



## COVERSHEET

<b>Minister</b>	Hon Simeon Brown	<b>Portfolio</b>	Energy
<b>Title of Cabinet paper</b>	Offshore Renewable Energy Regulatory Regime Offshore Renewable Energy Bill: Approval for Introduction	<b>Date to be published</b>	20 December 2024

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
November 2024	Offshore Renewable Energy Bill: Approval for Introduction	Office of the Minister for Energy
November 2024	Offshore Renewable Energy Bill: Approval for Introduction LEG-24-MIN-0235	Cabinet Office
13 June 2024	2324-3049 Offshore renewable energy regime – offences, penalties, powers and appeals	MBIE
20 June 2024	2324-3446 Offshore Renewable Energy regulatory regime – permit variations	MBIE
25 July 2024	2324-4013 Offshore renewable energy - update on progress and establishment of a developer working group	MBIE
8 August 2024	2425-0577 Accelerated timing for Offshore Renewable Energy Bill and Hydrogen Action Plan	MBIE
19 August 2024	2425-0725 Engagement with iwi on the offshore renewable energy regulatory regime	MBIE
23 August 2024	2425-0230 Offshore renewable energy regulatory regime – decommissioning obligations	MBIE
23 August 2024	2324-3448 Offshore renewable energy regulatory regime – transmission infrastructure	MBIE
18 October 2024	BRIEFING-REQ-0004369 Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies	MBIE
7 November 2024	BRIEFING-REQ-0005576 Offshore Renewable Energy Bill – updated Cabinet paper seeking approval for introduction	MBIE
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions	Office of the Minister for Energy
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions Minute of Decision CBC-24-MIN-0041	Cabinet Office

May 2024	Offshore Renewable Energy Regulatory Regime	Office of the Minister for Energy
May 2024	Offshore Renewable Energy Regulatory Regime Minute of Decision ECO-24-MIN-0062	Cabinet Office

**Information redacted**

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- a. Privacy of natural persons
- b. Confidential advice to Government



## BRIEFING

### Offshore renewable energy regulatory regime – decommissioning obligations

<b>Date:</b>	23 August 2024	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	2425-0230

Action sought		
	Action sought	Deadline
Hon Simeon Brown <b>Minister for Energy</b>	<b>Agree</b> to the proposed approaches for imposing limited trailing liability following the transfer of a permit and determining the amount of financial security that must be provided  <b>Forward</b> this briefing to the Minister for Resources	2 September 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 Policy Advisor	04 4 897 6688	
Georgia Banks	Senior Policy Advisor	04 896 5882	

The following departments/agencies have been consulted

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments



# BRIEFING

## Offshore renewable energy regulatory regime –decommissioning obligations

<b>Date:</b>	23 August 2024	<b>Priority:</b>	Medium
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### Purpose

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To seek further decisions on obligations relating to the decommissioning of offshore renewable energy infrastructure, to inform the instructions to Parliamentary Counsel Office (PCO) for the drafting of the Offshore Renewable Energy Bill.

### Executive summary

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In June 2024, Cabinet agreed that:

- the Minister’s approval must be gained before a permit transfer occurs,
- the new permit holder must put in place one or more financial securities, of combined equal or greater value than the existing security/securities, and
- there will be a continuing obligation on the previous permit holder, either to decommission (i.e. trailing liability) or maintain some form of financial security, which the Minister will have discretion to maintain or remove on a case-by-case basis.

### Continuing obligations following a permit transfer

Cabinet authorised you to make further decisions on the form of continuing obligation following a transfer and how it will be implemented.

We propose that the offshore renewable energy regime includes, as a default setting, a continuing obligation for former permit holders to decommission (‘trailing liability’), until the Minister is satisfied the new permit holder has accrued an amount of financial security equal to 100 per cent of the cost to decommission. The Minister could, on a case-by-case basis, agree to release a former permit holder from this default obligation before the new security has fully accrued.

This approach provides additional protection to minimise the risks of decommissioning costs falling to the Crown, without unduly deterring investment. It is similar to the offshore renewable energy regime in the United Kingdom, where the Secretary of State retains the right to keep the original developer liable for decommissioning until the required securities have been fully accrued.

### Cost estimates for financial securities

To inform the drafting of the Bill, we are also seeking your agreement that cost estimates for decommissioning, which determine the amount of financial security required to be held, will be based on the costs for the government to undertake decommissioning.

This would result in a higher cost estimate than one based on costs for the developer to undertake decommissioning and therefore offers a higher level of protection. Both the Australian and UK regimes require the security to cover the costs government would incur if it had to carry out decommissioning.

If you agree to the proposals, we will instruct PCO to reflect this approach in the Bill.

## Recommended action

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

- a **Note** both New Zealand's oil and gas and offshore renewable energy regimes are designed to limit the risk of decommissioning failures in a way that preserves the economic viability of existing developments and the investibility of new ones

*Noted*

- b **Agree** that the continuing obligation to decommission in the offshore renewable energy regime will take the form of a limited trailing liability imposed on former permit holders that continues until the Minister is satisfied the new permit holder's financial security has accrued to the total amount required, or the Minister agrees before this point to release former permit holders from the obligation

*Agree / Disagree*

- c **Agree** that the amount of financial security that must be put in place by a commercial permit holder (or any person obliged to maintain financial security relating to transmission infrastructure) must be based on the costs the government would incur if it carried out the decommissioning

*Agree / Disagree*

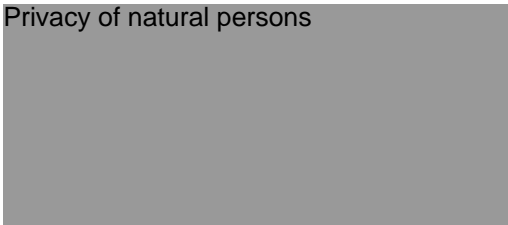
- d **Forward** this briefing to the Minister for Resources

*Agree / Disagree*

- e **Agree** that MBIE will proactively release this briefing once you have considered it

*Agree / Disagree*

Privacy of natural persons



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

Hon Simeon Brown  
**Minister for Energy**

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23 / 08 / 2024

## Background

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### Decommissioning obligations are designed to manage risk to the Crown

1. As noted in previous advice [2324-3395 refers], the purpose of the decommissioning provisions is to:
  - a. ensure that offshore renewable energy assets are removed at the end of their operational lives, and,
  - b. reduce the risk of significant decommissioning costs falling to the Crown<sup>1</sup>.
2. This aligns with the decommissioning obligations relating to petroleum exploration and mining under the Crown Minerals Act 1991 (CMA). In both regimes the decommissioning requirements are designed to limit the risk of decommissioning failures in a way that preserves the economic viability of existing developments, and the investibility of new developments. However, the regimes take slightly different approaches because of the different contexts in which the decommissioning requirements have been (or will be) introduced.

### Cabinet has agreed the high-level decommissioning requirements

3. On 10 June 2024, Cabinet confirmed the detailed design of the offshore renewable energy (ORE) regime agreed to by the Cabinet Business Committee (CBC-24-MIN-0041).
4. Cabinet agreed that:
  - a. Permit holders will be required to decommission.
  - b. Permit holders will be required to provide a decommissioning plan to the regulator and to the Environmental Protection Authority (via consequential amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012).
  - c. Cost estimates provided to the regulator must be based on the cost of fully removing infrastructure.
  - d. Permit holders must obtain and maintain one or more financial securities to enable the Crown to recover decommissioning costs in the event of default by the permit holder.
  - e. The form of financial security, and the amount to be secured, will be determined by the Minister based on the cost estimate and will be required to reach certain proportions of overall decommissioning cost at particular milestones, reflecting points of particular risk in the lifetime of a project.
  - f. If a commercial permit is transferred from one party to another:
    - i. the Minister's approval must be gained before the transfer occurs,
    - ii. the new permit holder must put in place one or more financial securities, of combined equal or greater value than the existing security/securities, and
    - iii. there will be a continuing obligation on the previous permit holder, either to decommission (i.e. trailing liability) or maintain some form of financial security, which the Minister will have discretion to maintain or remove on a case-by-case basis.

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<sup>1</sup> As with oil and gas, while the Crown is not technically required to pay for decommissioning, if a development is abandoned and creates health, safety and environmental risks, and there are significant costs to decommission, there may be an expectation that the Crown should step in.

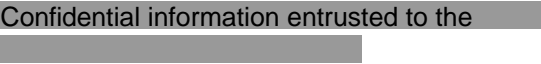
## **Cabinet delegated to you decisions on the details of continuing obligations following a permit transfer**

5. Cabinet delegated to you decisions on further details of the decommissioning obligations, including how a default trailing liability or requirement to maintain financial security following a permit transfer is implemented (recommendation 13.2.1), and alignment, where necessary, with any proposed changes to the decommissioning arrangements in the Crown Minerals regime (recommendation 13.2.2).
6. In developing the advice, we have contacted officials in Australia and the UK, and consulted with MBIE officials responsible for the Crown Minerals regime.
7. We will instruct Parliamentary Counsel Office (PCO) to reflect your decisions in the Offshore Renewable Energy Bill (ORE Bill).

## **Continuing obligations following a permit transfer**

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### **Continuing obligations following a permit transfer are designed to manage residual risks to the Crown**

8. As already agreed by Cabinet, there will be robust scrutiny of any application to transfer a commercial permit and a requirement for the new permit holder to put in place financial security at least equivalent to that already in place. The new permit holder will not necessarily have to provide the security in full at the point the permit is transferred and may be allowed to accrue the securities to the total amount required over time (like the original permit holder<sup>2</sup>). Once an approved portion of the new security is in place to the Minister's satisfaction, the previous security will be released. Confidential information entrusted to the 
9. However, there remains a level of residual risk that the need for Government to access the security arises before the financial security has built up to its total amount (e.g. if a permit holder becomes insolvent during the life of the infrastructure and no other acceptable permit applicant wants to take over the stranded assets). While this would be the case even if a permit is not transferred, a continuing obligation on a previous permit holder provides an opportunity to manage the risk to the Crown more comprehensively.

### **We propose a limited trailing liability for ORE permits, based on the UK regime**

10. Because New Zealand's regime will allow financial securities to build over time (as in the UK), we recommend aligning New Zealand's approach with that of the UK. In the UK regime, the Secretary of State retains the right to keep the original developer liable for decommissioning until the required securities have been fully accrued.
11. For New Zealand's ORE regime, we propose the obligation to decommission will continue to apply to the previous permit holder, as well as the new permit holder, until the latter has accrued an amount of financial security equal to 100 per cent of the cost to decommission, unless the Minister decides to release them from this obligation. The intention is the previous permit holder would only be liable if the new permit holder was unable to complete or fund decommissioning activities.
12. A limited trailing liability such as this mitigates the risk that comes with a transfer when less than 100 per cent of securities have accrued. Any further obligation beyond this (e.g. perpetual trailing liability) may deter investment in New Zealand offshore wind. We consider the other safeguards provide sufficient protection for the Crown, i.e. that the security must

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<sup>2</sup> Financial securities may be allowed to build over a period of time, to 100 per cent of the cost of decommissioning (which will be estimated at the outset and refined over time). The rationale for allowing gradual accrual is to balance the need to protect the Crown without significantly deterring investment.

cover 100 per cent of decommissioning costs and be provided in a form satisfactory to the Minister.

13. In practice, this proposal will mean that:
  - a. Once a new security is in place to the Minister's approval, the Minister would initiate the return of the previous permit holder's financial security. This will not be an automatic release. Rather the Minister will be required to make a decision that the new security is in place to his/her satisfaction before the previous security may be released.
  - b. Trailing liability will continue for the previous permit holder until released by the Minister once new financial securities have reached 100 per cent of the total amount required, unless the Minister releases the obligation earlier. This decision would be entirely at the Minister's discretion and would be informed by the risk posed by the transfer on a case-by case basis, taking into account factors such as the details of existing securities and the financial capability of the new permit holder.
14. Industry feedback during consultation strongly opposed having any trailing liability within the offshore renewable energy regime. However, the limited nature of the obligation reduces the burden for former permit holders, while still providing protection for the Crown.
15. We considered, but discounted, a continuing obligation to hold financial securities until the new permit holder obtains financial securities that match 100 per cent of decommissioning costs. This would be a significant ongoing cost to developers that would likely deter investment, and that there was not a strong rationale to create such a difference in the treatment of permits that had transferred from one holder to another, and those that had not.
16. As we previously advised, Australia does not have trailing liability, but requires financial security to be fully in place before construction begins [2324-3395 refers]. Limiting trailing liability only to the period when the new security is building up is more consistent with the Australian approach than perpetual liability.

*The CMA includes a different type of limited trailing liability*

17. Under the CMA, where there is discretion for the Minister for Resources to allow financial security of less than 100 per cent, there is trailing liability on permit holders after they transfer out of a permit. It is only intended to be used after other safeguards fail, including scrutiny of the new permit holder before the transfer of a permit, and existing financial securities. Trailing liability is limited as permit holders are liable only for decommissioning costs up to the value of assets in place at the time the Minister approved the transfer away from them. In May 2024, Cabinet agreed to amend the CMA to further limit trailing liability to the immediately prior permit holder [CAB-24-MIN-0181].
18. The proposed approach for offshore renewable energy does not limit trailing liability to the most recent permit holder. However, like the CMA it will limit trailing liability to the obligation to decommission the infrastructure in place at the point of transfer.
19. As noted in earlier advice, we also intend that ORE regulations will provide for only low-risk securities to be accepted, unlike for oil and gas under the CMA. This is a key difference between the regimes and one of the reasons why different approaches to decommissioning obligations have been taken.

*We consider the risks are adequately mitigated*

20. There remains a risk that, even with a legal obligation in place, it could be difficult in practice to recover any funds from former permit holders. This risk is inherent to trailing liability but needs to be seen in the context of the other safeguards in the decommissioning regime (such as the financial security requirements).



21. There also remains a risk that any amount of financial security required may be insufficient to cover the cost of decommissioning, i.e. if the decommissioning cost estimate does not reflect the actual costs incurred. This risk is mitigated by the requirement for the cost estimate to be refined over time, alongside future regulations which will set requirements for how to calculate costs. A change of permit holder also offers the opportunity to reassess cost estimates, further reducing risks.

## **Cost estimates for financial securities**

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### **We recommend financial securities are based on the cost to government of decommissioning**

22. We are also seeking a decision from you that the cost estimates for the financial securities will be based on costs government would incur to decommission, to inform drafting of the ORE Bill. This will cover securities required in relation to both commercial permits and transmission infrastructure.
23. As noted above, to reduce the risk of the Crown being required to fund decommissioning activities, it is important that the cost estimates for the level of financial security required accurately reflect the cost of decommissioning. A key choice is whether they are based on the developer undertaking decommissioning, or on the cost if the government were to undertake the work.
24. It is generally accepted that developers will be able to do the work at less cost. This is because developers may be able to access preferential pricing or utilise their own equipment and people. During consultation, developers clearly preferred cost estimates were based on costs to the developer to decommission.
25. We propose the cost estimates are based on the costs to government to decommission. This will result in a higher cost estimate and therefore higher amounts of financial securities being held. This will provide greater protection to the Crown if the government is required to step in and decommission any infrastructure. It also provides a buffer in case the cost estimates do not reflect actual costs.
26. If any financial security is left over after decommissioning has been carried out, it will be repaid to the permit holder and/or the person maintaining security for the transmission infrastructure. This will act as an incentive for them to carry out decommissioning themselves. Both Australia and the UK require the security to cover the costs government would incur if it had to carry out the decommissioning.
27. Details of how the cost estimates will be calculated will be set in regulations. During this process we intend to draw on the UK guidelines, and on the Australian guidelines once they are finalised. Australia has recently undertaken consultation on financial security regulations.

### **Next steps**

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28. As directed by you, MBIE is working closely with PCO to provide you with a draft Offshore Renewable Energy Bill by early November. Subject to your agreement, we will instruct PCO to reflect this approach in the ORE Bill and will proactively release this briefing on the MBIE website.