



Department for the
Economy
www.economy-ni.gov.uk

Consultation on Offshore Renewable Energy Installation (OREI) Policy Options for Northern Ireland



December 2023

1. Contents

1.	Purpose of this Consultation	3
2.	Introduction	4
3.	Offshore Renewable Energy in Northern Ireland	5
4.	Developing Offshore Renewable Energy Projects in NI	7
5.	Offshore Renewable Energy Installations Policy Options	8
	5.1 Decommissioning Regime	8
	5.2 Safety Zones	11
	5.3 Rights of Navigation	13
6.	Impact of Implementation of Policy Options	15
7.	Consultation Questions	16

1. Purpose of this Consultation

The purpose of this consultation on Offshore Renewable Energy Installation (OREI) Policy Options for Northern Ireland (NI) is to enable stakeholders to provide input into offshore renewable energy policy development.

We encourage stakeholders who will be impacted by offshore renewable energy development and the wider energy sector to provide comments on the policy options set out in this consultation. This will provide the Department for the Economy (DfE) with valuable insight, which will be analysed and considered as policy development progresses.

How to respond

Responses to this consultation can be submitted online at:

[OREI consultation - Citizen Space website](#)

The online consultation uses the Citizen Space platform, which has been specially designed to be as user-friendly and welcoming as possible for those who wish to complete the consultation. It also allows DfE to rapidly collate results. For this reason, we would encourage anyone who is interested in responding to this consultation to use Citizen Space as the method of their response.

If this is not possible, you can respond to this consultation via email to: RenewableElectricity@economy-ni.gov.uk or you can respond in writing to the DfE Renewable Electricity Team address:

OREI Consultation
DfE Renewable Electricity Team
6th Floor, Adelaide House
Adelaide Street
Belfast
BT2 8FD

When responding via email or in writing, please state whether you are responding as an individual or representing the views of an organisation (please state the name of the organisation). Also, quote the following reference: "OREI Consultation".

Responses must be received by 23:59 on 8 March 2024.

3. Offshore Renewable Energy in Northern Ireland

Offshore Renewable Energy Action Plan

The Energy Strategy Action Plan 2022⁴ (published 16 January 2022) included action 14, “develop an action plan to deliver 1GW of offshore wind from 2030”. To deliver on this action, DfE established the Offshore Renewable Energy Action Plan (OREAP) Steering Group which brought together the following key delivery partners to develop the OREAP:

- Department of Agriculture, Environment and Rural Affairs (DAERA)
- Department for Infrastructure (DfI)
- Utility Regulator Northern Ireland (UR)
- The Crown Estate (TCE)
- System Operator for Northern Ireland (SONI)
- Northern Ireland Electricity Networks (NIEN)
- RenewableNI

Over the course of 2022, DfE led the development of the Draft OREAP. The OREAP Steering Group oversee the development and delivery of the OREAP, identifying barriers to offshore renewable energy deployment in NI and seeking solutions to overcoming them, through a joined-up and coordinated approach. The Steering Group will also monitor the actions within the OREAP to ensure they are being delivered in an environmentally, socially, and economically sustainable way.

Offshore Renewable Energy Forum

The Offshore Renewable Energy Forum (OREF) was established, including representatives from coastal communities, the fishing industry, local government, maritime safety, environmental protection, maritime and marine economic development, ports and harbours, and marine heritage. The OREF ensures that the views of everyone that lives near, makes their living from, or otherwise uses the marine environment around NI are considered throughout the delivery of the plan.

Draft OREAP Public Consultation

A public consultation on the Draft OREAP was launched on 21 December 2022 for a period of 12 weeks and closed on the 16 March 2023. A Departmental response to the public consultation and an adopted OREAP will be published as soon as possible.

The OREAP is intended to be a ‘live’ document that is monitored and reviewed through annual reports. Therefore, the OREAP has the flexibility to be updated at regular intervals based on the progress of implementation and as new evidence becomes available.

The Draft OREAP contains 22 actions which have been identified by the OREAP Steering Group to progress in order to facilitate the delivery of offshore renewable energy in NI.

⁴ [Energy Strategy - Path to Net Zero Energy - Action Plan | Department for the Economy \(economy-ni.gov.uk\)](#)

Offshore Renewable Energy Installation Policy Options for Northern Ireland Public Consultation

The requirement for this public consultation was set out in Action 4 of the Draft OREAP to “consult on policy options for a decommissioning regime for offshore renewable energy installations in NI”. This public consultation will consider potential legislative changes needed and put forward policy options to establish provisions for OREI decommissioning, safety zones and rights of navigation.

4. Developing Offshore Renewable Energy Projects in NI

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

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

However, there are other areas which require attention in order to facilitate the sustainable deployment of offshore renewable energy projects in NI waters. The Energy Act 2004 (as amended in 2008)⁵ introduced several offshore energy renewable generating provisions which apply to Great Britain (GB) territorial waters. Whilst these provisions do extend to NI, NI territorial waters were not included in the definition of geographical coverage and therefore these provisions (and the additional provisions introduced in the Energy Act 2008) have no practical effect.

Establishing an OREI policy regime is therefore an essential part of the overall strategic framework for the development of offshore renewable energy projects. As such, it is proposed to take new powers in relation to the following areas:

- Development and implementation of an OREI 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.

These areas have been consulted on previously through a Department for Enterprise, Trade and Investment (now DfE) Offshore Renewable Energy Bill consultation (2013)⁶. A decade has however passed since this consultation was undertaken it is therefore necessary to reassess the policy options for NI and invite fresh input from stakeholders through a new public consultation on OREI policy options.

This also applies to the related UR consultation on Connection Arrangements for Offshore Generation (2013)⁷. In 2024, further public consultation on offshore renewable generation connection arrangements will be undertaken.

In this consultation each area has been introduced alongside the relevant policy options, including the proposed policy option the Department is minded to pursue.

⁵ [Energy Act 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁶ [Offshore Renewable Energy Bill | Department for the Economy \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk)

⁷ [Consultation on connection arrangements for offshore renewable generation | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk)

5. Offshore Renewable Energy Installations Policy Options

5.1 Decommissioning Regime

Decommissioning is the last phase in a project's lifecycle and can be considered as the opposite of the installation phase. The principle "the polluter pays" applies and ensures that the site is left in a similar condition as it was before the deployment of the project.

In the Draft OREAP, which sets out a pathway to deliver 1GW of offshore wind in NI waters from 2030, it is acknowledged that an OREI decommissioning regime needs to be developed for NI.

Sections 105 to 114 of the Energy Act 2004 (as amended by the Energy Act 2008⁸ and the Scotland Act 2016⁹) contain the statutory decommissioning scheme for offshore wind and marine energy installations and their related electric lines in England/Wales and Scotland respectively. Under the terms of these Acts, the Secretary of State for Energy Security and Net Zero and Scottish Ministers respectively may require a person who is responsible for an OREI to prepare a costed decommissioning programme and ensure that it is enacted.

The Secretary of State/Scottish Ministers can approve, modify, or reject a programme, including any financial security provisions which the responsible person proposes to provide. The Secretary of State is required to review the programme from time to time.

The Department for Energy Security and Net Zero (DESNZ) and TCE, which issues seabed leases for OREIs, work together to avoid duplicating decommissioning requirements imposed on developers/owners and that developers/owners covered by the statutory decommissioning scheme will only need to prepare one decommissioning programme, which is submitted to DESNZ. The Scottish Government has similar but separate arrangements in place with the Crown Estate Scotland (CES).

Decommissioner of Last Resort

It is recognised that there is a risk of costs falling to the taxpayer if a developer/owner fails to organise decommissioning. In England and Wales, The Secretary of State for Energy is the 'decommissioner of last resort' and will (where it is absolutely necessary) step in to meet any outstanding costs of decommissioning OREIs.

This does not automatically mean that the Secretary of State will be the first port of call should the owner fail to decommission. Taxpayer intervention will be in exceptional cases only and DESNZ will always explore where an associated corporate body such as a parent company, the landlord or administrator (or others) may potentially be in line to decommission before the risk passes to government and the taxpayer.

⁸ [Energy Act 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2008/31/contents)

⁹ [Scotland Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2016/12/contents) - Relates insofar as the generating sites is to be or is wholly in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas.

Scottish Ministers have taken on a similar role in relation to OREIs in Scottish Waters or the Scottish part of the UK Exclusive Economic Zone (REZ)¹⁰. In the case of NI, should a scheme that mirrors GB provisions be taken forward, it may result in DfE taking on the role of decommissioner of last resort.

Options for establishing a decommissioning regime for OREIs in NI

Option 1 – GB provisions for decommissioning mirrored for NI

- a) Take 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 (a key feature of the DESNZ regime), which is tried and tested and consistent with the GB approach.

Option 2 – Consider other regulatory options

- b) 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 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 place.

Option 3 – Do nothing

- c) 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.

Preferred option: Option 1

The Department is now seeking views on the preferred option that policy is adopted to introduce a standalone decommissioning regime for NI waters based on the decommissioning regime which has already been established in GB. The purpose of this is so that any framework in NI will as far as possible and practicable mirror that already in place in GB waters to ensure a consistent UK-wide approach to decommissioning OREIs.

¹⁰ The Scottish Government will in cases where developers fail to meet their decommissioning obligations step in to meet the costs of decommissioning through the use of taxpayer funds. UK REZ is an area of sea outside the UK territorial sea over which the UK claims exclusive rights for production of energy from water and wind under section 84 of the Energy Act 2004. The boundaries of the REZ have been redefined so that they are largely consistent with the Exclusive Economic Zone (EEZ).

Question 1

Do you agree that NI should introduce a standalone decommissioning regime based on the decommissioning regime which has already been established in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 2

Are there any other matters in relation to OREI decommissioning that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

5.2 Safety Zones

A safety zone is a designated area of water around or adjacent to an OREI, within which certain or all classes of vessels are excluded, and activities can be regulated.

In the UK, the Energy Act 2004 sets out the safety zone scheme which includes the introduction of discretionary power to the Secretary of State, Scottish or Welsh Ministers to declare such a zone(s) to protect installations and mariners.

The safety zone scheme, as set out in the Energy Act 2004 and the Electricity (Offshore Generating Stations) (Safety Zones) (Applications Procedures and Control of Access) Regulations 2007 (SI No 2007/1948)¹¹, applies to territorial waters in or adjacent to England, Scotland and Wales (between the mean low water mark and the seaward limits of the territorial sea, thereby including internal coastal waters and territorial waters), and to waters in the UK Exclusive Economic Zone (EEZ)¹² including that part adjacent to NI territorial waters. The scheme does not apply to the territorial or internal coastal waters of NI.

Schedule 16 of the Act sets out the basic requirements for applying for a safety zone to be placed around or adjacent to an OREI. Sections 95-98 of the Act address prohibition of activities within safety zones, creation of offences in relation to safety zones and extension of criminal responsibility beyond the Master of the vessel.

There is a need for the Department to seek discretionary power to issue a notice declaring one or more safety zones around OREI's located within territorial waters. This would entail taking powers so that the Department would have the flexibility to declare a safety zone as appropriate for the main stages of the life of an OREI – the construction, extension, operation, and decommissioning phases.

Sections 95-98 of the Energy Act 2004 provide a solid foundation for establishing discretionary powers to establish safety zones around renewable energy installations. It is therefore proposed that the GB provisions in relation to safety zones should be mirrored for NI.

We understand through discussions with stakeholders across sectors (UK government, NI Executive departments, relevant public bodies, developers, energy sector) that consistency with the current GB approach would be the most favourable to integrate with the ways in which they operate. For example, guidance issued by the MCA already applies on a UK basis (including NI) and therefore, consistency with the GB approach would make the process more favourable for public bodies and industry.

11 [The Electricity \(Offshore Generating Stations\) \(Safety Zones\) \(Application Procedures and Control of Access\) Regulations 2007 \(legislation.gov.uk\)](#)

12 [The Exclusive Economic Zone Order 2013 \(legislation.gov.uk\)](#)

Options for establishing safety zones around OREIs in NI

Option 1 – GB provisions for safety zones mirrored for NI

- a) To mirror the provisions as set out in the Energy Act 2004 for NI waters, with consideration for NI revisions or consequential amendments, the Department would enable the establishment of provisions for safety zones around OREIs which is tried and tested, and consistent with the GB approach.

Option 2 – Consider other regulatory options

- 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 NI Marine Area, 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.

Option 3 – Do nothing

- c) 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.

Preferred option: Option 1

The Department is now seeking views on the preferred option that policy is adopted to mirror the GB provisions within the Energy Act 2004 for NI waters, with NI revisions or consequential amendments as appropriate. Alignment with the GB approach is favourable as current guidance in relation to maritime safety is applicable on a UK wide basis, the current scheme in GB is tried and tested and NI's alignment with this will facilitate a coherent UK-wide approach to safety zones around OREIs via the MCA, the UK executive agency whose purpose is to prevent the loss of life on the coast and at sea.

Question 3

Do you agree that NI should adopt the approach relating to safety zones around OREIs that operates in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 4

Are there any other matters in relation to OREI safety zones that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

5.3 Rights of Navigation

Section 36 of the Electricity Act 1989 provides powers to the appropriate authority to consent to the construction, extension, or operation of a generating station. Sections 99-100 of the Energy Act 2004 expands on these powers by adding legislation to the Electricity Act 1989 (sections 36A and 36B) to deal specifically with rights of navigation.

Section 36A provides the appropriate authority with the power to make a declaration that the rights of navigation are extinguished, suspended or exercisable under certain conditions around the site of a renewable energy installation located in GB territorial waters. This is not an automatic right. The applicant needs to request such a declaration when applying for the consent.

Section 36B requires the appropriate authority to refuse to grant a section 36 consent to an OREI where a generating station is likely to cause interference with the use of recognised sea lanes essential to international navigation. The cumulative impact of generating stations in the area and the impact of safety zones must also be considered.

NI is not covered by The Electricity Act 1989. Instead, Article 39 of The Electricity (Northern Ireland) Order 1992 provides the Department with power to grant consent to the construction of generating stations. However, there is currently no provision in the legislation for DfE to deal specifically with rights of navigation for OREIs.

As set out in the Northern Ireland Act 1998¹³ navigation is a reserved matter. Should the NI Executive seek to take powers via legislation regarding the rights of navigation being extinguished, suspended or exercisable under certain conditions around the site of an OREI located in NI territorial waters, consent from the relevant Secretary of State must first be received. Without this consent being received, this approach will not be taken forward.

13 [Northern Ireland Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Options for addressing navigation rights around OREIs in NI

Option 1 – GB provisions for navigation rights mirrored for NI

- 1) To seek consent from the Secretary of the State to 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 would address the legislative gap that exists surrounding rights of navigation around OREIs in NI territorial waters with an approach consistent with GB.

Option 2 – Consider other regulatory options

- 2) As navigation is defined as a reserved matter in the Northern Ireland Act 1998, there are currently no other regulatory options for NI in this area.

Option 3 – Do nothing

- 3) 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 may have a negative impact on the future of offshore wind development and the safety of installations and mariners.

Preferred option: Option 1

The Department is now seeking views on the preferred option to seek consent from the relevant Secretary of State and to mirror the GB provisions within the Energy Act 2004 for NI waters, with NI revisions or consequential amendments as appropriate. Alignment with the GB approach is favourable as current guidance in relation to navigation rights is applicable on a UK wide basis, the current scheme in GB is tried and tested and NI's alignment with this will facilitate a coherent UK-wide approach to OREI navigation matters.

Question 5

Do you agree that NI should (with the Secretary of State's consent) adopt the approach relating to navigation and public rights around OREIs that operates in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 6

Are there any other matters in relation to OREI and rights of navigation that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

6. Impact of Implementation of Policy Options

Equality screening, Regulatory and Rural Impact Assessments have been conducted for the policy proposals. Currently we do not anticipate the policy to result in any adverse impacts for any of the Section 75 categories or those who live in rural areas. If any potential issues are raised as part of this consultation process, we will review our impact assessments at that stage and amend if required. A draft Initial Regulatory Impact Assessment has been prepared and published alongside this public consultation for review and commentary. Our Initial Regulatory Impact Assessment will be reviewed at legislation drafting stage when we will assess in more detail the regulatory impact of the policy proposal with the aid of further quantitative analysis and insight, which will be available by that time.

Question 7

Please provide any comments on the Initial Regulatory Impact Assessment, which can be found on the Department's website. Please provide evidence to support your answer.

7. Consultation Questions

Question 1

Do you agree that NI should introduce a standalone decommissioning regime based on the decommissioning regime which has already been established in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 2

Are there any other matters in relation to OREI decommissioning that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

Question 3

Do you agree that NI should adopt the approach relating to safety zones around OREIs that operates in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 4

Are there any other matters in relation to OREI safety zones that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

Question 5

Do you agree that NI should (with the Secretary of State's consent) adopt the approach relating to navigation and public rights around OREIs that operates in GB? Please outline the reasons why you agree or disagree and provide evidence to support your answer.

Question 6

Are there any other matters in relation to OREI and rights of navigation that may be specific to NI and should be considered as a necessary deviation from the legislative provisions within the Energy Act 2004 (as amended 2008)? Please provide evidence to support your answer.

Question 7

Please provide any comments on the Initial Regulatory Impact Assessment, which can be found on the the Department's website. Please provide evidence to support your answer.