

ENERGY ACT 2008

EXPLANATORY NOTES

Part 3: Decommissioning of Energy Installations

Chapter 2: Offshore Renewables Installations

Commentary on Sections

Section 71: Provision of information to Secretary of State

321. This section inserts a new section 112A (Power of Secretary of State to require information and documents) into the Energy Act 2004. This new section will replace the existing information-gathering provisions in section 105(9) and sections 107(5) to (7) of the Energy Act 2004, which enable the Secretary of State to require information from the recipient of a notice requiring the submission of a decommissioning programme. The information which may be required under the existing provisions includes, for example:

- information and specifications relating to the location of the OREI;
- information and documents relating to the financial affairs of the recipient; and
- details of the security which they propose to provide for the purpose of decommissioning.

The existing provisions also enable the Secretary of State to require the recipient of a notice to provide such information as the Secretary of State requires to prepare his own decommissioning programme. The developer can then be required to implement that decommissioning programme.

322. The new section 112A allows the Secretary of State to require persons who are, or may in future be, subject to decommissioning obligations to provide certain information or documents to assist the Secretary of State in exercising his functions under Chapter 3 of Part 2 of the Energy Act 2004 (decommissioning of OREIs). These functions include making a judgement on the suitability and financial viability of the proposals contained in a decommissioning programme, for example financial projections, banking models and electricity generation forecasts.

323. Under section 112A(2), the Secretary of State can require information from the person on whom notice has been served under section 105(2)(a) (those with principal responsibility for the installation, such as the developer), an associate of such a person, or a person who has been made subject to a decommissioning liability under the review procedure in section 108(3)(b) of the Energy Act 2004.

324. *Subsection (3)* of the new section 112A enables the Secretary of State to require information about:

- the place where the OREI is or will be situated;

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

- the OREI and an associated electric line;
 - in certain circumstances, details of an associate;
 - the financial affairs of the person receiving the notice for information and, in certain circumstances, the financial affairs of an associate;
 - the proposed security in relation to carrying out the decommissioning programme;
 - in certain circumstances, the name and address of any person whom the recipient of the notice believes to be an associate.
325. *Subsection (4)* of new section 112A allows the Secretary of State to require information in connection with a function under section 107(1) or (4) of the Energy Act 2004. Those provisions allow the Secretary of State to prepare his own decommissioning programme where one has not been submitted or has been rejected, and to require the relevant person to provide security in relation to the carrying out of the programme. In this case the type of such information is not limited to the categories detailed in section 112A(3), but should be information which the Secretary of State considers is necessary or expedient for the purpose of exercising those functions.
326. Under *subsections (6) and (7)* of new section 112A, the notice requiring the information must specify the documents or information (or the description of documents or information) to which it relates. The recipient of the notice is required to provide the information within the period specified in the notice.
327. *Subsection (8)* of new section 112A makes it an offence for a person to fail to comply with the notice without a reasonable excuse. Section 113 of the Energy Act 2004 sets out the sanctions that would apply if an offence was committed under *subsection (8)*. These are:
- on summary conviction, a fine not exceeding the statutory maximum; or
 - on conviction on indictment, imprisonment for a term not exceeding two years or an unlimited fine, or both.
328. *Subsection (9)* of new section 112A makes it an offence to disclose information obtained by virtue of a notice issued under new section 112A of the Energy Act 2004, unless the disclosure is:
- made with the consent of the person who provided the information; or
 - for the purpose of a function under this Chapter of the Energy Act, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998; or
 - required by or under another piece of legislation.