

Title: Draft Initial Regulatory Impact Assessment for Offshore Renewable Energy Installations Policy Options Consultation	Regulatory Impact Assessment (RIA)			
	Date: 29/09/2023			
	Type of measure: Primary Legislation			
Lead department or agency: DfE	Stage: Initial			
	Source of intervention: Domestic NI			
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)
Offshore renewable energy generation is not deployable in NI waters currently as there is no regime for decommissioning Offshore Renewable Energy Installations (OREIs). There are also no provisions for OREI safety and navigation which is necessary for the construction and operation of OREIs in NI waters. DfE is now seeking to consult on policy options that may lead to primary legislation to take powers to establish an OREI decommissioning regime and safety and navigation framework for NI territorial waters. The policy options are an essential part of the overall strategic framework for the development of offshore renewable energy projects in NI, which is a critical part of delivering on the NI Executive's Energy Strategy and the Climate Change (NI) Act 2022.

What are the policy objectives and the intended effects? (7 lines maximum)
The preferred policy option proposes to take new powers in relation to the following areas: Development and implementation of a decommissioning regime; Safety zones around OREIs and prohibition of certain activities in those safety zones; Navigation and extinguishing of public rights of navigation in relevant areas; Consequential amendments to legislation as a result of these measures. The aim of this proposal is that the framework should as far as possible and practicable mirror that already in place in GB waters to establish a consistent UK-wide regime, which developers, industry, and relevant authorities are already familiar as this will contribute to reducing environmental and economic risks surrounding offshore renewable energy development in NI waters.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)
Option 1 (preferred option): Take similar powers to those in the UK Energy Act 2004 to: a) cover all elements of decommissioning, including the protection of funds in the event of insolvency, resulting in a holistic regime that mirrors what is already happening in the UK for renewable energy installations; b) establish safety zones around OREIs and prohibition of certain activities in those safety zones; and, c) for navigation and extinguishing of public rights of navigation in relevant areas. Option 2: Consider other suitable regulatory options. This option has been considered and discounted. Marine Coastal Access Act 2009 (marine licensing regulations) has been deemed unsuitable these purposes. Option 1 is preferable because relevant public bodies and industry involved in constructing projects in NI waters would follow a tried and tested regime and would be subject to the same legal obligations to put in place a decommissioning regime and provide the same level of financial security as GB.

Will the policy be reviewed? It will be reviewed	If applicable, set review date: June 2024
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Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
Approximately £300mn	Not able to estimate at this stage.	0

Does Implementation go beyond minimum EU requirements?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this measure likely to impact on trade and investment?		YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Are any of these organisations in scope?	Micro	Small	Medium
	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			Large
			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Date:

ECONOMIC ASSESSMENT (Option 1)

Costs (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional	2	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	£140,000		£60,000	N/A

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 Main affected groups are DfE and offshore wind generation businesses. It is not possible to accurately estimate the monetised costs for decommissioning as projects do not yet exist. To illustrate, based on Offshore Renewable Energy Catapult data (2019), the cost of decommissioning a 1GW wind farm in the UK is estimated at £300mn (gross). Estimated government official’s and legal time and consultancy fees for implementing a decommissioning regime would be approximately £140,000. At a recurring rate of approximately £60,000 annually.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 Familiarisation costs would be negligible with this option for offshore wind generating business to adapt to an NI decommissioning, safety, and navigation regime for OREIs as they would mirror the well-established GB regime.

Benefits (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 It is not possible to estimate the monetised benefits by main affected groups as this will be entirely project specific and these projects do not yet exist. However, an established decommissioning methodology will help to strengthen the market proposition for investment in NI projects.

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines
 A coherent regime for the entire life cycle of OREI projects including decommissioning, increased safety, and access at sea for the development, maintenance and operation of projects. Further non-monetised benefits include the risk assurance on public finances provided by a legislative decommissioning regime as well as the avoidance of environmental risks by ensuring that OREI assets will be decommissioning to specified standards.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
 Project-specific factors 30 years in the future are unknown. A further detailed analysis of direct cost estimates and liabilities of NI-specific OREI decommissioning will be taken forward by the Department and will be available by the completion of the consultation exercise and prior to further evaluation of policy options. Marine activities (such as fisheries) may be impacted. The Energy Strategy and NI Marine Plan are aligned and via stakeholder engagement will ensure this risk is minimised and/or mitigated.

BUSINESS ASSESSMENT (Option 1)

Direct Impact on business (Equivalent Annual) £m		
Costs:~£300m	Benefits:N/A	Net:N/A

Cross Border Issues (Option 1)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 Energy Act 2004 established the decommissioning, safety zones, and navigation rights regime for OREIs in GB. NI is not included in the geographic coverage. The decommissioning requirements in Ireland are contained within the Maritime Area Planning Act 2021. Irish Government are currently developing a safety regime for OREI.

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional	3	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	£360,000		£60,000	N/A

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
 The UKMCA which contains provisions for marine licensing powers could be used to include decommissioning in marine licences. The decommissioning costs would likely be the same as Option 1. There is no suitable existing primary law for safety zones or navigation rights for NI waters. Administrative burden on government officials to implement this approach to decommissioning would be heavier as there is no precedent. Officials, legal and consultancy fees is approximately estimated at £360,000 at £60,000 recurring.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
 It is not possible to estimate the monetised costs by main affected groups as this depends on projects that do not yet exist. To illustrate, based on Offshore Renewable Energy Catapult data (2019), the cost of decommissioning a 1GW wind farm in the UK is estimated at £300mn. As this would require the development of a new regime that has no precedent in neighbouring jurisdictions government administrative burden would be higher. Industry would also incur increased familiarisation costs.

Benefits (£m)	Total Transitional (Policy) (constant price)	Years	Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines
 It is not possible to estimate the monetised benefits by main affected groups as this will be entirely project specific and these projects do not yet exist. However, an established decommissioning methodology will help to strengthen the market proposition for investment in NI projects.

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines
 A coherent regime for the entire life cycle of OREI projects including decommissioning. Further non-monetised benefits include a lower level of risk assurance on public finances provided by a decommissioning requirement in marine licences. With this option the risk assurance on public finance and the environment is reduced when compared to Option 1 as only the licensee would be liable for decommissioning responsibility and there would be no powers for the Department to reach back to a parent company or owner.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
 The key risk with this option is that the requirement to decommission could only be imposed on a licence holder. This produces a higher risk of resulting stranded assets and therefore impact on public finances and the environment.

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m		
Costs:£300mn	Benefits:N/A	Net:N/A

Cross Border Issues (Option 2)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 Energy Act 2004 established the decommissioning, safety zones, and navigation rights regime for OREIs in GB. NI is not included in the geographic coverage. The decommissioning requirements in Ireland are contained within the Maritime Area Planning Act 2021. Irish Government are currently developing a safety regime for OREI.

Evidence Base

• Problem under consideration

The development of offshore renewable energy projects in NI territorial waters requires the following leases/licenses/consents:

- Seabed lease (The Crown Estate)
- Marine Licence (DAERA)
- Terrestrial planning permission (DfI)
- Article 39 Consent to construct, operate or extend a generating station (DfE)
- Electricity generation licence (Utility Regulator)

However, there are other areas which require attention in order to facilitate the sustainable deployment of offshore renewable energy projects in NI waters including:

- Decommissioning regime
- Establishment of safety zones
- Extinguishing rights of navigation
- Offshore renewable generation connection arrangements

The problem under consideration is to determine the most appropriate policy for OREI decommissioning, establishment of safety zones and extinguishing rights of navigation in NI waters.

• Rationale for intervention

The NI Executive published the *Energy Strategy for Northern Ireland - The Path to Net Zero Energy* on 16 December 2021. The Energy Strategy established the vision of achieving net zero carbon and affordable energy in line with the commitment of the UK Government, enshrined in law, to achieve net zero emissions by 2050.

The Energy Strategy set out the policy direction for increasing renewable energy across NI by diversifying the technology mix to include offshore wind, marine renewables and reaching a target of at least 70% renewable electricity consumption from a diverse range of renewable sources by 2030.

The Climate Change Act (Northern Ireland) 2022 which came into effect on 6 June 2022, enshrined in law a target for DfE to ensure that 80% of electricity consumption in NI is from renewable sources by 2030.

Research underpinning the Energy Strategy, supported by the analysis of responses to the Energy Strategy policy options consultation, established that one of the criteria for raising the renewable electricity consumption target was the deployment of offshore wind in NI waters by 2030.

The Energy Act 2004 (as amended in 2008) introduced several offshore energy generating provisions which apply to GB waters. These provisions do extend to NI, however our territorial waters were not included in the definition of geographical coverage and therefore, these provisions (and the additional provisions introduced in the GB Energy Act 2008) have no practical effect.

Such a framework is an essential part of the overall strategic framework for the development of offshore renewable energy projects. The Department is therefore considering options to establish policy, and potentially consequential legislation, in relation to the following areas:

- Development and implementation of a decommissioning regime
- Safety zones around OREIs and prohibition of certain activities in those safety zones;
- Navigation and extinguishing of public rights of navigation in relevant areas;
- Consequential amendments to legislation as a result of the above measures.

• Policy objective

The purpose of this policy options consultation is to consider policy options to put in place a similar OREI regime for NI territorial waters to that which applies in GB territorial waters with regard to the issues of OREI safety zones, extinguishing of navigational rights and decommissioning measures.

In advance of any commercial developments being developed in NI waters (towards the Energy Strategy target of 1GW offshore wind from 2030) it is critical that NI has in place an OREI decommissioning regime. The Department is therefore considering policy options for making arrangements and any consequential legislation to develop a regime for NI waters and such actions are included within the Draft OREAP. In addition, to ensure that maritime safety and operational health and safety protections can be upheld, provisions for OREI safety zones and safety of navigation also should be brought forward.

- **Description of options considered (including do nothing), with reference to the evidence base to support the option selection;**

Option 1 – Replication of the GB regime. This is the preferred option.

- a) By taking similar powers to those in the Energy Act 2004 to cover all elements of decommissioning, including the protection of funds in the event of insolvency, which is a key element of the DESNZ regime, resulting in a holistic regime which mirrors that already happening in the UK for OREIs.
- b) By mirroring the provisions as set out in the Energy Act 2004, for NI waters, with consideration for NI revisions or consequential amendments, the Department will enable the establishment of provisions for safety zones around OREIs which is tried and tested, and consistent with the GB approach.
- c) Mirror the provisions surrounding rights of navigation as set out in the Energy Act 2004, for NI waters, with consideration for NI revisions or consequential amendments. This will address the legislative gap which exists surrounding rights of navigation around OREIs in NI territorial waters with an approach consistent with the rest of the UK.

Option 2 - Consider other regulatory options.

- a) The Department has considered other regulatory options such as the use of the UK Marine and Coastal Act (UKMCA) 2009 to allow conditions for decommissioning to form part of the marine licences issued to offshore energy projects. This is a UK-wide piece of legislation which sits within the responsibility of Defra and has implications for the marine licencing processes falling within the remit of DAERA. The UKMCA has not been used in this regard across the rest of the UK and is not an ideal mechanism. This is because via this option only the licence holder will be responsible for decommissioning and therefore, should they be unable to act upon this responsibility, another entity such as a parent company (or others) cannot be made liable in their stead.
- b) It is our understanding that the existing health and safety framework in NI does not provide the powers available to GB under the Energy Act and the Safety Zone Regulations to create or control activities within safety zones. While it is the case that certain health and safety regulations in NI can apply to activities within the Renewable Energy Zone, such application is limited to the energy structures and to specific matters relating to vessels. In addition, the UKMCA cannot be used to declare or enforce a safety zone around OREIs and a marine licence could only include conditions which required the licence holder/operator to provide safety markers etc around an installation, and is therefore not equivalent to the provisions in the 2004 Energy Act.
- c) As outlined previously, the provisions within the Energy Act 2004 do not apply in NI territorial waters. There are currently no other regulatory options for NI to legislate without seeking additional powers in relation to navigation rights as this remains a reserved matter.

Option 3 – Do nothing.

- a) If the Department does not take forward policy proposals to establish a decommissioning regime for NI, DfE will not be able to meet the target as set out in the NI Executive's Energy Strategy of 1GW of offshore wind from 2030. In the absence of a decommissioning regime offshore wind development in NI's territorial waters is not possible as it is an essential prerequisite to a sustainable and coherent framework for deployment.
- b) If the Department does not take forward policy proposals to establish powers in relation to the establishment of safety zones around OREIs in NI's territorial waters, this may have a negative impact on the future safety of installations and mariners.
- c) If the Department does not take forward policy proposals to establish powers in relation to the rights of navigation around OREIs in NI's territorial waters, this will have a negative impact on the safety of installations and mariners.

The evidence base to support the option selection was via expert stakeholder consultation in policy development. At the initial stage, via the relevant regulators, NI government departments, public bodies and industry representatives who sit on the Offshore Renewable Energy Action Plan Steering Group reviewed and approved the policy proposals. Then at a further and more detailed stakeholder consultation stage, the directly relevant bodies (Department for Agriculture, Environmental and Rural Affairs (DAERA), Maritime and Coastguard Agency (MCA), The Crown Estate (TCE) and Department for Energy Security and Net Zero (DESNZ)) provided feedback on detailed policy scoping papers prepared with the purpose of stakeholder consultation. Based on the evidence and advice provided through these two stages of stakeholder engagement and evidence gathering, the policy options (including preferred option) were developed.

- **Monetised and non-monetised costs and benefits of each option (including administrative burden);**

Option 1 – introduce new primary legislation

DfE would bring forward primary legislation requiring developers to submit (and eventually carry out) a decommissioning programme for the installation. These decommissioning provisions take into account international obligations under UNCLOS1 and OSPAR2 - that anyone who constructs, extends, operates or uses an installation should be responsible for ensuring that it is decommissioned at the end of its useful life. They should also be responsible for meeting the costs of decommissioning. Imposing a legal obligation on businesses to prepare and carry out a decommissioning programme – and requiring them to provide financial security – reduces the risk of them defaulting on their decommissioning liabilities. DfE would also be required to review these programmes from time to time.

This approach would place an administrative burden on DfE and would require adequate resourcing and appropriate specialist and technical assistance (dependent on the number of applications that might be submitted, which in absence of offshore wind leasing in NI is not currently known). It is estimated based on ready reckoners of NICS government officials and legal costs and estimated consultancy fees that the policy transitional cost would be ~£120,000 recurring for 2 years and then ~£60,000 annually for policy officials time working in operational delivery. This policy transitional cost is around 60% lower in this preferred option because policy development of a NI decommissioning scheme that mirrors the current well-established GB regime and would therefore be a more streamlined process to implement. Relevant public bodies and industry would have a reduced familiarisation cost in this option as the regime would already be well understood.

The non-monetised benefit of this approach is that the requirement for a decommissioning scheme could be imposed on persons/a company other than the licence holder and the obligation to carry out the programme could also be imposed on persons/a company other than the licence holder. This means that the decommissioning obligations could be imposed on a parent/owner company if required. Therefore, the risk of the Department assuming the role of decommissioner of last resort would be reduced. The environmental risk of stranded assets is also reduced by this option.

Option 2 – consider other suitable regulatory options (UKMCA).

It is not possible to estimate the monetised costs and benefits as this will be entirely project specific and these projects do not yet exist. However, an established decommissioning methodology will help to strengthen the market proposition for investment in NI projects.

DAERA would be responsible for amending the marine licensing process to include decommissioning into marine licences issued for offshore renewable energy development. This would increase the administrative burden and require technical and specialist capacity to effectively review decommissioning plans (dependent on the number of applications that might be submitted, which in absence of offshore wind leasing in NI is not currently known). It is estimated based on ready reckoners of government officials time, legal costs and estimated consultancy fees that the policy transitional cost would be ~£360,000 recurring for 3 years and then ~£60,000 annually for policy officials time working in operational delivery. This policy transitional cost is around 60% higher than in the preferred option because policy development of a NI decommissioning scheme that has no precedent in neighbouring jurisdictions would take significantly longer to develop. Industry would also incur a higher familiarisation cost as this would be a new regime without precedent in neighbouring jurisdictions.

Non-monetised cost of this approach is that there is no way to impose responsibility to decommission on any entity other than a licence holder. Therefore, a parent/owner company would not be liable for decommissioning the project should the licence holder be unable to. This produces a higher risk of stranded assets and might lead to monetised costs on public finances, as well as higher risks on environmental impacts of a stranded asset.

Option 3 – do nothing.

This is the status quo option, with no direct monetised and non-monetised costs and benefits because without a decommissioning regime for NI, offshore renewable energy deployment is not possible. An indirect non-monetised cost of doing nothing would be a setback in achieving the NI renewable electricity consumption and emission targets enshrined in law via the Climate Change (Northern Ireland) Act 2022.

- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);

At this stage of policy development, the level of analysis is employed towards this initial RIA is proportionate and based on policy official's research and evidence gathering via expert stakeholder engagement. If this policy proceeds to the next stage of RIA before Bill development an NI cost estimation and liabilities study will have been conducted and quantitative analysis will be able to be included. Additionally, any insight and evidence from this policy consultation will be available to include in the analysis.

- **Risks and assumptions;**

Low risk policy. The absence of an OREI decommissioning regime and safety and navigation framework poses high level of risk to industry, NI public finances and the environment should any OREI development take place. The absence of policy may block any development activity which produces the risk of failing to achieve Energy Strategy and Climate Change Act (NI) 2022 targets.

There are a series of unknowns associated with the introduction of this policy such as the size, scale and costs attributed to any future OREI projects; the impacts that any future OREI projects might have on other marine activities (including fishing), and the environmental impacts.

The Department is in close coordination with the relevant departments, regulators, public bodies and industry via the Offshore Renewable Energy Action Plan steering group that is overseeing this policy development process to scope potential risks and impacts, collect evidence and plan for minimising or mitigating risks. Additionally, engagement is ongoing with wider marine stakeholders (such as mariners, fish producers groups, heritage, tourism, maritime safety, environmental NGOs, and community representatives). The risks have been understood by potentially affected parties and engagement is underway to ensure the minimisation and mitigation of those risks.

- **Direct costs and benefits to business;**

It is not possible to estimate the monetised costs and benefits as this will be entirely project specific and these projects do not yet exist. To illustrate, based on Offshore Renewable Energy Catapult data (2019), the cost of decommissioning a 1GW wind farm in the UK is estimated at £300mn. A further detailed analysis of direct costs and benefits to business is currently being taken forward by the Department and will be available by the completion of the consultation exercise and prior to further evaluation of policy options.

- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Decommissioning OREI measures have also been subject to a NI-level Strategic Environmental Assessment and Habitats Regulations Assessment, which will see completion in June 2024. The OREI policy options consultation has had Section 75 (Equality) Impact Assessment screening; Human Rights Impact Assessment screening; Data Protection Impact Assessment screening; Economic Impact Assessment screening; Legal Impact Assessment screening; State Aid Impact Assessment screening and Rural Needs Impact Assessment screening. Those required to be published are available to download from the Department's website. |