Offshore Oil and Gas Decommissioning

Question 3. Do you agree with the proposal to give the Secretary of State discretion to require financial security (if appropriate) at the start of a development and/or at any subsequent stage? Please explain your reasons.

Question 4. Do you have comments on the costs of providing security in these situations (paragraphs 25 and 28 of the Regulatory Impact Assessment at Annex A contain our estimates)? Please support your comments with evidence where available.

Question 5. Do you agree that all the relevant parties should be liable for the decommissioning of an offshore installation or pipeline from the time that construction begins? Please explain your reasons.

Question 6. Do you agree with the proposal that companies which own an interest in an installation should share the responsibility for decommissioning even if other responsible parties appear capable of carrying out the decommissioning?

Question 7. Do you agree with the proposed approach that companies which are corporate members of Limited Liability Partnerships (LLPs) and LLPs which control companies could be made to share the liability if the Secretary of State is concerned that those directly responsible may not be capable of carrying out the decommissioning? Please explain your reasons.

Question 8. Do you agree that companies with an interest in a pipeline (including those which are parties to a joint operating agreement) but which are not owners should be capable of being served with decommissioning liability notices? Please explain your reasons.

Question 9. Do you agree that the Secretary of State should be able to ask for financial information on a company before serving a decommissioning liability notice?

Question 10. Do you agree with the proposal to provide legislative safeguards for funds set aside for oil and gas decommissioning so that they would not fall to the insolvency-office holder in the event of insolvency?

Offshore Renewable Decommissioning

Question 11. Do you agree with the proposal to provide legislative safeguards for funds set aside for the decommissioning of offshore renewable energy installations so that they would not fall to the insolvency-office holder in the event of insolvency?

Question 12. Do you agree that if satisfactory financial and other arrangements have not been made by a developer to meet its decommissioning obligations, or in the event of default of those obligations, the Secretary of State – as is already the case for oil and gas installations - should be able to impose those obligations on, and/or recovery of expenditure from, associated companies (such as parent and sister companies)? Please explain your reasons.

Question 13. Do you agree that the definition of associate companies used for oil and gas is the appropriate basis on which to define associated companies in the case of offshore renewable energy installations? If not, what definition would be more appropriate? Please explain your answer.

Question 14. Do you have any comments on the potential impact or costs of the proposal to make associate companies responsible if the Secretary of State is not satisfied with the decommissioning arrangements made (paragraphs 44 to 48 of the Partial RIA at Annex B contain our initial assessment)?

Question 15. Do you agree with the proposed approach to Limited Liability Partnerships, which is the same as that proposed in Question 7 for oil and gas installations and pipelines? Please explain your reasons.

Question 16. Do you agree with the proposal to give the Secretary of State power to require information (including financial information and details of associated companies) from developers and associated companies whenever he is undertaking, or is considering, the exercise of his decommissioning functions – as is already the case or proposed for oil and gas decommissioning – to assist in the promotion of better informed and fairer decision-making? Please explain your reasons.

Industry cooperation and collaboration

Question 17. Would you like to suggest any specific proposals for facilitating and encouraging cross-industry cooperation and collaboration at the decommissioning stage?

Partial Regulatory Impact Assessments

Question 18. Do you have any comments on the analysis of costs and benefits in the partial Regulatory Impact Assessment included at Annex A?

Question 19. Do you have any comments on the analysis of costs and benefits in the partial Regulatory Impact Assessment included at Annex B?

Question 20. Are you aware of any possible unintended consequences or other implications of the proposals set out in this consultation paper?

7. Background

Rationale for changes to the decommissioning schemes for offshore oil and gas and offshore renewable energy installations

7.1. The decommissioning provisions in the Petroleum Act 1998 and the Energy Act 2004 reflect the Government's view – taking into account our international obligations – that a person who constructs, extends, operates or uses an installation should be responsible for ensuring that the installation is decommissioned at the end of its useful life, and should be responsible for meeting the costs of decommissioning (the "polluter pays" principle).

7.2. The Government is seeking to minimise the risk of liabilities falling on the taxpayer, whilst at the same time wishing to implement decommissioning obligations in such a way that they do not hinder the development of offshore energy installations. The Government's view is that the risk of companies defaulting on their decommissioning liabilities will be reduced by providing safeguards to protect funds which have been set aside for decommissioning; by ensuring that all the relevant companies share the liability, including, for offshore renewables, extending to parent and associate companies and Limited Liability Partnerships (LLPs) the legal obligations to prepare and carry out a decommissioning programme and, if necessary provide financial security; by providing for security to be required from the start of an oil and gas project if necessary; and by imposing additional information requirements to enable the Government to exercise its functions.

7.3. Ensuring that decommissioning projects are carried out by the responsible persons on time and effectively is also of interest to other users of the seas such as fishermen and to The Crown Estate (as both a landowner and owner of rights).

International obligations

7.4. Our international obligations to decommission disused installations are set out in Annex C. They have their origins in the United Nations Convention on the Law of the Sea (UNCLOS). This requires abandoned or disused installations or structures to be removed, to ensure safety of navigation, taking into account generally accepted international standards. International Maritime Organization (IMO) standards[4] were adopted in 1989.

7.5. Relevant work has also been undertaken under the OSPAR Convention, which guides international cooperation on the protection of the marine environment of the North-East Atlantic. OSPAR Decision 98/3[5] sets out binding requirements for the disposal of disused offshore oil and gas installations. Whilst there is no equivalent Decision for offshore renewable energy installations, OSPAR has produced guidance documents on offshore wind farms, incorporating ideas on their decommissioning.

[4] Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone, IMO, 19 October 1989, http://www.imo.org/Newsroom/contents.asp?doc_id=628&topic_id=227

[5] OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations, http://www.ospar.org/eng/html/welcome.html

Decommissioning provisions in the Petroleum Act 1998

7.6. The key provisions in the Petroleum Act 1998 (Sections 29-45) are set out in Annex D. They consolidated provisions from the Petroleum Act 1987. In summary, the Secretary of State may by written notice require a person (or persons jointly) responsible for an offshore oil and gas installation or pipeline to submit a costed abandonment programme for approval and ensure that it is carried out. The Secretary of State can ensure that decommissioning liabilities are placed not only on the operator(s) or owner(s) and licensees or parties to joint operating agreements but also on associated companies, such as parent or sister companies, if he is not satisfied that adequate decommissioning arrangements (including financial) have been made. The liability to carry out an abandonment programme is joint and several.

7.7. The Act enables the Secretary of State to ask for financial information and for action to be taken if he is not satisfied that a person will be able to carry out an approved decommissioning programme. But since the original Act was passed in 1987, it has become the practice for companies to prepare and get approval of their decommissioning programmes towards the end of life of the oil or gas field. The Secretary of State is therefore only able to require action to be taken when he has concerns about the financial affairs of a company towards the end of the life of the relevant field. This leaves the taxpayer exposed to the possibility of having to fund decommissioning work if a field fails earlier.

Decommissioning provisions in the Energy Act 2004

7.8. The key decommissioning provisions in the Energy Act 2004 (Sections 105 to 114) are explained in Annex E. Broadly speaking, the Secretary of State may by Notice require a person, or persons jointly, responsible for constructing, extending, operating or using an offshore renewable energy installation (or for a proposal to do so) – to prepare a costed decommissioning programme and ensure that it is (eventually) carried out. The Secretary of State can approve, modify or reject a programme, including any financial security provisions which the responsible person proposes to provide. The Secretary of State is required to review the programme from time to time.

7.9. The Secretary of State may issue a notice requiring a decommissioning programme to be submitted once one of the statutory consents for the installation has been given or is likely to be given. As of April 2007, four such notices have been issued. It has been a condition of the relevant statutory consents that the decommissioning programme be submitted prior to the construction of the offshore renewable energy installation.

Proposed changes to the current regime

7.10. The changes proposed to the decommissioning legislation do not change the fundamental principle that a person who is responsible for developing or operating

an offshore generating installation should also be responsible for decommissioning it at the end of its life.

8. Scope of the scheme

Geographical scope

8.1. The oil and gas abandonment provisions apply to installations within UK territorial waters and on the United Kingdom Continental Shelf (UKCS). The offshore renewable energy provisions, as set out in the Energy Act 2004, apply to waters in or adjacent to England, Scotland and Wales (between the mean low water mark and the seaward limits of the territorial sea) and to waters in the UK Renewable Energy Zone (including that part adjacent to Northern Ireland territorial waters).

Categories of installation to be included within the changes

8.2. The Government's view is that the changes to the Petroleum Act 1998 and the Energy Act 2004 are a significant improvement on the current regime. The rationale for the changes is set out in chapter 7 and in the Partial Regulatory Impact Assessments at Annexes A and B.

8.3. The Government therefore intends to apply the scheme widely, to

- All existing and future oil and gas installations and pipelines; and
- to all existing and future offshore renewable energy (wind, wave and tidal) installations which fall within the Energy Act 2004 statutory decommissioning scheme.

8.4. We propose to exclude offshore renewable energy installations which - in line with published government guidance - are not included within the Energy Act 2004 decommissioning scheme (i.e. those installations which prior to June 2006 had a consent under S36 of the Electricity Act 1989 or the Transport and Works Act 1992; and installations which were already in operation in June 2006 but which did not require such a consent because their generating capacity was below the relevant threshold).

Question 1. Do you agree that the proposed changes affecting oil and gas installations and pipelines should be applied to all existing and future installations and pipelines?

Question 2. Do you agree that the proposed changes affecting offshore renewable energy installations should be applied to all existing and future offshore wind, wave and tidal energy installations to which the Energy Act 2004 scheme applies? Please explain your reasons.

9. Offshore Oil and Gas Decommissioning

Overall Approach

9. 1. The Petroleum Acts 1987 and 1998 sought to ensure that the companies which established oil and gas installations and pipelines on the UK Continental Shelf (UKCS) carry out the decommissioning of those facilities and neither the responsibility nor the cost of that work should fall to the taxpayer. In recent years there has been a significant transfer of oil and gas assets from large companies to small companies and the introduction of innovative licensing schemes has brought a number of new companies to the UKCS. There is also considerable interest in projects to enable gas to be stored offshore, and to enable liquefied natural gas to be imported and unloaded into offshore facilities.

9.2. When a company sells its interest in an oil or gas field to a new company, the Department will place a legal obligation to decommission on the buyer and withdraw the obligation on the seller if it is clear that the remaining group can afford the obligation or that satisfactory financial security has been arranged to cover the risk.

9.3. When a new oil or gas field is proposed, the DTI will assess the financial strength of the companies involved and if we have concerns about their ability to meet the cost of decommissioning the company may offer to provide security, usually in the form of a letter of credit. But there is no power in the current legislation to enforce this action.

Risks

9.4. Decommissioning of UKCS offshore oil and gas facilities is likely to cost between £15 and £19 billion over the next 30 years with individual projects costing between £5 and £500 million. The potential risks to the public purse are therefore significant. In 2005 two companies began to develop the Ardmore field but production levels were disappointing and the companies went into liquidation. This was the first such failure on the UKCS but the increasing involvement of smaller companies suggests this may well happen again. The lessons of this case and the experience of administering the current legislation suggest that there are significant gaps in the protection provided to the taxpayer under the current legislation and that the risk of default will grow with the trend to smaller developments being managed by smaller companies.

Wider discretionary powers to require security

9.5. To ensure that the taxpayer is better protected against the increasing risk of default on decommissioning liabilities, we would extend the Petroleum Act to enable the Secretary of State to require security when the level of risk is judged to be unacceptable. This could occur both as a result of a sale of a licence interest or with a new development. The risk would be calculated by assessing the financial strength of the companies concerned and comparing that to the decommissioning costs for the field in question. The procedures would be published to enable companies to understand the assessments and determine in advance what the likely security costs would be for a new development. The risks are likely to be higher at the start of a development when predictions of production levels may prove to have

been over-optimistic or towards the end of the field life when a fall in oil or gas prices, a sharp increase in operating costs or a sudden decline in reservoir performance may damage the economics of the field.

Power to create decommissioning obligations for all the responsible companies

9.6. Business practices on the UKCS have evolved since the Petroleum Act received Royal Assent in 1998 and experience of implementation has shown that liabilities cannot always be shared fairly amongst all the companies responsible for the installation or pipeline. Spreading the liability reduces the burden on individual companies and the risk of default and we therefore propose to make the following liable, where appropriate:

i. Licensees and others with an interest, i.e. persons within the scope of s30(1)(b) and (c) when activity is <u>intended to be</u> carried on from an installation, i.e. earlier than provided for by subsection (5) (b) at present;

ii. persons owning an interest in an installation, i.e. persons within the scope of s30(1)(d) even if the Secretary of State might be satisfied with arrangements made by other persons, i.e. within s30(1)(a) to (c). As an example, floating production systems may be owned by companies other than the licensees and may change hands occasionally. The initial owners are made liable for the removal of these facilities when the field development is approved, but the constraint in 31(1) means that if the facility is sold whilst on station, the new owner cannot be made liable for its removal if the licensees are seen as able to afford the decommissioning. In effect, the legal liability for removing the floating facility lies with the users but not its new owner, which seems unreasonable;

iii. the corporate members of Limited Liability Partnerships (LLPs). If the Secretary of State is concerned that a company may not be able to meet its decommissioning liabilities he can spread the obligation to its associate companies, e.g. a parent company. It is uncertain whether this provision (s30(1)(c), 30(2)(c) and 30(8)) would apply to the corporate members of LLPs and it would provide clarity for industry and government if this uncertainty was corrected by bringing corporate members of LLPs clearly within the scope of the provision;

iv. S30(2) does not enable the Secretary of State to serve liability (s29 notices) on the licensees or Joint Operating Agreement (JOA) parties for a pipeline unless they also own an interest in the line; the intention may have been that such companies could be designated as owners (under s27), but this provision has proved impracticable administratively as the numbers of pipelines grew (e.g. one field has over 260 pipelines);

v. The definition of pipeline (s45), unlike that for offshore installations (s44(1)), does not include a pipeline that is “intended to be established”. It should be possible to establish decommissioning liabilities for a pipeline once construction starts;

vi. The Secretary of State is required to act reasonably in serving s29 notices establishing decommissioning liabilities. To ensure he does so, he must be able to resolve any concerns about the financial position of a company: creating a legal liability by serving a notice might in some cases have a serious impact on the viability of the company. But the existing provision enabling the Secretary of State to obtain financial information (s38(1)) cannot be used before the serving of a notice; it is proposed that this provision be extended to cover the period prior to serving a notice;

Protection of security funds from insolvency procedures

9.7. In discussions about decommissioning liabilities both the industry and government have been concerned that efforts to ensure that funds are set aside to cover decommissioning if the companies responsible default could be swallowed up in the general distribution to creditors. The Coal Industry Act 1994 contains a provision to disapply the Insolvency Act 1986 and we propose to seek a similar arrangement for decommissioning funds. This is also proposed for offshore renewable installations and the proposal is discussed further at 10.12-18.

Question 3. Do you agree with the proposal to give the Secretary of State discretion to require financial security (if appropriate) at the start of a development and/or at any subsequent stage? Please explain your reasons.

Question 4. Do you have comments on the costs of providing security in these situations (paragraphs 25 and 28 of the Regulatory Impact Assessment at Annex A contain our estimates)? Please support your comments with evidence where available.

Question 5. Do you agree that all the relevant parties should be liable for the decommissioning of an offshore installation or pipeline from the time that construction begins? Please explain your reasons.

Question 6. Do you agree with the proposal that companies which own an interest in an installation should share the responsibility for decommissioning even if other responsible parties appear capable of carrying out the decommissioning?

Question 7. Do you agree with the proposed approach that companies which are corporate members of Limited Liability Partnerships (LLPs) and LLPs which control companies could be made to share the liability if the Secretary of State is concerned that those directly responsible may not be capable of carrying out the decommissioning? Please explain your reasons.

Question 8. Do you agree that companies with an interest in a pipeline (including those which are parties to a joint operating agreement) but which are not owners should be capable of being served with decommissioning liability notices? Please explain your reasons.

Question 9. Do you agree that the Secretary of State should be able to ask for financial information on a company before serving a decommissioning liability notice?

Question 10. Do you agree with the proposal to provide legislative safeguards for funds set aside for oil and gas decommissioning so that they would not fall to the insolvency-office holder in the event of insolvency?

10. *Offshore Renewable Energy Decommissioning*

Overall approach

10.1. The Government's objective, taking account of its international obligations, is to ensure that installations are decommissioned appropriately. Learning from oil and gas experience of the Petroleum Act, we have been keen to ensure that developers take account of their decommissioning liabilities at the beginning of their projects and make adequate provision to ensure that sufficient funds will be available to meet their liabilities.

10.2. The Government is seeking to minimise the risk of liabilities falling to the public purse in the event of default by developers whilst, at the same time, not wishing to impose a higher cost than necessary on the offshore renewables industry, in order to encourage the development of the industry.

10.3. Our general approach is that the "polluter pays" and that the business responsible for the installation is best placed to manage and mitigate the costs and risks associated with decommissioning. The developer can take on board decommissioning issues from the outset of the project, from the concept and design stage through to the contractual arrangements and warranties associated with construction and operation.

Background Information on Risk to Government

10.4. In consulting on the guidance on the decommissioning of offshore renewable energy installations, published in December 2006[6], the Government indicated that it would not be appropriate for it to bear the liabilities associated with decommissioning, nor simply to accept the risk that developers may default on their liabilities. However, the government accepted that it may be appropriate for it to take on some of the risk associated with potential default.

10.5. The risk to Government in relation to any particular offshore renewable energy installation is that the participating companies may not have sufficient assets to pay for decommissioning or that although such companies have sufficient assets, the assets are outside UK jurisdiction, and the powers of enforcement available under the Energy Act 2004 may not be exercisable so as to ensure that companies comply with their obligations. In such cases the UK Government's international obligations might mean that the costs then fall on the public purse.

10.6. In 2006 DTI commissioned Climate Change Capital (CCC) to assist it in identifying a range of suitable means by which security could be obtained by Government to protect against default on decommissioning liabilities, without unnecessarily inhibiting the development of the offshore renewable energy industry. A copy of their report is available from http://www.climatechangecapital.com/pages/newsdetail.asp?id=151&

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[6] Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004, Guidance Notes for Industry, December 2006 available at www.dti.gov.uk/energy/sources/renewables/policy/offshore/page22500.html

10.7. Significant uncertainty remains over decommissioning costs, given the lack of experience and 20 year plus time horizon before actual decommissioning, during which market conditions, technology and environmental knowledge may all change. However, based on industry figures, CCC estimated that, for all proposed Round Two offshore wind projects, the total level of decommissioning liabilities would be approaching £300m (based on 7.2 GW capacity and estimated £40k/MW decommissioning costs). If all actual and proposed Round One projects were included, total costs would be in the order of £360m. Industry estimates for the cost of decommissioning wave and tidal devices varied between £25-£100k/MW depending on the techniques involved. Based on these costs, CCC calculated that if 8.4GW of offshore wind farms and 2.5GW of wave/tidal devices were built by 2020, the total decommissioning liability would be between £400-585 million.

10.8. Using various assumptions CCC considered the maximum size of the decommissioning liability and adjusted it by the likelihood of default (based on standard company credit ratings) to produce an estimate of the risk-adjusted exposure to Government. CCC estimated that the cost to Government (assuming no financial security) could vary from anywhere between a few million pounds to more than £100 million for offshore wind farms in the case of a high rate of default. The risk to Government would also be dependent on any increases in decommissioning costs (if decommissioning costs were to double, for example, the risk adjusted exposure to Government would double) and on the average credit rating of installation owners.

10.9. CCC looked at the likely circumstances of default and levels of risk during the different phases of an installation's life. They concluded that the risk to Government of default on offshore wind farms is relatively low during the construction phase, increases during the operation phase, and is highest for the decommissioning phase. Given the industry's high capital costs and very low operating costs, CCC expected that an offshore wind installation, once financed and built, would probably be able to cover its decommissioning costs, even at a late stage in a project's life. Nevertheless, a few critical factors suggested that financial security that did not impose a significant burden on the sector would be advisable in order to manage the uncertainty of the risk. In particular:

- uncertainty over the magnitude of decommissioning costs;
- the risk of technical failure during operation, particularly given the difficulty of the marine environment;
- potential future transfer of assets (and consequent uncertainty over the creditworthiness of asset owners).

10.10. Based on the analysis, and following consultation, the government has indicated in the published guidance to industry that a number of forms of financial security would be likely to be acceptable to it, including:

- Cash, letters of credit and bonds
- Decommissioning funds that accrue continuously throughout the life of, or during the middle operating years of a project; or funds that start accruing early in or from the mid life of an installation (effectively from year 10 assuming a 20 year life before re-powering for offshore wind projects),

provided they are completed ahead of the expected end of life/re-powering of the installation. See an explanation of 're-powering' at paragraph 10.17 below.

The government has also indicated that a number of forms of security would be likely to be unacceptable, including parent company guarantees (PCGs) and funds that started accruing late in a project's life.

10.11. Responses to the consultation and discussions with industry suggest that the mid life accrual fund is likely to be the favoured financial security mechanism from those securities which the government would be prepared to accept. (Many companies would have preferred PCGs.) On the basis of their assumptions, CCC estimated that the risk adjusted exposure to Government from a mid life accrual scheme would be between £0-20 million. Costs to business would be about £18 million[7] higher than under a late accrual fund which the industry might normally opt for if there were no financial security requirement.

Proposed Safeguarding of Decommissioning Financial Security Funds

10.12. Given the risks of default and the costs to industry, as well as ensuring that projects have adequate security to meet their decommissioning liabilities, the government also wants to make sure that any such security is safe in the event of insolvency and can be used for its intended purpose. In its response to the consultation, HMG indicated that in assessing financial security, those responsible for installations would need to be able to demonstrate that their decommissioning funds would be secure in the event of insolvency. We recognised that would be hard for some developers to do, particularly those operating singly.

10.13. At the moment, under insolvency legislation, it is likely that in the event an operator became insolvent and defaulted on its decommissioning obligations, the decommissioning security fund – just when it would be needed - would fall to the insolvency office-holder for distribution amongst creditors. It would not be available for its intended purpose of decommissioning.

10.14. It has become clear that the safest way to ensure that, in the event of insolvency, funds are available for their intended purpose of decommissioning – rather than falling to the insolvency office-holder – would be to make statutory provision for the safeguarding of such funds. We are therefore proposing to take the opportunity of proposed new legislation to provide protection to offshore energy funds by disapplying the Insolvency Act 1986 so that these funds will not fall to the insolvency office-holder. There is a precedent in Section 29 of the Coal Industry Act 1994 protecting security provided for subsidence.

10.15. There would be benefit to companies as funds set aside for decommissioning would be more secure and this should reduce the burden of contingent liabilities. The proposal also keeps open for developers the option of

[7] The government's risk-adjusted exposure should not be directly compared with the costs to industry since the latter are "discounted". Further cost information is available in the CCC report http://www.climatechangecapital.com/pages/newsdetail.asp?id=151& and in the Full Regulatory Impact Assessment on the Statutory Decommissioning Scheme for Offshore Renewable Energy Installations under the Energy Act 2004 (URN 06/2088) at) http://www.dti.gov.uk/files/file35830.pdf

providing mid-life accrual funds as a preferred method of security since they will be able to demonstrate that funds will be secure in the event of insolvency. The premium payable for bonds and impact on borrowing associated with letters of credit may make funds an attractive option.

10.16. Under the proposal, in the event of insolvency, a decommissioning security fund could thus be used to meet in part (if insufficient security) or in full, the decommissioning obligations of the insolvent operator. The decommissioning responsibility would pass either to another person or persons (with funds released in stages once the decommissioning had been undertaken) or to the government, as ultimate guarantor (with the fund used to pay for the decommissioning). Any shortfall in the security would need to be met by the then responsible person(s) – see paras 10.18 - 10.20 below - or, in its position as ultimate guarantor, by the government. In the unlikely event that the security was more than the cost of the decommissioning, any surplus (after taking account of any reasonable costs associated with arranging for the decommissioning) would be passed to the liquidator for distribution amongst creditors.

10.17. In reality, if the insolvency arose as a result of financial difficulties particular to the developer rather than problems with the installation itself or the market, it may make more sense for another developer to re-power an installation (keeping foundations and replacing turbines) at or around year 20, rather than decommission it. Decommissioning would still be required but would effectively be deferred to about year 40. The accrued fund would still be needed for decommissioning but not for about another 20 years. Any surplus could not then be passed to the liquidator. However, the value of an installation with scope for re-powering would be inherently more than one that required decommissioning in the short-medium term and this – and the need for its eventual decommissioning – would be reflected in the price obtained for the assets by the liquidator.

10.18. The requirement to make payments to a ring-fenced decommissioning fund will need to be properly accounted for under existing accounting standards and legislation (such as UK Financial Reporting Standard 12, International Accounting Standard 37 and the requirements set out in Schedule 4, Paragraph 50 of the Companies Act 1985 as re-enacted. The latter provisions are subject to future repeal by the Companies Act 2006 which sets out detailed accounting responsibilities in Part 15. This transparency should mean that creditors need not lose out as the existence of such arrangements can be seen – and taken account of - in advance. It is also worth noting that creditors would not have access to decommissioning funds under other security arrangements such as letters of credit or bonds.

> *Question 11.* Do you agree with the proposal to provide legislative safeguards for funds set aside for the decommissioning of offshore renewable energy installations so that they would not fall to the insolvency-office holder in the event of insolvency?

Widening the category of persons on whom decommissioning obligations can be placed

10.19. In line with the government's overall approach that the polluter should pay for the liabilities it causes, and following default cases outside the energy sector and

experience of decommissioning within the oil and gas sector, we wish to ensure that associated companies can be made liable for decommissioning obligations. We therefore propose that the Secretary of State should, by written notice, be able to place decommissioning obligations (including those relating to financial security) on associated companies, such as parent or sister companies. In line with the provisions of the Energy Act 2004, in the event of default by the Notice holder(s), the Secretary of State would also have the power to recover expenditure from those associated companies.

10.20. In order to minimise the potential burden on the industry, we propose that decommissioning obligations should only be placed on associate companies if the Secretary of State is not satisfied with the decommissioning arrangements (including financial provision) which have been made (e.g. if there was insufficient financial security or default) by those responsible for decommissioning of offshore renewable energy installations. Similar provisions currently exist in relation to the decommissioning of offshore oil and gas installations (see Annex D).

10.21. We propose that associates should be defined in similar terms to those that exist for oil and gas within the Petroleum Act 1998 (Section 30). Under the Petroleum Act, one company is associated with another if one of them controls the other or a third company controls both of them; and one company controls another if it possesses or is entitled to acquire—

(a) one half or more of the issued share capital of the company;

(b) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company;

(c) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders; or

(d) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders,

or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes.

Under Section 30(d) of the Petroleum Act, a person who owns an interest in an installation as security for a loan is not within the categories of person who may be issued with a decommissioning notice, unless they fall within one of the categories under Section 30 (a) to (c).

10.22. In line with our proposals for the oil and gas sector (para 9.6(iii)), we also wish to include Limited Liability Partnerships (LLPs) and their corporate members within the category of persons on whom decommissioning obligations can be placed (including financial security and recovery of assets). LLPs may become involved and have obligations put upon them either where both the developer and its associate (where that associate is a company or LLP but not an individual) are themselves

members of an LLP, or where the associate, having a sufficient shareholding or interest in a limited liability company developer, itself is an LLP.

Question 12. Do you agree that if satisfactory financial and other arrangements have not been made by a developer to meet its decommissioning obligations, or in the event of default of those obligations, the Secretary of State – as is already the case for oil and gas installations - should be able to impose those obligations on, and/or recovery of expenditure from, associated companies (such as parent and sister companies)? Please explain your reasons.

Question 13. Do you agree that the definition of associate companies used for oil and gas is the appropriate basis on which to define associated companies in the case of offshore renewable energy installations? If not, what definition would be more appropriate? Please explain your answer.

Question 14. Do you have any comments on the potential impact or costs of the proposal to make associate companies responsible if the Secretary of State is not satisfied with the decommissioning arrangements made (paragraphs 44 to 48 of the Partial RIA at Annex B contain our initial assessment)?

Question 15. Do you agree with the proposed approach to Limited Liability Partnerships, which is the same as that proposed in Question 7 for oil and gas installations and pipelines? Please explain your reasons.

Information

10.23. Under the Energy Act 2004 the Secretary of State, when issuing a Decommissioning Notice, may require the recipient of the notice to provide such information and documents relating to the installation or the financial affairs of the recipient as may be specified in the notice. Experience within the oil and gas industry has shown that in order to enable the Secretary of State to carry out his functions fully, fairly and transparently, information may be required both from the developer and from third parties (e.g. associated companies). Given notices for offshore renewable installations are also being issued 20 years or so before expected decommissioning, it is also likely that information may be required in the future which was not foreseen at the time of the issuing of the notice.

10.24. We therefore propose that the Secretary of State's information powers should be extended to enable him to require information (including financial information and details of associated companies) from developers and associated companies whenever he is undertaking, or is considering, the exercise of his decommissioning functions, similar to the current and proposed provisions for oil and gas decommissioning (see Annex D).

Question 16. Do you agree with the proposal to give the Secretary of State power to require information (including financial information and details of associated companies) from developers and associated companies whenever he is undertaking, or is considering, the exercise of his decommissioning functions – as is already the case or proposed for oil and gas

decommissioning – to assist in the promotion of better informed and fairer decision-making? Please explain your reasons.

11. Cross-Industry cooperation and collaboration

11.1. The Government is keen to encourage cross-industry cooperation and collaboration at the decommissioning stage, where appropriate. At the decommissioning stage, competitive pressures are likely to be less than at the development and production stage, which presents an opportunity for companies across and within sectors to share decommissioning expertise. This might range from a general exchange of information and ideas to a more structured collaboration between the offshore energy industries on specific decommissioning projects and proposals.

> *Question 17.* Would you like to suggest any specific proposals for facilitating and encouraging cross-industry cooperation and collaboration at the decommissioning stage?

12. What happens next?

12.1 Following the end of the consultation, a summary of the views expressed during the consultation and the Government's response will be placed on the DTI website, with paper copies made available on request.

12.2 In the light of the comments received, the Government will decide whether to introduce the proposed legislative changes to the offshore decommissioning regimes. There will be legislation coming forward when parliamentary business allows.

PARTIAL REGULATORY IMPACT ASSESSMENT FOR PROPOSED CHANGES TO OFFSHORE OIL AND GAS DECOMMISSIONING

Petroleum Act 1998 Part IV – Abandonment Of Offshore Installations

1. This initial Regulatory Impact Assessment (RIA) considers the potential impacts of a proposal to amend the provisions of Part IV of the Petroleum Act 1998 ("the Act") relating to the Secretary of State's powers to ensure that adequate financial arrangements are put in place to carry out an abandonment programme.

2. The RIA also addresses amendments to the Act relating to the timing of the serving of notices under section 29, the persons to whom a notice can be given and the powers under section 30 in relation to Limited Liability Partnerships (LLP's).

Purpose and intended effect

Objective

3. To strengthen the Government's ability to require those responsible for offshore installations and pipelines to provide financial security for the costs associated with decommissioning these facilities. The aim is to minimise the risk that companies default on their decommissioning obligations leaving the exchequer to meet the costs.

4. The measures will affect companies responsible for existing offshore oil and gas facilities and those which develop new oil and gas fields or offshore gas storage or recovery infrastructure. The provision of security will only be necessary where we have concerns about the financial strength of the parties involved.

Devolution

5. Energy is a reserved matter except in relation to Northern Ireland. It is proposed that the amendment will apply, like the original provisions of the Petroleum Act 1998 to all of the UK territorial waters and the UK Continental Shelf (UKCS).

Background

6. In recent years there has been significant trading of UKCS oil and gas assets often involving sales from large companies to small companies. The introduction of innovative licensing schemes such as 'Frontier' and especially 'Promote' licences has also brought a number of new companies to the UKCS. In addition, to meet the challenge of declining gas production from the UKCS there is considerable market interest in pursuing projects to enable gas to be stored offshore, and to enable Liquified Natural Gas (LNG) to be imported to UK waters and unloaded into offshore facilities. Whilst wishing to encourage these activities, the Government also has a duty to ensure that the taxpayer is not exposed to an unacceptable risk of default in

meeting the costs associated with the decommissioning of oil and gas and gas storage facilities. The two aims must be carefully balanced.

7. The Government ensures that redundant facilities are decommissioned by serving notices under section 29 of the Act on those persons with an interest of a kind set out in section 30(1) and 30(2) in respect of each offshore installation or each offshore pipeline. Section 29 notices require the recipient to submit a decommissioning programme at such time as the Secretary of State may call for it. The obligation to carry out an approved decommissioning programme is joint and several. This means that if any one of those with a duty to carry out a programme is unable to do so, the other interested parties will be responsible for the defaulting party's share. Ultimately this could result in one party being liable for the full decommissioning costs. In addition, under section 34 of the Act, a company which had previously held an interest in an installation or pipeline may in certain circumstances be 'called back' and placed under a duty to carry out a decommissioning programme. The Secretary of State has a limited power to require companies to put up financial security if he is concerned about their ability to carry out a decommissioning programme, but this provision only applies once the programme has been approved. As it is the practice to draw up programmes at the end of the life of a field, the Secretary of State cannot require security under the Act before that time.

8. For installations, notices may be served on licensees, the company that manages the installation, the owners, and the parties to a Joint Operating Agreement. For pipelines notices are served on the owners. Notices under section 29 may also be served on parent or associated companies but this option is used only in those cases where it is judged that satisfactory arrangements, including financial, are not being put in place to ensure that a decommissioning programme will be carried out.

9. There are generally two instances when the Department needs to make a judgement on the ability of companies to carry out decommissioning; either at the time of an assignment of interests in a licence affecting an existing field or at the time of submission of a Field Development Plan (FDP) for a new project.

10. In the case of a licence assignment, where an existing company is selling its interest to a new company, the Department will serve a section 29 notice on the new party. At the same time it will carry out a financial assessment to gauge whether the new group looks capable of meeting its decommissioning obligations. If there is concern that the group will be weakened by the departure of the selling company it is unlikely that the Secretary of State will exercise his discretion to withdraw the section 29 notice from the selling company. In these circumstances, the selling company often requires the buyer to provide a financial guarantee. The companies may also decide to agree a Decommissioning Security Agreement (DSA) with the Department; this will make provision for financial security and the decision not to withdraw the section 29 notice from the selling company may then be reversed.

11. The Department has taken part in an industry initiative to develop a standard template for DSA's which is expected to be finalised shortly. The aim has been to establish a model that will ensure that guaranteed funds (which may include future

revenues in appropriate cases) will be available to cover decommissioning costs at all times and which can be endorsed by all parties including the DTI.

12. When a developer puts forward proposals to the Department for a development of a new oil or gas field, we can assess the financial strength of the companies involved but if we have concerns about their ability to meet the cost of decommissioning we have no legal powers to require security. The company may recognise the department's concerns and offer to provide security, usually in the form of a letter of credit. But we cannot enforce this action. To encourage voluntary action, the Department will suggest that the security need only cover the initial risk until it can be demonstrated that the reservoir will produce the expected revenues, and the period closer to end of field life as the reservoir is depleted.

Risks

13. The cost of decommissioning UKCS offshore infrastructure over the next 25 to 30 years is between £15 and £19 billion and indications from projects so far suggest this figure could increase unless savings can be gained as experience grows. The costs associated with individual decommissioning programmes can vary from £5 million pounds for a small subsea development with equipment only on the seabed to £500 million pounds for a full scale decommissioning project involving large steel or concrete platforms and other facilities such as pipelines, loading systems, seabed templates and manifolds. The estimated costs for current decommissioning projects are £160 million for the North West Hutton field and £260 million for the Frigg field as against £14 million for decommissioning the Durward and Dauntless subsea facilities.

14. Potentially therefore, the costs that could fall to the exchequer are significant should a company fail to meet its decommissioning liabilities. In 2005 the companies developing the Ardmore field defaulted. The decommissioning costs were very low at around £5 million but considerable effort has been required to ensure the costs did not fall to the taxpayer. This was the first such failure on the UKCS but the increasing involvement of smaller companies raises the probability of this happening again.

15. There is concern in Government and industry that trust funds created to pay for decommissioning could be brought within insolvency procedures if the company which set up the fund became insolvent. It seems to be generally accepted that if companies set money aside to cover their decommissioning obligations in a segregated fund over which they have no control, that fund should not be available for distribution to creditors if the company subsequently fails. The industry is developing a security agreement framework which endeavours to create a fund which would be immune from this possibility. The Department believes it may be more effective to disapply the provisions of the Insolvency Act 1986, following the precedent set in the Coal Industry Act 1994.

16. The Department has considered the lessons of the Ardmore case and concludes that the risk of such defaults will grow with the trend to smaller developments being handled by companies with limited financial resources. Experience of implementing the current legislation shows that there are cases

where the decommissioning obligation cannot be put on all the parties responsible for placing an installation or pipeline in the marine environment. In some instances the obligation cannot be created at the right time, in others the business models that have evolved in the North Sea mean some parties are not within the scope of the Act as it stands. The numbers of companies concerned is small but the potential costs are high and we believe these gaps should be closed.

17. Extensive discussions with the industry both direct and in the joint industry/government PILOT initiative and consideration of the possible solutions have led us to focus on three options. These do not include a proposal brought up in PILOT by the industry for an automatic clean break from decommissioning liabilities for the sellers of licence interests if a standard security agreement is put in place. Under the proposal the responsibility and costs for decommissioning if the company(ies) responsible defaulted would depend totally on the effectiveness of the security agreement. If that failed in some way, the responsibility would pass to the government rather than the original builders of the installation or pipeline. The standard agreement has never been activated to cover a default situation; nor has it been tested in the courts. The effectiveness of the agreement would be heavily dependent on accurate predictions of the costs of decommissioning, which are currently not achievable given the lack of experience of such work. Although it was argued that the proposal would lead to more sales of licence interests and thus investment in the UKCS, it has not been possible to demonstrate that these benefits would outweigh the risks in transferring all the contingent liabilities to the public purse.

Options

18. We are considering the following options:

- Option 1: No change;
- Option 2: Amend the legislation to provide greater flexibility to require security when the risks of default are unacceptable, to ensure all relevant companies bear the decommissioning liability and to protect security funds from insolvency proceedings.
- Option 3: Require financial security in all cases; ensure all relevant companies bear the liability and protect funds from insolvency proceedings.

Option 1:

19. No change. Taking no action exposes us to an increasing risk that companies will default on their decommissioning obligations, particularly with new field developments involving smaller companies. As existing powers to require financial security are limited by the Act to the period after approval of a decommissioning programme, which is normally towards the end of field life, we would have to depend on companies voluntarily putting up financial security at the start of a field development or at any subsequent vulnerable stage. This is unlikely to be effective in protecting the taxpayer as there is little incentive to encourage companies to pay for security voluntarily.

Costs and Benefits

20. The do nothing option would not add to current industry costs but the potential costs to the taxpayer will grow due to the increasing number of smaller companies active on the UKCS. One industry study of decommissioning liabilities in July 2006 used credit rating agency data to support an assumption that 11 companies could potentially default in the next 30 years and that the decommissioning costs involved could be between £25 m and £230 m, after taking account of the defaulting companies' potential assets and future revenues. This option also carries a resource cost to the Government in handling default situations; in the Ardmore case this has amounted to 450 staff/days at a cost of at least £225,000 to date.

21. Not tackling the gaps in powers to make all relevant companies liable for decommissioning leaves those companies which do have the liability carrying an unfair share of the burden. As this is effectively a contingent liability and the value will depend on companies' shares of the field and a wide range of decommissioning costs it is not possible to put a figure on this burden. Similarly, we have not been able to evaluate the risk that security funds might not be segregated from insolvency procedures in the event of a company defaulting. However its importance is demonstrated by the considerable efforts the industry has put into drafting a DSA model which will protect any security funds from insolvency procedures.

Option 2:

22. To ensure that the taxpayer is better protected against the increasing risk of default on decommissioning liabilities, we would extend the current provision of section 38 of the Petroleum Act to enable the Secretary of State to require security when the level of risk is judged to be unacceptable. The risk in each case would be calculated by assessing the financial strength of the companies concerned and comparing that to the decommissioning costs for the field in question. The Act would be amended so that the cost information could be acquired when the risk first arises. The procedures used would be published to enable companies to understand the financial assessments and, if they wish, to determine in advance what the likely security costs would be for a potential project.

23. We would introduce a provision to disapply the Insolvency Act 1986, following the precedent in the Coal Industry Act 1994. This would ensure that funds put aside for decommissioning would be retained for that purpose if a company became insolvent and would not be taken for distribution to the company's creditors. We recognise that potential investors in companies with oil and gas interests should be aware of this position, but such a company will be obliged to report funds set aside for decommissioning in their annual accounts. We will also draw attention to this issue in our Guidance Notes for Industry.

24. Business practices on the UKCS have evolved since the Act received Royal Assent in 1998 and experience of implementation has shown that liabilities cannot always be shared fairly amongst all the companies responsible for the installation or pipeline. Spreading the liability reduces the burden on individual companies and the

risk of default and we therefore propose to make the following liable, where appropriate:

- Licensees and others with an interest, i.e. persons within the scope of s30(1)(b) and (c) when activity is intended to be carried on from an installation, i.e. earlier than provided for by subsection (5) (b) at present;

- persons owning an interest in an installation, i.e. persons within the scope of s30(1)(d) even if the Secretary of State might be satisfied with arrangements made by other persons, i.e. within s30(1)(a) to (c). As an example, floating production systems may be owned by companies other than the licensees and may change hands occasionally. The initial owners are made liable for the removal of these facilities when the field development is approved, but the constraint in 31(1) means that if the facility is sold whilst on station, the new owner cannot be made liable for its removal if the licensees are seen as able to afford the decommissioning. In effect, the legal liability for removing the floating facility lies with the users but not its new owner, which seems unreasonable;

- the corporate members of Limited Liability Partnerships (LLPs). If the Secretary of State is concerned that a company may not be able to meet its decommissioning liabilities he can spread the obligation to its associate companies, e.g. a parent company. It is uncertain whether this provision [s30(1)(c), 30(2)(c) and 30(8)] would apply to the corporate members of LLPs and it would provide clarity for industry and government if this uncertainty was corrected by bringing corporate members of LLPs clearly within the scope of the provision;

- S30(2) does not enable the Secretary of State to serve liability (s29 notices) on the licensees or JOA parties for a pipeline unless they also own an interest in the line; the intention may have been that such companies could be designated as owners (under s27), but this provision has proved impracticable administratively as the numbers of pipelines grew (e.g. one field has over 260 pipelines);

- The definition of pipeline (s45), unlike that for offshore installations (s44(1)), does not include a pipeline that is "intended to be established". It should be possible to establish decommissioning liabilities for a pipeline once construction starts;

- The Secretary of State is required to act reasonably in serving s29 notices establishing decommissioning liabilities. To ensure he does so, he must be able to resolve any concerns about the financial position of a company; creating a legal liability by serving a notice might in some cases have a serious impact on the viability of the company. But the existing provision enabling the Secretary of State to obtain financial information (s38(1)) cannot be used before the serving of a notice; it is proposed that this provision be extended to cover the period prior to serving a notice;

Costs and Benefits

25. A wider discretionary power to require security would raise costs where the risk of default was judged to be unacceptable. On current levels of activity this

would probably occur on between 10 and 20 cases a year. New developments by smaller companies tend to use subsea facilities or small platforms with decommissioning costs in the range of £10m to £20m. A letter of credit for a smaller company would cost between 2 and 3% of the value, i.e. up to £600,000 a year for £20m cover. Total fees for new developments could thus be £6m to £12m a year and administrative and legal costs could add perhaps 25%, suggesting a maximum cost to the sector of £15m a year.

26. We may also require security when a larger company sells its interest in an existing field to a smaller company with fewer financial resources. 17 asset sales were recorded by Wood McKenzie in 2006 and security might be required in perhaps half of those with typical decommissioning costs of perhaps £25m for the new company's share. This would suggest a total cost for security to the industry of £8m. However the sellers of such interests will already require the buyers to put up security under standard commercial practice so there would be no increase in costs. Indeed we understand that when a new company joins a licence group it may have to put up security for more than one of its new partners; this can result in duplication of securities. We envisage that if the new company provides security under a legal requirement, those partners would not need additional guarantees. It is therefore likely that there will be no overall increase in security costs to the industry for asset trades, indeed the costs may actually be reduced.

27. Letters of credit can have an impact on companies by reducing the amount they can borrow from their bank and thus the amount they can invest in developments. The impact on companies will be dependent on their standing with their banks and their financial strength. Companies with very limited resources may have to provide cash collateral to back a letter of credit. The Department is therefore encouraging the use of other security instruments such as bonds or trust funds which do not have the same impact on a company's ability to borrow funds.

28. The benefit of this option is that the taxpayer would have a high level of protection from contingent liabilities of between £5 m and £500 m per project, and a total contingency of up to £19 bn for the whole of the UKCS. We believe that costs to the industry of perhaps £15 m are not unreasonable when compared to these contingency levels and the overall capital expenditure of the sector of £5.6 bn in 2006. This option is the Department's preferred choice.

Option 3:

29. We could amend the Act as for Option 2 but require decommissioning security to be put in place in all cases regardless of the financial strength of the participants. This would apply to new developments for the life of the field as well as for asset sales where the section 29 decommissioning liability would be retained on any exiting company.

Costs and Benefits

30. This option would impose the greatest cost burden upon the industry but would provide the highest level of certainty that decommissioning costs would be met. The costs to industry would rise substantially from the need to provide security

in all cases. As the overall decommissioning costs for the UKCS are estimated to be between £15 and £19 billions, and security in the form of letters of credit costs from 0.5% to 3% dependent on the standing of the companies concerned, the potential cost of security could be between £150m and £200m a year. This is based on an assumption that around 80% of the liabilities would be with larger, investment grade companies, which are likely to pay around 0.5% for letters of credit. Upon transfer of an asset we would retain section 29 notices on all exiting companies and they would continue to carry decommissioning liabilities in their accounts. The major oil companies would certainly object to a blanket requirement to provide security where they have not previously needed to because of their financial strength.

31. The benefit of this option is that the taxpayer would have the highest possible protection from defaults, but at a high cost to the industry. Securities would often be provided by some of the largest companies in the world where the risk of default is extremely low. The regime would be easier to administer in that it would no longer be necessary to make judgements about a company's financial standing and there would be no withdrawal of notices; on the other hand significant resources would be needed to enforce this provision across some 300 companies. We do not regard this option as providing an appropriate balance of costs and benefits.

Business sectors affected

32. The impact of all of the options considered would be confined mainly to the oil and gas sector. Some 300 companies currently have decommissioning liabilities for their interests in developed UKCS fields. These companies include major international oil companies, mid-sized independent companies, subsidiaries of other groups and smaller independents. It is anticipated that our preferred option will have more impact on the smaller companies as, being less financially robust, they are inevitably the most likely to have to provide decommissioning security.

33. There will be benefits to companies (both large and small) who are co-licensees with companies which have to provide security as their contingent risks under the joint and several responsibility will be reduced. There are also likely to be positive benefits for the financial sector, mostly banks, who would gain business from providing the securities required.

Equity and fairness

34. It is inevitable that the requirement to provide security will apply to companies with limited financial resources but we believe this is a necessary feature of a prudent business approach.

Small Firm's Impact Test

35. Whilst our proposals will have more impact on the less financially robust companies involved in the UKCS we do not believe they will have an unreasonable impact on small companies. Although we refer to small companies and some may well have fewer than 50 employees, they may well be backed by large investment trusts or venture capitalists and will be investing large sums in the development project. Nor do we believe that the cost of security when compared to the overall

costs of oil and gas developments is an unreasonable burden. The average figures taken from 4 recent new projects were a development cost of £71m and a decommissioning cost of £8m; a letter of credit for that liability would cost about £240,000 a year or 0.3% of the development cost. In the past year, 3 smaller companies have recognised the Department's concerns about their financial standing and have arranged security for the initial high risk start-up period of their projects.

Competition assessment

36. We do not believe that the implementation of option 2 will have competition impacts. Activity on the UKCS is still dominated by major oil companies but there are increasing numbers of medium-sized independents, subsidiaries of utilities and smaller companies entering the market and competing for opportunities to buy assets. The proposals will apply to all companies on the basis only of their financial strength relative to the related risks. The security requirements will apply equally to new and existing companies and do not relate to UK companies' export activities. We do not believe the potential increases in the costs of security relative to the costs of oil and gas projects and the turnover of the companies concerned would be sufficient to affect the existing market structure.

Enforcement and sanctions

37. The responsibility for ensuring decommissioning obligations are met and that appropriate decommissioning security is put in place rests with the DTI. This is fulfilled through the provisions of Part IV of the Petroleum Act 1998 and through Departmental guidance. Failure to comply with certain requirements of the Act can lead to criminal prosecution.

Consultation

38. Consultations with the industry have so far been conducted both within the PILOT initiative and in everyday contact with smaller developers. A group of smaller companies and their trade association was consulted last year and 8 companies have recently been consulted individually on a confidential basis about their experiences in negotiating transfers of licence interests. We will conduct a full public consultation covering all interested parties on the proposed amendments to the Act.

Recommendation

39. We recommend that:

i) the Act be amended as proposed under Option 2 to allow the Secretary of State discretion to require decommissioning security at any time during the life of an oil or gas field if the risks to the public purse are assessed as unacceptable;

ii) the Act be amended to provide protection for segregated decommissioning security funds from insolvency procedures;

iii) the Act be amended to enable the Secretary of State to make all the relevant companies party to the decommissioning liabilities for an installation or pipeline.

DTI
EDU
Offshore Decommissioning Unit
May 2007

PARTIAL REGULATORY IMPACT ASSESSMENT FOR PROPOSED CHANGES TO OFFSHORE RENEWABLE ENERGY DECOMMISSIONING UNDER THE ENERGY ACT 2004

1. This initial Regulatory Impact Assessment (RIA) considers the potential impacts of a proposal for making legislative changes to the statutory decommissioning scheme for Offshore Renewable Energy Installations (OREIs). Under the scheme in the Energy Act 2004, the Secretary of State may require developers of OREIs to submit (and eventually carry out) a decommissioning programme for their installation. The scheme, as set out in guidance for industry published December 2006[8], includes decommissioning standards and financial security requirements.

2. First-hand experience of offshore decommissioning in the oil and gas sector – and experience in consulting on and beginning to implement the scheme in accordance with the published guidance - have highlighted areas where legislative powers or safeguards would be desirable to ensure the effectiveness of the scheme. In particular, the protection of security funds set aside for decommissioning in the event of insolvency; the ability to place decommissioning obligations on associate companies (such as parent companies) in line with the oil and gas decommissioning regime; and filling in gaps in the information powers within the Act.

Purpose and intended effect

Objective

3. The objective of this proposal is to minimise the risk that funds are not available for decommissioning – leaving the exchequer (i.e. the taxpayer) to meet the costs – if developers default on their decommissioning of OREIs and to seek to ensure that "the polluter pays".

4. The policy would cover persons responsible for OREIs, i.e. offshore wind farms and wave/tidal devices, which are issued with a decommissioning notice under Section 105 of the Energy Act 2004 and their associated companies e.g. parent companies. Decommissioning obligations, including provision of financial security, would only be applied to associated companies where the Secretary of State had concerns about the decommissioning arrangements which had been put in place.

Devolution

5. Energy is a reserved matter except in relation to Northern Ireland. The offshore renewables decommissioning regime in Part 2 of Chapter 3 of the

[8] Decommissioning of Renewable Energy Installations Under the Energy Act 2004, Guidance Notes for Industry, December 2006 URN 06/2086
www.dti.gov.uk/energy/sources/renewables/policy/offshore/page22500.html

Energy Act 2004 applies to territorial waters in or adjacent to England, Scotland and Wales (between the mean low water mark and the seaward limits of the territorial sea – i.e. GB internal and territorial waters) and to waters in the Renewable Energy Zone (including that part adjacent to Northern Ireland territorial waters, where Northern Ireland has fisheries interests). At present this decommissioning regime does not cover Northern Ireland internal or territorial waters. The proposed legislative changes will extend to the legal jurisdictions of England and Wales, Scotland, and Northern Ireland.

Background

6. The Government is committed to cutting carbon emissions in the UK by 60% by 2050. Renewable energy is an integral part of that objective as it produces less carbon dioxide and other greenhouse gases than electricity generated by fossil fuels. The government has set a target of 10% of UK electricity supply from renewable energy by 2010, with a further aspiration to derive 20% by 2020. It is expected that both onshore and offshore wind will make a significant contribution to the UK's renewable energy targets and aspirations.

7. Exploitation of the potential offshore energy resource brings with it the potential for decommissioning liabilities at the end of an installation's life to fall to the exchequer. The government has international obligations under the United Nations Convention on the Law of the Sea to remove installations from the sea-bed. This is primarily to ensure safety of navigation whilst also taking account of fishing and protection of the marine environment.

8. In line with the "polluter pays" principle, the Energy Act 2004 (sections 105-114) introduced a statutory decommissioning scheme for offshore wind and marine (wave and tidal) energy installations. Under the terms of the Act, the Secretary of State may require a person who is responsible for an OREI to submit (and eventually carry out) a decommissioning programme for that installation.

9. Currently, once developers of OREIs have been given (or are likely to be given) a statutory consent to construct and operate a generating station, the Secretary of State may issue them with a decommissioning notice requiring them to submit to the Secretary of State a decommissioning programme. It has been a condition of recent statutory consents that the construction of an OREI may not commence until a decommissioning programme has been submitted for approval (but not necessarily approved).

10. Annex E of the consultation document sets out the details of the Energy Act 2004 decommissioning scheme.

The proposal

11. The Energy Act 2004 already includes a statutory decommissioning scheme for OREIs. The proposal would not change developers' existing obligations to submit a decommissioning programme, provide financial security and eventually decommission. Our proposal does not change the spirit of the

existing legislation and policy, but seeks to reinforce them. We propose to strengthen the statutory decommissioning scheme so that :

- *funds set aside for decommissioning can be effectively ring-fenced and safeguarded in the event of insolvency of an operator.* The intention is to ensure that funds set aside for decommissioning can be used for that purpose. The proposal is to enable the ringfencing of such funds – via trusts or other financial arrangements (such as secure escrow accounts) – to enable them to fall outside the scope of insolvency legislation (primarily the Insolvency Act 1986). In the event of insolvency, funds would not fall to the liquidator for distribution to creditors but would be safeguarded for decommissioning. In this way we seek to ensure the setting aside of the costs of decommissioning to enable it to be undertaken either by another developer or – in the absence of another developer – by HMG in accordance with our international obligations to ensure safety of navigation and having due regard to fishing and protection of the marine environment. (There is a precedent in the Coal Industry Act 1994 (Section 29).)

- *Parent and associate companies would become liable for the decommissioning obligations of their subsidiaries or associates* if the Secretary of State is not satisfied with the arrangements (including financial arrangements) that have been made by the developer. The intention is to bring the offshore renewable energy decommissioning scheme in line with the existing oil and gas regime (and in line with technical changes proposed to that regime). It makes companies ultimately liable for the actions of their subsidiaries/associates to avoid decommissioning liabilities falling on the exchequer when parent or associate companies exist who could perform the decommissioning in accordance with the "polluter pays" principle. Under the Energy Act, Section 110(5), the Secretary of State may recover expenditure from persons who are in default of their decommissioning obligations. The proposal makes that provision meaningful given companies may go into liquidation before fulfilling their decommissioning obligations, and a consequential effect of companies setting up special purpose vehicles (SPVs) or special purpose companies (SPCs) is that they may have limited, if any, assets the Secretary of State would be able to recover in the event of default. The intention is to minimise the risk of decommissioning liabilities falling on the government and taxpayer. These reforms, intended to bring arrangements in line with those in the Petroleum Act relating to oil and gas decommissioning works, will also be applied to Limited Liability Partnerships (LLPs).

- *Gaps can be filled in respect of information requirements.* The intention is to ensure the Secretary of State has sufficient information both to be able to assess the financial viability of companies and/or their parents/associates to carry out their decommissioning obligations and to carry out his functions fully, fairly and transparently, thereby ensuring that the quality of decision-making is enhanced.

12. The proposed changes would be made in forthcoming legislation. It is anticipated the proposed legislative change would be supported by

modifications to the published guidance and, if required and appropriate, via existing regulation-making powers under the Energy Act 2004

Further information on OREIs and decommissioning costs

13. In April 2003, The Crown Estate announced the grant of leases for offshore wind farm development in "Round 1" of offshore wind farm leasing. As of April 2007, 4 of those developments have now been constructed with a generating capacity of 300 MW out of the (around) 1300MW of capacity that has received consent in Round 1. Round 1 acted as a "demonstration round" and the submission of an acceptable decommissioning programme was not a statutory requirement. The Crown Estate requires from Round 1 wind farm developers a decommissioning plan one year before the expiry of the lease and a guarantor in the event of failure and for the purposes of decommissioning.

14. Under "Round 2", which concluded in December 2003, 15 projects with a total generating capacity of between 5.4 and 7.2GW were offered Agreements for Lease by The Crown Estate. As of April 2007, three projects with a total generating capacity of 1.8GW have been consented while another 5 applications for consent are under consideration. The three Round 2 projects which have been consented have been issued with decommissioning notices under Section 105 of the Energy Act which they are required to submit prior to construction. (A further project has also been issued with a decommissioning notice.) As of March 2007, one decommissioning programme has been submitted to the DTI for approval.

Risks

15. In a study for the Department of Trade and Industry, Climate Change Capital (CCC) last year estimated the 'risk adjusted cost to the Government' of default on decommissioning payments. The total magnitude of decommissioning costs was valued at up to £585 million (£335 million for all Round 1 and Round 2 offshore wind liabilities and up to £250 million for marine technologies). CCC used a range of company credit ratings as a proxy to estimate the probability of default and based on the proposed mid-life accrual decommissioning fund, the risk adjusted exposure for this total liability was estimated at between £0-20 million in present value terms, up to 2020. The expected risk of default is built upon a range of companies' credit ratings: if all companies involved in OREIs were credit rating C then the expected cost would be £20 million. Alternatively, if all companies were credit rating AAA then the expected cost would be £0 million. CCC and the industry recognised the estimated decommissioning costs of £40k/MW[9] for offshore wind and £25-100k/MW for wave and tidal devices on which the analysis was undertaken were rough estimates which could change substantially once experience in OREI decommissioning were gained. The total potential liability on government would therefore increase as costs increased and/or if further capacity were built.

[9] In response to the consultation on this policy, two respondents commented that decommissioning costs could be significantly higher than this.

16. Some offshore renewable energy projects are being set up by Special Purpose Companies (SPCs). These are companies created for a single, well defined purpose and with the intention of seeking outside investors to assume a significant proportion of the risk. Of 15 Round 2 projects, 7 are believed to have set up special companies for taking forward their specific wind farm projects. The risk of default of SPV is likely to be higher than for parent companies, although the SPV may have a higher credit rating, particularly once a wind farm is operational. Credit reports from credit agency, Dun & Bradstreet demonstrate that 2 of the 3 consented Round 2 SPCs which have been issued with a decommissioning notice, are currently assessed as having a higher risk of business failure than their owners. 75% (6 out of 8) of Round 2 projects which have been consented, or whose applications are under consideration, are currently rated by Dun and Bradstreet as having a "greater than average" risk of business failure. Whilst good business practice would suggest that some parents might cover the liabilities of their SPCs in the event of default, there is no obligation for them to do so, unless the parents or associated companies are themselves subject to a decommissioning notice by virtue of being party to a proposal to construct, operate, use or extend an offshore renewable energy installation (OREI). Indeed, one of the rationales for creating SPCs may be to limit liabilities. However, SPCs are often required by lenders to protect their revenues and enable them to match the risk and returns of their loans, rather than expose themselves to the risks associated with the parent. Such vehicles can therefore allow for the efficient allocation of capital.

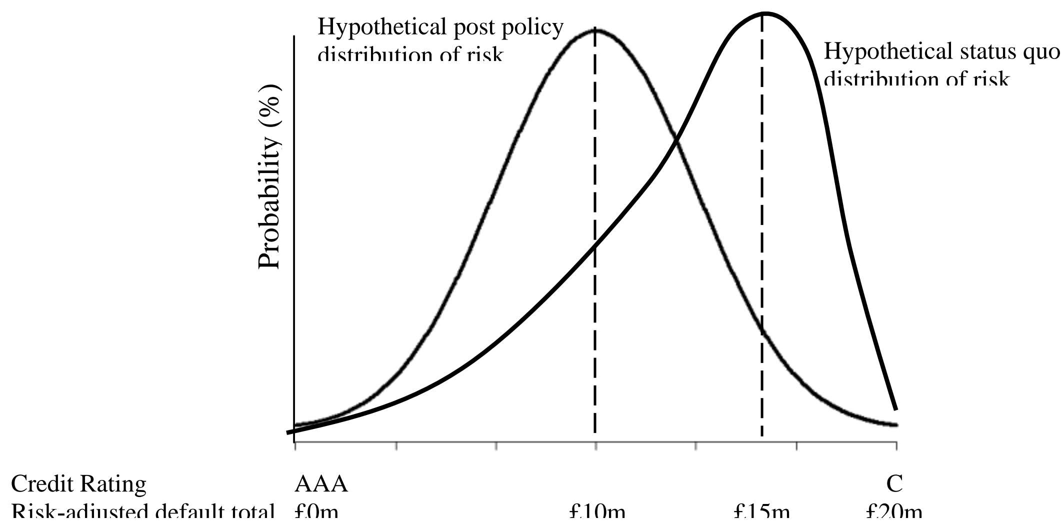
Risks under Current Situation and Proposed Policy Compared

17. The current situation with regard to decommissioning policy arguably encourages companies to set up Special Purpose Vehicles (SPVs) which would bear the decommissioning liabilities (whilst recognising that there are other reasons for setting up SPVs as highlighted above). Given that SPVs may have a lower credit rating than their corporate parent or associated company, the risk adjusted exposure is more likely to move towards the upper end of Climate Change Capital's (CCC's) estimated £0-20 million range. For instance, Diagram 1 below illustrates the hypothetical distribution of firms applying for offshore generation development with respect to their credit rating. The use of SPVs may result in a greater number of applicants with a lower credit rating. The expected value of the decommissioning default is currently unknown within the £0-20 million range identified by CCC, but let us assume it is in the order of £15 million.

18. Under the proposed policy in which the Secretary of State will be able to approach parent firms if decommissioning funds are inadequate, the parent will have less incentive to allow their subsidiaries to fall behind or renege on decommissioning payments. Therefore, this influences the behaviour of companies with respect to default risk which will tend to reduce the overall expected default value. The change in behaviour is illustrated as a change in the shape of the distribution curve to that more representative of a normal distribution, which would be expected if firms were not setting up (lower credit rating) companies. The value of the expected decommissioning default under

the proposed policy is now lower as a result, perhaps in the region of £10 million. The end points of the distribution remains £0-£20 million as the CCC calculated range still applies - although if all firms were credit rated C without parents or associates being responsible, the range of the government's risk-adjusted exposure would change to about £17-20 million. The proposed change of policy makes default at the top end of the scale less likely. Effectively, the policy maintains the agreed £0-20 million risk adjusted exposure to government, whereas without the change, the chances of the government having to pay would be higher.

Diagram 1 : Hypothetical Change in distribution of companies applying for OREIs with regard to their credit rating and probability of default.



The impact is likely to result in a fall in risk-adjusted exposure – in this example £0-5 million £0-5 million[10] – which is a total gain for society. HMG benefits further as the decommissioning costs will now be split between itself and the industry depending on whether there is a parent firm to cover the costs.

Experience of decommissioning OREIs

19. As no decommissioning of an OREI in the UK has taken place yet, it is difficult to evaluate how effective the current policy has been (i.e. to rely on the current statutory provisions within the Energy Act 2004 in minimising the risk and consequences of default on decommissioning). It is, however, likely that – as indicated above - the risk of default will be higher than under our proposals because of the possible vulnerability of trust funds and escrow accounts in the event of insolvency; and the practice in the industry of setting up special companies for the construction of wind farms. (See the next section on the rationale for Government's intervention).

[10] This is a purely illustrative example with the total benefit to society based upon plausible assumptions of the means of the distribution.

20. The offshore oil and gas sector is the nearest industry with which one can compare the OREI sector. It is partly regulated by the Petroleum Act 1998, which allows the obligation for decommissioning offshore infrastructure to be placed on the companies responsible and includes protection against default on decommissioning. Under the Petroleum Act 1998, the DTI can require financial securities in certain limited situations to ensure decommissioning is carried out. The Secretary of State can place the liability for decommissioning on associated companies if he is not satisfied with the decommissioning arrangements (including financial) which have been put in place by companies with a duty to carry out an approved decommissioning programme. There has been one instance of default. In 2005, the Ardmore development failed and the developers went into receivership and were unable to meet their decommissioning liabilities. Contractors separately owned some of the facilities in the field; they had a decommissioning liability for that equipment, which they met. Liability for the remaining equipment was met by an associate company of one of the developers.

Rationale for Government intervention

Rationale

21. The Government's international obligations. The Government ratified the *United Nations Convention on the Law of the Sea* (UNCLOS), which requires abandoned/disused installations to be removed. Two of this convention's aims are to ensure safety of navigation and protection of the marine environment. The Government has also ratified the Convention for the Protection of the Marine Environment of the North-East Atlantic (known as the OSPAR Convention). If a developer should find it is unable to decommission its OREI, the Government is therefore under a duty to undertake the decommissioning (at its own expense if necessary) in order to comply with its international obligations. As a possible last resort payer and ultimate risk bearer, the Government has a duty to reduce the financial burden on the taxpayer and thus should endeavour to minimise the risk of default on decommissioning by developers.

22. Polluter Pays Principle. According to the "polluter pays" principle, the polluter has to pay for the pollution caused by his activity. As the OREI has to be removed at some point, the government believes it should be the developer, or associated or parent companies responsible for it, that should pay for the installation's decommissioning.

23. The Government's policy. The Government is committed to a target of 10% of electricity coming from renewable sources by 2010. The 2003 Energy White Paper recognised that a key contributor to this target would be offshore wind: *Future Offshore*[11] calculated in 2002 that this could provide 40-50% of the target. Our proposals should help the offshore renewables sector by making it easier for developers, particularly smaller ones operating singly, to demonstrate that funds will be secure in case of insolvency. But, as discussed

[11] Published by the DTI in 2002. Available at http://www.dti.gov.uk/files/file22791.pdf

below, there may also be extra costs for them in aligning their decommissioning regime with that for oil and gas.

24. Potential for default on decommissioning. An offshore renewable energy developer has to submit a costed decommissioning programme. Research on offshore wind farms[12] suggests it is thus reasonable to expect the developer to be able to meet his decommissioning costs. However, there are several risks with non-negligible probabilities. First, developers could underestimate decommissioning costs in their decommissioning programme. Second, revenues from the wind farm may not be sufficient to cover decommissioning costs due to underperformance of the technology (the wind farm may not perform as well as expected or the difficulty of the marine environment could make operation and maintenance slow and expensive). Third, offshore assets might be transferred in the future to smaller companies with less financial standing than the ones currently in the market ("asset transfer risk"). These risks provide reasons for requiring financial security - as provided for in the Energy Act 2004.

25. The decommissioning guidance published in December 2006[13] set out the government's approach to requiring financial security, including the principles that would be applied and examples of the types of financial security that would be likely to be acceptable. Given the policy on requiring financial security has been widely consulted upon and agreed by government, it makes sense to ensure that any potential funds provided as security should be safe in the event of a developer's insolvency - precisely one of the circumstances when such a fund would be needed. Given the risks outlined above, it also follows that the ways in which companies choose to establish themselves should not increase the risk that liabilities fall on the government and taxpayer.

Who would be affected?

26. This proposal would affect:

- *Developers of OREIs and their associated companies*. All projects (except those which received consent or were put into operation prior to June 2006) are required to submit a decommissioning programme to the Secretary of State in line with the principles laid out in the guidance. (Those not covered by this scheme are required to submit decommissioning programmes to The Crown Estate.)

- *Future potential creditors* of offshore renewable energy developers who become insolvent who would not be able to access funds set aside for decommissioning.

[12] Climate Change Capital report available at http://www.climatechangecapital.com/pages/newsdetail.asp?id=151&

[13] Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004, Guidance Notes for Industry, December 2006 available at www.dti.gov.uk/energy/sources/renewables/policy/offshore/page22500.html

Consultation

27. Informal consultation has taken place with industry representatives, The Crown Estate, The Coal Authority, other government departments and the devolved administrations. A joint oil and gas/renewables "offshore energy decommissioning" formal public consultation is planned for June - September 2007 for 12 weeks, including renewables and oil and gas industry, business representatives, insolvency and company law specialists and fishing, navigation and environmental interests.

Options

28. The objective is to minimise the risk of default on decommissioning, whilst encouraging the development of the offshore renewable industry.

29. The Government has considered four options, which are:
    - *Option 1*: Do nothing
    - *Option 2*: Introduce statutory trust insolvency protection; enable obligations to be placed on associates if not satisfied with decommissioning arrangements at any stage; and fill loopholes relating to acquisition of information (our proposal)
    - *Option 3*: Introduce statutory trust insolvency protection and always put obligations on associated companies.
    - *Option 4*: Introduce statutory trust insolvency protection and fill loopholes relating to acquisition of information without placing obligations on associate companies

Option 1: Do nothing

30. The Government continues to rely on the Energy Act 2004 provisions. Under this option, the industry submits decommissioning programmes to the Secretary of State with proposed financial security arrangements which may include the accrual in a fund of security from the mid life of an installation. In the event a developer becomes insolvent, the very fund which has been set aside for decommissioning would be likely to fall to the liquidator to pay creditors and would not be available for its intended purpose of decommissioning. The cost of capital to the developer would have been high with no benefit to the government (taxpayer) in terms of funds to pay for decommissioning to meet international obligations, ensure the safety of navigation and protect the marine environment.

31. In practice, under the current arrangements – in line with the government's published guidance – we would be unlikely to accept accrual funds unless a developer could demonstrate that funds would be secure in the event of insolvency. This is likely to be extremely hard to do, particularly for companies acting singly, but also for joint venture companies. Complex legal security agreements and trust arrangements would need to be tested and set up with a high risk of the resultant arrangements not being secure in the event of insolvency. The otherwise attractive option of accruing funds from the mid life of an installation might therefore not be open to developers and they would be

required to provide potentially more costly forms of security such as letters of credit or bonds. This would be detrimental to the government's wish to encourage the development of the industry.

32. A variation of the "do nothing" option is to do nothing now. Wind farm developers are unlikely to be required to put funds aside until the mid life of an installation, assumed to be year 10 for a wind farm with a 20 year life before re-powering or decommissioning would be required. (Wave and tidal projects will be operating to different timescales - decisions on whether (and if so what) financial security will be required will be taken on a case by case basis.) The issue could be "parked" to see if there are developments in other sectors (nuclear, oil and gas or non-energy related) which could then be used as a template within the renewable energy industry. The downside of this approach is that – in addition to the points above - it leaves uncertainty for the industry. Other energy sectors (oil and gas and nuclear) are currently examining the use of legislation to ringfence funds in the event of a developer's insolvency. Whilst there may be other legislative opportunities, we risk "missing the boat" to secure funds before they need to be agreed and set aside in practice.

33. Doing nothing in terms of making associated companies potentially liable is likely to be welcomed by the industry if a clear decision were made not to pursue this option. A "do nothing now" approach would leave uncertainty which could be detrimental to the industry.

Costs and Benefits

34. The do nothing option would not add to current industry costs but the potential costs to the taxpayer will be higher because there will be a greater risk that a developer would default on his decommissioning obligations and the government would have to pay. It is not possible to quantify this risk and the costs involved. However, if we take a hypothetical assumption that all SPVs are credit rated C, and that 30%of them fail accordingly without security in place (e.g. because they fail in the first 10 years before security has been set aside or because their security fund passes to creditors in the event of insolvency) - the government would face the risk of a liability of £40 million assuming £40k/MW decommissioning costs and half of Round 2 projects (3.6GW) being SPCs.

35. The costs of financial security for some developers may rise if they cannot use a mid-life accrual fund due to the insolvency risk. Developers will choose the most efficient financial security for their OREI, within the boundaries put in place by HMG. Without the accrual fund options, developers have alternative means of providing financial security. They could opt for (draw-down) bonds or letters of credit as their financial security. Climate Change Capital reported that bonds could be a costly instrument as the premium could be quite high. Letters of credit have been used in the offshore oil and gas industry but they can be quite an expensive instrument because they affect companies' borrowing ability – reducing the amount they can borrow from the bank and thus the amount they can invest in developments.

36. The impact on companies depends on their standing with their banks and their financial strength. Companies with very limited resources may have to provide cash collateral to back a letter of credit. Oil and gas experience suggests that the direct cost of a letter of credit – not taking account of impact on borrowing would be between 0.5-3% depending on the companies concerned. Smaller companies would be likely to pay higher rates of 2-3% i.e. up to an additional total cost of £660k for a 100MW offshore wind farm assuming decommissioning costs of £4m and an incrementally increasing letter of credit over 10 years, or up to £120k a year for a letter of credit covering the full decommissioning liability.

37 Developers might also face expensive legal costs in seeking to develop complex (and legally expensive) trust arrangements to try and demonstrate that funds will be secure in the event of insolvency. We have not been able to evaluate the risk that security funds might not be segregated from insolvency procedures in the event of a company defaulting. However its importance is demonstrated by the efforts the oil and gas industry have put in to drafting a Decommissioning Security Agreement model to protect security funds from insolvency procedures.

38. The benefits to the industry of "doing nothing" are that decommissioning obligations cannot be placed on associated companies unless they are constructing, operating or using an offshore installation, or party to a proposal to do so.

39. The benefits to government of doing nothing, or doing nothing now, are in resource terms: this approach is the least resource intensive in present terms, requiring no legislative changes. It allows resources to be focused on other issues affecting the industry where alternatives do not exist. The present scheme whilst not ideal may be "good enough" for now. However, since it increases the risk of default and liabilities falling on HMG, this option is likely to take up increased resources in the longer term. The default of an oil and gas operator in 2005 has so far amounted to 450 staff days at a cost of at least £225k.

40. There is a small potential cost to the environment under this option in that default on decommissioning, should it occur, would be likely to delay decommissioning of the OREI, possibly harming the marine environment. If we do nothing or do nothing now, there may be a greater risk (than under the other options) that developers may default on decommissioning, thus delaying decommissioning.

Option 2: Introduce statutory trust insolvency protection; enable decommissioning obligations to be placed on associate companies where concerns; and fill loopholes

41. *This is the option we are proposing.* It ensures that developers have the option of providing mid-life accrual funds which will be secure for decommissioning in the event of insolvency. It also enables the Secretary of State to place obligations on associated companies (such as parents) if he is not satisfied that adequate arrangements (including financial arrangements) have been made by

the developer. The planned regular reviews of decommissioning programmes and, in confidence, the financial security provisions which underlie them would provide the opportunity for the Secretary of State to consider whether arrangements were adequate. The proposal is consistent with provisions which apply for oil and gas decommissioning in respect of associated companies; and consistent with the insolvency protection proposals for oil and gas which are being consulted upon jointly. A separate RIA has been prepared for the oil and gas industry.

42. If companies are confident of the decommissioning programmes they submit and the financial projections underpinning them, the provision should provide a safety net for government whilst not being too onerous on the industry. The downside is that the associated company provisions are likely to be opposed by the industry (unless Parent Company Guarantees (PCGs) are accepted instead of other financial security requirements which would increase the risk to, and resource pressures on, HMG).

Costs and Benefits

43. Statutory protection of their decommissioning fund may make financial security easier and cheaper to arrange for developers and provide added security for joint ventures thus reducing risk and encouraging development of the sector. As indicated above, the potential importance of this to developers has been demonstrated by the efforts the oil and gas industry has put in to drafting a Decommissioning Security Agreement model. Paragraph 36 above also highlights the costs of having to fund alternative security arrangements.

44. The maximum cost of the proposal to make associated companies liable for decommissioning obligations if the Secretary of State is not satisfied that adequate arrangements have been made by the responsible developer is the cost of decommissioning itself, plus any financial security costs. Assuming (an unrealistic) worst case scenario for the industry where all developers defaulted leaving associated companies responsible, this would amount to a total estimated decommissioning cost of £335 million for offshore wind developers and £63-£250 million for the wave/tidal sector, using the assumptions from Climate Change Capital (CCC)'s report.[14] However, this assumes that all projects will default and all will have associated companies which is extremely unlikely to be the case.

45. In reality, the costs would be much smaller because costs will only arise for associated companies in the event that the Secretary of State is not satisfied with the decommissioning arrangements (e.g. in the event of default). The likelihood of the industry defaulting en masse is very low. Taking account of CCC's research and assumptions on capacity, credit ratings and the likelihood of default in relation to offshore wind, the expected default amount is estimated between £0-20million across the industry. This is a measure of the total potential decommissioning costs weighted by the credit rating of the licensing applicants; £20 million is the expected defaulted value if all license applicants had a credit rating of CCC to C. If this default liability is passed onto

[14] Climate Change Capital report http://www.climatechangecapital.com/pages/newsdetail.asp?id=151&

associated companies of offshore wind developers, it will be a transfer of funds between the parent and the SPV, not an additional cost caused by the policy.

46. Decommissioning costs in the mid-life accrual scheme are between 0.4 and 0.7% of the total levelised cost of generating electricity from off-shore wind farms (see full RIA on the decommissioning guidance for offshore renewable energy installations[15]). These decommissioning costs are set to be split between associated companies and HMG only when the developers themselves cannot meet their obligations in full or part. The proposal does not impose additional decommissioning costs but transfers costs from one company to its associate. We envisage that associated companies would be able to access in stages any security funds set aside prior to default as decommissioning is undertaken – assuming such funds would be safeguarded under our proposed insolvency protection proposals.

47. The benefits of safeguarding funds in the event of insolvency and being able to place obligations on associated companies are the reverse of the "do nothing" option - it would enable developers to opt for an accrual fund to provide financial security without the premium, borrowing or renewal implications of alternative forms of security. There are likely to be some costs associated with any administration of a trust or small fees relating to an escrow account but developers would be able to choose the most attractive financial security option for them taking account of their own particular circumstances.

48. There are also likely to be costs on parents/associated companies relating to accounting provisions and monitoring their associates and on companies in relation to legal advice to explain the proposals and handle any cases that may arise. These will vary depending on the day rates, how many additional days work are required and on the complexities of particular cases. Based on rough estimates of the additional accountancy and legal advice that a business may need to understand the proposals and their particular circumstances, and to make and monitor the appropriate accounting provisions the additional administrative costs on business might be expected to be in the region of £100-£400k per annum (plus VAT) across the industry. (The consultation seeks evidence on the costs of the proposals.) However, as indicated previously, the risk and associated cost of liabilities falling on HMG is likely to be lower than under any of the other options.

Option 3: Introduce statutory trust insolvency protection; and always put obligations on associated companies

49. This option is similar to option 2 above but enables the Secretary of State to put decommissioning obligations – including financial security requirements - on associated companies (as well as the original companies) as a matter of course. It would minimise the risk of liabilities falling on HMG. However, it would impose an unnecessary added burden on the offshore renewable energy industry and take the renewables regime beyond the associated company

[15] Full Regulatory Impact Assessment (URN 06/2088) "Statutory decommissioning scheme for offshore renewable energy installations under the Energy Act 2004" http://www.dti.gov.uk/files/file35830.pdf

requirements for oil and gas decommissioning. We are seeking to bring the renewables regime in line with the oil and gas regime in this regard, rather than to go beyond it.

Costs and Benefits

50. This is the highest cost option to industry. As for option 2, it provides statutory safeguards for funds set aside for decommissioning. It places decommissioning options on associated companies in addition to financial security requirements which developers are required to make, even if there are no concerns about the ability of the developer to meet its decommissioning obligations. It provides additional protection to government thus reducing significantly the risk of decommissioning costs falling to HMG. However, it effectively involves the industry paying twice and as such is incompatible with our objective to encourage the development of the sector.

Option 4: Introduce statutory trust insolvency protection and fill information loopholes without placing obligations on associate companies

51. This is likely to be developers' preferred option (unless manufacturers or lenders as potential creditors see it as increasing their risk - and thus costs to industry – but given no fund is likely to be set aside for wind farms until year 10 this should not be an issue). The option allows wind farm developers to propose mid life accrual funds which they can demonstrate will be secure in the event of insolvency. It means developers are responsible for their decommissioning obligations but these obligations cannot be imposed on associated companies (unless they are party to the proposal to construct, operate or use a wind farm under the existing provisions of the Energy Act 2004).

52. The downside of this approach is that it increases the risks of decommissioning liabilities falling on the taxpayer if companies default and have no assets the Secretary of State could recover, either because the financial security has not begun to accrue or it has not accrued sufficiently (e.g. because the fund has not been completed or costs are greater than estimated.)

Costs and Benefits

53. This is likely to be the least cost option for the offshore renewable industry (subject to no unintended adverse consequences in terms of manufacturers or lenders perceptions of creditor risk). It has the benefit of enabling the industry to establish a cost-effective accrual fund which they can demonstrate will be secure in the event of insolvency, whilst imposing no additional burdens on the industry. It sends a positive signal that we are keen to overcome issues to make it easier for developers to provide financial security, consistent with our wish not to impose a higher cost than necessary on the offshore renewable industry.

54. The risk of liabilities falling on the public purse is higher than under our proposed option. A further potential cost is the resource cost in implementing the proposal through consultation and legislative change with no reduction in

risk of liabilities falling to HMG. The industry may prefer resources to be focused on more imminent issues which are hindering the development of the sector.

Summary Table of Costs and Benefits

Summary of costs and benefits

	Option 1 *Do nothing*	*Option 2* *Insolvency protection & associate companies responsible if default or concerns*	*Option 3* *Insolvency protection and obligations always on associates as well as developers*	*Option 4* *Insolvency protection but no new powers to put obligations on associates*
Costs	Costs to industry in trying to show funds secure in insolvency, or potentially higher cost in other security like bonds or letters of credit (0.5-3% or, for example, £660k for a 100MW windfarm with a 10 year incremental LOC) Higher risk of decommissioning costs falling on HMG than under other options (for example, hypothetically, £40m if half of Round 2 projects C rated with 30% failure rate)	Costs to associated companies – but transfer rather than additional decommissioning costs - and only if the Secretary of State not satisfied decommissioning or financial security arrangements Admin costs to business estimated at £100-400k per annum	Highest cost to industry Hinders development of offshore renewable energy industry	Higher risk of liabilities falling on taxpayer than under options 2 and 3 HMG resource costs without reduction in risk of liabilities
Benefits	Industry prefers limited liability Less resource intensive for HMG in short-term (but if defaults higher, increased resources in the longer term – 2005 oil & gas default resulted in staff costs of £225k)	Consistent with oil and gas (current regime and proposed changes) Safety net for HMG without being too onerous on industry Safeguarding funds supports renewables industry	Least risk/cost to HMG Safeguarding funds supports renewables industry	No additional costs on industry Safeguarding funds supports renewables industry

Small Firms Impact Test

55. To the best of our knowledge, there are few small firms (i.e. firms that employ less than 250 people full time) that act as developers in the offshore wind farm sector at the moment. However, some firms set up SPVs or SPCs to take forward particular wind farm projects, most of which have significantly fewer than 250 full time employees and some have none.

56. There are around fifty firms in the UK involved in the development of wave/tidal devices. This industry comprises small and large companies.

57. Impact on small firms in the wave/tidal sector: The proposal is not thought to have a disproportionate effect on small firms. The ability to demonstrate that funds are secure in the event of insolvency may, in particular, benefit small firms who may not have the resources to enter into other financial security arrangements.

Distribution Impacts

58. Following the policy to make associated companies liable in the event of default will have an impact on companies in the following ways:

- Company A – Can pay its own decommissioning liabilities. In this instance the policy will have no impact, as the Secretary of State will not require the associate company to pay as the company can cover its own decommissioning liabilities. This is the case if this company is an SPV or a stand-alone company.
- Company B – Cannot pay its decommissioning liabilities; does not have an associate company. The proposed policy would not have an impact on this company because there is no associate company for the Secretary of State to require to cover its liabilities. HMG will be required to pay the remaining decommissioning costs in line with the status quo.
- Company C – Cannot pay its decommissioning liabilities; has an associate company. This is the only scenario in which the proposed policy will have an impact; the Secretary of State will have the power to ensure that the associate company covers the decommissioning liabilities of its defaulting company. This will result in the associate having contingent liability, which is an inevitable consequence of the 'Polluter Pays' principle.

59. Our proposal will only have an impact on Company C as it increases the associates' contingent liabilities. However, these companies are likely to be larger and better capitalised, hence more able to absorb this risk than firms without parents, for example. The effect of the policy will be to encourage "parent" companies to behave in a less risky manner than otherwise as they will have to meet any default costs arising from their investments.

60. If the Secretary of State is able to collect decommissioning funds from the parent it will mean there is a reallocation of costs between HMG and industry. Where available, parents will be required to cover the decommissioning liabilities of its subsidiary as opposed to the cost being borne by HMG.

Competition Assessment

61. The offshore wind energy industry is characterised by several large vertically integrated utility companies, a number of oil and gas companies seeking to diversify and several niche market players who specialise in renewable energy. It is a multinational industry with participation by a number of European-based energy companies. The sector is a dynamic one and has seen a number of recent acquisitions and mergers.

62. In the wave and tidal industry there are 50-odd companies actively developing the technology, which is not yet commercial. The wave and tidal sector is less developed than the offshore wind industry.

63. In the offshore wind industry developers tend to form consortiums when the size of the project is several hundreds of MW or more. Thus, for Round 1, (where the average size of projects is relatively small at below 100MW) the development of projects has tended to be undertaken by a single company. For Round 2, the size of projects averages several hundreds of MW and, possibly to minimise risks and costs, many but not all projects are being developed by a consortium of developers.

64. The proposed changes would apply only to developers that are subject to the Energy Act 2004 scheme as set out in DTI's guidance on the scheme, i.e. those that had not received consent before June 2006, which is presently around 20 companies who are taking forward projects either individually or in consortia.

65. The cost of the proposal is not thought to affect disproportionately the sector covered by the proposed policy as it represents a small proportion of total costs borne by developers. The proposal is not thought to lead to significantly higher set-up and ongoing costs for new developers. Finally, it is not considered likely that the proposal will change the current market structure.

Enforcement and sanctions

66. The responsibility for ensuring decommissioning obligations are met and that appropriate decommissioning security is in place rests with the DTI. This is implemented through the provisions of Chapter 3 of the Energy Act 2004 (Sections 105-114) and published Departmental guidance. Failure to comply with certain requirements of the Act can lead to prosecution. Before construction of an offshore renewable energy installation begins, the Government issues a notice requiring the submission of a costed decommissioning programme. This can then be approved, rejected, or modified in accordance with the provisions in the Act. The Government is also required to review decommissioning programmes from time to time (including financial security). These reviews will seek to ensure that sufficient funds will be available to meet decommissioning liabilities. Under the proposals on which we are consulting, if concerns existed, or a default occurred, the Secretary of State would consider whether obligations should be placed on associated companies. Independent verification of decommissioning will be

required (set out in the published guidance) to ensure that decommissioning has been carried out to the appropriate standard

Implementation and delivery plan

67. The proposals would be implemented by making legislative provision in the forthcoming legislation and amending the published guidance to industry. A formal 12 week consultation is proposed for early June-early September 2007. Consultation workshops will be arranged to facilitate understanding and discussion of the proposals. Informal and formal consultation with developers should ensure that they are able to plan for the proposed changes.

68. It is estimated that implementing the scheme once the legislation has been introduced requires no additional resource beyond the ability to draw on the decommissioning, financial and legal expertise which is already available in the DTI dealing with decommissioning programmes for offshore renewable installations, oil and gas installations and in DTI legal services.

Compensatory simplification

69. The Government has contingent liabilities by virtue of international obligations. It should be borne in mind that we are introducing amendments to the existing 2004 Energy Act (that is, we are not introducing a new decommissioning scheme but extending the powers of the Secretary of State to make the current scheme more effective at minimising the risk of default in decommissioning obligations). The government will only impose obligations on associated companies if satisfactory arrangements have not been made by developers.

70. There will be no additional process for approval of decommissioning programmes. Bringing the offshore renewable decommissioning scheme more in line with the oil and gas decommissioning regime (and vice versa) should allow us to share knowledge and streamline the assessment of programmes and appropriate financial security. The Government requires operators to submit a decommissioning programme with financial security proposals only after at least one of the necessary consents is likely to be given or has been granted.

71. Statutory trust protection for decommissioning funds should simplify the existing financial security obligations on developers. The Government will amend its guidance to help the industry concerned to understand its obligations and look to provide advice on standard or model trust arrangements to facilitate the provision of effective financial security by the industry.

Post Implementation Review

72. The Government intends to review the operation of the statutory decommissioning scheme as a whole at an appropriate future date. This could be linked to any future licensing round for offshore renewable energy installations (but will be dependent on policy decisions about any future licensing round). The review will involve consulting interested parties for their

views on the implementation of the policy and on whether there have been any unintended consequences. Proposed and accepted financial security provisions will also be reviewed, to assess whether estimated decommissioning costs are likely to be sufficiently well covered.

Summary and recommendation

73. A summary table of the costs and benefits of the different options is provided in the table below paragraph 54.

74. We recommend that Option 2 (introducing statutory trust insolvency protection and associate company provisions whilst taking the opportunity to fill information loopholes) be accepted.

75. Option 2 reduces the risk to Government without substantially hindering the development of the offshore renewable energy sector. It facilitates developers in providing appropriate financial security to demonstrate that their decommissioning liabilities can be met.

INTERNATIONAL OBLIGATIONS

United Nations Convention on the Law of the Sea

1. The UK's international obligations on the decommissioning of offshore installations have their origins in the United Nations Convention on the Law of the Sea (UNCLOS), 1982. The Convention entered into force in 1994 and the UK acceded to it in 1997.

2. Article 60 of UNCLOS sets out countries' requirements in respect of abandoned or disused installations or structures in the exclusive economic zone.

> "Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed."

International Maritime Organization standards

3. The competent international organization for the purposes of Article 60 of UNCLOS is the International Maritime Organization (IMO). The IMO adopted, in 1989, 'Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone'[16]. The UK is therefore required, under UNCLOS, to take these IMO standards into account in removing abandoned or disused installations and structures in the exclusive economic zone.

4. The IMO standards require abandoned or disused offshore installations or structures, on any continental shelf or in any exclusive economic zone, to be removed, except in certain specified circumstances. Removal should be performed as soon as reasonably practicable after abandonment or permanent disuse of the installation or structure. Removal should be performed in such a way as to cause no significant adverse effects upon navigation or the marine environment.

[16] Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone, IMO, 19 October 1989, http://www.imo.org/Newsroom/contents.asp?doc_id=628&topic_id=227

OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic

5. In 1992 a new convention, the Convention on the Protection of the Marine Environment of the North East Atlantic ("the OSPAR Convention"), was agreed. This regional convention, which applies to specific sea areas of the North East Atlantic, including the North Sea and parts of the Arctic Ocean, replaced and updated the 1972 Oslo Convention on the Protection of the Marine Environment by Dumping from Ships and Aircraft and the 1974 Paris Convention on the Prevention of Marine Pollution from Land-Based Sources. The OSPAR Convention came into force in 1998.

6. In July 1998 at the First Ministerial meeting of the OSPAR Commission, a new regime for the decommissioning of disused offshore installations was established under the new Convention. Ministers adopted a binding Decision to ban the disposal of offshore installations at sea.

7. Pipelines are not covered by OSPAR Decision 98/3. There are no international guidelines on the decommissioning of disused pipelines.

The Main Features of OSPAR Decision 98/3

8. Under the terms of Decision 98/3, which entered into force on 9 February 1999, there is a prohibition on the dumping and leaving wholly or partly in place of offshore installations. The topsides of all installations must be returned to shore. All installations with a jacket weight less than 10,000 tonnes must be completely removed for re-use, recycling or final disposal on land.

9. The Decision recognises that there may be difficulty in removing the 'footings' of large steel jackets weighing more than 10,000 tonnes and in removing concrete installations. As a result there is a facility for derogation from the main rule for such installations. It has been agreed that these cases should be considered individually to see whether it may be appropriate to leave the footings of large steel installations or concrete structures in place. Nevertheless, there is a presumption that they will all be removed entirely and exceptions to that rule will be granted only if the assessment and consultation procedure, which forms part of the OSPAR Decision, shows that there are significant reasons why an alternative disposal option is preferable to re-use or recycling or final disposal on land.

10. The derogation provision for the footings of large steel installations applies only to those installed before 9 February 1999. All steel installations placed in the maritime area after that date must be totally removed. It should also be noted that the Ministerial 'Sintra' statement which accompanied Decision 98/3 made clear that new concrete installations would be used only when it is strictly necessary for safety or technical reasons.

11. The Decision provides for review by the OSPAR Commission at regular intervals, to consider in the light of experience and technical developments whether the derogations from the general ban on dumping continue to be

appropriate. The first such review was conducted in 2003 and concluded that insufficient decommissioning experience existed to justify changing the derogation criteria. Nevertheless, there is a clear intent within the Decision to reduce the scope of possible derogations and it can be expected that future derogation cases presented to OSPAR will be judged against the advances in technology or contractor capabilities that may have been achieved at the time. A further review of the Decision will be undertaken in 2008.

12. Whilst there is no equivalent Decision for offshore renewable energy installations, OSPAR has produced guidance documents on offshore wind-farms, incorporating ideas on their decommissioning. In particular, the paper *'Problems and Benefits Associated with the Development of Offshore Wind-Farms, Biodiversity Series, OSPAR Commission 2004'* proposes some aspects to be taken into consideration in developing guidance for the removal / disposal of offshore wind-farms. This paper says that:

    "when decommissioning wind energy installations (end of operational life-time use or premature termination of the project), the wind energy installations (including foundation) and cables should be removed completely and disposed of (recycling) on land. In order to avoid hindrances for e.g. fisheries, the piles should at least be cut off far enough beneath the seabed to ensure that the remaining parts will not be exposed by natural sediment dynamics."

13. In terms of *how* the structures should be removed, the OSPAR paper says that:

    "techniques which minimise impacts on the environment (e.g. benthos, fish) including re-suspension of the sediment should be applied for the removal."

SUMMARY OF OFFSHORE OIL & GAS DECOMMISSIONING PROVISIONS IN THE PETROLEUM ACT 1998

The Secretary of State for Trade and Industry has various powers under the Petroleum Act 1998 ("the Act") including the power to serve notices requiring the submission of decommissioning programmes. The DTI administers these powers on his behalf. The Act refers to abandonment programmes although these are now generally known as decommissioning programmes.

Section 29 – Preparation of Programmes

1. This section gives the DTI power to issue notices to certain people (defined in s30) requiring them to submit a programme detailing how they intend to decommission an offshore installation or pipeline.
2. Decommissioning programmes must be submitted by a date specified in the notice or, more commonly, to be specified in the future.
3. A notice may also advise the recipient that they must consult certain interested parties before they submit the programme.
4. A decommissioning programme must include: the estimated cost of decommissioning, a timetable, and maintenance provisions if it is proposed to leave an installation or pipeline in place.
5. This subsection allows the DTI to charge a fee to cover any expenditure in accordance with regulations made under s39 (no such regulations have been made).
6. DTI is allowed to call for another programme (i.e. we may serve further s29 notices) if we have rejected the initial programme (see s32) or withdrawn our approval (see s35).

Section 30 – Persons who may be required to submit programmes

1. This section defines who can receive a notice under s29 for offshore installations:
    a. Managers of the installation or main substructure – this may be the operator during construction;
    b. A person who has a right to explore for or exploit oil or gas, or store gas – this would be the operator and other licensees once production has started;
    c. A person who is not in (a) or (b) who is party to a joint operating or similar agreement – this relates to co-venturers or partners in the field;
    d. A person not in (a) to (c) who owns an interest in the installation other than as security for a loan – this may be the owner of an FPSO or possibly someone involved in a leaseback arrangement;
    e. A company not in (a) to (d) but associated with a company in one of those categories, e.g. a parent company. Notices can only be served on companies in this category if there is doubt about the ability of the associated company in (a) to (d) to meet its share of the decommissioning costs.

2. This section defines who can receive a notice under s29 in relation to a pipeline:
    a. Someone who is designated as an owner;
    b. A person who owns an interest in all or most of the pipeline, other than as security for a loan;
    c. A person not in (a) or (b) but associated with someone in those categories. Notices can only be served under this category if there are concerns about the financial ability of the company in (a) or (b).
3. DTI may ask a person to supply the names and addresses of any other people who should receive notices for particular installations or pipelines.
4. A person failing to comply with a notice under 3. will be guilty of an offence.
5. Determines if someone falls within category (b) of s30(1).
6. Determines the relevant activities.
7. Relates to installations used for accommodation and the circumstances in which they are not included in s30(6)(c).
8. and 9. define an associated company.

Section 31 – Supplementary provisions

1. A s29 notice must not be given to a person in category (d) or (e) of s30(1) for installations if we are satisfied that the persons who have notices under (a),(b) or (c) can carry out the decommissioning.
2. A s29 notice must not be given to a person in category (b) or (c) of s30(2) for pipelines if we are satisfied that a person in category (a) could carry out the decommissioning.
3. Sections 31(1) and (2) do not apply if a person has failed to comply with a s29 notice or a programme has been rejected.
4. A s29 notice cannot be issued without giving the recipient a chance to make representations.
5. DTI can withdraw a s29 notice at any time before a programme has been submitted or can issue a further notice in substitution or addition, but must inform other parties with related notices of the activity.
6. The withdrawal or issuing of new notices does not affect the duty of those with related notices to provide a programme.

Section 32 – Approval of programmes

1. gives the DTI the right to approve or reject the programme.
2. enables the DTI to make modifications to the programme and/or attach conditions to the approval.
3. If we want to make modifications or attach conditions, we must give the persons who submitted the programme the opportunity to make representations.
4. Reasons must be given for rejecting a programme.
5. A decision to approve or reject a programme must be given without unreasonable delay.

Section 33 – Failure to submit a programme

1. We can prepare a decommissioning programme ourselves if the persons with s29 notices fail to do so or their programme is rejected.

2. If we prepare a programme we can request that people with s29 notices provide any necessary information.
3. It is an offence for a company not to supply information when asked.
4. We can claim expenses and any applicable fee from people with notices if we prepare a programme.
5. Interest shall be paid on expenses and fees
6. at a rate determined by the Secretary of State.
7. We must notify the people with s29 notices that we have prepared a programme, which is then treated as if they had submitted it.

Section 34 – Revision of a programme

1. Once a programme has been approved, either we or those who submitted it, may suggest a change to the programme or any conditions, or propose a change in the parties responsible for its implementation.
2. If it is proposed that a person be given a duty for an installation, they must be within categories (a) to (e) of s30(1) at the time of the proposal, or have been in one of those categories since the first notices were served. If the programme is for pipeline, they must be within categories (a) to c) of s30(2) at the time of the proposal or have been so since notices were first served.
3. Duties can only be imposed on persons within categories (d) or (e) for an installation or (b) or (c) for a pipeline, if we have concerns about the ability of the persons who already have a duty, to carry it out.
4. If we make a proposal under s34(1), we must write to all the people who submitted the programme.
5. If we propose changes or conditions to a programme, the people who submitted it must have an opportunity to make representations.
6. If the proposal is to give a new person a duty, each person who either has a duty or will cease to have a duty, must be given the chance to make representations, with the exception of the person who made the proposal.
7. DTI will decide if the change is to be made and issue a written determination with reasons to all concerned.
8. Once a proposal has been accepted, the programme is treated as if it was submitted with the alterations or by the persons listed in the determination.

Section 35 – Withdrawal of approval

1. We can withdraw our approval if one or more of the people who submitted the programme asks us to do so.
2. Anyone who did not ask for the withdrawal must be given the chance to make representations.
3. We must give written notice of our decision.

Section 36 and 37 - Duty to carry out programmes

Once a programme has been approved, it is the duty of each of the people who submitted it to make sure the provisions of the programme are carried out (i.e. there is joint and several liability). If a programme or condition of the programme is not carried out, section 37 allows us to make the people who submitted the programme take remedial action. If they fail to do so they commit an offence and we can take action ourselves and recover the costs plus interest.

Section 38 – Financial Resources

This section allows us to make enquiries into the financial status of companies in receipt of section 29 notices. This can be done after issuing the notice but before approving a programme. This is in order to decide if a company will be capable of financing their share of decommissioning costs. We also have the right to make enquiries into the financial status of companies which have a duty to carry out a programme. Where we have doubts about the ability of a company to carry out an approved programme, we can require the company to take any action we specify to help remedy the situation. This would include requiring a company to set up a financial security agreement. The company has the right to make representations. Failure to comply with any of the notices given under this section is an offence.

Section 39 – 45 Regulations, Offences, Judicial Reviews, and Definitions

S39 provides a power to make regulations; organizations representing those likely to be affected must be consulted. S40 and 41 set the penalties and rules for proceedings when an offence has been committed and 42 provides for judicial reviews of the DTI's actions. S43, 44 and 45 govern delivery of notices and provide definitions.

NOTE FOR USERS — This annex is not intended as a definitive analysis of the provisions of the 1998 Act, some of which are complex. Inevitably, any paraphrasing of such provisions involves a degree of oversimplification. Any person using this annex should refer to the actual text of the sections concerned and take legal advice, if necessary.

SUMMARY OF OFFSHORE RENEWABLE DECOMMISSIONING PROVISIONS IN THE ENERGY ACT 2004[17]

Introduction

1. The Energy Act 2004 (Part 2, Chapter 3) sets out a comprehensive statutory scheme for the decommissioning of offshore renewable energy installations. The scheme applies to territorial waters in or adjacent to England, Scotland and Wales (between the mean low water mark and the seaward limits of the territorial sea) and to waters in the UK Renewable Energy Zone (including that part adjacent to Northern Ireland territorial waters).

2. Where an installation is to be (or is) wholly or partly in an area of Scottish waters or in a Scottish part of a Renewable Energy Zone, the Secretary of State will consult Scottish Ministers before acting.

Requirement to prepare decommissioning programmes (Section 105)

3. Under the terms of the Act, the Secretary of State may require a person who is proposing to construct, extend, operate or use an offshore renewable energy installation or its related electric lines (or is already doing so) to submit a decommissioning programme for the installation. The Secretary of State must also consider how he will exercise his decommissioning powers in determining whether to give a consent for an offshore generating activity under Section 36 of the Electricity Act 1989.

4. The requirement to submit a decommissioning programme may be imposed on more than one person, in which case a joint programme must be submitted. The requirement may be imposed at any point, from the point (prior to construction) at which it is judged likely that one of the statutory consents required will be given, through to the point at which an installation has begun to be decommissioned.

5. The Secretary of State may require specified consultations to be carried out before the decommissioning programme is submitted.

6. The decommissioning programme submitted must include:

    - measures to be taken for decommissioning the relevant object (renewable energy installation or related electric line);
    - an estimate of the expenditure likely to be incurred in carrying out those measures;
    - provision for determining the times at which, or the periods within which, those measures will have to be taken;

[17] This summary is intended to provide a helpful description of the key decommissioning provisions in the Energy Act 2004. However, it should not be relied upon to be a comprehensive description of the legislation.

- provision about restoring the place to the condition that it was in prior to the construction of the object (where it is proposed that the object will be wholly or partly removed from that place);
- provision about whatever continuing monitoring and maintenance of the object will be necessary (where it is proposed that the object will be left in position or will not be wholly removed).

7. The Secretary of State may also require other information to be submitted with the decommissioning programme. This may include details of the (financial) security (if any) that the person proposes to provide.

Approval of decommissioning programmes (Section 106); failure to submit or rejection of decommissioning programmes (Section 107)

8. The Secretary of State may: approve the programme as it stands; approve the programme with modifications and / or subject to conditions (after giving the person who submitted it an opportunity to make representations); reject the programme and require a new one; or prepare a decommissioning programme himself and recover the expenditure incurred from the person concerned.

9. The Secretary of State may approve a programme subject to a condition that the person who submitted the programme provides security in relation to the carrying out of the programme, at such time and in accordance with such requirements as the Secretary of State may specify.

10. Where more than one person has submitted a programme, different conditions (for example, in relation to financial security) may be imposed upon different persons.

11. The Secretary of State must act without unreasonable delay in reaching his decision as to whether to approve or reject a programme.

Reviews and revisions of decommissioning programmes (Section 108)

12. The Secretary of State must, from time to time, conduct such reviews of a decommissioning programme as he considers appropriate. Either the Secretary of State or the person who submitted the programme may propose modifications to it, including modifications to any conditions attached to the programme (for example, relating to financial security). The decision is made by the Secretary of State, after considering any representations made to him by the people concerned.

13. Either the Secretary of State or the person who submitted the programme may propose to relieve a person of his duty to carry out the decommissioning programme or to impose that duty upon a new person (either in addition to or in substitution for another person). (This might happen when there is a change in ownership of the installation.) The decision is made by the Secretary of State, after considering any representations made to him by the people concerned. When the duty is imposed upon a new person, that person may be required to provide security.

Carrying out of decommissioning programmes (Section 109); default in carrying out decommissioning programmes (Section 110)

14. The person who submitted the decommissioning programme (or any new person upon whom the duty has been imposed) must ensure that the programme is carried out. It is an offence for a person to take any decommissioning measures unless in accordance with the approved programme or with the agreement of the Secretary of State.

15. The Secretary of State may require remedial action if the programme is not carried out in any particular respect. If this is not done, the Secretary of State may himself secure the remedial action and recover the expenditure incurred from the person concerned.

Regulations about decommissioning (Section 111)

16. The Secretary of State may make regulations relating to decommissioning of offshore renewable energy installations. Regulations may include, for example, prescribed standards for decommissioning and provision about the security that a person may be required to provide.

Duty to inform Secretary of State (Section 112)

17. When a person becomes responsible for an installation (or related electric line) he must notify the Secretary of State. This would happen when, for example, a person makes a proposal to construct, extend, operate or use an installation, or begins to construct, extend, operate, use or decommission an installation. (This would apply whether it was a proposal for a new installation or whether the person was acquiring an existing installation.) In the case of a new installation, notification is not required until after at least one of the statutory consents has been given or applied for.

Offences relating to decommissioning programmes (Section 113)

18. A person guilty of an offence is liable: on statutory conviction, to a fine not exceeding the statutory maximum; on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both. In any proceedings against a person for default in carrying out a decommissioning programme, it would be a defence to show that he exercised due diligence to avoid the contravention in question.

Power to impose charges to fund energy functions (Section 188)

19. The Secretary of State may make regulations requiring charges to be paid to him to fund the carrying out of his energy functions (including functions relating to decommissioning of offshore renewable energy installations).

Compliance with other relevant legislation in addition to the Energy Act 2004

20. Decommissioning activities also need to comply with all other relevant UK legislation at the time. Such legislation currently includes: the Coast Protection Act (CPA) 1949; the Food and Environment Protection Act (FEPA) 1985; the

Water Resources Act 1991; the Conservation (Natural Habitats etc.) Regulations 1994; the disposal or recovery of waste on land, principally under Part II of the Environmental Protection Act 1990, other legislation relating to the carriage and transfer of waste and, where appropriate, the Hazardous Waste Regulations 2005; and relevant health and safety legislation. Decommissioning activities will also need to comply with any relevant international legislation, which might include, for example, the London Convention 1972 and the 1996 Protocol, relating to the prevention of marine pollution by dumping of wastes.

21. Whilst legislation may change over time, we will endeavour to provide helpful "signposting" and advice in the published Government guidance on the statutory decommissioning scheme. The guidance on the operation of the decommissioning scheme is intended to be flexible, and will be reviewed over time. This will allow it to be adapted in line with any future changes in legislation or policy, for example implementation of the proposed Marine Bill and operation of the Environmental Impact Assessment Directive.

LIST OF CONSULTEES

Developers and their representative organisations - renewables

Airtricity

Amec Wind Energy

AquaEnergy Development UK Ltd

Association of Electricity Producers

AWS Ocean Energy Ltd

Blue Energy Canada Inc

British Wind Energy Association

Centrica Energy

Core Ltd

Dong A/S

Eclipse Energy

Ecofys

EDF Energy

Electricity Networks Association

Elsam Engineering A/S

Energi E2 A/S

E.ON UK Renewables

Eurus Energy UK Ltd

Fluor Ltd

GE Wind Energy

HydroVenturi

Lunar Energy

Marine Current Turbines Ltd

Npower Renewables

Ocean Power Delivery Ltd

Ocean Power Technology Ltd

Offshore Wave Energy Ltd

ORECON Ltd

Renewable Energy Systems UK

Renewable Energy Association

Scira Offshore Energy Ltd

Scottish Power UK plc

SeaVolt

Shell WindEnergy Ltd

Tidal Electric Ltd

Total UK plc

Verdant Power

Warwick Energy Ltd

Wave Dragon

Wave Energy

Wavegen

Waveplane Production A/S

Developers and their representative organisations – oil and gas

Apache

Atlantic Petroleum

ATP

BG-Group

BHP Billiton

Bluewater

Bow Valley

BP

Bridge Resources

ConocoPhillips

CalEnergy

Centrica

Challenger Minerals

Chevron

CIECO

CNR International

Dana Petroleum

Dyas U.K. Limited

Eclipse

EDP

Endeavour Corporation

Eni

EOG Resources

E.On Ruhrgas

ERT

Euroil Exploration

Exmar

ExxonMobil

Fairfield

First Oil

Focus

GDF Britain

Granby

Halliburton

Hess

Iranian Oil Company U.K. Limited

Korea Captain Company Limited

Lundin

Maersk

Marathon

Marubeni

Mosaic

Murphy

Nexen

Newfield

Nippon

Noble

Oilexco

OMV

Oranje-Nassau

Palace

Perenco

Petrofac

Petro-Canada

Premier Oil

Qualimar Shipping

RWE

Sevan Marine ASA

Shell

Sojitz

Summit

Svenska

Talisman

Teekay

Total

Tullow

Venture

Wood Group

Brindex

International Marine Contractors Association

Oil and Gas Independents Association

Oil & Gas UK

Users of the marine environment

Associated British Ports

British Marine Aggregate Producers Association

British Ports Association

Chamber of Shipping

Global Marine Systems Ltd

National Federation of Fishermen's Organisations

Northern Ireland Fish Producers Organisation

Northern Ireland Fishermen's Federation

NUMAST

Port of London Authority

Royal Yachting Association

Scottish Fishermen’s Federation

Trinity House

UK Major Ports Group

Welsh Federation of Fishermen’s Associations

Environment and heritage organisations

English Heritage

Greenpeace

Marine Conservation Society

Royal Society for the Protection of Birds

Scottish Natural Heritage

Whale and Dolphin Conservation Society

Wildlife and Countryside Link

WWF-UK

Government Agencies, statutory advisers and organisations

Centre for Environment, Fisheries and Aquaculture Science

Countryside Agency

Countryside Council for Wales

Environment Agency

Joint Nature Conservation Committee

Marine Fisheries Agency

Maritime and Coastguard Agency

Natural England

Scottish Environment Protection Agency

The Crown Estate

Devolved Administrations, local government and regional organisations

East of England Energy Group

Local Government Association

Northern Ireland Assembly

Northern Ireland Department of Enterprise, Trade & Investment

Renewables North West

Renewables East

Scottish Enterprise

Scottish Executive

South West Regional Development Agency

Welsh Assembly Government

Welsh Development Agency

Yorkshire Forward

Banks and investors

AON

Association of Investment Trust Companies

Bank of Scotland

Barclays

British Bankers' Association

HSBC

Royal Bank of Scotland

Business organisations, professional firms and bodies, academic institutions and others

Ashursts

Association of Chartered Certified Accountants UK (ACCA UK)

Association of British Insurers

Bircham Dyson Bell

Bond Pearce

British Venture Capital Association

Cameron McKenna

Chartered Institute of Management Accountants (CIMA)

Confederation of Business Industries (CBI)

Decommissioning Development Consultants

Deloitte

Ernst & Young

Estrata Consultancy

Federation of Small Business

Freshfields Bruckhaus Deringer

Grant Thornton

Hammonds

Ince

Insolvency Practitioners Association

Institute of Chartered Accountants in England and Wales (ICAEW)

Institute of Chartered Accountants of Scotland (ICAS)

KPMG

Lancaster University

Law Debenture Trust Company

Law Society

Le Boeuf Lamb Green & Macrae

Ledingham Chalmers

Masons

McGrigors

Nabarro

NC Copping Syndicate 1036

Paull & Williamsons

PWC

R3

Robert Gordon University

Serle Court

Shepherd & Wedderburn

Stronachs

Structured Product Solutions LLP

Synnogy New Energy Forum

University of Aberdeen

University of Dundee

University of Edinburgh

University of Manchester

Winkworth Sherwood

CODE OF PRACTICE ON CONSULTATIONS

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site at:

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