

Chapter 3 Regulatory and Policy Context

3.1 Introduction

- 1 This chapter describes the policies and legislation that regulate the consenting, construction, operation and decommissioning of the Neart na Gaoithe offshore wind farm offshore works and ancillary infrastructure. Additional legislation which may be applicable to specific aspects of the development is also described.
- 2 The chapter describes the international regulations which influence and drive national legislation and leads on to discuss the regulatory framework and consenting regime for all aspects of the offshore elements of the project. The requirements to undertake an Environmental Impact Assessment (EIA) and Habitats Regulations Appraisal (HRA) are also covered.
- 3 National and local policies in support of the development of renewable energy schemes such as Neart na Gaoithe are briefly detailed in this chapter but are discussed in more detail in Chapter 2: Climate Change and the Need for the Project.

3.2 Data Sources

- 4 Information has been gathered from a variety of sources, including:
 - Directives and guidance documents from the European Commission;
 - United Kingdom (UK) and Scottish Government publications and strategies, Acts of Parliament, Statutory Instruments and White Papers;
 - Regional and local government development strategies and plans; and
 - Guidance and publications issued by the Scottish Government and its statutory advisory bodies.

3.3 Regulatory Overview

- 5 Offshore developments are governed by a number of regulatory and legislative instruments. Table 3.1 summarises the key legislation and provides details of requirements and implications for the Neart na Gaoithe development consent application process.
- 6 The applications for Marine Licence and Section 36 Electricity Act 1989 (EA 1989) consent to construct and operate an offshore generating station are submitted to the Marine Scotland Licensing and Operations Team (MS-LOT), a department of Marine Scotland, who provide a single point of access. Scottish Ministers are the marine licensing authority and will make the decision on the Section 36 Consent of the EA 1989, however Marine Scotland will process the application for both consents and issue the Marine Licences on their behalf.
- 7 For the offshore works consent decision, Marine Scotland will be advised by the Scottish Government’s statutory advisers, including Scottish National Heritage (SNH), as to additional considerations with respect to the Habitats Regulations.
- 8 The onshore works associated with the project (the works associated with installation of the onshore cable and substation, including all aspects above Mean Low Water Springs (MLWS)) are subject to separate regulatory requirements, such as the Town and Country Planning Act (Scotland) 1997 and the Town and Country Planning (EIA) (Scotland) Regulations 2011. This legislation requires an application for planning permission to be made for the onshore works to East Lothian Council, with separate documentation requirements including a separate Environmental Assessment of the onshore works.

- 9 The export cable for the project falls under what is known as the Offshore Transmission regime. This regime, governed by Ofgem, dictates that export cables (or transmission assets) linking offshore wind farms to the onshore grid connection will not ultimately belong to the wind farm operator once projects are operational; they will belong to an Offshore Transmission Owner (OFTO). Developers are permitted to consent and build the transmission assets and then hand over to the OFTO to own and manage or to consent the assets and then hand over to the OFTO to build, own and operate. In both cases the developer applies for consent for projects as a whole, including the transmission assets that will ultimately be transferred to an OFTO.
- 10 Given the OFTO regime and the consenting regime (see Table 3.1), this document therefore accompanies an application for the following licences and consents:
 - Offshore Generating Station – a Section 36 Consent and a Marine Licence, covering the offshore generating station, consisting of the turbines and inter-array cables; and
 - Transmission Assets – a Marine Licence, covering the offshore substation, export cable and associated infrastructure to Mean High Water Springs (MHWS).

Legislation	Requirement and implications for Neart na Gaoithe
Electricity Act 1989 (as amended)	Section 36 of the EA 1989 requires consent from the Scottish Ministers for applications to construct and operate offshore wind farms above 1 MW in generation capacity within Scottish territorial waters (STW).
Marine (Scotland) Act 2010	A Marine Licence is required from Scottish Ministers for activities listed under Part 4 of the Marine (Scotland) Act 2010, which includes proposals to construct, alter or improve any works within the Scottish marine area. The Marine Licence(s) will be issued by MS-LOT on behalf of the Scottish Ministers.
Conservation (Natural Habitats, &c.) Regulations 1994 ('the Habitats Regulations') (as amended)	When consenting projects under the Marine (Scotland) Act 2010 or the EA 1989, a competent authority (in this case Marine Scotland) must consider potential impacts on European protected sites and species of nature conservation importance. Marine Scotland, as the competent authority, has been advised by Scottish Natural Heritage (SNH) that an Appropriate Assessment (AA) of such potential impacts under the Habitats Regulations will be required. A Wildlife Licence may be required (from SNH or Marine Scotland, depending on the species and type of activity) for proposed activities that could impact protected species as listed in the Habitats Regulations.
Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) and The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (together the 'EIA Regulations')	Any application for consent for a project under the Electricity Act 1989 or for a Marine Licence which constitutes an "EIA development" under the EIA Regulations must be accompanied by an Environmental Statement (ES). EIA is required to inform the production of an ES for the Neart na Gaoithe offshore works under the EIA Regulations.

Table 3.1: Overview of key legislation and consents required for the Neart na Gaoithe offshore works development application

- 11 The following documents have been produced in support of the applications to construct and operate the offshore works of the Neart na Gaoithe offshore wind farm:
- An ES (this document) which complies with the content requirements of the EIA Regulations, including a description of the development and the provision of maps or charts to accompany this description;
 - Information to support AA (within this document); and
 - A Preliminary Hazard Analysis and Navigational Risk Assessment, the findings of which are detailed in Chapter 17: Shipping and Navigation and the chapter appendices.

3.4 Consenting and Licensing Legislation

- 12 Applications to construct and operate offshore wind farms that generate more than 1 MW are made to the Scottish Ministers, who have the power to grant or refuse consent under Section 36 of the EA 1989. Section 36 applicants are obliged to “...have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest” and, so far as possible “...avoid causing injury to fisheries or to the stock of fish”.
- 13 In considering any proposals Scottish Ministers are obliged to have regard to the “*desirability of preserving the amenity and fisheries and also the extent to which the applicant has attempted to mitigate any effects*”. Such considerations are taken into account in this ES.
- 14 Under the Marine (Scotland) Act 2010, a Marine Licence is also required from the Scottish Ministers (MS-LOT) for activities listed under Part 4 of the Act. These activities include proposals to construct, alter or improve any works within the Scottish marine area.
- 15 The Act also imposes a number of duties upon the Scottish Ministers and public authorities in respect of the granting of any Marine Licence, such as obligations under Sections 3 and 4 to act in a way “*which is best calculated to further the achievement of sustainable development and to mitigate and adapt to climate change*”. These considerations are therefore also taken into account in this ES.

3.4.1 Environmental Impact Assessment

- 16 European Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (‘the EIA Directive’), as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC, provides that European Union authorities giving consent for a specific project must take into consideration any significant environmental or socioeconomic impacts the proposed project may cause.
- 17 The associated transposing regulations for the EIA Directive, relevant to Neart na Gaoithe, are the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (as amended) and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended). Both legislative instruments require the applicant to undertake an EIA of relevant electricity generating installations and marine projects, respectively.
- 18 Under the initial screening stage of EIA, the Neart na Gaoithe project was identified as being “*an installation for the harnessing of wind power for energy production (wind farms)*” as listed in Annex II of the EIA Directive and cross-referred to in the Marine Works (Environmental Impact Assessment) Regulations 2007. The Neart na Gaoithe project is an EIA Development under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 as it falls within the definition of Schedule 2 Development which includes “*a generating station, the construction of which (or the operation of which) will require a section 36 consent*”. The competent authority has advised that a full EIA and associated ES are required through production of a Scoping Opinion, shown in Appendix 6.1: Scoping Opinion.
- 19 The process by which an EIA is undertaken is discussed in greater detail in Chapter 6: The Approach to Environmental Impact Assessment.

- 20 There are further requirements for the separate application for planning permission to East Lothian Council in respect of installing the onshore cable from Neart na Gaoithe to the National Grid. An EIA of these works will be submitted in support of the planning application and where relevant, the cumulative impacts of the offshore works and onshore works are considered in both assessments to provide a holistic understanding of the full impacts of the proposals.

3.4.2 Requirement to Undertake a Habitats Regulations Appraisal

- 21 In addition to the requirement to undertake an EIA, European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (‘the Habitats Directive’) and the transposing Habitats Regulations, require development projects to consider the impacts of potential developments on sites and species of international nature conservation importance. Where any plan or project is likely to significantly affect features of a nature conservation site which has been designated under the Habitats Regulations, a HRA is required and the competent authority must undertake an AA of the potential impacts of the project against the site’s conservation objectives. Marine Scotland has advised that it is the competent authority in respect of the Neart na Gaoithe offshore works. SNH has advised Marine Scotland and the development team that an HRA is required for Neart na Gaoithe in respect to a number of Natura 2000 sites (Special Areas of Conservation (SAC) and Special Protection Areas (SPA), SNH, 2010), and as such information to inform the AA is presented within this ES. Further information on HRA and AA is provided in Chapter 11: Nature Conservation.
- 22 Under the Habitats Regulations, offshore developments may also require wildlife licences for activities which may disturb or affect a protected species as listed in Annex IV of the Habitats Directive, such as certain marine mammal and fish species. Further detail on this and other relevant legislation, policy and conventions concerning nature conservation is provided in Chapter 11: Nature Conservation.

3.4.3 Additional Legislation

- 23 There is legislation concerning specific receptors or topics, for example relating to safety and navigation, maritime archaeology or commercial fisheries. Legislation relevant to assessing potential environmental impacts is referred to in individual chapters of this ES.

3.5 Applicable Policy

- 24 The determination of both Section 36 Consent and Marine Licence applications involves a wide range of considerations, including relevant national, regional and local government policies. This section describes the overarching policies that have been taken into account in preparing this ES.

3.5.1 Energy Policy and Planning

- 25 There are several policies supporting the diversification of energy sources and promoting the development of renewable energy sources, and offshore wind farm development in particular, as described in Chapter 2: Climate Change and the Need for the Project. In line with international agreements and European policy, a number of domestic policies are in place to promote the use of renewable energy.
- 26 The following legislation has been taken into account in submitting the application for consent for Neart na Gaoithe and in preparing this ES:
- The Climate Change Act 2008, which commits the UK to a net reduction in greenhouse gas emissions of 80% by 2050 and 34% by 2020;
 - The Climate Change (Scotland) Act 2009, which sets additional targets for emissions reductions in Scotland than the Climate Change Act: 80% reduction by 2050, with an additional interim target of 42% by 2020; and

- 27 There are a number of UK and Scottish Government policies and plans promoting the use of energy from renewable sources, including:
- The Energy Acts 2004 - 2011, which update energy legislation to reflect the availability of renewable energy technologies through measures such as feed-in tariffs, the Renewables Obligation and other incentives to develop renewable energy development.
 - The National Renewable Energy Action Plan for the UK, produced under Article 4 of the Renewable Energy Directive;
 - The UK National Policy Statements (NPSs) on Energy, produced under Part 2 of the Planning Act 2008, which decision makers must have regard to when deciding an application for nationally significant infrastructure projects consented under that Act. As energy policy is a reserved matter for UK ministers, the Energy NPSs may be a relevant consideration in planning decisions in Scotland. Of the 12 NPSs, EN-1 (overarching energy) sets out the policy for the delivery of major energy infrastructure and reflects the UK Low Carbon Transition Plan, and EN-3 (Renewable Energy) supports the development of renewable energy and offshore wind farms in particular;
 - Strategic Environmental Assessments (SEAs), carried out under Directive 2001/42/EC on the assessment of plans and programmes on the environment ('the SEA Directive'), which underpin TCE offshore energy leasing rounds and require member states to consider the environmental impacts of government plans, programmes and other strategic actions. This is to ensure the integration of environmental and socioeconomic considerations such as the STW leasing round; more details on this can be found in Chapter 4: Site Selection Project Alternatives and Design Evolution;
 - The 2020 Routemap for Renewable Energy in Scotland, which sets further targets of renewable sources to generate the equivalent of 100% of Scotland's gross annual electricity consumption by 2020 (The Scottish Government, 2011);
 - The National Planning Framework 2 (NPF2), produced under the Planning etc. (Scotland) Act 2006, sets out a strategy for Scotland's development up to 2030 (The Scottish Government, 2009). One of the main elements of the strategy is to "realise the potential of Scotland's renewable energy resources and facilitate the generation of power and heat from all clean, low carbon sources" (The Scottish Government, 2009); and
 - Scottish Planning Policy (SPP) published in 2010 sets out how the planning system should manage the process of encouraging, approving and implementing renewable energy proposals when preparing development plans and determining planning applications.

3.5.2 Strategic Marine Policy

- 28 There are several policies governing the marine environment that are in development and that have been taken into account in the production of this ES. Many of these also promote the use of offshore wind as a renewable energy resource and therefore relate closely to energy policy:
- The UK Marine Policy Statement (MPS), produced under the Marine and Coastal Access Act 2009, sets out policies that shape the management and use of our marine resources and will apply to all UK waters. The MPS provides a strategic framework for future marine spatial plans to consider how they contribute to delivery of national targets and priorities, including energy policy targets;
 - Marine spatial plans for Scottish waters, as provided for by the Marine (Scotland) Act 2010 and the Marine and Coastal Access Act 2009, are being developed under the MPS. A national marine plan and regional marine plans will be developed for Scotland; and

- A sector specific marine plan, 'Blue Seas - Green Energy: A Sectoral Marine Plan for Offshore Wind in Scottish Territorial Waters' ('the Plan') (Marine Scotland, 2011) was published in March 2011 (including a SEA, HRA and an Economic Impact Assessment), and confirmed that six sites for offshore wind developments are suitable for development in the short term. Within the Plan the Neart na Gaoithe site is shortlisted as one of these sites.

29 Following the publication of the Plan and accompanying documents including SEA, Neart na Gaoithe was confirmed as one of the six remaining STW development options considered viable in the near future. One of the six sites, the Forth Array, has been withdrawn by its developer.

30 The remaining five STW sites represent a potential total of up to 4,860 MW of electricity generating capacity (refer to Table 3.2 and Chapter 1: Introduction). The continued development of offshore wind farms is expected to be a major contributor towards the Scottish Government's 2020 target for renewable generation.

Site	Maximum capacity (MW)
Islay	690
Argyll Array	1800
Beatrice	920
Inch Cape	1000
Neart na Gaoithe	450
Forth Array	Withdrawn by developer

Table 3.2: Scottish territorial water development sites identified in the Plan and respective maximum site capacities

31 The Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 also provide a framework for the development of a network of Marine Protected Areas (MPAs). More detail on these and related measures is provided in Chapter 11: Nature Conservation.

3.5.3 Other Policies

32 There are also a number of wider policy measures, including those at a local level, which can be taken into account as considerations for the development of a project such as Neart na Gaoithe, which promote the development of renewable energy resources:

- Scotland's Low Carbon Economic Strategy (LCES) aims to secure economic growth and includes an approach to guiding Scotland into a low carbon economy. The strategy focuses on Scotland's targets for reducing GHG emissions, and recognises that, "By 2030 almost all of our electricity will have to come from low carbon technologies such as renewables and fossil fuelled plants fitted with carbon capture and storage technology" (The Scottish Government, 2010);
- The Edinburgh and South East Scotland Strategic Development Plan Authority (SESplan) Strategic Development Plan (SDP) will be submitted to Scottish Ministers in July 2012. The proposed SDP, as approved by the SESplan Joint Committee includes the setting of a "framework for the encouragement of renewable energy proposals, taking into account relevant economic, social, environmental and transport considerations" (SESplan, 2011);
- East Lothian Council's East Lothian Local Plan 2008 states that East Lothian Council is supportive of the Government's policy to secure more energy from renewable sources and will endorse proposals of wind farms and the associated transmission lines given local considerations (East Lothian Council, 2008);
- Fife Council's Fife Structure Plan 2006-2026 sets out a development strategy and land use policies and states the policy objective "encouraging the use of renewable energy and low carbon technologies, including wind power" (Fife Council, 2009); and
- Edinburgh City Local Plan 2010 acknowledges that much of Scotland's capacity for generating renewable energy will come from large scale developments such as wind farms (Anderson, 2010).

3.6 References

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