



Department  
of Energy &  
Climate Change

# Addendum to decommissioning of offshore renewable energy installations under the Energy Act 2004

## Guidance notes for industry

Tidal lagoons

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[offshore.renewables@decc.gsi.gov.uk](mailto:offshore.renewables@decc.gsi.gov.uk)

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# Executive summary

This is an addendum to the 2011 revised 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 guidance should be read in conjunction with the Offshore Renewables Decommissioning Guidance. This document is available on the DECC website reference URN 10D/1025.

This addendum has been written 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, apply 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.

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 enclose a tidal area of sea. The closest comparison would be the construction of a harbour.

## Guidance

- 1.1 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.
- 1.2 It is the Government's view that the deployment of tidal lagoon structures raises decommissioning (or long-term maintenance) issues that are similar in nature to those posed by other offshore renewable energy installations. For this reason, the Government considers that the decommissioning provisions of the Energy Act 2004 should be applied to nationally significant tidal lagoon structures which are attached to land.
- 1.3 It is the Government's view that tidal lagoon installations attached to land, over 100MW<sup>1</sup> and within territorial waters adjacent to England and Wales should 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 offshore elements of any tidal lagoon installation defined as any part thereof which falls below the mean low water mark.
- 1.4 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.

## Decommissioning and / or on-going maintenance programme

- 2.0 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 or complete removal. As the removal of tidal lagoons may impact on the local

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<sup>1</sup> Installations over 100MW are nationally significant infrastructure projects and are consented under the Planning Act 2008.

environment the scope should also consider on-going maintenance of some or all of the structure at the end of the installation's operational life.

- 2.1 The Offshore Renewables Decommissioning Guidance sets out, in chapters 5 – 9, guidance on developing a decommissioning programme. This will apply in full to tidal lagoons attached to land.
- 2.2 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.

## Legal

- 3.0 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).
- 3.1 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 otherwise 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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Department of Energy & Climate Change  
3 Whitehall Place  
London SW1A 2AW  
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