



Department
of Energy &
Climate Change

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

Consultation on extension of the ‘Decommissioning of offshore renewable energy installations under the Energy Act 2004’ guidance to include tidal lagoons attached to land

10 October 2014



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General information

Purpose of this consultation:

DECC is seeking input from a range of interested parties, most specifically developers and regulators involved with the permitting and installation of offshore renewable technologies.

Issued: 10 October 2014

Respond by: 23 November 2014

Enquiries to:

Renewables Delivery Team, Office of Renewable Energy Deployment
Department of Energy & Climate Change,
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Email: tidallagoonconsult@decc.gsi.gov.uk

Consultation reference: URN **14D/373** – Tidal Lagoons attached to land – addendum to guidance under the Energy Act 2004

Territorial extent:

England and Wales including territorial waters

How to respond:

Your response will most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses can be submitted either by post or by email to the addresses outlined above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at

<https://www.gov.uk/government/consultations/tidal-lagoons-attached-to-land>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. 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 by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Executive Summary

Proposal for an addendum to the guidance document 'Decommissioning of offshore renewable energy installations under the Energy Act 2004' (hereinafter referred to as "Offshore Renewables Decommissioning Guidance") to include tidal lagoons attached to land.

This addendum has been developed to ensure that existing requirements for the decommissioning of offshore renewable installations, as set out in the Energy Act 2004 and supporting Offshore Renewables Decommissioning Guidance, applies to tidal lagoons. This extension of the guidance relates specifically to tidal lagoons attached to land, which currently fall outside its scope. To date, the UK has not sought to develop its tidal lagoon potential and hence such installations have not so far been included in Government guidance.

In light of The Crown Estate leasing round 2014 for tidal range projects we recommend that applications for nationally significant tidal lagoon installations are drafted so as to extend the provisions of the Energy Act 2004. This will enable the Government to use existing mechanisms to manage the long-term maintenance and/or decommissioning of tidal lagoons attached to land.

This consultation relates specifically to decommissioning covering the complete removal or on-going maintenance of some or all of the structure usually at the end of the installation's operational life. At the end of the planned lifetime or in event of incomplete build there may also be alternative options for the on-going use or development of the tidal lagoon infrastructure.

DECC call for responses to decommissioning guidance for tidal lagoons attached to land

Introduction to consultation question

- 1.0 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.
- 1.1 Decommissioning provisions for tidal lagoons are being reviewed in light of The Crown Estate's tidal range leasing round 2014. It is the 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, the 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.
- 1.2 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 when they 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 in the form of a Development Consent Order. 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.

1.3 The scope of any decommissioning programme will depend on the specific circumstances of each installation, having regard to the principles and standards set out in the Offshore Renewables Decommissioning Guidance. By way of example the scope could include: decommissioning in the event of developer / operator insolvency, complete removal or on-going maintenance of some or all of the structure at the end of the installation's operational life.

Catalogue of consultation questions

Consultation questions for response

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 below?

Proposed guidance for tidal lagoons attached to land

Draft addendum to extend the scope of the Offshore Renewables Decommissioning Guidance to include tidal lagoons attached to land

Guidance

2.0 It is the Government's intention that tidal lagoon installations attached to land, over 100MW¹ and within territorial waters adjacent to England and Wales would become subject to the decommissioning regime of the Energy Act 2004. The draft Development Consent Orders 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 Installations over 100MW are nationally significant infrastructure projects and are consented under the Planning Act 2008.

Background

- 3.0 This addendum should be read in conjunction with the [‘Decommissioning of offshore renewable energy installations under the Energy Act 2004 guidance notes for industry January 2011’](#). The guidance set out in chapters 5 - 9 will apply in full to tidal lagoons attached to land.
- 3.1 The Government is keen to encourage industry cooperation and collaboration. As with other offshore renewable energy installations it is important that developers of tidal lagoons take account of liabilities for decommissioning, and/or, the on-going maintenance of installations at the outset. The Secretary of State would expect any decommissioning programme submitted by virtue of the inclusion of tidal lagoon installations into the Energy Act 2004 regime to cover the whole of the installation.
- 3.2 Tidal lagoons are structures that use an embankment to impound an area of water, incorporating turbines through which water passes during different states of tide to generate electricity. There are a number of different design approaches to constructing tidal lagoons. This guidance relates to those in coastal waters that use an embankment attached to land to close off a tidal area of sea. The closest comparison would be the construction of a harbour.
- 3.3 The Government notes that the power to apply statutory provisions in a development consent order does not extend to provisions creating criminal offences (see section 120(8) of the Planning Act 2008). A Development Consent Order which applies the Energy Act 2004 to tidal lagoon projects should therefore not purport to apply the criminal offence provisions of that Act. Instead, to make clear the consequences of breaching decommissioning provisions in the Development Consent Order, requirements which would be enforced by criminal sanctions

under Chapter 3 of Part 2 of the Energy Act 2004 should expressly be made terms of the Development Consent Order (the breach of which would itself be a criminal offence, section 161 of the Planning Act 2008). It should therefore be made clear on the face of the Development Consent Order that a person must: decommission the project in accordance with the approved decommissioning programme or agreement of the Secretary of State (see section 109(2) of the Energy Act 2004); comply with any remedial notice given (section 110 of that Act); and comply with any duty to inform, or provide information or documents to, the Secretary of State (sections 112 and 112A of that Act).

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