

### 3 LEGISLATION AND CONSENTING REQUIREMENTS

#### 3.1 INTRODUCTION

1. This Section of the ES explains the development consents required to construct, operate and decommission the Project, and which legislative and regulatory procedures have been adhered to with regard to the EIA as reported in this ES.
2. All necessary development consents and leases will be obtained prior to construction commencing.

#### 3.2 DEVELOPMENT CONSENT REQUIREMENTS

3. A summary of the development consents and licences required by BOWL to construct, operate and decommission the Wind Farm and the OfTW are outlined in Table 3.1.
4. Figure 1.1 shows the Project Boundary in context of the Scottish Territorial Waters boundary.

*Table 3.1 Development Consents Required*

Project Element	Development Consents and Licences Required	Works / Activities	Decision Making Body
Wind Farm (wind turbines and inter-array cables only)	Section 36 Consent-Electricity Act 1989	To operate generating station within UK territorial waters adjacent to Scotland as defined in The Scottish Adjacent Waters Boundaries Order 1999.	Scottish Ministers, acting through MS-LOT.
Wind Farm and OfTW	Marine Licences - Marine (Scotland) Act 2010; and Marine and Coastal Access Act 2009  (Separate Marine Licences will be sought to construct the Wind Farm and the Offshore Transmission Works.)  Section 36A Consent-Electricity Act 1989	For depositing substances or objects and for the construction, alteration or improvement of any works in or over the sea or on or under the seabed (below Mean High Water Springs (MHWS) including the temporary placement of construction materials and/or disposal of dredged material etc.  To extinguish public rights of navigation so far as they pass through those places within the Scottish Marine Area where structures forming part of the Wind Farm and OfTW are to be located.	Scottish Ministers, acting through MS-LOT.

### **3.2.1 SECTION 36 CONSENT**

5. To operate a wind farm (of greater than 1 Megawatt (MW) capacity) in Scottish Territorial Waters requires consent under Section 36 of the Electricity Act 1989. A Section 36 consent is required for all elements of the 'generating station' and for the purposes of the Project this includes the wind turbines and inter-array cables elements of the Wind Farm but does not include the OfTW.
6. The Onshore Transmission Works (OnTW) are covered in a separate ES.

### **3.2.2 SECTION 36A CONSENT**

7. BOWL are also applying for consent under Section 36A of the Electricity Act 1989 to extinguish public rights of navigation so far as they pass through those places within the Scottish Marine Area where structures (but not, for the avoidance of doubt, the areas of sea between those structures) forming part of the Wind Farm and Offshore Transmission Works are to be located.

### **3.2.3 MARINE LICENCE**

8. The Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009 state that a Marine Licence is required to construct, alter or improve any works or deposit any object in or over the sea, or on or under the seabed. A Marine Licence will therefore be required to construct the Wind Farm and to construct the OfTW element of the Project. The Marine Licence requirements under the Marine (Scotland) Act 2010 apply in Scottish Territorial Waters and the Marine Licence requirements under the Marine and Coastal Access Act 2009 apply in Scottish Waters beyond the Territorial Sea (Scottish Offshore Waters).
9. In considering a Marine Licence application insofar as it relates to Scottish Territorial Waters the Scottish Ministers ensure the proposals are in accordance with the "appropriate marine plans" (as defined in the Marine (Scotland) Act 2010 i.e. any National Marine Plan or relevant Regional Marine Plan in effect) and insofar as it relates to Scottish Offshore Waters the "appropriate marine policy documents" (as defined in the Marine and Coastal Access Act 2009 i.e. the UK Marine Policy Statement and any relevant Marine Plan in effect), unless relevant considerations indicate otherwise. When making their decision, the Scottish Ministers must also consider:
  - The need to protect the environment;
  - The need to protect human health;
  - The need to prevent interference with legitimate uses of the sea;
  - The effects of any use intended to be made of the works in question when constructed;
  - Any representations made by anyone with an interest in the outcome of the marine licence application; and
  - Such other matters as the Scottish Ministers consider relevant.

### **3.2.4 DECISION MAKERS**

10. Marine Scotland (MS) is the part of the Scottish Government charged with 'managing Scotland's seas for prosperity and environmental sustainability'. One of its key responsibilities is to 'achieve good environmental status' through its marine planning and licensing functions. The current statutory marine planning and

licensing system was established by the Marine (Scotland) Act 2010 and Marine and Coastal Access Act 2009 (and went live in April 2011). The physical elements of the Project lie within Scottish Territorial Waters and, in respect of a portion of the OfTW, Scottish Offshore Waters, therefore, in marine planning and licensing terms the Project lies under the jurisdiction of the Scottish Ministers acting through MS-LOT. The Scottish Ministers acting through MS-LOT are therefore the decision making body for the elements within Scottish Territorial Waters.

11. All the Project consent applications will be determined by MS-LOT acting on behalf of Scottish Ministers.

### **3.3 EIA LEGISLATIVE FRAMEWORK**

12. The European Commission (EC) EIA Directive (85/337/EEC as amended by 97/11/EC, 2003/35/EC and 2009/31/EC) (EC, 1985) requires that an EIA must be carried out in support of an application for development consent for certain types of major projects.
13. The EIA Directive lists a series of such projects in Annex I and Annex II which are likely to have the potential to give rise to significant environmental effects. Offshore wind farm developments are listed as Annex II projects as *“installations for the harnessing of wind power for energy production (wind farms)”*.
14. Annex II projects require an EIA to be undertaken for projects where they are: *“likely to have significant effects on the environment by virtue of factors including their nature, size or location”*.
15. The EIA Directive has been transposed into Scottish law through a number of different regulations. In relation to the Project, the EIA Directive is applied through the following regulations:
  - The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000, as amended by The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008 (where applicable); and
  - The Marine Works (Environmental Impact Assessment) Regulations 2007, as amended by the Marine Works (Environmental Impact Assessment) Regulations 2011 (where applicable).
16. This EIA has been carried out in accordance with both of the above regulations, collectively referred to in this ES as the “EIA Regulations”.

#### **3.3.1 ROCHDALE ENVELOPE**

17. The ‘Rochdale Envelope’ principal derived from planning case law (R v Rochdale MBC ex. parte Tew and R v Rochdale MBC ex parte Milne 1999). The Rochdale cases established, amongst other things, that the description of the project for the purposes of EIA can set out a range of parameters within which the actual project undertaken must fall. The Rochdale cases established that it is acceptable for an ES to assess the worst case likely significant effects of a project through implementing the Rochdale Envelope approach.
18. The applications for development consent will be submitted before detailed design and specific phasing details have been developed. This is normal practice and it is recognised by regulators that within the offshore wind industry final design details will not be available to the EIA team at the time of ES finalisation. Given this

position, it is accepted that a Rochdale Envelope can be created containing realistic maximum/minimum design parameters when undertaking the EIA. For each topic in the ES, the EIA team assesses the likely significant effects arising from the worst case scenario within the Rochdale Envelope.

19. Given that the Project will ultimately be constructed, operated and decommissioned within the maximum/minimum extent of these parameters the ES will have assessed the likely significant effects of the 'worst case' Project.
20. This EIA has been undertaken using a Rochdale Envelope approach and is based upon a set of clearly defined parameters which cover a range of construction, operational and decommissioning options. This has allowed the likely significant effects arising from the worst case maximum/minimum parameters to be assessed. The Rochdale Envelope parameters used in this ES are presented in Section 7: Project Description.

### **3.4 OTHER RELEVANT LEGISLATION**

#### **3.4.1 HABITATS AND BIRDS DIRECTIVES AND REGULATIONS**

21. In 1992 the EC adopted Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive).
22. The provisions of the EC Habitats Directive required EC Member States to introduce a range of measures including the protection of habitats and species listed in Annexes I and II of the Directive. The 189 habitats listed in Annex I and the 788 species listed in Annex II are protected by means of a network of sites (known as the Natura 2000 network of sites). Council Directive 2009/147/EC on the conservation of wild birds (EC Birds Directive adopted in 2009) fulfils a parallel role for bird species.
23. In Scotland, the Conservation of Habitats and Species Regulations 2010 and the Conservation (Natural Habitats, &c.) Regulations 1994 transpose the requirements of the EC Habitats Directive and EC Birds Directive into national law within Scottish Territorial Waters, (up to the 12 nautical mile (NM) territorial waters limit). The 2010 Regulations consolidate various amendments to the 1994 Regulations and apply in Scotland to, among other things, Section 36 applications.
24. Within Scottish Offshore Waters (beyond 22.2 km (12 NM)), the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 apply. The Conservation of Habitats and Species Regulations 2010 now provide for the designation and protection of European sites (Special Protection Areas (SPAs) and Special Areas of Conservation (SACs)), the protection of European protected species, and the adaptation of planning and other controls for the protection of European Sites.
25. In the UK the Birds Directive has also been transposed into national law through the Habitats Regulations. Under these Habitat Regulations a network of protected sites for birds (SPAs) and certain habitats and species (SACs) have been established in the UK. Projects which are likely to have a significant effect on European protected sites are subject to particular consideration of their impacts in an Appropriate Assessment (part of a Habitats Regulations Appraisal (HRA)). A report containing information to inform an appropriate assessment will be submitted.