



Department
of Energy &
Climate Change

Tidal lagoons attached to land – addendum to guidance under the Energy Act 2004

Consultation response document

© Crown copyright 2015

URN 14D/486

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at: offshore.renewables@decc.gsi.gov.uk

Contents

Executive summary	4
Consultation response	5
Consultation background	6
1.1 Background	6
1.2 Purpose of consultation.....	7
1.3 Consultation questions	7
1.4 Main messages from the responses	7
1.5 Original proposal	8
1.6 Post consultation decision.....	8
Detail of the consultation responses	9

Executive summary

This document sets out Government's response to its consultation of 10th October 2014 on the proposal for an addendum to the guidance document 'Decommissioning of offshore renewable energy installations under the Energy Act 2004' to include tidal lagoons attached to land.

In total 7 responses were received with an approximate equal split between regulator and industry responses.

The majority of response's agreed with DECC's proposals though many recommended further work and asked for remaining inconsistencies in the 'Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004' (hereafter referred to as the Offshore Renewables Decommissioning Guidance) to be addressed. The full ranges of issues raised are addressed later in this document alongside Government responses to these.

After careful consideration of all responses, we have decided to implement the suggestion to extend the guidance for offshore renewable energy installations to allow it to apply to nationally significant tidal lagoon installations.

Consultation response

After careful consideration, we have decided to extend the Offshore Renewables Decommissioning Guidance to allow it to apply to nationally significant tidal lagoon installations. Alongside this consultation response document we are simultaneously publishing the relevant addendum to the Offshore Renewables Decommissioning Guidance to include tidal lagoons attached to land. The decision to proceed with the addendum was based on a detailed assessment of the consultation responses, and took into account the preference of the majority of responses as outlined in this response document.

Consultation background

1.1 Background

The provisions for decommissioning of offshore installations in sections 105 to 114 of the Energy Act 2004 do not currently apply to tidal lagoons which are located below mean low water levels but attached to land. This addendum to the existing Offshore Renewables Decommissioning Guidance has been produced to provide clarity on the applicability of this regime to such lagoons.

Decommissioning provisions for tidal lagoons are being reviewed in light of The Crown Estate's tidal range leasing round 2014¹ and in anticipation of the outcomes of this. It is Government's view that the deployment of tidal lagoon structures raises decommissioning issues that are similar in nature to those posed by other offshore renewable energy installations. For this reason, Government considers that there is a strong case for applying the decommissioning provisions of the Energy Act 2004 to nationally significant tidal lagoon structures which are attached to land.

Under the Planning Act 2008, offshore generating stations are defined as Nationally Significant Infrastructure Projects (NSIPs) if they have a generating capacity of more than 100MW and are situated in waters in or adjacent to England or Wales (in both territorial waters and the Renewable Energy Zone). As NSIPs, such projects require development consent from the Secretary of State for Energy and Climate Change in the form of a Development Consent Order (DCO). In making such an Order, the Secretary of State has the power under section 120 of the Planning Act 2008 to impose requirements in connection with the development for which consent is granted, including requirements which apply or modify statutory provisions.

¹ <http://www.thecrownestate.co.uk/energy-and-infrastructure/wave-and-tidal/tidal-range/>

1.2 Purpose of consultation

To collate views on the application of the Offshore Renewables Decommissioning Guidance to tidal lagoons and to ensure that the existing guidance is extended to tidal lagoons attached to land which currently fall outside its scope.

1.3 Consultation questions

1. Do you agree that the powers within the Energy Act 2004 should be applied to nationally significant tidal lagoons attached to land?
2. Can you propose any alternative options for managing the decommissioning liabilities associated with tidal lagoons attached to land?
3. Do you have any other comments relating to the drafting of the intended guidance?

1.4 Main messages from the responses

There was a majority of support for applying the Offshore Renewables Decommissioning Guidance to tidal lagoons attached to land. There were a number of points raised in conjunction to the methods used to transpose the guidance as well as questions regarding the consistency of application of the guidance in comparison to other offshore renewables, these included:

- Whether the scope of the Energy Act 2004 should be extended to cover other energy generating stations attached to land.
- Whether we could look to the Reservoirs Act 1975 to provide an appropriate mechanism for the management of tidal lagoons.
- Whether it may be better for the environment to maintain the tidal lagoon embankment structure after the end of its operation life.
- Comments relating to the need for a refresh of the existing Offshore Renewables Decommissioning Guidance and/or the Energy Act 2004.

- Questions relating to the specific content of potential tidal lagoon decommissioning plans.

1.5 Original proposal

Government proposed that tidal lagoon installations attached to land, over 100MW and within territorial waters adjacent to England and Wales would become subject to the decommissioning regime of the Energy Act 2004. DCO's relating to such installations should be drafted to apply the decommissioning regime of the Energy Act 2004 to the whole of the tidal lagoon installation including any part thereof which falls below the mean low water mark.

1.6 Post consultation decision

After careful consideration, taking into account the consultation responses, we have decided to proceed with the proposal outlined above. We will aim to address the points raised during this consultation within the published addendum to the Offshore Renewables Decommissioning Guidance and supporting consultation response document.

Detail of the consultation responses

Number Question and Government response

Q. 1 Why doesn't Government directly amend the Energy Act 2004 rather than drafting a separate stand-alone guidance document?

Our response The guidance aims to use the powers under the Planning Act 2008 to mirror the Energy Act 2004 as it is not appropriate to extend the remit of the Energy Act 2004 at this time. DECC have noted the other areas of concern which also fall outside of the Energy Act 2004 and hope to review these in due course. The extension of the Offshore Renewables Decommissioning Guidance to use the powers in the Planning Act 2008 in relation to tidal lagoons is therefore independent of a review of the content or remit of the Energy Act 2004 as this would be a lengthier and more detailed piece of work.

Q. 2 How would additions to existing NSIP's be covered by this guidance?

Our response Government has specifically designed the Offshore Renewables Decommissioning Guidance and supporting addendum to cover all offshore renewable energy NSIP's that we regulate.

Q. 3 Should the scope of the Energy Act 2004 be extended to cover other energy generating stations attached to land?

Our response Due to the individual nature and need of tidal lagoons attached to land, specific guidance was deemed appropriate for the nature and scale of the risks associated with these installations. Should other developments come forward for which appropriate guidance is required Government will work with stakeholders to identify the most appropriate vehicle to address them.

Q. 4 Can Government advise whether the guidance applies to the whole of the installation or just the offshore elements?

Our response	<p>The addendum to the Offshore Renewables Decommissioning Guidance is intended to use the powers within the Planning Act 2008 in a similar manner to the application of the Energy Act 2004.</p> <p>Therefore the guidance will cover the whole installation below mean low water in the same way as any other offshore renewable energy installation as dealt with by the Energy Act 2004.</p>
Q. 5	<p>Is it possible that plans for decommissioning of tidal lagoons may include options for decommissioning which do not necessarily incur removal of the entire of the structure?</p>
Our response	<p>Government requires a clear plan for decommissioning to be provided by developers at the start of a project, but that may not always lead to a complete removal of the structure. The plan will need to outline the options for maintenance or removal of the structure and the costs and funds associated with these. This is consistent with the approach currently taken with other offshore structures when negotiating the terms of the decommissioning plan with offshore energy developers.</p>
Q. 6	<p>Would it be possible to use the powers within the Reservoirs Act 1975 to review the on-going safety and functionality of a tidal barrier?</p>
Our response	<p>The Reservoirs Act 1975 applies to reservoirs located in England and Wales. While the Reservoirs Act 1975 makes provision for the supervision of reservoirs and for measures to be taken where a reservoir is to be abandoned, it does not provide a comprehensive regime in relation to decommissioning of the type set out in the Energy Act 2004. Hence the application of the Reservoirs Act 1975 to tidal lagoons would need to be in addition to the application of Energy Act 2004 regime and therefore would risk further burden on industry.</p>
Q. 7	<p>Should all of the powers within the Energy Act 2004 be applied to tidal lagoons attached to land?</p>
Our response	<p>The Energy Act 2004 was specifically designed in relation to the needs of the United Nations Convention on Law Of the Sea (UNCLOS) and hence the predicted role was developed in mind for the specific needs of the industry. Therefore the powers within the Energy Act 2004 are already thought to be best placed to deliver the flexibility and energy specific guidance necessary for developing</p>

successful decommissioning guidance for tidal lagoons.

Q. 8 **At what point in a project lifetime do DECC envisage costs associated with a decommissioning programme becoming available?**

Our response It is the intention that decommissioning liabilities are negotiated as part of the decommissioning programme following a project receiving a DCO. The shape and form of this plan would be project specific and would be determined by the risks inherent within each project. The decommissioning funds which are identified at the start of the project are intended specifically to protect competent authorities (and indirectly tax payers) by avoiding financial liability for the project.

Q. 9 **How do Government plan to update other out of date references within the existing offshore renewables decommissioning guidance?**

Our response We have noted that there a number of areas where the existing Offshore Renewables Decommissioning Guidance may need updating and intend to implement a review of this guidance in due course.

© Crown copyright 2015

Department of Energy & Climate Change

3 Whitehall Place

London SW1A 2AW

www.gov.uk/decc

URN 14D/486