MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

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

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

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

Information redacted **YES**

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

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

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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BRIEFING

Offshore Renewable Energy regulatory regime – permit variations

Date:	13 June 2024	**Priority:**	Medium
Security classification:	In Confidence	**Tracking number:**	2324-3446

Action sought		
	Action sought	**Deadline**
Hon Simeon Brown **Minister for Energy**	**Agree** to the process for varying offshore renewable energy permits to inform drafting instructions to the Parliamentary Counsel Office.	20 June 2024

Contact for telephone discussion (if required)			
Name	**Position**	**Telephone**	**1st contact**
Melanee Beatson	Manager, Offshore Renewable Energy and Hydrogen	Privacy of natural persons	✓
Jahnavi Manubolu	Senior Policy Advisor	09 928 6626	

The following departments/agencies have been consulted

Minister's office to complete:

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

Comments

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BRIEFING

Offshore renewable energy regulatory regime – permit variations

Date:	13 June 2024	**Priority:**	Medium
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Purpose

To seek decisions on requirements for variations of feasibility and commercial permits for the Offshore Renewable Energy (ORE) regulatory regime.

This briefing is part of the package of briefings being provided to you to take further decisions, in line with the delegated authority obtained from Cabinet, to inform the instructions to Parliamentary Counsel Office (PCO) for the drafting of the Offshore Renewable Energy Bill.

Recommended action

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

a **Note** that Cabinet has provided you with delegated authority to make decisions on a range of issues relating to the Offshore Renewable Energy Bill – including the process for considering applications for permit variations and extensions

Noted

b **Note** that Cabinet has agreed the Minister for Energy may approve variations to permits on the application of the permit holder – specifically minor extensions to permit area, extensions to permit durations, transfers or change of control of the permit holder and permit conditions

Noted

c **Agree** to the proposed legislative requirements for varying permits, extending permit durations and change of permit holder as set out in **Annex 1**

Agree / Disagree / Discuss

d **Agree** that, in line with the Crown Minerals Act 1991, the Bill will prescribe the procedural requirements at a relatively high level, with a regulation-making power for further detail to be prescribed in regulations.

Agree / Disagree / Discuss

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

13 / 06 / 2024

Hon Simeon Brown
Minister for Energy

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Background

1. On 10 June 2024, Cabinet confirmed the detailed design of the Offshore Renewable Energy (ORE) regime agreed to by the Cabinet Business Committee (CBC-24-MIN-0041). This confirmed;

    a. the Minister for Energy may approve the following variations, on the request of the permit holder minor extensions to permit area, extensions to permit duration, transfers or change of control of the permit holder and permit conditions,

    b. feasibility permits will have a duration of seven years (with the ability for the Minister to approve an extension in limited circumstances),

    c. commercial permits will have an initial duration of up to 40 years, with the ability to seek extensions up to a further 40 years, and

    d. significant extensions to the permit area that alter generation capacity or impact neighbouring developments will require a new permit.

2. Cabinet delegated authority to you to make decisions on the procedural requirements for considering applications for permit variations and extensions (Recommendation 13.4).

3. This briefing provides advice on the design of the permit variation process – including extensions to permit duration and change of permit holder. We are seeking your decisions on proposals set out in **Annex One** to inform the drafting of the Offshore Renewable Energy Bill. The proposals cover:

    a. the type of variations that may be permitted and the requirements or criteria for approval, and

    b. the procedural requirements for receiving, assessing and determining variations.

Recommended legislative requirements for permit variations

4. In most comparable regimes, legislative requirements for the permit variation process aims to strike a balance between minimising the administrative burden on regulated parties and the regulator whilst ensuring the overarching policy objectives of the regime are not undermined.

5. **Annex One** outlines the recommended requirements, and our rationale, for each type of permit variation agreed to by Cabinet. The recommendations are consistent with the policy decisions made by Cabinet and the objectives of the regime. In summary, we recommend:

    a. **Extensions to feasibility permit duration** can only apply in a narrow set of circumstances outside the permit holder's control (e.g. force majeure, global supply chain delays, regulatory changes), up to a maximum of seven years. This provides flexibility to manage delays caused by significant events outside the permit holder's control, while not undermining the general seven-year limit for the feasibility stage. This is aligned with the Australian ***Offshore Electricity Infrastructure Act 2021*** (the Australian regime) and similar extensions are provided for by the ***Crown Minerals Act 1991*** (CMA).

b. The **procedural requirements for variations sought by the permit holder**, including whether any consultation is required, will depend on the type of variation requested. In most cases consultation will be at the discretion of the Minister, except in cases where extensions to a permit area are likely to have an impact on iwi or other permit holders. The proposed approach aligns with procedural requirements of the CMA, which the regulator has experience implementing. These requirements are also consistent with approaches taken in other regulatory regimes in New Zealand.

c. **The Minister may make some variations to a permit**, on the Minister's own initiative, with the consent of the relevant permit holder. In most cases, these variations are used to address administrative issues, legislative gaps or regulatory changes. As such, variations initiated by the Minister are not subject to the same limitations or thresholds described above. This aligns with the CMA and the Australian regime.

6. We recommend the Offshore Renewable Energy Bill describes the procedural requirements at a high level, with further detail or considerations to be prescribed in regulations. The proposed legislative requirements provide a clear and transparent decision-making framework. However, once permits are awarded and developments get underway, further safeguards and clarifications will be necessary. Prescribing additional requirements in regulations provides greater flexibility to make changes.

The recommended approach reflects the CMA and the Australian regime

7. Where appropriate, we have drawn from the CMA and/or the Australian regime. However, we consider some departures are necessary to reflect the objectives of the ORE regime agreed to by Cabinet. We have also had regard to the feedback we received from the consultation process – specifically, the commercial realities of an emerging market and the risks present in developments of this scale.

8. Key differences from the Australian regime or the CMA include:

a. **Permitting minor extensions to permit area,** which we consider to be necessary when site selection is entirely developer-led and permits are allocated very early in the development process. The Australian regime does not allow for permit area extensions, which may be due to the steps taken by the government to identify and declare suitable areas and the relatively larger areas available in Australia.

b. **Threshold for 'control'** is recommended to be where any person either owns or can control the exercise of 'more than 25 per cent' of the voting rights in the permit holder. This is lower than the equivalent definition in the CMA (50 per cent) and higher than the Australian equivalent (20 per cent). A lower threshold will ensure any changes to beneficial owners or those indirectly controlling the permit holders are notified and consented to – thereby reducing the risk of non-compliance. Furthermore, the 25 per cent threshold aligns with the Overseas Investment Act 2005, meaning it will be consistency across the ORE regulatory system.

c. **Approach to variations initiated by the Minister** aligns with the CMA. The purpose of a broadly scoped power is to fill any legislative gaps that may arise in the future. The Australian regime includes some limitations, which we do not consider to be necessary.

d. **Limiting the scope of extensions to permit durations**. The Australian regime does not impose any strict limitations on when an extension may be granted in the primary legislation. To appropriately manage risks of land banking and ensure extensions are only granted in limited circumstances, we recommend a more prescriptive approach and that additional detail is best set out in primary legislation.

Next steps

9. Alongside this briefing, we will also provide you with advice on the offences, penalties, powers and appeals for the ORE regime [Briefing 2324-3049]. Among other matters, that briefing provides advice on rights of appeals and penalties that apply if procedural requirements for permit variations (specifically change of control) are not met.

10. MBIE will develop drafting instructions based on your decisions on these briefings. The drafting instructions are intended to be provided to PCO by mid-June.

Annexes

Annex One: Proposed legislative requirements for permit variations

Annex One: Proposed legislative requirements for permit variations

Type of variation	Legislative requirements	Rationale
Legislative requirements applying to variations to the permit initiated by the permit holder For all variations: • applicant must provide the details of the permit they wish to vary, a description of the variation being sought, evidence to satisfy the Minister the prescribed criteria are met, and such other details as may be set out in regulation or required by the Minister • where a timeframe for application applies, an application may be accepted at a later date if the Minister is satisfied that there are compelling reasons why a permit holder could not apply within the prescribed timeframe • a fee may be prescribed to cover the administrative costs of receiving and assessing a permit variation application, and • decisions are provided to the permit holder in writing and, if approved, the Register is updated to reflect the variation and the date the permit was varied.		
Extensions of permit area	May be approved if: • the permit area remains a single contiguous area, • permit considerations are met to the same standard, • the proposed extension is minor – i.e. the variation does not materially alter the scale of the project or neighbouring developments and the area was not previously sought by another developer, and • for commercial permits, the extension is necessary to align with the relevant consent or consent application. In assessing the application, the Minister must consult with neighbouring ORE permit holders and iwi. The Minister may also consult with any other party with interests in the proposed area if relevant to assessing the likely impact of the variation.	The purpose of these extensions is mainly to allow technical corrections or minor adjustments arising from feasibility studies or other regulatory processes (i.e. consent applications). As proposed in the Cabinet paper, significant extensions will require new permits (e.g. comparative allocation in a future feasibility round). The legislative requirements are similar to the CMA, except that additional limitations are imposed to prevent land banking and minimise the impact on other developments or marine users. Consultation will be required to appropriately assess and ensure extensions are truly minor and the criteria for variation has been met – i.e. they do not undermine Treaty settlements or impact neighbouring developments. In the CMA, iwi consultation is required for any extensions to the permit area. The Australian regime does not explicitly provide for permit area extensions. However, the Australian regime follows a declared areas model which involves some government-led site selection and public consultation which reduces the uncertainty for developers. The Australian regime also provides much larger licence areas. In a fully developer-led model with smaller permit areas, we consider some flexibility for amending permit areas will be necessary to accommodate changes and incentivise investment.

Changes to permit conditions (Such as changes to deliverables in work programme, information disclosure obligations, impact mitigation measures, reporting obligations)	Application must be made at least three months before the relevant date for meeting a condition (if any). May be approved if permit considerations are likely, or highly likely, to be met to the same standard. The assessment will consider the permit considerations relevant to the condition being varied and a full reassessment may not be necessary if the change is immaterial or minor. If variation impacts other interests or Treaty settlements, the Minister may consult iwi and any other party that is likely to be affected by the variation.	As with the CMA and the EEZ Act, the requirements provide a flexible process that provides discretion to assess applications based on the condition that is proposed to be varied.
Extensions to feasibility permit duration	Application must be made at least 90 days before the permit is due to expire. Permit holders may seek more than one extension provided the total duration does not exceed 14 years (i.e. a further seven years following the initial term of seven years). May be approved if: • the permit holder has been impacted by unforeseen delays outside of their control preventing them from applying for commercial permits, • there continues to be energy system benefits, and • the proposed work programme is adequate and appropriate to obtaining a commercial permit within a reasonable timeframe. Regulations may prescribe the circumstances where extensions may be considered acceptable (such as force majeure, global supply chain delays, regulatory changes, legal challenges).	A strict end date could have perverse outcomes locking out developments with significant potential. Some flexibility, with clearly defined limits, would better achieve the policy objectives of the ORE regime whilst providing greater certainty to competitors. However, the threshold for extensions is set high and limited to a narrow set of circumstances, to avoid the risks of land banking, or undermining the comparative allocation process. Timeframes for total duration of permit reflect the maximum timeframes in the Australian regime. The CMA also provides for similar limitations to extensions to exploration permits where they do not have sufficient time to appraise a discovery.

Extensions to commercial permit duration	Application must be made at least five years before the permit is due to expire.
	
	Permit holders may seek more than one extension provided the total duration does not exceed 80 years (i.e. a further 40 years following the initial term of 40 years).
	
	Following a comprehensive reassessment of the permit considerations, extensions may be approved if:
	
	• the extension is necessary to:
	  o accommodate the operational life of infrastructure that continues to benefit the energy system, or
	  o appropriately decommission the infrastructure following unforeseen delays outside permit holder's control,
	• the associated consents have been obtained, and
	• the permit considerations are met to the same standard.
	
	In assessing the application, the Minister may consult with neighbouring ORE permit holders, iwi and other parties with an interest in the marine area.
		Similar to the CMA, variations to commercial permits are allowed in a wider set of circumstances on the presumption that, once infrastructure is under operation, it is presumed that they are delivering electricity that is benefiting New Zealand and therefore extensions are justified.
		
		However, limitations and a comprehensive reassessment is recommended to ensure there are no better uses of the space and to maintain a competitive market.
		
		Timeframes for total duration of permit reflect the maximum timeframes in the Australian regime.

Transfer of permit to a new permit holder	Applications must be made jointly by the permit holder and the transferee at least 90 days before the transfer is due to take effect. Will only be approved if the transferee meets the same standard of capability and is able to carry out the work programme and comply with the Act, regulations and any conditions of the permit (including the ability to put in place the required financial security to meet decommissioning obligations).	Changes to the permit holder can materially impact the deliverability and compliance of the permit holder. A full reassessment of capability is necessary to mitigate any risks that could arise from transfers to unsuitable permit holders. The requirements are proposed to be less discretionary than other variations due to their commercial nature and potential to influence investment decisions. A clearly defined process in which transfers will be approved provides greater investment certainty, while ensuring the objectives of the regime are not undermined.

Change of control of a permit holder	Approval must be sought and granted before a change affecting a person owning or controlling more than 25 per cent of the voting rights of the permit holder takes effect. Will only be approved if it is highly likely that the permit holder will continue to be able to carry out the work programme, the permit considerations are met to the same standard and the permit holder will continue to comply with the Act, regulations, and any conditions of the permit after the change of control takes effect. Approvals are subject to a notification by the permit holder confirming the change of control has taken place during the prescribed approval period.	Changes to the permit holder can materially impact the deliverability and compliance of the permit holder. However, the likely impact of a change of control may in some cases be lower than a transfer of the permit. The threshold for consent of change is aligned with the Australian regime and the Overseas Investment Act 2005, thereby creating consistency across the ORE regulatory system in New Zealand and overseas. The CMA has a higher threshold for change of control (50 per cent or more of the voting rights). This threshold was informed by the Insurance (Prudential Services) Act 2010 and intended to focus on changes to majority shareholding. A lower threshold will ensure any changes to beneficial owners or those indirectly controlling the permit holders are notified and consented to – thereby reducing the risk of non-compliance.
Reductions to permit area (in part or in full)	Will be accepted if the reduction does not result in the permit area being non-contiguous and any infrastructure outside the permit area is decommissioned in accordance with the decommissioning plans. A reduction to some of the permit area will be treated as a partial surrender and the vacated area will be potentially available for reallocation in future feasibility application rounds.	This will generally be a commercial decision that should not be subject to a discretionary approval process. A simplified process encourages areas to be released and made available in future rounds. Process for giving effect to reductions will be incorporated into the processes for surrendering permits, which will require permit holders to be liable until all underlying obligations are met (e.g. decommissioning, payment of fees, reporting).
Legislative requirements applying to variations to the permit initiated by the Minister		
Any change to the permit area, duration or conditions	At any time, the Minister may vary the permit area, duration or conditions with the written consent of the permit holder, provided that the variation is in line with the objectives of the Act. Variations must be updated on the register and provide an explanation of why the permit was varied.	Provides flexibility to allow variations in broader circumstances that serve the objectives of the Act and benefit both the permit holder and the Crown. Similar processes apply under the CMA and are used relatively rarely. However, when they have been used, they enabled the Minister to respond to changes in the regulatory landscape or industry changes without relying on legislative change.