These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008

ENERGY ACT 2008

EXPLANATORY NOTES

Part 3: Decommissioning of Energy Installations

Chapter 2: Offshore Renewables Installations

Summary and Background

308. The Government has stated its commitment to ensuring that renewable generation plays an increasing role in the UK's energy mix. It is anticipated that a large proportion of the renewable electricity in the future will be generated offshore – the reforms of the Renewables Obligation as set out in Part 2 of this Act are intended to support this growth. As a signatory to the United Nations Convention on the Law of the Sea (UNCLOS), the Government has international obligations to ensure that redundant offshore installations are removed from the seabed to ensure safety of navigation and to ensure the protection of fisheries and the rest of the marine environment.

309. In line with the "polluter pays" principle, sections 105 to 114 of the Energy Act 2004 (c.20) introduced a statutory decommissioning scheme for offshore wind and marine energy installations. Under the scheme, once developers of offshore renewable installations have been given or are likely to be given a statutory consent to construct and operate a generating station, the Secretary of State has the power to issue a notice requiring them to submit a decommissioning programme (as set out in section 105 of the 2004 Act) and eventually require them to carry the programme out. It has been a condition of recent statutory consents that the construction of an offshore renewable energy installation (OREI) may not commence until a decommissioning programme has been submitted for approval. The Energy Act 2004 also sets out penalties and conditions in case of failure to submit a programme acceptable to the Secretary of State or failure to implement the programme.

310. The new provisions are intended to strengthen this scheme by:

- Enabling the Secretary of State, in certain circumstances, to issue a decommissioning notice to an associate (for example, a parent company) of the developer. This follows practice in the offshore oil and gas sector (see section 30(1)(e) of the Petroleum Act 1998). It seeks to ensure that the costs of decommissioning can be met without recourse to the taxpayer in cases where the developer does not have the financial resources to meet those costs but the associate does. Provided the associate has adequate financial resources, the new power will enable the Secretary of State to approve a decommissioning plan that would otherwise have had to be rejected if it had come from a developer with inadequate financial resources of its own.

- Putting protection in place for funds put aside for decommissioning, to ensure that those funds will only be available for that purpose and will not be available for distribution to the general body of creditors in the event of the person responsible for decommissioning becoming insolvent.

- Providing the Secretary of State with additional powers to require information from developers and associated companies to ensure that there is sufficient information to enable an assessment of whether the developer or associate has the financial capacity to meet its decommissioning obligations.

For the purposes of the provisions in this Chapter of the Act, a company ("A") is an associate of another company ("B") if A controls B or if a third company controls both A and B.