MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

# COVERSHEET

| **Minister** | Hon Simeon Brown | **Portfolio** | Energy |
|---|---|---|---|

| **List of documents that have been proactively released** | | |
|---|---|---|
| **Date** | **Title** | **Author** |
| 14 December 2023 | Offshore renewable energy | MBIE |
| 18 December 2023 | Iwi Engagement in Offshore Renewable Energy | MBIE |
| 1 February 2024 | Offshore renewable energy: Timing and design of permitting regime | MBIE |
| 1 March 2024 | Offshore renewable energy: Regime design and next steps for Cabinet decisions | MBIE |
| 15 March 2024 | Offshore Renewable Energy – Alignment with Fast-track Approvals Bill | MBIE |
| 28 March 2024 | Offshore renewable energy regulatory regime: Draft Cabinet Paper | MBIE |
| 18 April 2024 | Offshore renewable energy – Interaction with environmental consents | MBIE |
| 17 May 2024 | Offshore renewable energy regulatory regime – Next steps | MBIE |
| 21 May 2024 | Offshore renewable energy – decommissioning requirements | MBIE |
| 22 May 2024 | Offshore renewable energy regulatory regime - Timeline | MBIE |

**Information redacted** **YES**

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- Privacy of natural persons
- Commercial information
- Confidentiality
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- Free and frank opinions
- Legal professional privilege
- International relations
- Constitutional conventions

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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# BRIEFING

## Offshore renewable energy – decommissioning requirements

| | | | |
|---|---|---|---|
| **Date:** | 21 May 2024 | **Priority:** | High |
| **Security classification:** | In Confidence | **Tracking number:** | 2324–3395 |

| **Action sought** | | |
|---|---|---|
| | **Action sought** | **Deadline** |
| Hon Simeon Brown<br>**Minister for Energy** | Advise your preferred approach to trailing liability in the offshore renewable energy regime | 24 May 2024 |

| **Contact for telephone discussion (if required)** | | | |
|---|---|---|---|
| **Name** | **Position** | **Telephone** | **1st contact** |
| Melanee Beatson | Manager, Offshore Renewable Energy and Hydrogen | Privacy of natural persons | ✓ |
| Poppy Haynes | Principal Advisor, Offshore Renewable Energy | Privacy of natural persons | |

| **The following departments/agencies have been consulted** |
|---|
| |

**Minister's office to complete:**

- ☐ Approved
- ☐ Noted
- ☐ Seen
- ☐ See Minister's Notes
- ☐ Declined
- ☐ Needs change
- ☐ Overtaken by Events
- ☐ Withdrawn

**Comments**

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# BRIEFING

## Offshore renewable energy – decommissioning requirements

| | | | |
|---|---|---|---|
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## Purpose

To provide further information on the consistency between the proposed decommissioning requirements for offshore renewable energy and those for oil and gas, and to confirm your preferred approach to trailing liability for the Offshore Renewables regime.

## Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Note** Constitutional conventions the Minister for Resources requested further information on the proposed decommissioning requirements for offshore renewable energy and those for oil and gas

*Noted*

b **Note** in both regimes, the decommissioning requirements are designed to limit the risks of decommissioning failures in a way that preserves the economic viability of existing developments and the investibility of new developments

*Noted*

c **Note** the regimes take different approaches to achieve this objective, because of the different contexts in which the decommissioning requirements are (or will be) introduced:

i. For the oil and gas sector, decommissioning requirements have been introduced late in the life of most fields, meaning the combination of requirements is designed in a way that recognises some permit holders may be unable to absorb the costs of maintaining financial security, which can be significant

ii. For offshore renewable energy, decommissioning requirements will be known from the outset of developments and factored into investment decisions and financial arrangements, making it more feasible to set financial security at 100% of the cost of decommissioning

*Noted*

d **Note** this context is reflected in the differences between New Zealand's oil and gas decommissioning requirements and those proposed for offshore renewable energy:

i. For oil and gas, there is **more flexibility on the kind and amount of financial security** a permit holder must provide, and there is **also trailing liability** to keep permit holders who transfer out of a permit liable for decommissioning costs

ii. For offshore renewables, there is proposed to be **less flexibility on the kind and amount of financial security** a permit holder must provide, and there is (currently) **no provision for trailing liability**

*Noted*

e **Advise** whether you prefer to:

i. proceed *without* trailing liability in the offshore renewable energy regime, as currently drafted in the Cabinet paper

*Yes / No*

ii. (recommended) include in New Zealand's regime an option to maintain some form of trailing liability based on the UK or Australian approach. This would mean building in obligations that could be removed by the Minister when approving the transfer of a permit

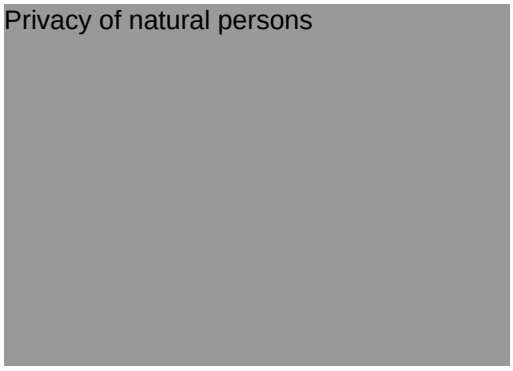
*Yes / No*

f **Note** that if you prefer option (ii) to maintain some form of ongoing obligation, we will update the draft Cabinet paper, including delegated authority to determine the details of how it will be implemented

*Noted*

g **Agree** to forward this briefing to the Minister for Resources.

*Agree / Disagree*




Melanee Beatson
**Manager, Offshore Renewable Energy and Hydrogen**
Building, Resources and Markets, MBIE

21 / 05 / 2024

Hon Simeon Brown
**Minister for Energy**

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## Background

1. On 1 May 2024, the Cabinet Economic Policy Committee (ECO) discussed and noted the proposed design of the offshore renewable energy regulatory regime, including the decommissioning proposals.

2. ECO noted that the Minister for Energy would return to Cabinet after Budget to seek agreement to the proposals.

3. Following that meeting, we undertook to provide you and the Minister for Resources with further information on how the proposed decommissioning requirements for offshore renewable energy compare with those that apply to oil and gas in New Zealand. We understand there is a desire for the regimes to align unless good reason exists for differences.

## Rationale for decommissioning requirements

4. Offshore (renewable and non-renewable) energy infrastructure will need to be decommissioned at the end of its commercial life. The costs of decommissioning can be substantial. While there is limited evidence on the costs of decommissioning offshore renewable energy infrastructure, we understand estimated costs could range up to $500 million. Commercial Information [redacted] International experiences shows that actual costs can be higher (sometimes significantly) than estimated costs.

5. The magnitude of the costs and the potential environmental impacts from a failure to decommission mean it is important to set legislative decommissioning requirements that reduce the risk of taxpayers having to meet decommissioning costs if an operator defaults on its decommissioning obligations.[1]

## Proposed decommissioning requirements for offshore renewables and oil and gas

6. The Crown Minerals Act 1991 (CMA) sets out the decommissioning requirements for our oil and gas sector, while the proposed requirements for offshore renewable energy are summarised in the Cabinet paper you intend to take to Cabinet Business Committee for policy decisions in June 2024.

7. Both New Zealand's oil and gas decommissioning requirements and those proposed for offshore renewable energy include:

    a. a **legal requirement to decommission** infrastructure (and, in the case of oil and gas, wells) once it ceases to be operated and

    b. a **requirement to maintain financial securities** the Crown can draw on to pay decommissioning costs in the event a permit holder fails to carry out decommissioning or meet the associated costs.

[1] The Crown is not technically required to pay for decommissioning, but often becomes 'the provider/decommissioner of last resort' and decommissions abandoned wells and infrastructure that otherwise create an unacceptable environmental risk

8. The main differences between the regimes are in the requirements for:

    a. the **amount to be secured and the kind of financial security** a permit holder must obtain, and

    b. **whether to have trailing liability** for permit holders who transfer out of a permit. These key differences are set out in Table 1 below. **Annex One** provides a general summary of the decommissioning requirements for oil and gas in New Zealand and for offshore renewable energy in New Zealand, Australia and the UK.

## Differences between the regimes arise from when decommissioning obligations have or will be introduced

9. In both regimes, the decommissioning requirements are seeking to limit the risks of decommissioning failures in a way that preserves the economic viability of existing offshore developments and the investibility of new ones. The regimes take slightly different approaches to achieve this objective because of the very different contexts in which the decommissioning requirements are (or will be) introduced:

    a. For the oil and gas sector, decommissioning requirements have been introduced late in the life of most fields, meaning the combination of requirements is designed in a way that recognises some permit holders may be unable to absorb the costs of maintaining financial security, which can be significant.

    **b.** For offshore renewable energy, decommissioning requirements will be known from the outset of developments and factored into investment decisions and financial arrangements, making it more feasible to set financial security at 100% of the cost of decommissioning.

**Table 1: Key differences between decommissioning requirements for oil and gas vs offshore renewable energy**

| | **Oil and gas (NZ)** | **Proposed offshore renewable energy regime (NZ)** |
|---|---|---|
| **Amount of security**<br>*Does the security have to cover 100% of decommissioning costs?* | ×<br>*Discretion for Minister to allow financial security less than 100% decommissioning cost depending on a range of considerations such as the risk of a particular permit holder* | ✓<br>*The expectation is that financial security covers 100% of estimated decommissioning costs. Decisions on how this is calculated will be made later (through secondary legislation)* |
| **Type of security**<br>*Are less secure kinds of financial security excluded, such as parent-company guarantees and insurances?* | × | ✓<br>Confidential advice to Government |
| **Trailing liability**<br>*Are former permit holders liable to cover unmet decommissioning costs?* | ✓<br>*Cabinet will consider on 22 May 2024 a change to limit trailing liability to the immediately prior permit holder. Currently, any former permit holder can be held liable to meet unmet decommissioning costs relating to infrastructure in place at the time they transferred the permit.* | × |

10. The CMA provides discretion for the Minister to allow the financial security to cover less than 100% of the costs of decommissioning and for a broader range of security to be held (e.g. Parent Company Guarantees, which are a lower cost for a permit holder). The Minister makes the decision on amount and kind based on a range of considerations, such as the circumstances of the particular permit holder and any current or emerging risks to the permit holder's ability to comply with its decommissioning obligations. This discretion is intended to acknowledge that financial security requirements were set late in the life of existing fields, decades after investment decisions were made. The discretion was also intended to avoid unintended consequences, such as the requirement acting as a barrier to investment or exacerbating existing financial issues that a permit holder may be experiencing and, in a worst-case scenario, precipitating the very risk (of a permit holder becoming insolvent and defaulting on decommission obligations) the Crown is seeking to mitigate.

11. For offshore renewables, decommissioning requirements will be known from the outset of developments, meaning financial securities can be factored into investment decisions and financial arrangements. Requiring full financial security is consistent with international regimes, including the UK and Australia. The proposed design of the requirements also means financial securities can build up over time to reflect key risk periods, making it more feasible to set them at 100% of the cost of decommissioning.

12. The ability to set decommissioning requirements from the outset of offshore renewable energy developments also underpins the proposal to accept a narrower (more expensive) set of financial securities.

## Trailing liability is a necessary backstop in our oil and gas regime to mitigate the risk of decommissioning costs falling to taxpayers

13. The financial securities required in both regimes help to reduce the risk of taxpayers (and, in the case of oil and gas, private landowners) being left to pay decommissioning costs if infrastructure is not decommissioned by the permit holder. This occurred after Tamarind Taranaki Limited went into receivership in 2019 before the Tui Oil field had been decommissioned. Some risk, however, remains because it is not necessarily possible to fully anticipate decommissioning costs in advance, and, in the case of oil and gas, because of the flexibility the CMA provides on the kinds of financial security that may be accepted, and amount to be secured.

14. Under the CMA, trailing liability helps to mitigate this residual risk by making the previous holder of a licence or permit liable if the current holder fails to meet its decommissioning obligations. If the decommissioning costs could not be fully met by the financial security in place, the government could pursue the former holder to pay for any unmet decommissioning costs relating to any wells or infrastructure that were in place at the time of the permit transfer.[2] This discourages permit holders from transferring out of a permit towards the end of a development's life as a way to try to avoid decommissioning costs, and incentivises permit holders to consider carefully whether the incoming permit holder has the financial capacity to meet the decommissioning obligations.

15. Cabinet is currently considering changes to the CMA to limit trailing liability to the immediately prior permit holder.

## Trailing liability is not currently included in the proposed offshore renewable energy regime

16. In contrast to the CMA, we have not to date proposed to include trailing liability in the offshore renewable energy regime. The rationale for not including trailing liability was that

[2] In the CMA, trailing liability also applies if a permit participant transfers their 'interest' in a permit that is held by multiple participants.

the requirement for financial security to cover 100% of decommissioning costs and to be provided in low-risk forms of security adequately mitigates the risk to the Crown. The productive life of offshore wind infrastructure is also relatively predictable, meaning there is lower risk of people transferring out of a permit to avoid decommissioning risk.

17. The 1 May 2024 Cabinet paper specified that if a permit is transferred to a new permit holder, there would be robust scrutiny of the transfer and a requirement for the new permit holder to put in place adequate financial security, but there would not be trailing liability.

18. However, as with oil and gas, a level of residual risk remains that the financial security does not entirely cover decommissioning costs (e.g. if costs have been underestimated) or fails in some other way. This would be the case even if a permit is not transferred during its commercial life, i.e. the Crown has recourse to the same remedies whether a permit is transferred to a new holder or stays with the original holder.

19. Industry feedback during consultation on the regime was strongly against having a trailing liability in the offshore renewable energy regime, indicating it would have a significantly negative impact on the investibility of projects.

## The UK and Australia have the legislative discretion to trail former permit holders or require financial security to remain to place

20. We have looked further into how both Australia and the UK have dealt with trailing liability for offshore renewable energy.

21. Australia does not have trailing liability *per se* for offshore renewable energy. Instead it does not automatically release a permit holder that transfers out of a licence from the obligation to maintain financial security. The Minister must make an active decision to free the previous permit holder from liability. International relations

22. Similarly, in the UK a permit holder who transfers out of a permit is not absolved from their decommissioning obligations. Instead, the Minister must agree to remove liability. The Secretary of State retains the right to keep the original developer/owner liable for decommissioning.

23. A difference between Australia's regime and the UK and proposed New Zealand regimes is that Australia requires financial security relating to particular infrastructure to be in place *before* that infrastructure is installed, whereas the UK can allow the financial security to build up to reflect key risk periods (as proposed in New Zealand). Both regimes set the total amount of security that must be provided as the equivalent of the full costs government would incur if it carried out the decommissioning.

## We consider there may be merit in building in a form of trailing liability that could be removed by the Minister when approving the transfer of a permit

24. As indicated above, we consider there are differences between the oil and gas and offshore renewables regimes that justify treating trailing liability differently between the two regimes, while achieving consistent outcomes.

25. Based on Constitutional conventions and our further consideration of this issue, you may wish to consider building in an ongoing obligation for offshore renewable energy. This would further mitigate any risk to the Crown if a financial security falls short.

26. We consider there would be merit in adopting an approach similar to that in the UK (maintaining liability with the option to remove) or Australia (maintaining a financial

security until relieved of that obligation). This would give the Minister discretion to decide if maintaining liability is appropriate, on a case-by-case basis, when approving a transfer.

## Next steps

27. If you agree to include an option to maintain some form of ongoing obligation following a permit transfer, we will:

    a. update the relevant section of the draft Cabinet paper you are planning to take to Cabinet for policy decisions on the regime in June 2024

    b. include a proposal that Cabinet authorises you to decide the details of how this will be implemented.

28. We are also preparing to brief you shortly on proposed policy settings to deal with permit variations, including changes of control of permit holders.

## Annexes

Annex One: Proposed decommissioning requirements for offshore renewable energy vs oil and gas

## Annex 1: Proposed decommissioning requirements for offshore renewable energy vs oil and gas

| Decommissioning requirements | Oil and gas (NZ) | Offshore renewable energy (NZ) | Offshore renewable energy (Aus) | Offshore renewable energy (UK) | Rationale for New Zealand requirements and commentary |
|---|---|---|---|---|---|
| Permit holders have a legal obligation to decommission | ✓ | ✓ | ✓ | ✓ | Both regimes involve infrastructure that will require decommissioning. |
| Permit holders must provide financial security for decommissioning | ✓ | ✓ | ✓<br>*Security covers a broader range of costs and liabilities than just decommissioning costs* | ✓ | The costs of decommissioning will be significant for both types of infrastructure. Requiring permit holders to maintain financial securities decreases the risk of costs falling to the Crown or environmental risks arising from decommissioning failures. |
| Financial security can build up over time | ✓<br>*Depends on the kind of financial security* | ✓<br>*Case-by-case decisions on whether security can build over time, the rate at which it must accrue and whether it may be partially released at lower-risk times (e.g. early in commercial operation)* | ×<br>*Financial security that relates to particular infrastructure must be provided before that infrastructure is constructed or installed* | ✓<br>*For large scale commercial deployments that receive a predictable revenue stream and are judged to have a low operating risk* | Less onerous than requiring full financial security to be in place from the outset of a development.<br>For offshore renewables, the risk-based, case-by-case approach to determining how the security must accumulate is aligned with the UK's approach. |
| Security must cover 100% decommissioning costs | ×<br>*Discretion for Minister to allow financial security less than 100% decommissioning cost* | ✓<br>*How this is calculated will be determined (in secondary legislation)* | ✓<br>*Covers costs government would face in decommissioning (which are higher than costs of permit holders completing own decommissioning)* | ✓<br>*Covers costs government would face in decommissioning* | For oil and gas, where fields are approaching the end of their commercial lives and financial security requirements are fairly recent, this flexibility is necessary to avoid the requirements becoming so financially onerous that permit holders cannot absorb the cost.<br>For offshore renewables, financial securities will build up over the lifetime of the infrastructure and it is feasible to set them at 100% of the cost of decommissioning. |
| Less secure kinds of security, such as parent-company guarantees, are not accepted | ×<br>*Flexibility for the Minister to approve a broader range of securities* | ✓<br>Confidential advice to Government | ✓<br>*Secure only – no parent company guarantees or insurance schemes* | ✓<br>*Secure only – parent company guarantees only considered in exceptional circumstances* | As above, oil and gas permit holders may be less able to provide more secure (therefore more expensive) kinds of security than offshore renewable permit holders. |
| Trailing liability | ✓<br>*Cabinet is considering a change to limit trailing liability to the immediately prior permit holder* | ×<br>*[New proposal to include option to maintain some form of obligation]* | ×<br>*No trailing liability* per se. *However, the obligation to maintain financial security is not automatically lifted if a person transfers out of a permit; the Minister must make an active decision to do this* | **optional**<br>*The Secretary of State retains the right to keep the original developer/owner liable for decommissioning until the required securities have been fully accrued* | Trailing liability is a common feature of oil and gas regulation and is an important backstop when there is risk that a new permit holder may fail to meet decommissioning obligations.<br>Trailing liability plays a more important role where financial securities do not cover full decommissioning costs and are in less secure forms. |