

EXECUTIVE COUNCIL

PUBLIC

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Report Author:	Attorney General
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List of Documents:	Appendix A – Part V of the Offshore Minerals Ordinance 1994 Appendix B – Part IV of the Petroleum Act 1998 (UK) Appendix C – section 114, Taxes Ordinance 1997

1. Recommendations

Honourable Members are recommended:

- (a) To approve the proposed amendments to the Offshore Minerals Ordinance 1994 as described in §5.5 to 5.7 of this report, and authorise the Attorney General to work with the Director of Mineral Resources to produce a Bill for consideration at the earliest opportunity;
- (b) To note and approve in principle the development of a model Decommissioning Security Deed, adapted to the circumstances of the Falkland Islands, as described in outline in §5.11 to 5.13;

- (c) To note and approve in principle the development of a model Trust Deed, adapted to the circumstances of the Falkland Islands, as described in outline in §5.14 of this report,;
- (d) To approve the proposed approach to decommissioning described in this report and authorise officers to take action to ensure that adequate provision is made to meet potential decommissioning expenditure to comprise:
 - a. “Alternative provision” in place prior to commencement of operations;
 - b. A cash trust fund, progressively taking the place of the alternative provision, to build up, starting in the quarter after “first oil”, to meet the full cost of “end of life” decommissioning.

2. Additional Budgetary Implications

2.1 None.

3. Executive Summary

3.1 This report, builds on the work proposed following consideration of report 175/24, and the recommendations approved at that time. It describes the current law in relation to the abandonment and/or decommissioning of offshore installations and associated infrastructure. It describes proposals for short-term improvement of those provisions, in order to manage certain risks around the completion of necessary activities and provision for funding those activities. Further proposals to make more fundamental change to the law in this area will be considered separately and will be incorporated into planned updates to the suite of legislation regulating the offshore minerals industry.

4. Background

- 4.1 An inevitable consequence of any offshore minerals project proceeding to production is the subsequent requirement to take action at the cessation of production, by abandonment or decommissioning of the project infrastructure. If a project proceeds as planned, the abandonment and decommissioning activities will not take place for up to 35 years after the commencement of the relevant licence entering the exploitation phase. However, there are circumstances in which there may be a need to abandon/decommission projects early, for a range of reasons, as described below.
- 4.2 Removal of installations may be desirable in the interests of safety of navigation, environmental protection and fisheries. On the other hand, the removal operations themselves may cause damage to the environment and fish stocks and involve serious risk of injury to the personnel engaged in removing structures, especially if the operations are carried out at great water depths.
- 4.3 In the UK Continental Shelf it is estimated that perhaps up to 50% of the total cost of decommissioning falls on the public purse through recovery by operators of taxes paid, given available tax relief. Hence there is considerable attention paid to reducing the costs of decommissioning to the lowest possible level. The UK Government seeks to achieve effective and balanced decommissioning solutions which are consistent with international obligations and which have proper regard for safety, the environment and

other legitimate uses of the sea, and which include economic and social considerations as well as technical feasibility.

- 4.4 Whilst the international obligations are not precisely the same, many of the same considerations apply in the Falkland Islands. The aim is to minimise any potential impact on the public purse, whilst balancing all other considerations.
- 4.5 There are separate statutory requirements in relation to the approval of an abandonment programme. In the Falkland Islands, as in the UK, there are no mandatory requirements to remove disused offshore installations. Authorities do, however, have a number of powers enabling them to require removal of installations after they have been abandoned for production purposes.
- 4.6 Although such activities may not take place for decades, it is important to recognise that the activities will likely take place at a time when revenues have declined or have not yet materialised. Given the scale of expenditure potentially required, it is important, for the management of risk, that we plan for this from the outset, and take appropriate steps to ensure that sufficient resources will be available to safely complete the necessary action.

Current FI Offshore Minerals Law in relation to Abandonment and Decommissioning

- 4.7 Current Falkland Islands law is contained principally in Part V – Abandonment of Offshore Installations, of the Offshore Minerals Ordinance 1994. Part V is set out in full in Appendix A to this report, but the main provisions are summarised in the following paragraphs. These provisions are based on what was, at the time it was originally put in place, contained in the UK Petroleum Act 1987.
- 4.8 Section 48 provides that the government may give notice to certain persons to submit for consideration and approval a programme setting out the measures those persons propose to take in connection with the abandonment of an offshore installation or submarine pipeline. This will be referred to as an “abandonment programme”.
- 4.9 This report will concentrate on references to offshore installations, but the provisions apply equally to pipelines (as defined in the legislation).
- 4.10 A notice under section 48 may either specify a date by which an abandonment programme is to be submitted or may provide that it is to be submitted on or before such date as the government may direct.
- 4.11 There may be requirements for consultation to be carried out before the abandonment programme is submitted. The government may charge a fee to cover the government’s costs of considering and approving the programme.
- 4.12 An abandonment programme:
 - a) shall contain an estimate of the cost of the measures proposed in it;
 - b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;

- c) if it proposes that an installation or pipe-line be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.
- 4.13 Section 49 sets out the persons on whom a notice under section 48 may be served, and section 50 contains further provisions about this.
- 4.14 Notice may be served on the following:
- a) The person who has the management of the offshore installation or of its main structure;
 - b) A person who is a concession owner in relation to the installation (it is expected that this will relate to each of the licensees);
 - c) A person outside a) and b) who is party to a joint operating agreement or similar agreement.
- 4.15 In addition, notice may be served on the following, but only if the government is not satisfied that adequate arrangements (including financial arrangements) have been made by the persons in paragraphs a) to c) above:
- d) A person outside a) to c) who owns any interest in the installation otherwise than as security for a loan;
 - e) A company who is outside a) to d) but is associated with a company within any of those paragraphs.
- 4.16 A notice is not to be given under section 48 unless the government has first given the potential recipient the opportunity to make representations about whether the notice should be given.
- 4.17 Under section 51, the government may either approve or reject an abandonment programme. If approved, it may be approved with or without modifications, and either subject to conditions or unconditionally. Prior to making modifications or imposing conditions, the persons who submitted the programme must be given the opportunity to make written representations about the proposed modifications or conditions.
- 4.18 A decision on a programme must be taken without unreasonable delay.
- 4.19 If a programme is not submitted when required, or is rejected, the government may itself prepare a programme and where that is done the programme prepared by the government is treated as if it had been submitted and approved.
- 4.20 Where a programme has been approved, both the government and those who submitted it may propose alterations to the programme or to any conditions. Again there are opportunities for written representations to be made and considered before a decision is made on the proposed alterations (section 53).
- 4.21 The government may, at the request of one or more of the persons who submitted the programme, withdraw its approval (section 54).

- 4.22 Section 55 imposes a duty on persons who submitted a programme to secure that it be carried out, in compliance with any conditions.
- 4.23 It is an offence under section 56 if a person fails to comply with a notice requiring action in the face of failure to carry out the programme or comply with any conditions.
- 4.24 Section 57 is a key provision in the context of this report. At any point after serving a section 48 notice, the recipients of the notice may be required to provide information about their financial affairs. It is an offence to fail to provide information. Under subsection (4), if the government is not satisfied that a person will be capable of discharging their duty to implement an abandonment programme, then it may by written notice require the person to take such action as may be specified in the notice within such time as may be specified. There is a requirement to give the person the opportunity to make written representations prior to serving notice under section 57(4). Again, non-compliance is an offence.
- 4.25 The validity of certain acts of the government under Part V, including service of a section 48 notice, and notice requiring action under section 57(4), may be challenged via the Supreme Court. A challenge can be made on the grounds that either the act was not within the powers of the government, or that relevant procedural requirements had not been complied with.
- 4.26 A number of production licences are in existence. Depending on the date of grant of each licence the licence will incorporate the model clauses set out in Schedule 2 to the Offshore Petroleum (Licensing) Regulations 1995 or Offshore Petroleum (Licensing) Regulations 2000. Model clause 17(2) in both sets of regulations also provides that “*The Licensee shall not abandon any well without the consent in writing of the Governor.*” Consent can be given subject to conditions and there is an obligation to comply with any conditions imposed.
- 4.27 As no projects have yet entered the exploitation phase of the production licences, the provisions relating to abandonment and decommissioning have not yet been tested in practice, and FIG has not developed and approved guidance on how the current law would be applied in practice.

Current UK Law and arrangements

- 4.28 The current UK law in this area is set out in Part IV of the Petroleum Act 1998 (as amended). These provisions are set out in Appendix B. Some key differences between the FI and UK legislation are described in the following paragraphs.
- 4.29 Persons on whom a notice may be served under section 29 of the 1998 Act, and who may be required to submit an abandonment programme, are described in section 30 of the Act. This provision is materially different to the current FI position in some respects and includes the following:
- a) The person having the management of the installation or of its main structure;
 - b) A person who has the right to exploit mineral resources in the area;

- c) A person who had the right to exploit mineral resources, but who has transferred the right to another person, and has not obtained a consent required under the licence in relation to the transfer;
- d) A person outside a) or b), who is party to a joint operating agreement or similar, relating to rights by virtue of which a person is within b);
- e) A person outside a) to d) who owns any interest in the installation otherwise than as security for a loan;
- f) A body corporate which is outside a) to e) but is associated with a body corporate within any of those paragraphs.

4.30 Section 31 makes supplementary provision in relation to section 29 notices. There are restrictions on service of notices on certain persons in certain circumstances, for example if they have never been entitled to derive financial benefit from exploitation of mineral resources. As with the FI provisions, notice cannot be given to anyone outside paragraphs a), b) or d), if the Secretary of State continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraphs a), b) or d) to ensure that a satisfactory abandonment programme will be carried out.

4.31 Section 38 deals with financial resources.

4.32 There are powers in section 38(1) to require persons on whom a section 29 notice may be served to provide information on the person's financial affairs, including the provision of documents relating to those affairs. The purposes for which information may be sought are:

- a) To determine whether to give a section 29 notice to a person in respect of an installation;
- b) To determine whether to make a proposal under section 34 to impose a duty on a person under section 36 to secure that an abandonment programme is carried out;
- c) Where a person has made a proposal under section 34, to determine whether to impose the duty under section 36.

4.33 Where a section 29 notice has been given, or a person has a duty under section 36 to secure that an abandonment programme be carried out, section 38(2) gives the power to require information, including an estimate of the costs of abandonment or any other financial or other information, in order that the Secretary of State may be satisfied that a person will be capable of carrying out any abandonment programme which has been submitted (whether or not it has been approved).

4.34 Section 34(4) gives the Secretary of State the power, after consulting the Treasury, to give written notice to a person who has been given a section 29 notice or who has a duty to secure that an abandonment programme be carried out, requiring the person to take such action as may be specified in the notice within such time as may be specified. Notice may only be given under section 34(4) if the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been or is likely to be imposed

on the person under section 36 to secure that an abandonment programme be carried out. Prior to giving notice under section 34(4), a person is to be given the opportunity to make written representations as to whether notice should be given.

- 4.35 Section 38A seeks to provide that where any security has been provided by a person by way or a trust or other arrangements for the performance of obligations under an approved abandonment programme, no regard is to be had to any enactment or rule of law (including in relation to insolvency), which would prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement.
- 4.36 Section 38B gives the power to the Secretary of State to require a security provider to give information about the protected assets.
- 4.37 It is common practice in relation to the UK continental shelf for a section 29 notice to be served at the start of production of a field requiring the recipient(s) to submit a programme on a date to be directed at a later date. It is now common practice in the UK to serve section 29 notices on parent companies of subsidiaries which are considered unable, by themselves, to meet their abandonment liabilities. There is a power to withdraw a notice, which has been used where one licensee has transferred the whole of its interests to a third party. However, the department has sometimes refused to withdraw a notice where it is concerned that there will remain a licensee or licensees whose financial strength may be in doubt, unless the parties enter into a financial security for abandonment. This in effect places a burden on the transferor to monitor the transferee's performance, even when they will have no other involvement with the operation of the field.
- 4.38 In practice in the UK there will be detailed discussion and development of an abandonment programme (between companies and officials) before it is submitted to the Secretary of State for approval.
- 4.39 In the UK, there are "Decommissioning Security Agreements" (DSAs) in use. The current standard agreements in use are a modern form of an agreement that has been in existence since the early 1980s. Use of such agreements arose because the field which is being decommissioned will, by definition, no longer be producing an income from which the costs of decommissioning can be paid and the owners need to be satisfied that a means can be found for paying the costs if one of the owners is unable to pay. Moreover, although each company which owns a producing field is obliged under accounting rules to make provision against its future decommissioning obligations, there is no general obligation to set aside an actual fund for such purposes. A DSA can, however, be a requirement imposed by the Secretary of State, and the Secretary of State may be a party, particularly where the government is requiring the DSA. The main parties are the current licensees, but there is provision for former owners, who retain potential liabilities, to be "second tier parties" to the DSA, and even for third parties who may have future liability to become parties, though often with limited rights.
- 4.40 Under the model DSA, the operator of the field is required to prepare a decommissioning plan, which includes physical activities involved, the costs of decommissioning the facilities and the anticipated remaining value of the field (i.e. its income stream), and to carry out an annual review of the plan. This plan will have to be in line with the programme (if any) agreed with the Secretary of State. A risk factor (usually between 125% and 150%) is then applied to the value and when the risked value is equal to the

costs of decommissioning (after applying appropriate discount factors), the licensees are required to provide their proportionate shares of security against the costs of decommissioning. The security is again a discounted value which is expected to build up to the full cost of decommissioning by the time actual payment is required.

- 4.41 One of the more difficult factors to put into the calculation regarding the amount of security is how to allow for the effect of the future contribution to the costs of decommissioning expected to be made in the form of repayments of tax.
- 4.42 The model DSA provides for a number of ways of providing for decommissioning expenditure. The basic provision is payment of cash into a cash fund but there is scope for licensees to offer specific forms of alternative provision. The amount of provision will change annually and either the cash fund will be topped up or the alternative provision will be renewed on a similar annual basis. Failure to provide or renew alternative provision is a form of default. The provision is given in favour of the “Security Holder”, acting on behalf of itself and the other parties, other than the provider of the security. The Security Holder will be the operator, or, where the security provider is the operator, usually the holder of the next largest percentage interest. The cash fund or security may be called on if the provider of the security defaults in the payment of decommissioning costs or in the provision of security.
- 4.43 An important part of the DSA is the creation of trusts by each of the licensees, with an independent trustee who will hold and administer the funds and the alternative securities. The terms of the trust deeds, which are prescribed under the DSA, allow the trustee to release funds only in specific circumstances. The creation and administration of such trusts involves a cost burden for the licensees.
- 4.44 It is widely agreed within the industry that the safest form of security is the cash trust fund, which commentary indicates is in fact rare, if not unknown. There are two main disadvantages of the cash trust fund: first, the funds in the trust must under trust rules be invested conservatively, with the result that the sums to be placed in the fund would be larger than might otherwise be necessary and the returns on those funds would be less than oil companies could earn by investing in their own activities. Secondly, there is currently no tax relief available when any cash amounts are placed in trust funds, presumably because HM Treasury fears that such relief would be open to abuse. In practice, therefore, companies focus on alternative forms of provision.
- 4.45 If a DSA is established to which the Secretary of State is a party, the only alternative form of provision which is acceptable to the UK Government is a bank letter of credit or equivalent bond in favour of the licensees other than the licensee providing the letter of credit or bond. The form of letter of credit or bond obliges the bank to make payment upon demand. The bank will give a letter of credit or bond only for a limited period, which will usually be a year, after which the letter of credit or bond has to be renewed.
- 4.46 The bank’s fee for providing the letter of credit or bond is allowable against income for tax purposes. The bank must be a recognised OECD bank and have a minimum credit rating, usually A- with Standard & Poors, or equivalent, although current difficulties with ratings have led to these requirements being relaxed in some cases. In order to be able to provide a letter of credit or bond a licensee must provide collateral to the bank. The collateral might be provided under a credit agreement or in the form of a cash deposit in a bank account which is at least more flexible than a trust fund.

- 4.47 A form of provision which is preferred by larger companies, but not acceptable to the UK Government, is a parent company guarantee; the UK Government's objections centre on three factors: the possibility of a dispute regarding the underlying liability; the potential difficulty of enforcing the guarantee in a foreign jurisdiction; and the likelihood that if the UK licensee defaults other companies in the group will also have financial difficulties. The advantage to the company providing a parent company guarantee is that there is no cost involved other than the necessary provisions in the accounts of the parent and subsidiary. Accordingly, those companies whose parents have a satisfactory credit rating (similar to those required for banks) usually try to persuade the other licensees to accept parent company guarantees under DSAs to which the Secretary of State is not a party. The drawbacks for other licensees are the same as those noted by the UK Government but the financial leverage of the larger companies is usually sufficient to gain the acceptance of a parent company guarantee. However, in its most recent version of the Guidance Notes the UK Government has stated that it would not require security from a company which has sufficient financial capacity in its own right; to qualify a company would need to have sufficient assets to easily afford its liabilities on this field and its wider UKCS portfolio, in each case amounting to no more than 30% of its net worth.
- 4.48 Noting the UK Government's requirement in certain cases for decommissioning security to be given or a DSA to be required when producing assets are transferred. If there are financially sound owners remaining, such a requirement is unlikely but the remaining owners themselves may require some form of financial security. The UK Government was concerned over whether some UKCS operators may fail to pay decommissioning costs.
- 4.49 The purpose of establishing a trust fund is to protect the funds from creditors of the relevant licensee. To test the effectiveness of the trust fund the working group on the DSA obtained a counsel's opinion. In summary, counsel advised that, because of insolvency law considerations:
- a) there should be two trust funds for each owner, one for cash, one for other securities, such as a letter of credit; since the other securities are in the name of third parties and for the benefit of third parties, they should be free from attack;
 - b) the trust fund should be held by a third party trustee, not the operator;
 - c) the DSA should be entered into as early as possible (preferably at the time of execution of the JOA); and
 - d) the trust funds should be set up as early as possible after the execution of the DSA .
- 4.50 The effect of these recommendations would be a significant cost burden on the owners. Accordingly, the Energy Act 2008 contains a provision to disapply the provisions of the Insolvency Act 1986 and any other relevant legislation if the effect would be to defeat the objects of the trust. The effect of this provision could therefore depend on the court's interpretation of the objects of the trust but would seem to be effective to avoid the effects of insolvency law referred to above. Accordingly the latest version of the DSA provides

for only one trust fund for each company which could be put in place only when the security provisions become effective.

- 4.51 When the licensees decide that the field can no longer continue to produce oil at a profit, they will apply for permission to cease production under the licence. It will be necessary to satisfy the OGA firstly, that there is no possibility of continuing economic production and secondly, that there is no alternative use of the facilities before the DBEIS and OGA will approve the decommissioning programme and decommissioning can commence. If there is no monetary trust fund in place, payment for decommissioning will be made by way of cash calls under the JOA. Insofar as there is a monetary trust fund the trust deed and the DSA together provide for cash calls to be made on the fund. In the case of default, the DSA provides for payment to be called for via the securities in place.
- 4.52 There is a requirement in the UKCS Industry Standard JOA that prior to submitting a development plan the parties should enter into a DSA. As a consequence the Industry Standard JOA has little provision for decommissioning.
- 4.53 It has been common practice in the UKCS for some level of security to be put in place at the outset of a project, to ensure early project failure was covered. That security is wound down as a project moves into production, and is then built up again, much later in the life of the project.

Current FI Tax Laws relevant to Decommissioning

- 4.54 The Taxes Ordinance 1997 contains specific provision in relation to decommissioning activities. The current provisions are contained in Chapter II and are summarised below. The provisions were amended in 2019, following previous consideration of what might be appropriate to allow.
- 4.55 The main provisions are set out in section 114 which is set out in full at Appendix C.
- 4.56 In essence, tax relief is given in relation to net expenditure on implementation of an abandonment programme, and this relief essentially allows the costs to be deducted from the income of the taxpayer, and where, as is likely, the income at the point of expenditure on abandonment is less than the costs, the excess costs may then be carried back and applied to the previous tax periods up to 10 years – this could result in a taxpayer receiving a considerable repayment of tax.

The Sea Lion Project

- 4.57 The “Sea Lion” project has taken different forms over a number of years. There is currently a project in the course of development, which will be subject to separate consideration for approval. In terms of abandonment and decommissioning, this was addressed at a high level in the Environmental Impact Statement. The following extracts were copied from the version of the EIS submitted for public consultation. As a result of the consultation exercise, representations made, and detailed consideration by FIG and its external experts, the “working version” has been amended, but that is not material for present purposes. At §1.4.1.7 it said

At the end of Field Life, expected to be 30 years after commencement of production, the FPSO and all associated subsea infrastructure and pipelines, will be

decommissioned and removed from the NFB in accordance with regulatory requirements in place at that time. Decommissioning will be subject to a separate EIA, submitted at a time to be agreed with FIG (most commonly a few years prior to the cessation of production).

(note: NFB means North Falkland Basin, and FPSO means Floating Production Storage and Offloading)

4.58 This was also repeated at §2.2.3.7 and it was said at §2.4, that:

...Following consultation with FIG (Chapter 6), and in line with FIG EIA Guidance (FIG, 2016e), areas that fall outwith the scope of this EIS include:

...

Offshore decommissioning impacts:

o These will be covered in a decommissioning-specific EIA prior to the Cessation of Production (CoP) and in support of the decommissioning programme (as agreed in discussion with FIG, and in accordance with the approach taken in the UK with regard to developments on the UK continental Shelf (UKCS) and the DECC (now BEIS) Decommissioning Guidelines (BEIS, 2018)).

4.59 More consideration of the approach to decommissioning was set out in §5.12 of the EIS, which provides that:

5.12 Decommissioning

The Field Life of the Phase 1 & 2 Development is estimated to be 30 years. The date of Cessation of Production (CoP) and the commencement of decommissioning of associated facilities will depend upon field performance and economics. Decommissioning will be considered a separate project and will thus follow the standard Navitas planning process and will warrant its own EIA and EIS.

Decommissioning will be carried out in accordance with the legislation in place at the time. However, in line with the current legislation, the Phase 1 & 2 Development infrastructure has been designed to enable complete removal of all structures. Equally, the flowlines will be surface laid and will not be trenched or buried thus facilitating complete removal (noting that the seabed is very soft, so flowlines may self-bury which could change the methods required for complete removal).

Specifically, the Development has been designed to enable:

- Abandonment of wells in accordance with The OEUK Guidelines for the Suspension and Abandonment of Wells,*
- Cutting of the well casings to a level below the natural seabed, which ensures they remain below the seabed in the face of prevailing conditions,*
- Removal of the 'disused offshore installation':*

o Removal the FPSO and moorings for legitimate use elsewhere - the FPSO will be on a 'lease and operate' contract so may be re-deployed following decommissioning of the Phase 1 & 2 Development,

o Removal of all subsea infrastructure associated with the installation (i.e., wellheads and X-mas trees) for waste recovery (e.g. reuse or recycling) or final disposal on land. Infrastructure removed will be transported to shore and managed in accordance with the Waste Hierarchy. Any disposal will be justified by demonstrating that recovery and recycling options are not feasible or reasonably practicable, and

o Any piles will be cut to a level below the natural seabed, which ensures they remain below the seabed in the face of prevailing conditions.

• Removal of the SURF:

o All subsea umbilicals, risers, flowlines, and associated infrastructure will be removed unless comparative assessment of the safety, environmental, technical, societal and economic impacts indicate that leaving wholly or partially in situ is the best practicable option.

• Removal of any debris associated with the production or decommissioning phases.

Note: No part of the Phase 1 & 2 installation will qualify for derogation under the current OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations. As stated, the Phase 1 & 2 Development will be decommissioned in accordance with legislation and best practice relevant to the time.

5.12.1 Decommissioning programme

The base-case is the complete removal of all structures to approximately two metres below the seabed. However, it is not possible to assess the environmental impacts and risks associated with the decommissioning process at this time due to:

• The varying options for removal,

• Unknowns about the status of the infrastructure at the end of Field Life (e.g., flowlines may self-bury), and

• The potential for technological advances that emerge during the life of the Phase 1 & 2 Development.

Toward the end of Field Life, a detailed Decommissioning Programme outlining the methods for removal and outcomes of the comparative assessment for pipeline decommissioning options will be submitted to FIG for the FPSO, pipelines and subsea infrastructure.

The Decommissioning Programme/s will be supported by:

• An ENVIID which will be carried out to inform the EIA that will accompany the decommissioning programme,

- *A comparative assessment for the pipeline decommissioning options,*
- *An EIS detailing the impacts and risks associated with the selected removal options and waste management strategies, and*
- *A Stakeholder Engagement Plan.*

4.60 There are similar references to decommissioning in Chapters 10 and 11 of the EIS as published for public consultation.

4.61 Navitas has provided estimates as to the current estimated cost of decommissioning at each stage of the project lifecycle; the planned activity and estimates will be subject to independent external expert review. DMR has sought external advice on this, in order to validate the estimates and proposed methodology. The outcome of that external advice is under consideration, and may affect the level of provision which is required, but is not likely to affect the mechanism by which it is provided (which is the purpose of this report).

5. Current Proposals

5.1 Abandonment and/or decommissioning of offshore installations and associated infrastructure presents significant potential risks. In particular, risks to the environment and financial risks. Carrying out abandonment and decommissioning activities to the best standards is very costly. Although it is not expected that such activities will take place for decades, there are scenarios in which they may take place at any point. Decisions made now about the nature of the installations/other facilities can have significant impact on what can be done in future, and on the cost of such activities. The purpose of this report is to ensure arrangements are put in place to mitigate those risks. In particular, the report aims to ensure, so far as practicable, that the financial risks, including the residual risks to the government, are understood and managed. The risks are discussed in §13 of this report, below.

5.2 There has been much discussion about the best way to deal with this. It is considered that the current legislation is not adequate to mitigate the risks to FIG in relation to potential decommissioning activities and expenditure. Equally, it is not considered that it will be possible to put in place a wholly new regime in sufficient time to meet the requirements of the Sea Lion Project. It is therefore considered that interim arrangements, bespoke to the Sea Lion Project should be put in place at the earliest opportunity, with the option to transition to a new regime in future, as appropriate. This report recommends certain policy decisions in which to frame the interim arrangements which, if it is approved to proceed, will be applied to the Sea Lion Project, recognising that further detailed work is required in order to finalise and implement the new arrangements.

5.3 The core proposals are, in summary:

- a) The Offshore Minerals Ordinance 1994 will be amended at the earliest opportunity to introduce sufficient powers to enable effect to be given to the policy proposals;

- b) There will be a requirement for a “decommissioning security agreement” to be entered into, to which the government will be a party;
- c) There will be a requirement for a “trust fund” (or funds) to be established;
- d) There will be a requirement for “cash” payments to be made into the fund;
- e) There will be the ability for “alternative provision” to be made, in respect of initial/early project failure (to be maintained/renewed until progressively replaced by the value of cash payments) – the alternative provision will be required to be of such amount as is reasonably expected to cover the costs of decommissioning in an early project failure scenario;
- f) Where cash contributions are made to a decommissioning trust fund, the contributor will be able to deduct that expenditure from its taxable income, but will not then be able to deduct the costs of expenditure on decommissioning activities, where trust funds meet that expenditure;

5.4 Alternative provision permitted in relation to the initial period of development (until cash funds are built up) will be permitted. However the range of methods of alternative provision will be limited. It had previously been considered that use of an “escrow” account for cash payments might be acceptable. If cash payments are to be made, however, it is now considered these should be paid into the proposed trust to be established under the DSA. Forms of permitted alternative provision include:

- a) A contract with a parent company;
- b) Letter of credit;
- c) Surety bond (TBC).

In each case, for a form of provision to be acceptable the provider will need to have an appropriate rating from a recognised rating agency (S&P, Moody etc). There will need to be an individual assessment of each “product” offered by way of provision, to ensure that it will mitigate the risks of unfunded decommissioning liabilities. Discussions with Navitas have covered what ratings might be acceptable. They have suggested, for example, that a letter of credit from an institution rated “BBB” should be accepted, whereas officers are of the view that this should be “A-.” Navitas have also suggested that they be permitted to suspend payment into the cash fund in certain circumstances, whereas officers are of the view that this should not be permitted. Actual decisions will need to be taken later in the process, when the decommissioning provisions are activated.

Amendment of Offshore Minerals Ordinance 1994

5.5 In relation to the Offshore Minerals Ordinance 1994. It is recognised that whilst provision is made for decommissioning, the legislation is based largely on UK legislation, but without updating amendments made in light of recent experience. It is therefore considered that the existing provisions should be adopted to incorporate many of the updates made in the UK, whilst also modifying these, and not adopting all changes,

to reflect the different circumstances of the Falkland Islands. The purpose of making these amendments is to strengthen statutory decommissioning provisions to minimise the risk of liabilities falling to the Government, whilst continuing to encourage development of the industry. Part of this involves safeguarding appropriate financial security for the costs associated with decommissioning offshore facilities.

5.6 The following amendments are proposed:

- a) Introduce provisions equivalent to what is now section 28A of the UK Petroleum Act 1998, to ensure that it is clear that decommissioning activities should not begin unless a programme has been approved;
- b) Amend section 48 to introduce provisions drawn from section 29 of the 1998 Act (as amended) to update and clarify the circumstances in which a decommissioning programme can be required;
- c) Amend section 49 to introduce provisions drawn from section 30 of the 1998 Act (as amended), to clarify the persons on whom notice under section 48 can be served and in what circumstances;
- d) Amend section 51 to introduce provisions drawn from section 32 of the 1998 Act (as amended), to make further provision about modification or a programme or imposition of conditions, in particular, intended to reduce the total cost of a decommissioning programme, and for connected purposes;
- e) Amend section 52 to introduce provisions drawn from section 33 of the 1998 Act (as amended), including to ensure that the Government may recover the cost of certain expenditure from persons to whom a section 48 notice has been given;
- f) Amend section 53 to introduce provisions drawn from section 34 of the 1998 Act (as amended), focussed on ensuring that the cost of decommissioning is minimised, so far as appropriate, including the consideration of alternatives;
- g) Introduce a new section 53A, drawn from section 34A, drawn of the 1998 Act (as amended), again focused on consideration of alternatives and keeping costs to a minimum, and introduce a new section 55A, drawn from section 36A of the 1998 Act (as amended), for the same purposes;
- h) Amend section 56 to introduce provisions drawn from section 37 of the 1998 Act (as amended), focussed on ensuring that the cost of decommissioning is minimised, so far as appropriate, by taking effects on costs into account;
- i) Essentially replace section 57 with provisions drawn from section 38 of the 1998 Act (as amended), and introduce new sections 57A, 57B and 57C, drawn respectively from sections 38A, 38B and 38C of the 1998 Act (as amended). These are substantive provisions allowing the

Government to seek information and to require action to be taken. It is these provisions which are to enable the Government to require the sorts of actions to be taken as are described below. Whilst the amended and new provisions are drawn from the current UK provisions, these will be amended to make provision which is more suited to the circumstances in the Falkland Islands. This will allow the Falkland Islands Government to be more prescriptive in requiring financial security to be provided by those to whom a section 48 notice is to be given.

- j) Amend section 58 to make additional provision about the things about which regulations may be made, including making specific reference to introduction of charges in accordance with the proposed new section 57C;
- k) Insert a new section 60A drawn from section 45A of the 1998 Act (as amended), making specific provision regarding the decommissioning of wells.
- l) To make a number of minor and consequential amendments to the remainder of the Offshore Minerals Ordinance 1994 consistent with the provisions described in this report, including changes to:
 - i) Section 2 relating to interpretation;
 - ii) Part VI relating to environmental impact assessment in respect of a decommissioning programme;
 - iii) Any other current references to “abandonment” – to refer instead to decommissioning;

5.7 The above amendments are considered to give sufficient powers to the Falkland Islands Government to mitigate the risks relating to decommissioning which might arise from any specific project. They will give the Government the power to require appropriate provision (including cash funds) to be set aside, in an effort to ensure that decommissioning costs, when required, are already provided for. The primary responsibility will always remain with the parties to whom a section 48 notice is given to produce a programme, and to implement that programme. Setting aside funds gives further assurance that such a programme will be capable of implementation (including by contractors on behalf of the Government), whatever the position then is of the responsible parties.

Decommissioning security agreements and trust deeds

5.8 The amendment of the 1994 Ordinance will facilitate notices being given at the earliest opportunity. It is likely, that a full decommissioning programme will not be required until a later date or event occurs, but an estimate of the costs of decommissioning will be required to be provided at the outset, and kept up to date.

5.9 It is intended that the Government will use the powers in Part V of the Offshore Minerals Ordinance 1994, as amended following approval of this report, in order, in each case, to require that a “Decommissioning Security Agreement” is entered into between all the

relevant parties, and the Government. This, in turn, will require the establishment of a suitable trust or trusts to hold the sums provided by the commercial parties to the agreement, which will then only be capable of being applied to meet expenditure associated with the carrying out of an approved decommissioning programme.

- 5.10 There is scope for each Decommissioning Security Agreement to be negotiated to some degree. However, it is intended that a model agreement for the Falkland Islands will be established. This will be based on model agreements currently in use in the UK, suitably adapted for FI circumstances.
- 5.11 The object of the Decommissioning Security Agreement is to make provision for the costs of decommissioning, providing assurance that a statutory decommissioning programme will be carried out to completion. The initial parties to an agreement will certainly include all licensees, and may include others (if a separate party will have the management of an installation, for example). There will be provision allowing for other participants and new parties to join the agreement.
- 5.12 The model agreement will include provisions relating to the production by the Operator of the Field of a Proposed Plan for decommissioning, including:
- a) A geological/reservoir review of the Field;
 - b) An estimate of the dates on which decommissioning will commence and be completed;
 - c) An estimate of the net costs of decommissioning;
 - d) All other matters relevant to the proper preparation for and management of decommissioning.
 - e) There will be provision for independent expert determination if the Proposed Plan is not agreed by all parties to the agreement. There will also be periodic expert review of the Proposed Plan in any event.
 - f) The agreement will make provision for the establishment of a trust (or trusts, as appropriate), and will include a model trust deed (discussed below).
 - g) The agreement will make provision for cash payments to be made into a trust, and will make provision for “alternative provision” to be made, in relation to the risk of decommissioning early in the life of the project, sufficient to cover the costs of early decommissioning.
 - h) It is intended that a professional trustee will be appointed (ideally named in the agreement). There will be no power to amend the terms of the trust(s) without the prior written consent of the Falkland Islands Government.
 - i) The “Provision Amount” will represent the value of provision which is to be put into the trust each year, will be calculated on a formula basis such as the following:

$A=(B-C)*D/E$, where:

A is quarterly contributions to the fund;

B is estimated cost of abandonment/decommissioning;

C is accumulated fund balance;

D is the volume of petroleum produced in current quarter; and,

E is estimated remaining reserves in barrels of oil.

- j) The agreement will set out the process by which provision is to be made, including the making of cash payments into the trust(s).
- k) There shall be no scope for any “refunds” to be made to any contributing party, unless and until all decommissioning activities are complete in relation to a specific Field, and a “Close-Out Report” has been provided to the Government, and the agreement shall make provision for whether/how sums are to be distributed at that point.
- l) The agreement will be prescriptive about the nature of permitted “Alternative Provision”, which shall only be available at the outset of the project and shall progressively be replaced by cash contributions into a trust fund, starting from first oil.
- m) The agreement will include detailed provisions in relation to the consequences of default by any party to the agreement.
- n) The agreement will make detailed provision for how decommissioning costs will be paid, including the scope for payment being made from the trust fund(s). Forms of notice to be used in the process will be attached to the agreement.
- o) The agreement will include provision in relation to a number of “boilerplate” provisions, including in relation to:
 - i) Assignment and withdrawal;
 - ii) Expert resolution of disputes;
 - iii) Confidentiality;
 - iv) Giving of notices;
 - v) Rights of third parties;
 - vi) Costs and expenses;
 - vii) Entire agreement;
 - viii) Provisions for amendment;

- ix) Waiver;
 - x) Severance; and
 - xi) Law and jurisdiction.
- p) The appendices to the agreement will include a model trust deed, model notices, forms for acceptable letter of credit etc, key assumptions underpinning provisions in the agreement.

5.13 Whilst the form of model decommissioning security agreement will be based on the equivalent UK model form, this will necessarily require adaptation to take into account the particular circumstances of the Falkland Islands and the regime which it is proposed will be put into place. The final form of model agreement will be subject to further approval in due course, as will any decision to enter into any actual agreement(s). An early draft model agreement is in the course of preparation, and will be available for review in due course. It requires significant detailed further consideration and amendment, before it will be finalised, including external expert advice.

5.14 The model trust deed will be appended to the decommissioning security agreement. This will set out the provisions for:

- a) creation of the trust and appointment of Trustee (as well as the powers of the Trustee);
- b) the obligations of the Trustee;
- c) restrictions on the Trustee to take actions except where directed;
- d) exclusion of liability of the Trustee;
- e) notification of communications and information;
- f) retirement and removal of the Trustee;
- g) remuneration of the Trustee;
- h) the perpetuity period applicable to the trust;
- i) provision for notices;
- j) rights of third parties;
- k) other “boilerplate” clauses; and
- l) governing law and jurisdiction;
- m) Schedules – including a description of the beneficiaries, and description of authorised investments for trust funds.

Tax treatment of decommissioning expenditure

- 5.15 One reason posited for the reluctance for licensees to make “cash” provision in relation to the UKCS is the tax treatment of contributions. The situation in the Falkland Islands is similar. Section 114 of the Taxes Ordinance 1997 is briefly discussed above.
- 5.16 It is proposed that section 114 be amended to allow cash contributions to a trust fund established under a decommissioning security agreement, to be deductible from the taxable income of any “ring-fence” taxpayers required to make such contributions. Further consideration will need to be given to the treatment of expenditure related to “alternative provision” of decommissioning security. Any actual decommissioning costs met from trust funds will then not be deductible, but current provisions will need to remain applicable to any expenditure made by parties separately from/over and above the funds available in the relevant trust(s). It is anticipated that the necessary changes can be incorporated into the same Bill in which the amendments to the Offshore Minerals Ordinance 1994 will be set out. However, this aspect of the proposals requires further external advice.

6. Future policy proposals

- 6.1 It is considered that it might be preferable to establish a statutory decommissioning trust. This will be the subject of further policy work and will come back for consideration and approval in due course. If it is considered that this will better provide for and protect funds than establishment of trust funds under decommissioning security agreements, then it is likely that this work will proceed. There should be no net cost to parties if there is a transition in due course to such new arrangements.

7. Consultation

- 7.1 The proposed approach to decommissioning has been the subject of discussions with Navitas, to understand the potential implications for the Sea Lion Project, and there have been discussions with officials from UK Government/ Agencies, as well as with FIG’s external advisers. There has been no wider public consultation, and none is intended.

8. Resource Implications

8.1 Financial Implications:

There are no direct financial implications arising from this report. Implementation will be met from existing approved resources (including external advisers). The financial implications of decommissioning and the associated risks, are considered throughout the body of this report.

8.2 Human Resource Implications:

There are no direct human resource implications arising from this report. Implementation will be met from existing approved resources (including external advisers). The matters contained in the report will be progressed within existing resources – including external advisers. It should be recognised that if the Sea Lion Project goes into production, there is likely to be a requirement for a significant increase in the staff employed in the Department of Mineral Resources and other parts of Government, in order to regulate the industry effectively.

8.3 Other Resource Implications:

There are no other resource implications arising from this report.

9. Legal and Legislative Implications

9.1 The legal and legislative implications are considered throughout the body of the report, and are not considered separately.

10. Equalities and Human Rights Implications

10.1 There are no equalities or human rights implications arising from this report.

11. Environmental & Sustainability Implications

11.1 There are no direct environmental or sustainability implications arising from this report. Abandonment/decommissioning activities can have significant impacts on the environment, particularly if proper provision is not made for those activities from the outset – both in terms of the design of the infrastructure, plans for decommissioning and funding for decommissioning activities. This report seeks to put in place the framework for appropriate decommissioning activity to be facilitated, and, in particular, that adequate resources are available to secure that the approved decommissioning programme is carried out.

12. Camp Implications

12.1 None.

13. Significant Risks

General

13.1 There is always a residual risk for government in relation to activities such as oil extraction from the seabed. A prudent government will seek to mitigate these risks, so far as practicable, but it is never possible completely to remove the risks. If oil production installations are established, then there will be a need at some point to ensure that those installations are abandoned/decommissioned to an appropriate standard, to ensure protection of the environment.

Early project failure

13.2 Whilst a great deal will be known about the reservoirs which a project hopes to exploit, as a result of seismic surveys, exploratory drilling and other activity, there is still a risk that a reservoir will not be as productive as expected. This is likely to be known very early into a project, and could mean that it will not be economic to continue with the project. If this risk crystallises, it is likely to do so at a time when maximum expenditure has been made, with no return from oil production. If the operator makes the decision to cease the project, there will be a need to abandon/decommission all the relevant infrastructure. The largest expense will likely relate to the plugging/abandonment of any wells which have, by that point, been drilled. It will be essential that FIG can require that an abandonment/decommissioning programme be implemented, and that it can be assured that sufficient resources will be available for this to be done. The risks around early project failure have driven the recommendations in this report, which seek to strike

the right balance between giving assurance as to the available resources, whilst not being so stringent as to prevent the project from proceeding.

Mid-project early curtailment

13.3 After the early risks have been overcome, and the project moves to profitable production, there are still risks that an operator may wish to curtail the project early. This might occur, for example, if oil prices fall to such a level that the project ceases to be profitable. Similar to an early failure scenario, it will be essential that an abandonment/decommissioning programme can be implemented. The risks for this phase will be mitigated by multiple sources of assurance. Firstly, since the project will already have been in production for a time, revenue should be flowing to the operator (and to Government). Secondly, the security required in the early phase will also still be available, and will progressively be replaced by a “cash” fund which will be accumulating.

End of life decommissioning

13.4 Absent any other factors, the project will produce oil for perhaps 30 years. When the reservoir is depleted, the project will be wound down, and there will be a need to abandon/decommission the project infrastructure. As noted above, there are specific risks to the environment if abandonment/decommissioning activities are not completed in a planned manner, to the appropriate standard. Such activities can be very costly, and can, ultimately, fall on the government which has authorised the activities. For example, see government and press reporting in relation to the “Northern Endeavour” FPSO (the Laminaria and Corallina oil fields), in relation to which the Australian Government had to step in and is in the process of decommissioning. It is reported that contracts totalling AUS\$850million have already been let, with total costs expected to top AUS\$1billion¹. As a result, the Australian Government passed legislation to impose a levy for eight years on all petroleum production licensees specifically to recover the costs of decommissioning. The costs are more than twice the original estimate, and exclude the costs of plugging and abandoning the wells and removing the subsea infrastructure from the seabed.

13.5 It is unlikely that FIG would have the “luxury” of being able to recoup costs in the way the Australian Government is seeking to do. It is therefore important that FIG takes appropriate steps to prevent, so far as possible, it ending up in a similar position. The mitigating factors include having robust processes in place to ensure that operation of a field is not passed to a party which will be incapable of meeting its obligations, and also having adequate arrangements in place to ensure that there is adequate provision to meet the costs of decommissioning.

¹ <https://www.bairdmaritime.com/offshore/column-spraying-cash-around-northern-endeavour-decommissioning-head-for-1-billion-bill-britoil-newbuilds-in-china-nigeria-bans-cash-throwing-at-parties-as-over-one-hundred-drown-offshore-accounts>
<https://www.industry.gov.au/mining-oil-and-gas/oil-and-gas/offshore-oil-and-gas/decommissioning-northern-endeavour/offshore-petroleum-cost-recovery-levy>

14. Publicity

14.1 The statutory proposals in this report will be published at the appropriate time. It is not proposed that the form of model decommissioning security agreement will be published.

15. Reasons for Recommending Preferred Option

15.1 This is a continuation of the direction of travel previously approved by Executive Council and is considered to represent an appropriate proposal to improve the position as it currently stands under the existing legislation in this area.

Appendix A - Offshore Minerals Ordinance 1994, Part V

PART V ABANDONMENT OF OFFSHORE INSTALLATIONS

47 Interpretation of Part V (1987, c.12, s. 16)

(1) In this Part-

- (a) "abandonment programme" has the meaning given by section 48;
- (b) "offshore installation" has the meaning given by section 2(1); and
- (c) "submarine pipe-line" means a pipe-line within the meaning given by section 38(1) which is in, under or over the controlled waters.

(2) This Part applies-

- (a) so far as it applies to individuals, applies to them whether or not they are British citizens or British dependent territories citizens.
- (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of the Falkland Islands.

(3) Any reference in any provision of this Part to a provision of this Ordinance includes a reference to any provision which, by virtue of any Order or regulation made or having effect by virtue of section 36, for the time being replaces that provision and where a provision of this Ordinance referred to in a subsequent provision of this Part has been modified by such or any such regulation the reference to it includes a reference to that provision as so modified.

48 Preparation of programmes (1987, c.12, s. 1)

(1) The Governor may by written notice require-

- (a) the person to whom the notice is given, or
- (b) where notices are given to more than one person, those persons jointly,

to submit to the Governor a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or submarine pipe-line (an "abandonment programme").

(2) A notice under subsection (1) shall either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Governor may direct.

(3) A notice under subsection (1) may require the person to whom it is given to carry out such consultations as may be specified in the notice before submitting an abandonment programme.

(4) An abandonment programme-

(a) shall contain an estimate of the cost of the measures proposed in it;

(b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;

(c) if it proposes that an installation or pipe-line be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.

(5) A person who submits an abandonment programme to the Governor under this section shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(6) The Governor may exercise his powers under this section notwithstanding that an abandonment programme has previously been submitted for the installation or pipe-line in question, but only if he rejected that programme under section 51 or has withdrawn his approval of it under section 54.

49 Persons who may be required to submit programmes (1987, c.12, s. 2)

(1) A notice under section 48(1) shall not be given to a person in relation to the abandonment of an offshore installation unless at the time when the notice is given he is within any of the following paragraphs-

(a) the person who has registered the installation pursuant to section 23 of this Ordinance (or, if appropriate, that section modified, amended or replaced as may be under section 36) or, if there is no such person, the person having the management of the installation or of its main structure;

(b) a person who is a concession owner in relation to the installation for the purposes of this Ordinance, or who was a concession owner for those purposes when a relevant offshore activity was last carried on from, by means of or on the installation;

(c) a person outside paragraphs (a) and (b) who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within paragraph (b);

(d) a person outside paragraphs (a) and (c) who owns any interest in the installation otherwise than as security for a loan;

(e) a company which is outside paragraph (a) to (d) but is associated with a company within any of those paragraphs.

(2) A notice under section 49(1) shall not be given to a person in relation to the abandonment of a submarine pipe-line unless at the time when the notice is given he is within any of the following paragraphs-

(a) a person designated as the owner of the pipe-line by an Order made by the Governor in pursuance of section 38(3) of this Ordinance;

(b) a person outside paragraph (a) who owns any interest in the whole or substantially the whole of the pipe-line, otherwise than as security for a loan;

(c) a company which is outside paragraphs (a) and (b) but is associated with a company within one of those paragraphs.

(3) The Governor may by written notice require a person appearing to the Governor to be within any of the paragraphs of subsection (1) or (2) to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice believes to be within any of those paragraphs in relation to the installation or pipe-line concerned.

(4) A person who without reasonable excuse fails to comply with a notice under subsection (3) commits an offence.

(5) For the purposes of this section, one company is associated with another if one of them controls the other or a third company controls both of them; and one company controls another if it possesses or is entitled to acquire-

(a) one half or more of the issued share capital of the company,

(b) such rights as would entitle it to exercise one half or more of the votes exercisable in general meetings of the company,

(c) such part of the issued share capital of the company as would entitle it to one half or more of the amount distributed if the whole of the income of the company were in fact distributed among the shareholders, or

(d) such rights as would, if the event of the winding up of the company or in any other circumstances, entitle it to receive one half or more of the assets of the company which would then be available for distribution among the shareholders,

or if it has the power, directly or indirectly, to secure that the affairs of the company are conducted in accordance with its wishes.

(6) In determining whether, by virtue of subsection (5), one company controls another, the first-mentioned company shall be taken to possess-

(a) any rights and powers possessed by a person as nominee for it, and

(b) any rights and powers possessed by a company which it controls (including rights or powers which such a company would be taken to possess by virtue of this paragraph).

50 Section 48 notices: supplementary provisions (1987, c.12, s. 3)

(1) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to an offshore installation to a person within paragraph (d) or (e) of section 49(1) if

the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a), (b) or (c) to ensure that a satisfactory abandonment programme will be carried out.

(2) Subject to subsection (3), the Governor shall not give a notice under section 48(1) in relation to a submarine pipe-line to a person within paragraph (b) or (c) of section 49(2) if the Governor has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a) to ensure that a satisfactory abandonment programme will be carried out.

(3) Subsections (1) and (2) shall not apply if there has been a failure to comply with a notice under section 48(1) or if the Governor has rejected a programme submitted in compliance with such a notice.

(4) The Governor shall not give a notice to a person under section 48(1) without first giving him an opportunity to make written representations as to whether the notice should be given.

(5) Where the Governor has given notice under section 48(1) in relation to an installation or pipe-line, he may at any time before the programme required by it is submitted withdraw the notice or give (subject to the preceding provisions of this section) a further notice under section 48(1) (whether in substitution for or in addition to any notice already given); and if he does so he shall inform the recipients of any other notices which have been given in relation to that installation or pipe-line and not withdrawn.

(6) Neither the withdrawal of a notice given under section 48(1) nor the giving of a further notice shall relieve the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices).

51 Approval of programmes (1987, c.12, s. 4)

(1) The Governor may either approve or reject a programme submitted to him under section 48.

(2) If he approves a programme, the Governor may approve it with or without modifications and either subject to conditions or unconditionally.

(3) Before approving a programme with modifications or subject to conditions, the Governor shall give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions.

(4) If he rejects a programme, the Governor shall inform the persons who submitted it of his reasons for doing so.

(5) The Governor shall act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

52 Failure to submit programmes (1987. c.12, s. 5)

(1) If a notice under section 48(1) is not complied with, or if the Governor rejects a programme submitted in compliance with such a notice, the Governor may himself prepare an abandonment programme for the installation or pipe-line concerned.

(2) With a view to exercising his powers under subsection (1) of this section, the Governor may by written notice require any of the persons to whom notice was given under section 48(1) to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified.

(3) A person who without reasonable excuse fails to comply with a notice under subsection (2) commits an offence.

(4) The Governor may recover from any of the persons to whom a notice was given under section 48(1) any expenditure incurred by the Governor in preparing an abandonment programme under this section, and any fee that would have been payable on the submission of a programme by those persons.

(5) A person liable to pay any sum to the Governor by virtue of subsection (4) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.

(6) The rate of interest payable in accordance with subsection (5) shall be a rate determined by the Governor to be comparable with commercial rates.

(7) Where the Governor prepares an abandonment programme under this section, he shall inform the persons to whom notice was given under section 48(1) of its terms; and when he has done so, the following provisions of this Part of this Ordinance shall have effect as if the programme had been submitted by those persons and approved by the Governor.

53 Revision of programmes (1987, c.12, s. 6)

(1) Where the Governor has approved a programme submitted to him under section 48-

(a) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject, and

(b) either he or any of those persons may propose that any person who by virtue of section 55 has a duty to secure that the programme is carried out shall cease to have that duty, or that a person who does not already have that duty shall have it (either in addition to or in substitution for another person).

(2) In the case of a proposal of the kind mentioned in subsection (1)(b), any person who would if the proposed change were made have a duty to secure that the programme is carried out must be a person who-

(a) if the programme relates to an offshore installation, is within paragraph (a), (b) (c), (d) or (e) of section 49(1) when the proposal is made, or has been within one of those

paragraphs at some time since the giving of the first notice under section 48(1) in relation to the installation, and

(b) if the programme relates to a submarine pipe-line, is within paragraph (a), (b) or (c) of section 49(2) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 48(1) in relation to the pipe-line.

(3) The Governor shall not propose that a person who is or has been within paragraph (d) or (e) (but no other paragraph) of section 49(1) or paragraph (b) or (c) (but not paragraph (a)) of section 49(2) shall have a duty to secure that a programme is carried out unless it appears to the Governor that a person already under that duty has failed or may fail to discharge it.

(4) A proposal under subsection (1) shall be made by written notice given-

(a) if the proposal is the Governor's to each of the persons by whom the programme was submitted, and

(b) in any other case, to the Governor;

and a person giving notice to the Governor shall at the same time pay to him such fee in respect of his expenditure under this Part of this Ordinance as may be determined in accordance with regulations under section 58.

(5) Where the Governor has made a proposal under subsection (1) (a), he shall give an opportunity to make written representations about it to each of the persons who submitted the programme.

(6) Where a proposal has been made under subsection (1)(b), the Governor shall give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made-

(a) have a duty to secure that the programme is carried out, or

(b) cease to have that duty.

(7) The Governor shall determine whether a change proposed under subsection (1) is to be made and shall then give notice of his determination, and of his reasons for it, to-

(a) every person who, before the determination was made, had a duty to secure the carrying out of the programme, and

(b) any person who has that duty as a result of the determination.

(8) Where the Governor determines that a change proposed in accordance with this section shall be made, this Part of this Ordinance shall thereafter have effect as if the programme had been approved by the Governor after being submitted under section 48 with the alterations, or as the case may be by the persons, specified in the determination.

54 Withdrawal of approval (1987, c.12, s. 7)

- (1) The Governor may at the request of one or more of the persons who submitted an abandonment programme withdraw his approval of the programme.
- (2) If a request under subsection (1) is made by some but not all of the persons who submitted the programme, the Governor shall give the others an opportunity to make written representations as to whether his approval should be withdrawn.
- (3) The Governor shall after determining whether to withdraw his approval of an abandonment programme give notice of his determination to each of the persons who submitted the programme.

55 Duty to carry out programmes (1987, c.12, s. 8)

Where an abandonment programme is approved by the Governor, it shall be the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with.

56 Default in carrying out programmes (1987, c.12, s. 9)

- (1) If an abandonment programme approved by the Governor is not carried out or a condition to which the approval is subject is not complied with, the Governor may by written notice require any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be so specified.
- (2) A person who fails to comply with a notice given to him under subsection (1) commits an offence unless he proves that he exercised due diligence to avoid the failure.
- (3) If a notice under subsection (1) is not complied with, the Governor may carry out the remedial action required by the notice, and may recover any expenditure incurred by him in doing so from the person to whom the notice was given.
- (4) A person liable to pay any sum to the Governor by virtue of subsection (3) shall also pay interest on that sum for the period beginning with the day on which the Governor notified him of the sum payable and ending with the date of payment.
- (5) The rate of interest payable in accordance with subsection (4) shall be a rate determined by the Governor to be comparable with commercial rates.

57 Financial resources (1987, c.12, s. 10)

- (1) At any time after the Governor has given a notice under section 48(1) to any person and before he has approved an abandonment programme for the installation or pipe-line concerned, he may by written notice require that person within such time as may be specified in the notice-
 - (a) to provide such information relating to the financial affairs of that person, and
 - (b) to supply copies of such documents relating to those affairs,

as may be so specified.

(2) In order to satisfy himself that a person who has a duty to secure that an abandonment programme is carried out will be capable of discharging that duty, the Governor may at any time by written notice require that person, within such time as may be specified in the notice-

- (a) to provide such information, and
- (b) to supply copies of such documents,

as may be so specified.

(3) A person who-

(a) without reasonable excuse fails to comply with a notice under subsection (1) or subsection (2), or

(b) in purported compliance with such a notice provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular,

commits an offence.

(4) If the Governor is not satisfied that a person will be capable of discharging the duty imposed on him by section 55, he may by written notice require that person to take such action as may be specified in the notice within such time as may be so specified.

(5) The Governor shall not give notice to a person under subsection (4) without first giving him an opportunity to make written representations as to whether the notice should be given.

(6) A person who fails to comply with a notice under subsection (4) commits an offence unless he proves that he exercised due diligence to avoid the failure.

58 Regulations (1987, c.12, s. 11)

(1) The Governor may make regulations relating to the abandonment of offshore installations and submarine pipe-lines.

(2) Without prejudice to the generality of subsection (1), regulations under this section may-

(a) prescribe standards and safety requirements in respect of the dismantling, removal and disposal of installations and pipe-line;

(b) prescribe standards and safety requirements in respect of anything left in the water in cases where an installation or pipe-line is not wholly removed;

(c) make provision for the prevention of pollution;

(d) make provision for inspection, including provision as to the payment of the costs of inspection;

(e) make provision as to the determination of the amount of any fees that are payable to the Governor under this Part of this Ordinance.

(3) The provisions of subsection (2) are without prejudice to the general powers of the Governor in relation to regulations under this Ordinance provided in Part VI of this Ordinance.

59 Offences under Part V (1987, c.12, s. 12)

A person who commits an offence under section 49, 52, 56 or 57 is liable on conviction of that offence to a fine without limit.

60 Validity of Governor's acts (1987, c.12, s. 14)

(1) If any person is aggrieved by any of the acts of the Governor mentioned in subsection (2) and desires to question its validity on the ground that it was not within the powers of the Governor or that the relevant procedural requirements had not been complied with, he may within 42 days of the day on which the act was done make an application to the Supreme Court under this section.

(2) The acts referred to in subsection (1) are-

- (a) the giving of a notice under section 48(1);
- (b) the approval of a programme under section 51;
- (c) the rejection of a programme under section 51;
- (d) a determination under section 53;
- (e) a determination under section 54; and
- (f) the giving of a notice under section 57(4).

(3) If on an application under this section the Supreme Court is satisfied that the act in question was not within the powers of the Governor or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the Supreme Court may quash the act.

(4) Except as provided by this section, the validity of any of the acts of the Governor referred to in subsection (1) of this section shall not be questioned in any legal proceedings whatsoever.

(5) In this section "the relevant procedural requirements"-

(a) in relation to the giving of a notice under section 48(1), means the requirements of section 50(4);

(b) in relation to the approval of a programme under section 51, means the requirements of section 51(3);

(c) in relation to the rejection of a programme under section 51, means the requirements of section 51(4);

(d) in relation to a determination under section 53, means the requirements of section 53(5), (6) and (7);

(e) in relation to a determination under section 54, means the requirements of section 54(2); and

(f) in relation to the giving of a notice under section 57(4) means the requirements of section 57(5).

Appendix B - Petroleum Act 1998, Part IV

28A Restriction on abandonment

(1) A person to whom a notice may be given under section 29(1) in relation to an offshore installation or submarine pipeline may not abandon, or begin or continue the decommissioning of, the installation or pipeline unless an abandonment programme approved by the Secretary of State has effect in relation to the installation or pipeline.

(2) A person who without reasonable excuse contravenes subsection (1) is guilty of an offence.

29.— Preparation of programmes.

(1) The Secretary of State may by written notice require—

(a) the person to whom the notice is given; or

(b) where notices are given to more than one person, those persons jointly,

to submit to the Secretary of State a programme setting out the measures proposed to be taken in connection with the abandonment of an offshore installation or submarine pipeline (an “*abandonment programme*”).

(1A) The power to give a notice under subsection (1) is exercisable—

(a) on the Secretary of State’s own motion, or

(b) at the request of any person to whom the notice may be given (whether or not the notice is given to that person).

(2) A notice under subsection (1) shall either specify the date by which the abandonment programme is to be submitted or provide for it to be submitted on or before such date as the Secretary of State may direct.

(2A) A person to whom a notice under subsection (1) is given—

(a) must consult the OGA before submitting the abandonment programme to the Secretary of State, and

(b) must frame the programme so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying it out is kept to the minimum that is reasonably practicable in the circumstances.

(2B) When consulted under paragraph (a) of subsection (2A) the OGA must (in particular) consider and advise on—

- (a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and
 - (b) how to comply with paragraph (b) of that subsection.
- (3) A notice under subsection (1) may require the person to whom it is given to carry out such other consultations as may be specified in the notice before submitting an abandonment programme.
- (4) An abandonment programme—
- (a) shall contain an estimate of the cost of the measures proposed in it;
 - (b) shall either specify the times at or within which the measures proposed in it are to be taken or make provision as to how those times are to be determined;
 - (c) if it proposes that an installation or pipeline be left in position or not wholly removed, shall include provision as to any continuing maintenance that may be necessary.
- (5) A person who submits an abandonment programme to the Secretary of State under this section shall at the same time pay to him such fee in respect of his expenditure under this Part of this Act as may be determined in accordance with regulations under section 39.
- (6) The Secretary of State may exercise his powers under this section notwithstanding that an abandonment programme has previously been submitted for the installation or pipeline in question if the Secretary of State has under section 32—
- (a) rejected that programme, or
 - (b) approved it (whether or not the approval has been withdrawn).

30.— Persons who may be required to submit programmes.

- (1) A notice under section 29(1) shall not be given to a person in relation to the abandonment of an offshore installation unless at the time when the notice is given he is within any of the following paragraphs—
- (a) the person having the management of the installation or of its main structure;
 - (b) a person to whom subsection (5) applies in relation to the installation;
 - (ba) a person to whom subsection (5)(a) and (b) applied in relation to the installation, but who—
 - (i) transferred the right mentioned in that subsection to another person, and
 - (ii) has not obtained a consent required under the licence in relation to the transfer;

(c) a person outside paragraphs (a) and (b) who is a party to a joint operating agreement or similar agreement relating to rights by virtue of which a person is within paragraph (b);

(d) a person outside paragraphs (a) to (c) who owns any interest in the installation otherwise than as security for a loan;

(e) a body corporate which is outside paragraphs (a) to (d) but is associated with a body corporate within any of those paragraphs.

(2) A notice under section 29(1) shall not be given to a person in relation to the abandonment of a submarine pipeline unless at the time when the notice is given he is within any of the following paragraphs—

(a) a person designated as the owner of the pipeline by an order made by the Secretary of State under section 27;

(b) a person outside paragraph (a) who owns any interest in the whole or substantially the whole of the pipeline, otherwise than as security for a loan;

(c) a body corporate which is outside paragraphs (a) and (b) but is associated with a body corporate within one of those paragraphs.

(3) The Secretary of State may by written notice require a person appearing to the Secretary of State to be within any of the paragraphs of subsection (1) or (2) to give him, within such time as may be specified in the notice, the name and address of every other person whom the recipient of the notice believes to be within any of those paragraphs in relation to the installation or pipeline concerned.

(4) A person who without reasonable excuse fails to comply with a notice under subsection (3) shall be guilty of an offence.

(5) This subsection applies to a person in relation to an offshore installation if—

(a) the person has the right—

(i) to exploit or explore mineral resources in any area,

(ii) to unload, store or recover gas in any area or to convert any natural feature in any area for the purpose of storing gas, or

(iii) to explore any area with a view to, or in connection with, the exercise of a right within sub-paragraph (i) or (ii), and

(b) either—

(i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or

(ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation,

or if he had such a right when any such activity was last so carried on.

(6) The activities referred to in subsection (5) are—

(a) the exploitation or exploration of mineral resources in the exercise of the right mentioned in subsection (5)(a);

(aa) the unloading, storage or recovery of gas in the exercise of that right;

(ab) the conversion, in the exercise of that right, of any natural feature for the purpose of storing gas;

(ac) the exploration in exercise of that right with a view to, or in connection with, the exercise of a right within subsection (5)(a)(ii);

(b) the conveyance in the area so mentioned, by means of a pipe or system of pipes, of minerals got, or gas being stored or recovered, in the exercise of that right; and

(c) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a) to (b) or this paragraph.

(7) The fact that an installation has been maintained for the carrying on of an activity within subsection (6) shall be disregarded for the purposes of paragraph (c) of that subsection if, since it was so maintained, the installation—

(a) has been outside relevant waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or

(b) has been maintained for the carrying on of an activity which is not within that subsection.

(8) For the purposes of this section, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them; and subsections (8A) to (8D) set out the circumstances in which one body corporate (“A”) controls another (“B”).

(8A) Where B is a company, A controls B if A possesses or is entitled to acquire—

(a) one half or more of the issued share capital of B,

(b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,

(c) such part of the issued share capital of B as would entitle A to one half or more of the

amount distributed if the whole of the income of B were in fact distributed among the shareholders, or

(d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

(8B) Where B is a limited liability partnership, A controls B if A—

(a) holds a majority of the voting rights in B,

(b) is a member of B and has a right to appoint or remove a majority of other members, or

(c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(8C) In subsection (8B)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(8D) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.

(9) In determining whether, by virtue of subsections (8) to (8D) , one body corporate controls another, the first-mentioned body corporate shall be taken to possess—

(a) any rights and powers possessed by a person as nominee for it; and

(b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

31.— Section 29 notices: supplementary provisions.

(A1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a person (“P”) who, in relation to the installation, falls within paragraph (b) or (c) of section 30(1), if—

(a) P is not entitled to derive, and never has been entitled to derive, any financial or other benefit from any activity within section 30(6)—

(i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and

(ii) is an activity to which subsection (B1) applies, and

(b) P is not, and never has been, a person within section 30(1)(a), (ba), (d) or (e) in relation to the installation.

(B1) This subsection applies to an activity if—

(a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;

(b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;

(c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;

(d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;

(e) where the activity is within section 30(6)(c)—

(i) the installation is in an oil field in respect of which P has an interest, or

(ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.

(C1) For the purposes of subsection (B1)—

(a) “*oil field*” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,

(b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from activities within section 30(6) (other than paragraph (c)) carried on in the field.

(D1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a body corporate if—

(a) the body corporate falls within paragraph (e) of section 30(1) (and no other paragraph of that section), and

(b) the body corporate falls within that paragraph by reason only that it is associated (within the meaning given by section 30(8)) with a person to whom the Secretary of State may not give a notice in relation to the installation by virtue of subsection (A1).

(1) Subject to subsection (3), the Secretary of State shall not give a notice under section

29(1) in relation to an offshore installation to a person within paragraph (e) of section 30(1) if the Secretary of State has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a), (b) or (c) to ensure that a satisfactory abandonment programme will be carried out.

(2) Subject to subsection (3), the Secretary of State shall not give a notice under section 29(1) in relation to a submarine pipeline to a person within paragraph (b) or (c) of section 30(2) if the Secretary of State has been and continues to be satisfied that adequate arrangements (including financial arrangements) have been made by a person or persons within paragraph (a) to ensure that a satisfactory abandonment programme will be carried out.

(3) Subsections (1) and (2) shall not apply if there has been a failure to comply with a notice under section 29(1) or if the Secretary of State has rejected a programme submitted in compliance with such a notice.

(4) The Secretary of State shall not give a notice to a person under section 29(1) without first giving him an opportunity to make written representations as to whether the notice should be given.

(5) Where the Secretary of State has given a notice under section 29(1) in relation to an installation or a pipeline, he may at any time before the programme required by it is submitted withdraw the notice or give (subject to the preceding provisions of this section) a further notice under section 29(1) (whether in substitution for or in addition to any notice already given); and if he does so he shall inform the recipients of any other notices which have been given in relation to that installation or pipeline and not withdrawn.

(6) Neither the withdrawal of a notice given under section 29(1) nor the giving of a further notice shall relieve the recipient of any other notice of his duty to submit a programme (jointly, in a case where more than one notice is given and not withdrawn, with the recipients of the other notices).

32.— Approval of programmes.

(1) The Secretary of State may either approve or reject a programme submitted to him under section 29.

(2) If he approves a programme, the Secretary of State may approve it with or without modifications and either subject to conditions or unconditionally.

(2A) The modifications or conditions may (in particular) include modifications or conditions—

(a) which are intended (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) to reduce the total cost of carrying out the programme, provided that they do not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme;

(b) requiring the persons who submitted the programme to carry out and publish or make available to the Secretary of State and the OGA a review of the programme and its

implementation including, where relevant, recommendations as to the contents and implementation of future abandonment programmes.

(3) Before approving a programme with modifications or subject to conditions, the Secretary of State shall give the persons who submitted the programme an opportunity to make written representations about the proposed modifications or conditions.

(4) If he rejects a programme, the Secretary of State shall inform the persons who submitted it of his reasons for doing so.

(5) The Secretary of State shall act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

(6) Before reaching a decision under this section the Secretary of State must—

(a) consult the OGA, and

(b) take into account the cost of carrying out the programme that has been submitted and whether it is possible to reduce that cost by modifying the programme or making it subject to conditions.

(7) When consulted under subsection (6)(a), the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) whether section 29(2A)(b) has been complied with and, if it has not been, modifications or conditions that would enable it to be complied with.

33.— Failure to submit programmes.

(1) If a notice under section 29(1) is not complied with, or if the Secretary of State rejects a programme submitted in compliance with such a notice, the Secretary of State may himself prepare an abandonment programme for the installation or pipeline concerned.

(2) With a view to exercising his powers under subsection (1) of this section, the Secretary of State may by written notice require any of the persons to whom notice was given under section 29(1) to provide him, within such time as may be specified in the notice, with such records and drawings and such other information as may be so specified.

(3) A person who without reasonable excuse fails to comply with a notice under subsection (2) shall be guilty of an offence.

(3A) When preparing an abandonment programme under this section the Secretary of State must—

(a) consult the OGA, and

(b) frame the programme so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying it out is kept to the minimum that is reasonably practicable in the circumstances.

(3B) When consulted under paragraph (a) of subsection (3A), the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) how to comply with the requirement in paragraph (b) of that subsection.

(4) The Secretary of State may recover from any of the persons to whom a notice was given under section 29(1) any expenditure incurred by the Secretary of State in preparing an abandonment programme under this section, and any fee that would have been payable on the submission of a programme by those persons.

(5) A person liable to pay any sum to the Secretary of State by virtue of subsection (4) shall also pay interest on that sum for the period beginning with the day on which the Secretary of State notified him of the sum payable and ending with the date of payment.

(6) The rate of interest payable in accordance with subsection (5) shall be a rate determined by the Secretary of State as comparable with commercial rates.

(7) Where the Secretary of State prepares an abandonment programme under this section, he shall inform the persons to whom notice was given under section 29(1) of its terms; and when he has done so, the following provisions of this Part of this Act shall have effect as if the programme had been submitted by those persons and approved by the Secretary of State.

34.— Revision of programmes.

(1) Where the Secretary of State has approved a programme submitted to him under section 29—

(a) either he or the persons who submitted it acting together may propose an alteration to the programme or to any condition to which it is subject; and

(b) either he or any of those persons may propose that any person who by virtue of section 36 has a duty to secure that the programme is carried out shall cease to have that duty, or that a person who does not already have that duty shall have it (either in addition to or in substitution for another person).

(2) In the case of a proposal of the kind mentioned in subsection (1)(b), any person who would if the proposed changes were made have a duty to secure that the programme is carried out must be a person who—

(a) if the programme relates to an offshore installation, is within paragraph (a), (b), (ba),

(c), (d) or (e) of section 30(1) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 29(1) in relation to the installation; and

(b) if the programme relates to a submarine pipeline, is within paragraph (a), (b) or (c) of section 30(2) when the proposal is made, or has been within one of those paragraphs at some time since the giving of the first notice under section 29(1) in relation to the pipeline.

(3) The Secretary of State shall not propose that a person who is or has been within paragraph (e) (but no other paragraph) of section 30(1) or paragraph (b) or (c) (but not paragraph (a)) of section 30(2) shall have a duty to secure that a programme is carried out unless it appears to the Secretary of State that a person already under that duty has failed or may fail to discharge it.

(3A) A proposal that a person who is or has been within paragraph (b) or (c) of section 30(1) is to have a duty to secure that a programme is carried out may not be made if the Secretary of State would be prevented from giving a notice under section 29(1) to the person by virtue of section 31(A1) if the programme had not already been approved under this section.

(4) A proposal under subsection (1) shall be made by written notice given—

(a) if the proposal is the Secretary of State's, to each of the persons by whom the programme was submitted; and

(b) in any other case, to the Secretary of State;

and a person giving notice to the Secretary of State shall at the same time pay to him such fee in respect of his expenditure under this Part of this Act as may be determined in accordance with regulations under section 39.

(4A) A person who makes a proposal under subsection (1) that is likely to have an effect on the cost of carrying out the programme must frame it so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying out the programme as proposed to be altered is kept to the minimum that is reasonably practicable in the circumstances.

(4B) Where the Secretary of State makes a proposal under subsection (1)(a) the purpose of which is to reduce the total cost of carrying out a programme, the proposal may not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme.

(5) Where the Secretary of State has made a proposal under subsection (1)(a), he shall give an opportunity to make written representations about it to each of the persons who submitted the programme.

(6) Where a proposal has been made under subsection (1)(b), the Secretary of State shall give an opportunity to make written representations about it to every person (other than one who made the proposal) who will if the proposed change is made—

- (a) have a duty to secure that the programme is carried out; or
- (b) cease to have that duty.

(7) The Secretary of State shall determine whether a change proposed under subsection (1) is to be made and shall then give notice of his determination, and of his reasons for it, to—

- (a) every person who, before the determination was made, had a duty to secure the carrying out of the programme; and
- (b) any person who has that duty as a result of the determination.

(7A) If it appears to the Secretary of State that what is proposed under subsection (1) is likely to have an effect on the cost of carrying out the programme, the Secretary of State must, before making a determination under subsection (7)—

- (a) consult the OGA, and
- (b) take that effect into account.

(7B) When consulted under subsection (7A)(a) the OGA must (in particular) consider and advise on—

- (a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and
- (b) whether subsection (4A) applies and, if so, whether it has been complied with.

(8) Where the Secretary of State determines that a change proposed in accordance with this section shall be made, this Part of this Act shall thereafter have effect as if the programme had been approved by the Secretary of State after being submitted under section 29 with the alterations, or as the case may be by the persons, specified in the determination.

34A Amendment of programmes

(1) This section applies where an abandonment programme approved by the Secretary of State includes provision by virtue of which the programme may be amended.

(2) A person who proposes to make an amendment under such a provision that is likely to have an effect on the cost of carrying out the programme must frame the amendment so as to ensure (whether by means of the timing of the measures proposed, the inclusion of provision for collaboration with other persons, or otherwise) that the cost of carrying out the programme as proposed to be amended is kept to the minimum that is reasonably practicable in the circumstances.

(3) If it appears to the person who proposes to make the amendment that subsection (2) applies, the person must consult the OGA before making the amendment.

(4) When consulted under subsection (3) the OGA must (in particular) consider and advise on—

(a) alternatives to abandoning or decommissioning the installation or pipeline, such as re-using or preserving it, and

(b) whether subsection (2) applies and, if so, whether it has been complied with.

(5) Any person who has the function of approving amendments made under a provision mentioned in subsection (1) must, when exercising the function, take into account the effect of the proposed amendment on the cost of carrying out the programme.

35.— Withdrawal of approval.

(1) The Secretary of State may at the request of one or more of the persons who submitted an abandonment programme withdraw his approval of the programme.

(2) If a request under subsection (1) is made by some but not all of the persons who submitted the programme, the Secretary of State shall give the others an opportunity to make written representations as to whether his approval should be withdrawn.

(3) The Secretary of State shall after determining whether to withdraw his approval of an abandonment programme give notice of his determination to each of the persons who submitted the programme.

36. Duty to carry out programmes.

Where an abandonment programme is approved by the Secretary of State, it shall be the duty of each of the persons who submitted it to secure that it is carried out and that any conditions to which the approval is subject are complied with.

36A Reduction of costs of carrying out programmes

(1) This section applies where an abandonment programme approved by the Secretary of State has effect in relation to an installation or pipeline.

(2) The Secretary of State may, for the purpose of reducing the total cost of carrying out the programme, by written notice require any person who submitted the programme to take, or refrain from taking, action of a description specified in the notice.

(3) The notice may, in particular, require—

(a) changes to the times at which the measures proposed in the programme are to be carried out;

(b) the persons who are under a duty to secure that the programme is carried out to

collaborate with other persons.

(4) The programme, and any condition to which it is subject, has effect subject to any notice given under this section.

(5) A notice given under this section may not increase the total costs to be met by any person who is to be subject to obligations under the programme or under any other abandonment programme.

(6) The Secretary of State may not give a notice to a person under this section without first giving the person an opportunity to make written representation as to whether the notice should be given.

(7) A person to whom a notice is given under this section who without reasonable excuse fails to comply with the notice is guilty of an offence.

(8) If a notice under this section is not complied with, the Secretary of State may—

(a) do anything necessary to give effect to the notice, and

(b) recover from the person to whom the notice was given any expenditure incurred under paragraph (a).

(9) A person liable to pay any sum to the Secretary of State by virtue of subsection (8) must also pay interest on that sum for the period beginning with the day on which the Secretary of State notified the person of the sum payable and ending with the date of payment.

(10) The rate of interest payable in accordance with subsection (9) is a rate determined by the Secretary of State as comparable with commercial rates.

37.— Default in carrying out programmes.

(1) If an abandonment programme approved by the Secretary of State is not carried out or a condition to which the approval is subject is not complied with, the Secretary of State may by written notice require any of the persons who submitted the programme to take such remedial action as may be specified in the notice within such time as may be so specified.

(1A) If it appears to the Secretary of State that the proposed remedial action is likely to have an effect on the cost of carrying out the programme, the Secretary of State must—

(a) consult the OGA before giving a notice under subsection (1), and

(b) take that effect into account when deciding whether to give the notice.

(1B) When consulted under subsection (1A)(a), the OGA must consider and advise on the likely effect of the proposed remedial action on the cost of carrying out the programme.

(2) A person who fails to comply with a notice given to him under subsection (1) shall be guilty of an offence unless he proves that he exercised due diligence to avoid the failure.

(3) If a notice under subsection (1) is not complied with, the Secretary of State may carry out the remedial action required by the notice, and may recover any expenditure incurred by him in doing so from the person to whom the notice was given.

(4) A person liable to pay any sum to the Secretary of State by virtue of subsection (3) shall also pay interest on that sum for the period beginning with the day on which the Secretary of State notified him of the sum payable and ending with the date of payment.

(5) The rate of interest payable in accordance with subsection (4) shall be a rate determined by the Secretary of State as comparable with commercial rates.

38.— Financial resources.

(1) The Secretary of State may, for a purpose specified in subsection (1A), give a notice to a person within subsection (1B) requiring the person, within a time specified in the notice—

- (a) to provide specified information relating to the person's financial affairs;
- (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.

(1A) Those purposes are—

- (a) determining whether to give a notice under section 29 to a person in respect of an installation or pipeline;
- (b) determining whether to make a proposal under section 34(1) to impose a duty on a person under section 36;
- (c) where a person has made such a proposal, determining whether to impose the duty on the person proposed.

(1B) A person falls within this subsection if—

- (a) a notice under section 29(1) may be given to the person,
- (b) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering proposing, in accordance with section 34(1)(b), that the person should have a duty under section 36, or
- (c) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering whether to impose a duty on the person under section 36 in accordance with a proposal made under section 34(1)(b).

(2) In order to satisfy himself that a person falling within subsection (2A) will be capable

of carrying out any abandonment programme which has been submitted (whether or not it is approved) or may be submitted in relation to an installation or pipeline, the Secretary of State may at any time by written notice require that person, within such time as may be specified in the notice—

(a) to provide such information (which may relate to the estimated costs of abandonment of the installation or pipeline or to any other financial or other matter) ; and

(b) to supply copies of such documents,

as may be so specified.

(2A) A person falls within this subsection if—

(a) a notice under section 29(1) has been given to the person, or

(b) the person has a duty under section 36 to secure that an abandonment programme is carried out.

(3) A person who—

(a) without reasonable excuse fails to comply with a notice under subsection (1) or (2);
or

(b) in purported compliance with such a notice provides information which the knows to be false in a material particular or recklessly provides information which is false in a material particular,

shall be guilty of an offence.

(4) The Secretary of State may, after consulting the Treasury, give written notice to a person to whom subsection (4A) applies, requiring the person to take such action as may be specified in the notice within such time as may be so specified.

(4A) This subsection applies to a person if—

(a) the person falls within subsection (2A), and

(b) the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been, or is likely to be, imposed on the person by section 36.

(5) The Secretary of State shall not give notice to a person under subsection (4) without first giving him an opportunity to make written representations as to whether the notice should be given.

(6) A person who fails to comply with a notice under subsection (4) shall be guilty of an offence unless he proves that he exercised due diligence to avoid the failure.

(7) It is an offence for a person to disclose information obtained by virtue of a notice under

subsection (1) or (2) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided,
- (b) is for the purpose of the exercise of the Secretary of State’s functions under this Part, Chapter 3 of Part 2 of the Energy Act 2004 or Part 1 of the Energy Act 2008, or
- (c) is required by or under an enactment.

38A Protection of funds set aside for the purposes of abandonment programme

(1) This section applies where any security for the performance of obligations under an approved abandonment programme has been provided by a person (“the security provider”) by way of a trust or other arrangements.

(2) Subsection (1) applies whether the security is provided before or after the programme is approved.

(3) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.

(4) In this section “*security*” includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) an insurance policy;
- (e) a letter of credit.

(5) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider’s insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.

(6) For the purposes of subsection (5), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—

- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
- (b) prevent or restrict their enforcement for the purposes of being so applied.

(7) In subsection (6) “*enactment*” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation.

38B Directions to provide information about protected assets

(1) The Secretary of State may direct a security provider to publish specified information about the protected assets.

(2) A direction under this section may specify—

- (a) the time when the information must be published, and
- (b) the manner of publication.

(3) If a security provider fails to comply with a direction, the Secretary of State, or a creditor of the security provider, may make an application to the court under this section.

(4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.

(5) In this section—

“*court*” —

- (a) in relation to an application in England and Wales or Northern Ireland, means the High Court, and
- (b) in relation to an application in Scotland, means the Court of Session;

“*security provider*” means a person who has provided security in relation to which section 38A applies;

“*the protected assets*”, in relation to a security provider, means the security, and any property or rights in which it consists.

38C Charges in connection with exercise of functions under Part 4

(1) The Secretary of State may by regulations made by statutory instrument provide for payment to the Secretary of State of charges for or in connection with the carrying out by the Secretary of State of the Secretary of State’s functions under this Part.

(2) Regulations under this section may provide that a charge is to be of an amount—

- (a) specified in the regulations, or
 - (b) determined by the Secretary of State in accordance with the regulations.
- (3) Regulations under this section may specify matters to which the Secretary of State must have regard when determining the amount of a charge.
- (4) Regulations under this section may specify—
- (a) how a charge is to be paid;
 - (b) when a charge is to be paid;
 - (c) the person by whom a charge is to be paid.
- (5) Provision made by virtue of subsection (4)(c) may confer a discretion on the Secretary of State.
- (6) Regulations under this section may—
- (a) include incidental, supplementary or consequential provision;
 - (b) include transitory or transitional provision or savings;
 - (c) make different provision for different purposes.
- (7) Before making regulations under this section, the Secretary of State must consult organisations in the United Kingdom that appear to the Secretary of State to be representative of persons who are likely to be affected by the regulations.
- (8) The Secretary of State must not make regulations under this section without the consent of the Treasury.
- (9) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

39.— Regulations.

- (1) The Secretary of State may make regulations relating to the abandonment of offshore installations and submarine pipelines.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may—
- (a) prescribe standards in respect of the dismantling, removal and disposal of installations and pipelines;
 - (b) prescribe standards and safety requirements in respect of anything left in the water in

cases where an installation or pipeline is not wholly removed;

(c) make provision for the prevention of pollution;

(d) make provision for inspection, including provision as to the payment of the costs of inspection;

(e) make provision as to the determination of the amount of any fees that are payable to the Secretary of State under this Part of this Act.

(3) Regulations under this section may include provision making it an offence, in such cases as may be prescribed in the regulations, to contravene the regulations.

(4) Where regulations under this section create an offence, they shall make provision as to the mode of trial and punishment of offenders; but—

(a) any provision as to punishment on summary conviction shall not authorise a fine exceeding the statutory maximum or imprisonment; and

(b) any provision as to punishment on conviction on indictment shall not authorise imprisonment for a term exceeding two years.

(5) Before making regulations under this section the Secretary of State shall consult organisations in the United Kingdom appearing to him to be representative of those persons who will be affected by the regulations; and he shall not make regulations relating to the amount of any fees without the consent of the Treasury.

(6) Regulations under this section shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

40. Offences: penalties.

A person guilty of an offence under section 28A, 30, 33, 36A, 37 or 38 shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

41.— Offences: general.

(1) Proceedings for an offence under section 28A, 30, 33, 36A, 37 or 38 or under regulations made under section 39 shall not be instituted in England and Wales except—

(a) by the Secretary of State or by a person authorised in that behalf by the Secretary of State; or

- (b) by or with the consent of the Director of Public Prosecutions.
- (2) Proceedings for an offence under section 28A, 30, 33, 36A, 37 or 38 or under regulations made under section 39 shall not be instituted in Northern Ireland except—
- (a) by the Secretary of State or by a person authorised in that behalf by the Secretary of State; or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (3) Where an offence committed by a body corporate under section 28A, 30, 33, 36A, 37 or 38 or under regulations made under section 39 is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (4) Where the affairs of a body corporate are managed by its members, subsection (3) shall apply in relation to acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (5) If an offence under section 37 or under regulations made under section 28A, 36A or 39 is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) shall not apply to proceedings for an offence to which subsection (1) of this section applies

42.— Validity of Secretary of State’s acts.

- (1) If any person is aggrieved by any of the acts of the Secretary of State mentioned in subsection (2) and desires to question its validity on the ground that it was not within the powers of the Secretary of State or that the relevant procedural requirements had not been complied with, he may within 42 days of the day on which the act was done make an application to the court under this section.
- (2) The acts referred to in subsection (1) are—
- (a) the giving of a notice under section 29(1);
 - (b) the approval of a programme under section 32;
 - (c) the rejection of a programme under section 32;
 - (d) a determination under section 34;
 - (e) a determination under section 35;

(ea) the giving of a notice under section 36A(2);

(f) the giving of a notice under section 38(4).

(3) If on an application under this section the court is satisfied that the act in question was not within the powers of the Secretary of State or that the applicant has been substantially prejudiced by a failure to comply with the relevant procedural requirements, the court may quash the act.

(4) Except as provided by this section, the validity of any of the acts of the Secretary of State referred to in subsection (1) shall not be questioned in any legal proceedings whatever.

(5) In this section “*the relevant procedural requirements*” —

(a) in relation to the giving of a notice under section 29(1), means the requirements of section 31(4);

(b) in relation to the approval of a programme under section 32, means the requirements of section 32(3);

(c) in relation to the rejection of a programme under section 32, means the requirements of section 32(4);

(d) in relation to a determination under section 34, means the requirements of section 34(5), (6) and (7);

(e) in relation to a determination under section 35, means the requirements of section 35(2);

(ea) in relation to the giving of a notice under section 36A(2), means the requirements of section 36A(6);

(f) in relation to the giving of a notice under section 38(4), means the requirements of section 38(5).

(6) In this section, “*the court*” means —

(a) in relation to England and Wales, the High Court;

(b) in relation to Scotland, the Court of Session;

(c) in relation to Northern Ireland, the High Court.

43. Notices.

Any notice or other communication authorised or required to be given by this Part of this Act may be sent by post (but this is without prejudice to any other method of transmission).

44.— Meaning of “offshore installation”.

(1) In this Part of this Act, “*offshore installation*” means any installation which is or has been maintained, or is intended to be established, for the carrying on of any activity to which subsection (2) applies.

(2) This subsection applies to any activity mentioned in subsection (3) which is carried on from, by means of or on an installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes.

(3) The activities referred to in subsection (2) are—

(a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of relevant waters;

(aa) the exploration of any place in, under or over relevant waters with a view to the storage of gas in such a place;

(ab) the conversion of any place in, under or over relevant waters for the purpose of storing gas;

(b) the storage of gas in, under or over relevant waters or the recovery of gas so stored;

(ba) the unloading of gas at any place in, under or over relevant waters;

(c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of relevant waters; and

(d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within any of paragraphs (a) to (c) or this paragraph.

(4) In this Part of this Act, “*relevant waters*” means—

(a) tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea;

(b) waters in an area designated under section 1(7) of the Continental Shelf Act 1964; and

(c) such inland waters as may for the time being be specified for the purposes of this paragraph by Order in Council;

but Her Majesty may by Order in Council provide that, in such cases and subject to such exceptions and modifications as may be prescribed by the Order, this Part of this Act shall have effect as if—

(i) any reference in this Part of this Act to relevant waters included a reference to waters in any area specified under section 10(8); and

(ii) in relation to an installation which is or has been maintained, or is intended to be established, in relevant waters, any reference in subsection (3) to relevant waters included a reference to waters in a foreign sector of the continental shelf which are adjacent to such waters.

(5) For the purposes of this section—

“*gas*” means gas within the meaning of section 2(4) of the Energy Act 2008;

“*inland waters*” means waters within the United Kingdom other than tidal waters and parts of the sea;

“*installation*” includes—

(a) any floating structure or device maintained on a station by whatever means; and

(b) in such cases and subject to such exceptions as may be prescribed by Order in Council, any apparatus or works which are by virtue of section 26 to be treated as associated with a pipe or system of pipes for the purposes of Part III of this Act,

but, subject to paragraph (b), does not include any part of a pipeline within the meaning of that section;

“*modifications*” includes additions, omissions and alterations.

(6) The fact that an installation has been maintained for the carrying on of an activity falling within subsection (3) shall be disregarded for the purposes of this section if, since it was so maintained, the installation—

(a) has been outside relevant waters or, where it was so maintained in a part of a foreign sector of the continental shelf adjacent to those waters, the area consisting of those waters and that part; or

(b) has been maintained for the carrying on of an activity not falling within that subsection.

(7) Any statutory instrument containing an Order under subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

45. Interpretation of Part IV.

In this Part of this Act—

“*abandonment programme*” has the meaning given by section 29;

“*foreign sector of the continental shelf*” has the meaning given by section 48(1);

“*offshore installation*” has the meaning given by section 44;

“*relevant waters*” has the meaning given by section 44(4);

“*submarine pipeline*” means a pipeline within the meaning of section 26 which is, or is intended to be established, in, under or over waters in—

(a) the territorial sea adjacent to the United Kingdom; or

(b) an area designated under section 1(7) of the Continental Shelf Act 1964.

but does not include any such pipeline which, by virtue of an order under subsection (2A) of section 24, is to be disregarded for the purposes of Part 3 of this Act (other than that subsection).

Appendix C - Taxes Ordinance 1997, section 114

114 Demolition and abandonment costs

(1) The demolition or abandonment of any machinery or plant used for the purposes of a ring-fence trade shall not be a relevant event for the purposes of sections 106B, 112 and 113 but the following provisions of this section shall have effect in relation to the demolition or abandonment.

(2) Where machinery or plant used for the purposes of a ring-fence trade is demolished or abandoned, then-

(a) if the person carrying on the trade replaces the machinery or plant by other machinery or plant, the net cost to him of the demolition or abandonment shall be treated for the purposes of this Chapter as expenditure incurred by him on the provision of that other machinery or plant (in addition to the expenditure actually incurred on its provision); and

(b) if the person carrying on the trade does not replace the machinery or plant, the expenditure to be taken into account in accordance with section 112(4) under head A for the chargeable period related to the demolition or abandonment shall be treated as increased by the net cost to him of the demolition or abandonment.

(3) In subsection (2) above, any reference to the net cost of the demolition or abandonment of any machinery or plant is a reference to the excess, if any, of the cost of the demolition or abandonment over any moneys received for the remains of the machinery or plant.

(4) This subsection applies to abandonment expenditure, that is to say, expenditure incurred by any person which, apart from subsection (6) below, would fall within subsection (2)(b) above and which is incurred-

(a) for the purposes of or in connection with the closing down of, or of any part of, that person's ring-fence trade in the whole or any part of a licensed area; and

(b) on the demolition or abandonment of machinery or plant which has been brought into use for the purposes of that trade and which is or forms part of an offshore installation or a submarine pipe-line; and

(c) on demolition or abandonment which is carried out, wholly or substantially, in order to comply with an abandonment programme, or with any condition to which the approval of such a programme is subject.

(5) In subsection (4) above "abandonment programme", "offshore installation" and "submarine pipe-line" have the same meaning as in Part V of the Offshore Minerals Ordinance 1994

(6) If the abandonment expenditure exceeds any moneys received for the remains of the machinery or plant concerned and the person incurring the abandonment expenditure so elects, then-

(a) an allowance shall be made to that person, for the chargeable period in which the expenditure is incurred, of an amount equal to that excess; and

(b) subsection (2)(b) above shall not apply in relation to that excess.

(7) An election under this section-

(a) shall specify the abandonment expenditure to which it relates and the amounts of any such moneys received as mentioned in subsection (6) above;

(b) shall be made by notice in writing given to the Commissioner not later than two years after the end of the chargeable period in which the abandonment expenditure was incurred; and

(c) shall be irrevocable.

(8) In any case where-

(a) a person ("**the former trader**") ceases to carry on a ring-fence trade; and

(b) within the period of three years immediately following the last day on which he carried on that trade, or within the further period that the Commissioner allows, the former trader incurs expenditure ("**post-cessation expenditure**") on the demolition or abandonment of machinery or plant which falls within subsection (4)(b); and

(c) the post-cessation expenditure would have been abandonment expenditure for the purposes of this section if the demolition had been carried out and the expenditure incurred before the cessation of the ring-fence trade; and

(d) apart from this section, the post-cessation expenditure would not be deductible in computing the income of the former trader for any purpose of this Ordinance,

then the former trader's expenditure on machinery or plant for the last chargeable period in which he carried on his ring-fence trade shall be treated for the purposes of section 112 as increased by so much of the post-cessation expenditure as exceeds any moneys received in the period referred to in paragraph (b) for the remains of the machinery or plant referred to in that paragraph.(9) Where subsection (8) above applies, any moneys received as mentioned in that subsection shall not constitute income of the former trader for any purpose of this Ordinance.

(10) In any case where-

(a) an allowance is made or to be made, by virtue of subsection (6) or (8) above, for any chargeable period; but

(b) the whole or part of the allowance cannot be made because of an insufficiency of ring-fence income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the 10 immediately preceding periods (but the allowance may only be made against ring-fence income of an earlier period in so far as there is an insufficiency of ring-fence income for later periods).

(11) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the provisions of subsections (8) and (10) above.