

## Contents

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<b>Contents</b> .....	<b>i</b>
<b>3 Regulatory Requirements</b> .....	<b>1</b>
<b>3.1 Introduction</b> .....	<b>1</b>
<b>3.2 Development Consents</b> .....	<b>1</b>
3.2.1 Marine Strategy Framework Directive.....	1
3.2.2 Marine (Scotland) Act 2010.....	1
3.2.3 Terrestrial Planning .....	2
3.2.4 Electricity Act 1989.....	2
3.2.5 Energy Act 2004 .....	2
3.2.6 National Grid Electricity Transmission- Connection Agreements.....	3
<b>3.3 Protection of Habitats and Species</b> .....	<b>3</b>
3.3.1 Introduction.....	3
3.3.2 The Birds Directive.....	4
3.3.3 The Habitats Directive.....	4
3.3.4 Ramsar Convention .....	5
3.3.5 Biodiversity Duty .....	5
<b>3.4 Environmental Impact Assessment</b> .....	<b>5</b>
3.4.1 The Environmental Impact Assessment Directive.....	5
3.4.2 EIA Regulations .....	5
<b>3.5 Protecting the Water Environment</b> .....	<b>6</b>
3.5.1 The Water Framework Directive.....	6
3.5.2 Water Environment and Water Services (Scotland) Act 2003.....	6
<b>References</b> .....	<b>7</b>

## 3 Regulatory Requirements

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### 3.1 Introduction

- 1 This chapter describes the key regulatory requirements, applicable to the Inch Cape Offshore Wind Farm and Offshore Transmission Works (OfTW). In addition, it considers the broader legal and regulatory context applicable to the applications required for the construction, operation and decommissioning of the Wind Farm and OfTW (see *Section 3.2*). The Wind Farm is located in Scottish Territorial Waters (STW) so is within Scottish jurisdiction but applicable United Kingdom (UK) legislation is also relevant and has been included in this chapter. The legislation and policy framework for the Project is described in *Chapter 2: Policy and Legal Background*.
- 2 As part of the Environmental Impact Assessment (EIA) process the need to meet legislative requirements has been taken into account (see *Section 4.3*).

### 3.2 Development Consents

#### 3.2.1 Marine Strategy Framework Directive

- 3 The European *Marine Strategy Framework Directive* (2008/56/EC) requires Member States to prepare national strategies to manage their seas to achieve or maintain Good Environmental Status by 2020. These requirements are implemented in Scotland through the *Marine (Scotland) Act 2010*.

#### 3.2.2 Marine (Scotland) Act 2010

##### The Purpose of the Marine (Scotland) Act 2010

- 4 The *Marine (Scotland) Act 2010* introduced a framework for sustainable management of the STW, aiming to ensure environmental protection is balanced with economic growth of marine industries. The *Marine (Scotland) Act 2010* establishes that decisions by the Scottish Ministers on Marine Licence applications must be made in accordance with specified marine plans and policy documents unless relevant considerations indicate otherwise.

##### The Marine Licence Process

- 5 Marine Licences are issued by the Scottish Ministers, through Marine Scotland. The primary objectives of the legislation are to protect both the marine ecosystem and human health, and to minimise interference and nuisance to other legitimate users of the sea. Part 4 of the *Marine (Scotland) Act 2010* outlines licensable activities including the deposit of substances and objects, and the construction, alteration or improvement of works within the Scottish Marine Area.
- 6 Guidance on the Marine Licence process is contained in *A Guide to Marine Licensing: Marine Licensing in Scotland's Seas under The Marine (Scotland) Act 2010 and The Marine and Coastal Access Act 2009* (Marine Scotland, 2012a) and the *Marine Scotland Licensing and Consents Manual: Covering Marine Renewables and Offshore Wind Energy Development*

(Marine Scotland, 2012b). These documents have guided the approach to marine licensing of the Project.

### 3.2.3 Terrestrial Planning

- 7 Planning permission under the *Town and Country Planning (Scotland) Act 1997* as amended by the *Planning etc. (Scotland) Act 2006* will be required for the Onshore Transmission Works (OnTW) once sufficient design detail and location have been confirmed. It is envisaged that any application will be determined by East Lothian Council.

### 3.2.4 Electricity Act 1989

- 8 The Inch Cape Offshore Wind Farm is subject to an application for consent to Scottish Ministers under Section 36 of the *Electricity Act 1989* for construction, operation and decommissioning of the Wind Turbine Generators (WTGs) and inter-array cables.
- 9 Where consent is granted under Section 36 of the *Electricity Act 1989*, a declaration under Section 36A may be made at the same time, which will restrict rights of navigation where this is prevented.
- 10 Under Section 36B of the *Electricity Act 1989* (as outlined in Section 99 of the *Energy Act 2004*) the Scottish Ministers may not grant Section 36 consent where the Generating Station would interfere with 'recognised sea lanes essential to international navigation'. In deciding whether navigation will be obstructed, the Scottish Ministers must take into account how they intend to exercise their powers in relation to any application for a declaration to remove public rights of navigation (see *Chapter 19: Shipping and Navigation* and *Appendix 19A: Navigational Risk Assessment Development Area* and *Appendix 19B: Navigational Risk Assessment Offshore Export Cable Corridor*).

### 3.2.5 Energy Act 2004

#### Safety Zones (Section 95)

- 11 Under Section 95 of the *Energy Act 2004*, where the construction of a renewable energy installation is proposed, and the Secretary of State for Energy and Climate Change considers it appropriate for safety reasons, a notice declaring that specified areas are to be designated as safety zones may be issued. Such zones are intended to secure the safety of the renewable energy installation, or other installations in the vicinity, during construction, operation, or decommissioning. Importantly the purpose of the safety zone is also to secure the safety of individuals in or around the installation, vessels in the vicinity and individuals on such vessels. The requirement and extent of any safety zones during construction and/or operation will be determined through further consideration and consultation. Should a future application be made in relation to the Project the impacts of these zones are considered in the relevant sections of this Environmental Statement (ES) (*Chapter 18: Commercial Fisheries* and *Chapter 19: Shipping and Navigation* and *Chapter 21: Other Human Considerations*).

### Decommissioning Programme

- 12 Sections 105 to 114 of the *Energy Act 2004* establish a decommissioning scheme for offshore wind and marine energy installations. This incorporates the requirements of the *Convention for the Protection of the Marine Environment of the North-East Atlantic* (the OSPAR Convention). This regional convention, which applies to specific sea areas of the north-east Atlantic, including the North Sea and parts of the Arctic Ocean, replaced and updated the 1972 *Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft* and the 1974 *Paris Convention for the Prevention of Marine Pollution from Land-Based Sources*. The OSPAR Convention came into force in March 1998 (OSPAR, 1998a).
- 13 Under the terms of OSPAR Decision 98/3 (OSPAR 1998b), effective February 1999, there is a prohibition on the dumping of and leaving offshore installations wholly or partly in place unless further consents are granted.

### The Offshore Transmission Operator Process

- 14 The *Energy Act 2004* requires that an Offshore Transmission Owner (OfTO) will own and operate the transmission infrastructure that is required to connect a wind farm to the national grid. The transmission infrastructure will include the OfTW and the OnTW.
- 15 An OfTO will be appointed through a tendering process managed by The Office of Gas and Electricity Markets. Inch Cape Offshore Limited (ICOL) is currently acting as an 'interim OfTO' and will submit consent applications for the transmission infrastructure. It is anticipated that ICOL will also construct the OfTW and OnTW before ownership is transferred to an independent third party to operate, this is known as 'Generator Build'.

### **3.2.6 National Grid Electricity Transmission- Connection Agreements**

- 16 ICOL has three separate connection agreements with National Grid Electricity Transmission plc (NGET) for the electrical connection of the Inch Cape Platform 1 (330 MW), Inch Cape Platform 2 (360 MW) and Inch Cape Platform 3 (360 MW) to the national electricity transmission system (national grid). Each platform is defined as a separate power station within their respective connection agreements.
- 17 Each Inch Cape connection is to be constructed by ICOL on the basis of an associated Construction Agreement with NGET.

## **3.3 Protection of Habitats and Species**

### **3.3.1 Introduction**

- 18 Sites designated for their European importance for nature conservation value include Special Protection Area (SPAs) and Special Areas of Conservation (SACs). These internationally important designations form the Natura network and are protected under legislation as described in *Section 3.3.2* to *Section 3.3.5*.

### 3.3.2 The Birds Directive

- 19 Directive 2009/147/EC (the *Birds Directive*) requires member states to protect all wild birds, their nests, eggs and habitats. Under the *Birds Directive*, SPAs are designations which protect birds which are particularly rare or vulnerable, and migratory birds.

### 3.3.3 The Habitats Directive

- 20 Directive 92/43/EEC (the *Habitats Directive*) defines the basis upon which areas can be designated in order to conserve natural habitats and protect wild fauna and flora. The *Habitats Directive* has a major contribution to implementing the Biodiversity Convention agreed at the 1992 Rio Earth Summit. As well as establishing Natura sites and setting out how they should be protected, the *Habitats Directive* has a number of wider implications, such as those relating to European Protected Species. In Scotland, the requirements of the *Habitats Directive* are translated into specific legal obligations by the Habitats Regulations (the *Conservation (Natural Habitats &c.) Regulations 1994* and the *Conservation of Habitats and Species Regulations 2010*).

#### Habitats Regulations Appraisal

- 21 Where the potential for likely significant effects on European designated sites has been identified, an Appropriate Assessment must be carried out by the relevant competent authority (in this case, the Scottish Ministers). The Habitats Regulations are distinct from the EIA Regulations (see *Section 3.4.2* below) and the Appropriate Assessment is a separate process to EIA. The purpose of an Appropriate Assessment is to assess whether there will be an adverse effect on the integrity of a European designated site as a result of a proposed project (either alone or in combination with other plans or projects). Information to inform an Appropriate Assessment by the relevant competent authority has been included in this ES. Screening for likely significant effects and/or the information to inform an Appropriate Assessment are collectively referred to as a Habitats Regulations Appraisal (HRA) (see *Section 4.7.4*).
- 22 The designated European sites (SPAs and SACs) which could be impacted by the Project are described in *Chapter 9: Designated Nature Conservation Sites*. Likely significant effects on designated European sites and information to support the HRAs are presented in *Chapter 13: Natural Fish and Shellfish* (see *Section 13.13*), *Chapter 14: Marine Mammals* (see *Section 14.13*) and *Chapter 15: Ornithology* (see *Section 15.12*). The findings of the HRAs are summarised in *Chapter 23: Summary* (see *Section 23.15*).

#### European Protected Species

- 23 European Protected Species (EPS) Licences may be granted to authorise activities which would otherwise be illegal under the Habitats Regulations. Regulation 39 of the Habitats Regulations relates to EPS and Regulation 44 provides clarity on the circumstances under which EPS licences are required. ICOL will apply for any required EPS licences once consent has been granted and a detailed construction method statement is produced.

### 3.3.4 Ramsar Convention

- 24 The *Convention of Wetlands of International Importance especially as Waterfowl Habitat* (Ramsar Convention, 1971) was adopted in Ramsar, Iran in 1971 and ratified by the UK Government in 1976. Ramsar sites have subsequently been designated to protect wetlands that are of international significance in terms of their ecology, botany, zoology, limnology (freshwater science) or hydrology. All Ramsar sites in Scotland are also either SPAs or SACs.
- 25 Ramsar Sites which could be impacted by the proposals have been considered in the EIA and HRAs are described in *Section 9.3*.

### 3.3.5 Biodiversity Duty

- 26 Section 1 of the *Nature Conservation (Scotland) Act 2004* states that "it is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions." The Scottish Ministers will need to consider this duty and the biodiversity strategy *Scotland's Biodiversity – It's In Your Hands* (Scottish Executive, 2004) when determining the application.

## 3.4 Environmental Impact Assessment

### 3.4.1 The Environmental Impact Assessment Directive

- 27 The *EIA Directive* (85/337/EEC) introduced a Europe-wide procedure to ensure that environmental consequences of projects are identified and assessed before authorisation is given. The purpose of the *EIA Directive* is to ensure that, in considering whether to grant consents for developments that are likely to have significant environmental effects, the consenting authorities have all the necessary environmental information on which to base their decision.
- 28 In Scotland, the *EIA Directive* has been brought into Scots law through a number of Scottish Statutory Instruments relevant to individual consenting regimes as noted in *Section 3.2* above and explained in more detail in *Section 3.4.2*.

### 3.4.2 EIA Regulations

- 29 The *EIA Directive* is applied to the different consent regimes in the UK by different sets of regulations (which can differ slightly in approach) as outlined above. The need for an EIA for electricity generation projects is defined in Scotland by the *Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000* as amended in 2008. These set out the statutory process and minimum requirements for EIA.
- 30 The *Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000* prohibit consent from being granted unless the environmental information, as defined in those Regulations, has been taken into consideration.

- 31 Applications for a Marine Licence required for the Project will be subject to consideration, assessment and reporting in compliance with the *Marine Works (Environmental Impact Assessment) 2007* (as amended).

### 3.5 Protecting the Water Environment

#### 3.5.1 The Water Framework Directive

- 32 The *Water Framework Directive (WFD)* (2000/60/EC) was introduced in 2000 to establish systems to manage the water environment. The *WFD* applies to the water environment - rivers, lochs, estuaries, coastal and underground water. Under the *WFD* European Union member states are required to protect and improve their inland and coastal waters.

#### 3.5.2 Water Environment and Water Services (Scotland) Act 2003

- 33 The *WFD* was enacted in Scotland through the *Water Environment and Water Services (Scotland) Act 2003*. Section 2 imposes a duty on the Scottish Ministers to secure compliance with the requirements of the *WFD* when exercising their functions. The most relevant *WFD* requirement is the need to prevent deterioration in the status of a water body. In Scotland this requirement extends up to three nautical miles from land.

## References

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European Parliament, Council (2000). *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive)*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:327:0001:0072:en:PDF>

European Parliament, Council (2008). *Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:164:0019:0040:EN:PDF>

European Parliament, Council (2009). *Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version of Directive 79/409/EEC as amended)*. Available at: [http://ec.europa.eu/environment/nature/legislation/birdsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm)

Great Britain Parliament (1989). *Electricity Act 1989*. Available at: <http://www.legislation.gov.uk/ukpga/1989/29/contents>

Great Britain Parliament (1994). *The Conservation (Natural Habitats, &c.) Regulations 1994*. Available at: <http://www.legislation.gov.uk/uksi/1994/2716/contents/made>

Great Britain Parliament (2004). *Energy Act 2004*. Available at: <http://www.legislation.gov.uk/ukpga/2004/20/contents>

Great Britain Parliament (2007). *The Marine Works (Environmental Impact Assessment) Regulations 2007*. Available at: <http://www.legislation.gov.uk/uksi/2007/1518/contents/made>

Great Britain Parliament (2010). *The Conservation of Habitats and Species Regulations 2010*. Available at: <http://www.legislation.gov.uk/uksi/2010/490/contents/made>

Marine Scotland (2012a). *A Guide to Marine Licensing: Marine Licensing in Scotland's Seas under The Marine (Scotland) Act 2010 and The Marine and Coastal Access Act 2009*. Available at: <http://www.scotland.gov.uk/Resource/0039/00394406.pdf>

Marine Scotland (2012b). *Marine Scotland Licensing and Consents Manual: Covering Marine Renewable and Offshore Wind Energy Development*. Report R.1957. Available at: <http://www.scotland.gov.uk/Resource/0040/00405806.pdf>

OSPAR (1998a). *Convention for the protection of the marine environment of the north-east Atlantic (OSPAR Convention)*. Available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21998A0403\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21998A0403(01):EN:HTML)

OSPAR (1998b). *OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations*. Available at: [http://www.ospar.org/v\\_measures/browse.asp?preset=0&menu=00510416000000\\_000000\\_000000\\_0&v0\\_0=&v1\\_0=title,referencenumber,dateofadoption&v2\\_0=&v0\\_1=OSPAR+Decision+98/3&v1\\_1=referencenumber&v2\\_1=&v0\\_2=&v1\\_2=dateofadoption&v2\\_2=](http://www.ospar.org/v_measures/browse.asp?preset=0&menu=00510416000000_000000_000000_0&v0_0=&v1_0=title,referencenumber,dateofadoption&v2_0=&v0_1=OSPAR+Decision+98/3&v1_1=referencenumber&v2_1=&v0_2=&v1_2=dateofadoption&v2_2=)



Ramsar Convention (1971). *Convention of Wetlands of International Importance especially as Waterfowl Habitat*. Available at: [http://www.ramsar.org/cda/en/ramsar-documents-texts/main/ramsar/1-31-38\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-documents-texts/main/ramsar/1-31-38_4000_0__)

Scottish Executive (2004). *Scotland's Biodiversity: It's In Your Hands*. . Available at: <http://www.scotland.gov.uk/Resource/Doc/25954/0014583.pdf> [Accessed February 2013].

Scottish Parliament (1997). *Town and Country Planning (Scotland) Act 1997*. Available at: <http://www.legislation.gov.uk/ukpga/1997/8>

Scottish Parliament (2000). *The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000*. Available at: <http://www.legislation.gov.uk/ssi/2000/320/contents/made>

Scottish Parliament (2003). *Water Environment and Water Services (Scotland) Act 2003*. <http://www.legislation.gov.uk/asp/2003/3/contents>

Scottish Parliament (2004). *Nature Conservation (Scotland) Act 2004*. Available at: <http://www.legislation.gov.uk/asp/2004/6/contents>

Scottish Parliament (2006). *Planning etc. (Scotland) Act 2006*. Available at: <http://www.legislation.gov.uk/asp/2006/17/contents>

Scottish Parliament (2010). *Marine (Scotland) Act 2010*. Available at: [http://www.legislation.gov.uk/asp/2010/5/pdfs/asp\\_20100005\\_en.pdf](http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf)

The Council of the European Communities (1985). *Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (The EIA Directive) as amended*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20090625:EN:PDF>

The Council of the European Communities (1992). *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) as amended*. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0043:20070101:EN:HTML> [Accessed September 2012].