



Department for  
Business, Energy  
& Industrial Strategy

# OFFSHORE RENEWABLES DECOMMISSIONING GUIDANCE FOR INDUSTRY

Summary of responses

March 2019



**OGL**

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# Introduction

## Context

1. The former Department for Energy and Climate Change (DECC), published guidance for developers and other interested parties on the decommissioning of offshore renewable energy installations (“OREIs”) in 2011. In January 2018, the Department for Business, Energy and Industrial Strategy (“BEIS”, which took on DECC’s functions in relation to OREI decommissioning) published draft updated guidance of decommissioning OREIs with the intention of bringing it into line with the more detailed application of policy developed over the intervening seven years. A consultation on the draft guidance ran from 7 February 2018 to 16 March 2018. Nineteen responses were received from industry, trade bodies, regulators and other organisations: BEIS is grateful to all those who took the time to contribute to the consultation exercise.
2. The consultation document asked 15 questions in total, relating to the profile of respondents, the guidance document issued in 2011, the draft updated guidance document, and future decommissioning policy to be addressed at a later date.
3. A summary of consultation responses was published in June 2018, “Offshore renewables decommissioning guidance for industry: summary of responses to consultation<sup>1</sup>.” This document includes the actions taken by BEIS taking into account the consultation feedback received and any next steps. Annex A to this document sets out a list of the organisations that provided responses to the consultation.

## Response

4. BEIS’ actions in updating the guidance take into account consultation feedback: they are set out under the summaries of each set of question responses below.

## Next steps

5. The revised guidance is being published alongside this consultation response and comes into immediate effect.
6. Further reviews of the guidance are likely in the future as our learning and experience of decommissioning OREIs continue to evolve. The potential future actions are summarised in the ‘Next Steps’ section of this document at page 12 below (though note that BEIS has not taken any decisions yet on future updates to the decommissioning regime under the Energy Act 2004).

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<sup>1</sup> <https://www.gov.uk/government/consultations/offshore-renewables-decommissioning-guidance-for-industry-proposed-updates>.

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# Summary of responses received to the consultation

## Questions 1 and 2: Level and profile of responses

7. The breakdown of respondents was as follows:

Respondent type	Responses	Percentage of total responses (rounded)
Developer or owner-operator	12	63%
Industry representative body	1	5%
Public bodies	5	26%
Academia	1	5%

Respondent region(s) [respondents were able to pick more than one <sup>2</sup> ]	Responses	Percentage of total responses
England	15	79%
Wales	13	68%
Scotland [where decommissioning has been devolved but where there are still legacy cases managed by the UK Government <sup>3</sup> ]	7	37%

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<sup>2</sup> It was expected that some respondents would be located in more than one region.

<sup>3</sup> Under the Scotland Act 2016, the Secretary of State's Energy Act 2004 functions in relation to the decommissioning of new OREIs (i.e. those where construction started after 1 April 2017) in Scottish waters or a Scottish part of a Renewable Energy Zone passed to the Scottish Ministers on 1 April 2017. Functions in relation to longer-term projects where construction started before 1 April 2017 also pass to the Scottish Ministers when certain conditions are met.

Respondent region(s) [respondents were able to pick more than one <sup>2</sup> ]	Responses	Percentage of total responses
Northern Ireland  [nb the Energy Act clauses on decommissioning OREIs do not apply in Northern Ireland]	5	26%

8. The majority of responses were from developers/owners of existing offshore renewables projects across English and Welsh waters and the corresponding parts of the renewable energy zone and UK continental shelf (and in some cases, Scotland).

## Questions 3-4: Comments on the 2011 guidance

These questions sought views on the usefulness of the current guidance and whether any of it was considered irrelevant or unclear. They also asked for feedback on the costs to developers/owners of putting in place financial securities in the form of bank guarantees or letters of credit.

9. The majority of respondents felt that the existing guidance was unclear in places and welcomed the greater clarity provided by the updated draft. Developers/owners welcomed the “best practicable environmental option” framework and the flexibility to consider multiple factors when deciding on decommissioning methodology. However, some public bodies felt the guidance risked giving too much leeway for developers/owners to leave infrastructure in-situ following the end of the project’s life. Respondents felt the sections setting out timings for casework and reviews, expectations around financial securities, and the contents of a model decommissioning programme were the most helpful.
10. Many respondents did not provide feedback on the costs of putting in place bank guarantees or letters of credit, as these tend to be options primarily selected by wind farm developers. The responses received indicated that these security options were likely to be more cost-effective for developer/owners than cash reserving, varying from 1% to 3-4% of the secured value. One respondent also stated that increasing the amount to be reserved by 20 – 30% would add tens of millions of pounds onto costs for developer/owners. A few responses suggested increasing flexibility for developer/owners to “mix and match” different forms of security in order to find the most cost-effective solution.

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## Response

11. In order to provide clarity and improve transparency on BEIS' decommissioning policy, the chapter on Financial Security in the 2011 guidance has now been split into two separate sections on (i) estimating decommissioning costs and (ii) providing financial securities. In addition, the revision of the text is intended to provide clarity on the substantive comment and level of detail required in decommissioning programmes.
12. An annex to the revised guidance (Annex E) now includes a template to help developers itemise costs and understand the issues BEIS considers when deciding whether to accept cost estimates (and the resulting financial securities based on those estimates) as accurate. However, the updated guidance allows flexibility for other formats to be used in itemising costs to be used where contractors have grouped together cost items in different ways.
13. Chapter 7 of the revised guidance (on "Environmental and safety considerations") now includes more detailed information on the line of reasoning to be used where partial decommissioning is being proposed and is designed to ensure any such considerations are tailored to the circumstances of the individual site.
14. In relation to requests on the ability to 'mix and match' elements of securities, both the 2011 guidance and the 2018 version allow the ability to combine more than one form of security, as long as each element is within the list of acceptable securities set out in the guidance and the elements as a whole cover the entire amount required.

## Questions 5-10: Comments on the draft updated guidance

These questions sought views on the key changes in the updated version of the guidance, which mainly related to requirements for financial securities. The changes on which feedback was sought were as follows:

- allowing developer/owners to draw down on their securities during decommissioning, with a proportion to be held back until receipt of a satisfactory post-decommissioning survey;
- requiring developer/owners to factor in CPI (Consumer Price Index) inflation over the project lifetime into securities;
- introducing new criteria for assessing project risk to inform decisions around timing of securities (early-life or mid-life);
- introducing more detailed requirements for reviewing decommissioning programmes during the project lifetime;
- requiring developer/owners to have an approved decommissioning programme in place prior to construction.

Respondents were also invited to provide any further comments on the draft updated guidance.

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15. Respondents largely welcomed the proposal to allow for draw-down of securities during decommissioning, although views on the proposal to hold back a proportion of the funds held by or for BEIS until receipt of a post-decommissioning survey were mixed. Several developers/owners felt that holding back a set proportion of securities was too restrictive, and the proportion should be decided on a case-by-case basis. Others felt that holding back any securities at all was too burdensome, particularly if the amount and purpose for doing so were unclear. However, public bodies generally supported the need for robust checks before allowing for the draw-down of decommissioning securities, including checks on the financial stability of companies. Some respondents did suggest set proportions that could be held back, including around 10% for offshore windfarms and around 5% for OFTOs (Offshore Transmission Owners). There was support for allowing the draw-down of all securities, not just cash, and for a quick and simple process to be put in place to trigger the release of any funds held by BEIS.
  16. There was broad support for the proposal to include CPI inflation in securities, although some developers/owners pointed out that other public bodies involved with offshore renewables use RPI inflation, and that BEIS should work with those public bodies to avoid conflicting requirements. There were also requests for more specific guidance for how to forecast inflation beyond the available Office for Budget Responsibility (OBR) forecasts. Some developer/owners felt it should be left to individual companies to provide their own inflation calculations, while others felt it unreasonable to require inflation at all as it ought to be cancelled out by interest on the securities held.
  17. Different views were put forward on the timings of securities required for different types of projects. Some developer/owners felt that the only requirement should be for securities to be in place in full at the end of the subsidy period, rather than accruing from several years before, while public bodies mostly thought that the current approach was appropriate, but that more detail should be provided on the types of security to be set up, for example on the terms and conditions of legal requirements. Developers/owners of pre-commercial projects highlighted the challenges of providing upfront securities, not only due to cash flow issues but due to the signal given to investors regarding project risks. One developer/owner also made a point regarding proposals to retain securities for projects that are re-powered, arguing that this would effectively treat re-powered projects as higher risk by requiring securities for the full project lifetime.
  18. Most developers/owners felt that the proposed review schedule was too frequent and risked being a burden to them. The ideal frequency of reviews varied between developers/owners, with some content with a 3-year cycle, others preferring a 5-year cycle, and others proposing no set review cycle at all, but rather “trigger points” for reviews, or some flexibility in the timings. Public bodies, on the other hand, preferred more frequent reviews and monitoring, particularly of financial securities, to minimise the risk of costs falling to Government.
  19. Most respondents were supportive of BEIS’ desire to have approved programmes in place for all projects prior to construction. However, developers highlighted the risk that making this a formal requirement could mean that any delays in approving programmes would delay construction, resulting in significant additional costs to developers. It was also pointed out that many project details are not confirmed until close to the construction date, particularly for projects using new or innovative methods or technologies, and this may cause difficulties in trying to get a decommissioning programme approved. One suggestion was to request a more basic decommissioning



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programme before construction with cost assumptions taken from previous business planning and applications for any subsidies, and several construction options included which could then be narrowed down and more detail added during a post-construction review.

20. A wide range of other comments were provided on the draft updated guidance. Common themes in the responses from developers/owners included requesting increased flexibility in requirements for owners of offshore transmission infrastructure (“OFTOs”), given the protections built into the OFTO regime; more flexibility for developers/owners where possible and clarity over where flexibility is not possible, and requirements are fixed; and more clarity over the status of VAT in decommissioning securities. There was concern over how the new guidance would be applied to existing projects and additional clarity on this was sought, along with faster casework processing times. It was also suggested that the guidance is particularly onerous for small-scale developers and emerging technologies, signalling a risk-averse approach that does not encourage investment.
21. Some public bodies felt that the guidance should emphasise that leaving any infrastructure in situ should be a last resort, with full removal explicitly stated as an objective including at the design stage; and that the framework for assessing whether assets can remain in situ should align more closely with the Habitats Directive and Conservation Regulations. It was suggested that the guidance should address the status of intertidal areas, and that financial models should be sought from developers as part of the assessment process. There was also support from some regulators for the proposal to incorporate VAT into securities (though Ofgem raised concerns on the effect on the subsidy of offshore transmission), and a suggestion to add in some guidance on optimism bias, exchange rates, and securities for short-term demonstration projects.
22. Several respondents felt the policy on test centres needed further clarification to ensure that tenants would have to meet the same decommissioning requirements as other developers. There were also comments about the need for more focus on waste management, including the risk that the durability of infrastructure, and the costs of decommissioning, are underestimated.

## Response

23. Regarding requests for separate decommissioning regimes for OFTOs and for wave/tidal devices, we consider that there should be a single framework with a risk-based approach consistently applied for all OREI technologies which fall under the Energy Act 2004.
24. We recognise that the workload involved in obtaining and updating a decommissioning programme can be particularly onerous for smaller businesses. However, BEIS needs to balance any reduction in requirements against protecting taxpayers against inherited decommissioning costs. To date, a number of projects in British waters have become insolvent. BEIS does not consider, therefore, that it is appropriate in the current circumstances to introduce a lighter touch regime for smaller projects. We do note, however, that where full decommissioning is proposed (which to date has been the case for most smaller projects) the decommissioning programme would only require relatively brief information on the geography of the site and on risks to safety of navigation. It should also be noted that developers/owners of new projects at test centres in England

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and Wales will no longer need to submit decommissioning programmes to the Secretary of State (see paras 33 – 34 below).

25. In the updated guidance, BEIS has agreed that the proportion of securities to be held back until the Secretary of State confirms receipt of a satisfactory post-decommissioning report will be considered on a case by case basis rather than as a set percentage across all projects.
26. The updated guidance confirms that the Consumer Price Index (“CPI”) will be used as the inflationary index for financial securities in line with cross-Governmental standards. We did not agree with the argument that ‘inflation should not be factored into decommissioning costs because interest on financial securities would cancel it out’, as (i) it is not a given that inflation and interest rate rises will be equal and (ii) not all forms of security earn interest.
27. The updated guidance does not change the position on the timing of securities but provides greater explanation of who will qualify for upfront or mid-life accruals. BEIS recognises the points made by developers of wave and tidal demonstrator projects on the difficulties of obtaining funds to provide upfront securities. However, as indicated above, BEIS needs to consider a range of factors to protect taxpayers against the possibility of having to pay for the cost of decommissioning in the event of a company failure. As set out below, a large proportion of these projects are situated in test centres and now no longer have to submit draft decommissioning programmes to BEIS.
28. A number of developers/owners have asked about the drawdown of financial security in the situation where an OREI is repowered (i.e. can securities fully accrued under the original project be returned to the developer/owner at the point of repowering and then made available to BEIS again at a later date?). Securities for longer term projects (normally offshore wind farms and OFTOs) are in the order of £millions per project, and should securities suddenly cease to be in place it would mean a significant exposure to financial risk for BEIS. Our overriding principle in requiring of financial securities to be put in place is to protect the taxpayer, so the updated guidance reiterates the default position that once fully accrued, the securities should remain in place until final decommissioning. Therefore, where a project changes hands at repowering, as para 5.7.7 – 5.7.10 of the updated guidance notes, the original developer/owner will continue to be held liable for decommissioning until the new developer/owner has an approved programme and fully accrued securities in place. The original developer/owner is recommended to handle this risk in its arrangements for the transfer of the project.
29. The updated guidance still includes a similar number of reviews for an approved programme’s review schedule (although in early years the reviews would be at a high level, focusing on whether there have been any significant changes since the programme was approved). A comprehensive review is added to take place 2 years before decommissioning. BEIS understands concerns on workload, but it is in the interests of both the Government and owners to make sure that any changes in decommissioning requirements or financial securities can be managed and as far as possible planned in advance (to reduce the possibility of the Secretary of State requiring £millions extra in securities at short notice).
30. BEIS understands respondents’ concerns that strengthened guidance on obtaining upfront authorisation of decommissioning programmes could impact on the timetable for

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construction. Annex A of the guidance sets out the circumstances in which BEIS may take action to ensure the milestones for upfront approval of decommissioning programmes are met, but enforcement action against developer/owners is not likely to be taken if the milestones were missed because of issues outside their control. BEIS may in due course consider new legislation to provide it with stronger powers in this area if, going forward, high risk projects fail to meet these milestones.

31. Section 8.5 of the guidance clarifies the treatment of VAT in the calculation of financial security levels as follows:
- where all the OREI infrastructure is within 12 nautical miles of the shore baseline, VAT on all decommissioning elements should be factored into financial securities to be provided to BEIS;
  - for sites fully outside of 12 nautical miles of the shore baseline (i.e. relevant offshore windfarms which have sold off their transmission network), no VAT should be factored into financial securities to BEIS;
  - some projects (such as tidal arrays or OFTOs) may be partially or primarily based outside 12 nautical miles of the shore baseline but would need to conduct a portion of decommissioning within 12 nautical miles (for example to remove export cabling). In such cases, VAT should be factored into financial securities for all decommissioning activity that takes place within 12 nautical miles of the shore baseline, and excluded from all decommissioning activity that takes place outside 12 nautical miles of the shore baseline.
32. The purpose of securities is to cover the full cost of removal if this requirement falls to the Government. As decommissioning is not the Government's 'business activity' then BEIS cannot recover any VAT associated with decommissioning. As a result, securities need to include this VAT element otherwise it will lead to a shortfall of costs falling to the taxpayer if this security is ever required to be used for its intended purpose).
33. The guidance sets out that test centres will take responsibility for overseeing the decommissioning of their tenants. The test centre will take liability for decommissioning if the tenant fails to decommission. BEIS will require a decommissioning programme and financial securities for the central infrastructure and expects test centres to have robust financial security arrangements in place with their tenants to provide protection against any inherited decommissioning costs that might arise. However, it could be the case that the financial security arrangements a test centre sets up with its tenants would differ from the methods of financial securities BEIS takes from sites outside test centres.
34. In relation to comments on ensuring test centre tenants have the same decommissioning requirements as those elsewhere, BEIS considers that requirements in terms of managing the environmental impact of decommissioning and ensuring the safety of navigation should be equal to those sites outside test centres.

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## Questions 11-15: Comments on early-stage proposals for future updates to policy

These questions sought views on early stage proposals for potential changes to the guidance in future years. In particular, views were sought on the following policy areas:

- the acceptance (or otherwise) of Parent Company Guarantees as a form of security;
- the workability of an industry-wide insurance scheme to cover financial securities;
- the mechanisms for managing residual liabilities for infrastructure remaining in place following decommissioning, possibly an industry-wide insurance scheme as mentioned above;
- flexibility on the timing of decommissioning towards the end of a project's life, where some assets wear out more quickly than others;
- any other issues not previously mentioned.

35. Developer/owners were strongly supportive of BEIS accepting Parent Company Guarantees, arguing that they would save developer/owners and, therefore, taxpayers a significant amount of money and that a system to require an alternative form of security if a parent company's credit rating drops below a certain level could be put in place without being too much of a burden.
36. Most respondents welcomed the idea of exploring the scope for insurance to be put in place for decommissioning, while recognising that significant work would need to be done to develop workable proposals. Some felt individual insurance products would be more cost-effective than an industry-wide scheme at this stage. An industry-wide scheme was seen as very beneficial for small-scale developers, although this would need to be backed by Government.
37. In terms of insurance specifically to cover post-decommissioning liabilities, this was acknowledged to be a very complex area presenting significant challenges. In particular, OFTOs and offshore wind farms, as special purpose vehicles that are designed to dissolve following decommissioning, will have difficulty managing any ongoing liability. An industry-wide scheme could be a potential solution but would need to ensure fairness and not penalise those who decommission more fully than others. Some respondents suggested alternative approaches, such as a "contingency mutual" paid into per project, to be used in the event individual insurance is not obtainable; or holding back a proportion of securities (though it would be difficult to determine the right amount). An added complexity mentioned was the ongoing uncertainty over the exact extent of decommissioning that would be required, and what the residual liability might be once decommissioning, and monitoring of the site has been completed.
38. There was broad agreement that arrangements for decommissioning a project in stages or leaving inactive assets in-situ until the full site can be decommissioned, should be agreed on a case by case basis allowing for flexibility and responsiveness to enable developers/owners to maximise cost-effectiveness. Public bodies emphasised the need

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for monitoring of any inactive asset to be left in-situ to ensure no risks to personnel, navigation, the environment or the public. This was also recognised to be a complex area that might benefit from further specific consultation.

## Response

39. The updated guidance allows for the limited use of PCGs in certain circumstances. However, public bodies noted that project ownership can change over time and felt that ensuring the ongoing reliability of PCGs would be hard to achieve. We do not at present intend to change the rules, though we reserve the right to consider PCGs in exceptional circumstances – perhaps as a very short-term form of security, or as a secondary form of security to provide BEIS with additional reassurance that the taxpayer is being suitably protected.
40. BEIS remains sceptical about the possibilities of an industry-wide insurance scheme against inherited decommissioning costs or a ‘contingency mutual’ covering industry-wide insolvency risks. Most other examples of such schemes involve larger numbers of participants and a more equal spread of risk amongst participants. For this sector, there are different designs (particularly for the wave and tidal industry), differing physical characteristics of the sea-bed at sites, and varying degrees of financial risk within companies or business groups in the sector. Insurance acts to insure against an unlikely event, whereas decommissioning is a legal requirement, hence we do not see a high probability that an insurance policy could work. Regarding a mutual scheme, it would be hard to ensure that some participants were not in effect being required to substantially subsidise more high-risk competitors, where payments into the scheme are designed to enable the pay-out of full decommissioning costs in the event of insolvency.
41. Despite the reservations raised in paragraphs 39 – 40, BEIS remains in principle open to suggestions should others have proposals for a workable scheme for PCGs or an insurance or mutual scheme, but we have no current plans to take forward such work in the short term.

## Next steps

42. The updated guidance comes into immediate effect on the publication of this document and applies to all projects (i.e. projects which submitted decommissioning programmes before the publication of the guidance should take forward the next stages of their decommissioning programme – which in most cases will mean the next in-operation review of their approved programme – under the new guidance.) However, those tenants at the European Marine Energy Centre in Scotland whose projects remain under the UK decommissioning scheme at the time of this guidance update should continue with existing requirements under decommissioning programmes submitted directly to BEIS until or unless told otherwise.
43. BEIS considers that the following activities are likely to be required in the medium term:
  - further work to consider bringing the process for assessing the arguments for burial of cables and monopiles more in line with the methodology used in the oil and gas decommissioning regime. The revised guidance sets out that the developer/owner is

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encouraged to consider using the Comparative Assessment Framework set out in decommissioning guidance for the Oil and Gas sector<sup>4</sup> when determining and setting out their position (on the extent of decommissioning). BEIS might consider introducing a formal requirement to follow a similar process – we would discuss this system further with OREI developers/owners in due course;

- BEIS will consider methods for seeking to prevent those developers/owners not following the decommissioning requirements placed on them under the provisions of the Energy Act 2004 (e.g. not accruing securities in line with an approved programme or abandoning assets) from concurrently claiming public subsidy on OREI projects.
44. Although the updated guidance sets out advised timescales for the submission of decommissioning programmes in order to help ensure they are approved before construction, it is yet to be proven whether these timings will be followed by developers/owners. If over the next few years decommissioning programmes are submitted too late for BEIS to require upfront securities where appropriate, we will consider making regulations to put the timetable of submitting applications on a statutory footing.
45. As the industry develops, BEIS may need to consider whether the timings for accruals of financial securities or the list of available formats of securities should be amended, although we have no plans at present to do so.

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<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/760560/Decommissioning\\_Guidance\\_Notes\\_November\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760560/Decommissioning_Guidance_Notes_November_2018.pdf) - annex A

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# Annex A

A list of organisations that provided responses to the consultation is below.

Balfour Beatty Investments Ltd.

Blue Transmission Investments Ltd.

The Crown Estate

Diamond Transmission Corporation

EDF Energy

Equitix

Innogy Renewables UK Ltd.

Nova Innovation Ltd.

Natural Resources Wales

Ofgem

Ørsted

RenewableUK

Scottish Government

ScottishPower

Tidal Lagoon Power

Transmission Capital Services

University of Leeds, School of Civil Engineering

West of Duddon Sands Transmission

# Annex B – Glossary of Acronyms

BEIS – Department for Business, Energy and Industrial Strategy

CPI – Consumer Price Index

DECC – Department for Energy & Climate Change

OBR – Office for Budget Responsibility

OFTO – Offshore Transmission Owner

OREI – Offshore Renewable Energy Installations

PCG – Parent Company Guarantees

VAT – Value Added Tax



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