



# BERWICK BANK WIND FARM ENVIRONMENTAL IMPACT ASSESSMENT REPORT

Volume 1, Chapter 2: Policy and Legislation



### Document Status

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## 2. POLICY AND LEGISLATION

### 2.1. INTRODUCTION

1. This chapter of the Offshore Environmental Impact Assessment (EIA) Report provides a summary of the policy and legislative context for the Proposed Development, specifically in relation to:
  - international obligations and policy, including those derived from European legislation, relating to climate change, reducing greenhouse gas (GHG) emissions and the role of renewable energy;
  - UK and Scottish climate change and energy legislation and policy;
  - Scottish offshore wind consenting legislation, including the consent applications required for the construction, operation and maintenance, and decommissioning of the Proposed Development; and
  - other legislation that may be relevant to the Proposed Development.
2. Policy and legislation relating to specific topics, particularly in respect to the impact assessment, is discussed in the relevant topic chapters of the Offshore EIA Report.
3. The consents required are dictated by the location, nature and scale of the Proposed Development and the consenting requirements are explained with reference to different legislative requirements within Scottish inshore waters (within 12 nautical miles (nm)) and within Scottish offshore waters (12 nm to 200 nm). Section 2.3 describes the consents and legislation relevant to the Proposed Development.
4. In order to combat climate change through decarbonisation of the energy system, Scotland and the UK, require new renewable sources of energy, which will ensure that a secure supply of electricity is available to meet increased future demand (Scottish Government, 2017). The provision of new renewable energy capacity will help the Scottish Government meet legally binding national and international commitments on climate change.
5. Offshore wind generation has been identified at Scottish and UK level as being capable of providing a significant contribution towards such commitments (Scottish Government, 2020b; HM Government, 2020a).
6. For the purpose of this chapter (and throughout this Offshore EIA Report), where legislation has been amended (for example, by European Union (EU) Exit Amendment Regulations), following an initial acknowledgement of the amending legislation, the legislation is referred to as amended.

### 2.2. CLIMATE CHANGE POLICY AND THE NEED FOR THE DEVELOPMENT

#### 2.2.1. INTERNATIONAL COMMITMENTS

7. In December 2015, 195 countries adopted the first ever universal, legally binding global climate deal at the Paris climate conference (21<sup>st</sup> Conference Of the Parties (COP21)). The Paris Agreement (2016) sets out a global action plan towards climate neutrality with the aims of stopping the increase in global average temperature to below 2 °C above pre-industrial levels, and to pursue efforts to limit global warming to 1.5 °C.

#### 2.2.2. EUROPEAN LEGISLATION AND POLICY

##### EU Exit

8. On 31 January 2020, the UK formally left the EU after triggering article 50 of the Lisbon Treaty (EU Exit). After leaving the EU, the UK Government has committed, as a minimum, to implement international environmental obligations in accordance with the EU (Withdrawal) Act 2018 and to maintain environmental commitments made and legislation enacted following the departure of the UK from the EU (HM Government, 2018).
9. On this basis, the existing EU renewable energy targets for the UK, including the EU Renewable Energy Directive (RED) 2009/28/EC will remain applicable. However, new EU legislation or updates to existing directives will not be required to be transposed into UK law. The following sections set out the EU renewable energy targets.
10. Where specific EU Exit legislation has been implemented to ensure legislative instruments continue to operate in a similar way after EU Exit Day, these are discussed in this chapter.

#### 2.2.3. UK CLIMATE CHANGE AND ENERGY LEGISLATION

##### The Climate Change Act 2008

11. Under the Climate Change Act 2008, the UK committed to a net reduction in GHG emissions by 2050 of 80% against the 1990 baseline. In June 2019, secondary legislation was passed that extended that target to at least 100% against 1990 baseline by 2050, with Scotland committing to a net zero by 2045. The Climate Change Act 2008 also established the Committee on Climate Change (CCC) which advises the UK government on emissions targets, and reports to Parliament on progress made in reducing GHG emissions. The CCC has produced six four yearly carbon budgets, covering 2008-2037. These carbon budgets represent a progressive limitation on the total quantity of GHG emissions to be emitted over the five year period as summarised in Table 2.1. There are currently no amendments to the Climate Change Act 2008 as a result of EU Exit.

**Table 2.1: Summary of the Six Carbon Budgets Produced by the UK Committee on Climate Change**

Budgetary Period	Years Covered	Carbon Budget (MtCO <sub>2</sub> )	Average Annual Reduction (cf. 1990)
1	2008-2012	3,018	-26%
2	2013-2017	2,782	-31%
3	2018-2022	2,544	-37%
4	2023-2027	1,950	-52%
5	2028-2032	1,725	-58%
6 <sup>1</sup>	2033-2037	1,105 to 885	-75% to -80%

12. The UK has met the target set in the first two carbon budgets, with GHG emissions being lower between 2008 and 2017 (HM Government, 2020b). The Institute for Government states that “*the UK is on track to meet its third carbon budget (the current one, covering 2018-22) but is not on track to meet its fourth (2023-27) and fifth (2028-32)*” (Institute for Government, 2020).
13. The UK Government subsequently produced two Carbon Plans (in 2009 and then in 2011) which set out how the UK is planning to achieve decarbonisation within the framework of the energy policy and provide a vision for 2050. The importance of offshore wind generation is noted in the most recent Carbon Plan published in 2011 (HM Government, 2011a).
14. The Proposed Development is intended to have the production capacity of 4.1 GW at optimal running, which will be a remarkable contribution towards achieving a net zero target in Scotland and the UK.
- Climate change
15. The Scottish Government published a statement in 2019 stating that “*there is a global climate emergency*” (Scottish Government, 2019a). The Intergovernmental Panel on Climate Change (IPCC) (2021) states that “*widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred as a result of human influence*” (IPCC, 2021).
16. The CCC (2019) recommended a net zero date of 2045 for Scotland while recognising that Scotland has a “*greater relative capacity to remove emissions than the UK as a whole*”. CCC (2020) provides the UK Government response to the CCC’s 2020 Progress Report to Parliament, highlighting that “*the truly global challenge presented by climate change cannot be underestimated*” and “*meeting net zero will require reductions in emissions across the economy on a scale not previously seen*”.
17. In December 2020, the UK Government published the Energy White Paper (HM Government, 2020d), which provides a compelling case for tackling climate change, with a substantial increase of offshore wind capacity as part of the Prime Minister’s ten point plan.
18. The UK submitted its Nationally Determined Contribution (NDC) (HM Government, 2020c) to the United Nations Framework Convention on Climate Change (UNFCCC) under the Paris Agreement in December 2020, covering England, Scotland, Wales and Northern Ireland. The UK’s NDC draws on the Clean Growth Strategy (HM Government, 2017), which contains the current policies and measures to decarbonise all

sectors of the UK economy through the 2020s and beyond. HM Government (2020c) includes a commitment for a reduction of at least 68% of GHG emissions by 2030 compared to 1990 levels.

19. The Scottish Government has also published an indicative NDC (Scottish Government, 2021a) setting legally binding targets, which include “*a 75% reduction in economy-wide GHG emissions by 2030, relative to 1990 levels of carbon dioxide, methane and nitrous oxide and 1995 levels of hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and nitrogen trifluoride*”, and 90% reduction by 2040 with net zero emissions proposed for 2045.
20. Moreover, the Scottish First Minister has sent a letter to the Prime Minister (Scottish Government, 2021 b) highlighting the severity of the climate emergency we currently face and the need for international action to reduce emissions to limit global warming.
21. The programme for Scottish Government 2021-2022, which includes a chapter on how Scotland proposes to end its contribution to climate change, was published in September 2021 (Scottish Government, 2021c). This report considers offshore wind as a key contributor towards this goal.
22. Furthermore, Scotland’s Climate Change Plan 2018-2032 was updated in 2020 (Scottish Government, 2020a), listing policies and proposals which contribute towards reducing GHG emissions and meeting Scotland’s target for net zero.
23. The Proposed Development is considered to be a key project to help towards the end goal of reducing Scotland’s contribution to climate change and achieving net zero within the target dates set out within Government policy.
24. Further information on how climate change has been assessed as part of this Offshore EIA Report is included in volume 3, appendix 21.
- The Energy Act 2013
25. The Energy Act 2013 makes provisions to incentivise investment in low carbon electricity generation, ensure security of supply, and help the UK meet its emission reduction and renewables targets.
26. The Energy Act contains provisions for Electricity Market Reform (EMR), which sets out the framework for replacing Renewables Obligation Certificates (ROCs) with Contracts for Difference (CfD) to provide stable financial incentives to encourage investment in low carbon electricity generation.
27. CfDs are private contracts between a low carbon electricity generator and the UK Government owned Low Carbon Contracts Company (LCCC). The aim of the CfDs is to give greater certainty and stability of revenues to electricity generators by reducing exposure to volatile wholesale prices, whilst protecting the consumer from paying for higher generation support costs when electricity prices are high (BEIS, 2021). CfDs aim to support development of renewable energy in the UK by incentivising development.
28. Table 2.2 summarises these projects and subsequent CfDs awarded between 2014 and 2022 (BEIS, 2021; CfD Allocation Round, 2022).

<sup>1</sup> Four level options have been shortlisted as part of the sixth carbon budget advice to government. Included in the table is the looser budget option (in line with CCC’s ‘headwind’ scenario) and a tighter budget option (in line with CCC’s ‘widespread innovation’ scenario).

**Table 2.2: CfDs Allocated Between 2014 and 2022**

Allocation Round	Year	Number of CfDs Awarded	CfDs for Offshore Wind Projects	Name of Projects
-	2014	8	5	<ul style="list-style-type: none"> <li>• Beatrice;</li> <li>• Burbo Bank Extension;</li> <li>• Dudgeon;</li> <li>• Hornsea Project One; and</li> <li>• Walney Extension.</li> </ul>
1	2015	27	2	<ul style="list-style-type: none"> <li>• East Anglia One; and</li> <li>• Neart na Gaoithe.</li> </ul>
2	2017	11	3	<ul style="list-style-type: none"> <li>• Triton Knoll;</li> <li>• Hornsea Project Two; and</li> <li>• Moray Offshore (East).</li> </ul>
3	2019	12	6	<ul style="list-style-type: none"> <li>• Dogger Bank Creyke Beck B P1;</li> <li>• Dogger Bank Teeside A P1;</li> <li>• Forthwind;</li> <li>• Seagreen Phase 1; and</li> <li>• Sofia Offshore Wind Farm Phase 1.</li> </ul>
4	2022	93	5	<ul style="list-style-type: none"> <li>• Inch Cape Phase 1;</li> <li>• East Anglia 3 Phase 1;</li> <li>• Norfolk Boreas Phase 1;</li> <li>• Hornsea Project Three; and</li> <li>• Moray West.</li> </ul>

**UK Marine Policy Statement**

29. The UK wide Marine Policy Statement (MPS) was published in March 2011 and updated in September 2020, under Section 44 of the Marine and Coastal Access Act (MCAA) 2009, to provide a framework for marine spatial planning, specifically for the preparation of Marine Plans and to ensure that marine resources are used in a sustainable way (HM Government, 2011b). The MPS was jointly adopted by Scottish Ministers, the Secretary of State, Welsh Ministers and the Department of the Environment Northern Ireland (DOENI). The MPS confirms that all public authorities, in examining and determining applications for all energy infrastructure, the relevant marine policy statement must be followed, and the following must be considered:
- the national level of need for energy infrastructure;
  - the positive wider environmental, societal and economic benefits of low carbon electricity generation;
  - that renewable energy resources can only be exploited where the resource exists and where economically feasible; and
  - the potential for inward investment on energy related manufacturing and deployment activity and employment opportunities and regeneration of local national economies, supporting the objective of developing the UK's low carbon manufacturing capability.
30. The MPS states that "Marine Plans should take into account and identify areas of potential for the deployment of different renewable energy technologies", and notes that as offshore wind is the most developed offshore renewable energy technology, it has the biggest potential to improve the UK's medium term energy security (HM Government, 2011b).

31. Potential impacts from renewable energy along with mitigation measures are considered in the National Planning Framework (NPF 3) (see National Planning Framework 3, paragraph 41) (Scottish Government, 2014a). The MPS states that renewable energy offers the potential for significant broad scale environmental benefits through mitigating GHG emissions.
32. When considering potential benefits and adverse effects, decision makers should also consider any cumulative impacts of the proposals with other projects and activities. The MPS also confirms that the level of assessment undertaken for any project should be proportionate to the scale and potential impact of the project, as well as the sensitivity of the environment concerned and in accordance with the EIA Directive, where applicable.

**UK Offshore Wind Sector Deal**

33. The UK Government published the Offshore Wind Sector Deal in 2019, which sets out the key commitments and actions from the UK Government to support offshore wind energy development (HM Government, 2019). "The Deal will drive the transformation of offshore wind generation, making it an integral part of a low-cost, low-carbon, flexible grid system and boost the productivity and competitiveness of the UK supply chain" (HM Government, 2019). The Sector Deal is divided in terms of ideas, people, infrastructure, business environment and places, laying key commitments for each of these. In relation to infrastructure, it investigates:
- how clean, affordable energy is essential for economic prosperity;
  - the need to reduce energy costs for consumers;
  - how to deliver up to 30 GW of energy in a sustainable way; and
  - the plans for offshore wind energy beyond 2030.
34. In 2020, the UK Government prepared a policy paper to reflect on the status of the offshore wind industry one year after the publication of the Offshore Wind Sector Deal (HM Government, 2020a). Since the launch of the Sector Deal in 2019, the UK Government and the offshore wind energy sector have made progress on delivering the commitments set out within the Sector Deal. Examples of these include:
- the development and establishment of Offshore Wind Growth Partnership;
  - the development of Regional Clusters; and
  - the appointment of a Diversity Champion.

**2.2.4. SCOTTISH POLICY AND LEGISLATION**

**The Climate Change (Scotland) Act 2009 and Climate Change (Emissions Reduction Targets) (Scotland) Act 2019**

35. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 amends the Climate Change (Scotland) Act 2009 to introduce binding targets on the Scottish Government to reduce net Scottish GHG emissions by at least 100% by 2045 from 1990 levels, with interim targets of at least:
- 56% by 2020;
  - 75% by 2030; and
  - 90% by 2040 (HM Government, 2009d).
36. The objective of this Act is to contribute appropriately to the world's efforts to deliver on the Paris Agreement reached at the COP21 of the UNFCCC. There are currently no amendments to The Climate Change (Scotland) Act 2009 as a result of EU Exit.

37. Due to the size of the Proposed Development and its potential to reduce GHG emissions, it is considered to be a key offshore wind project for the delivery of those targets identified in paragraph 35.

#### The Scottish Energy Strategy

38. The Scottish Energy Strategy: The Future of Energy in Scotland (Scottish Government, 2017), sets out the Scottish Government's vision for the future energy system in Scotland. The strategy outlines six priorities around Scotland's 2050 vision which includes renewable and low carbon energy solutions. The strategy sets targets of the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources; and an increase by 30% in the productivity of energy use across the Scottish economy, by 2030. The strategy highlights the success of Scottish projects in offshore wind in recent CfD auctions and highlights the great potential for future development, particularly within deeper waters.
39. The Proposed Development will be a key project to achieve the goals set out by Scottish Government (2017), where the target is for at least 50% of the energy in Scotland to be supplied from renewable sources. Indeed, more challenging targets have been set since the publication of the Scottish Energy Strategy, as outlined at paragraph 35, increasing the importance of the Proposed Development's contribution to meeting these targets.
40. The Scottish Government has published a Position Statement for the Scottish Energy Strategy in March 2021 (Scottish Government, 2021d), which provides an overview of the key priorities for the short to medium term to ensure green economic recovery. This report sets out key priorities for energy (including renewables) and Scotland's energy strategy. This has also been covered in the Scotland's National Strategy for Economic Transformation (Scottish Government, 2022), which highlights the importance of offshore wind.

#### National Planning Framework 3

41. The NPF 3 is the long term strategy developed in 2014 by the Scottish Government, which expresses plans for development and investment in infrastructure by the Scottish Government over the next 25 years (Scottish Government, 2014a).
42. In relation to renewable energy and offshore wind energy, one of the key visions for Scotland's development is the enhancement of the low carbon economy and to be a world leader in low carbon energy generation, both onshore and offshore. The NPF 3 commits Scottish Ministers to maximising the economic benefits arising from the manufacturing, construction, operations and maintenance activities associated with offshore wind energy developments in Scottish Waters.
43. The NPF 3 is supported by the Scottish Planning Policy (SPP) (Scottish Government, 2014b), which sets out national plans and strategies to provide a vision of how Scotland should evolve in the future. This includes policy on a series of topics, including renewable energy, and acknowledges Scotland's offshore renewable energy sources.
44. The Fourth National Planning Framework: position statement (Scottish Government, 2020b) sets out the Scottish Government's current thinking on the issues to be addressed as part of Scotland's fourth NPF (NPF 4). Scottish Government (2020a) shows a strong support for renewable energy projects, stating that "as a priority, our strategy will need to facilitate the roll-out of renewable electricity and renewable and zero emissions heat technologies".

#### National Planning Framework 4

45. A revised draft NPF 4, which was laid before Scottish Parliament in November 2022 and is currently under consultation, sets out the approach to planning and development in support of achieving net zero in Scotland by 2045 (Scottish Government, 2022). The revised draft of the NPF 4 supersedes the previous version produced by the Scottish Government in 2021 (Scottish Government, 2021e).
46. The Scottish Government's (2022a) "strategy and policies support development that helps to meet greenhouse gas emissions targets" and the 'global climate emergency and the nature crisis have formed the foundations of the spatial strategy as a whole'. The NPF 4 includes Energy Policy 19 which provides support for all forms of renewable, low carbon and zero emissions sources including wind energy. Due to timing, the technical chapters (chapters 7-21 in Volume 2 of this EIAR Report) were completed prior to the publishing of the revised NPF 4 and therefore may reference the previous draft NPF 4 (Scottish Government, 2021e). However, it is not considered to have any substantive effect on the outcomes of the EIA Report.

#### Scotland's Offshore Wind Route Map

47. The Offshore Wind Industry Group (OWIG) (consisting of industry, government, and public sector bodies) published Scotland's Offshore Wind Route Map in 2010 to illustrate the opportunities, challenges and recommendations to OWIG to build a strong and sustainable offshore wind industry in Scotland (OWIG, 2010). The ambition of the offshore wind industry is highlighted, with 25% of Europe's offshore wind potential, the manufacturing, supply chain, job creation and training opportunities present Scotland with huge scope for sustainable economic growth (OWIG, 2010). The route map presented recommendations to support offshore wind making a significant contribution to the now superseded target of achieving 80% of Scotland's electricity consumption coming from renewable sources by 2020. The latest review of this route map was in 2013, which studied the progress that has been made in line with the original recommendations and updated targets (OWIG, 2013). This concluded that offshore renewables, especially the full deployment of Round 3 and the Scottish territorial waters round, will play a key role in meeting both the 2020 targets and 2030 decarbonisation targets (OWIG, 2013).

#### Offshore Wind Policy Statement

48. The Offshore Wind Policy Statement (OWPS) (Scottish Government, 2020b) sets out ambitions to capitalise on offshore wind development and the role this technology could play in meeting commitments of net zero by 2045, as required by The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (paragraph 36). The OWPS builds upon the ambitions outlined in Scotland's Energy Strategy (paragraph 40) (Scottish Government, 2017). It also refers to the Offshore Wind Sector Deal published in 2019 (paragraph 33) (HM Government, 2019) which details specific actions to be undertaken by governments and industry, designed to promote and grow the sector.
49. The OWPS highlights the intention of the Scottish Government to achieve as much as 11 GW of offshore wind capacity in Scottish waters by 2030 (Scottish Government, 2020b). The report shows that the total consented capacity in Scotland (both from fixed and floating technologies) was 5.6 GW in September 2020.
50. Furthermore, the OWPS states "Looking beyond 2030, we know that huge increases in renewable capacity and generation are likely to be needed in order to decarbonise our energy use, and to meet the potential for much greater demand for clean electricity – as well as for green hydrogen – to reduce emissions associated with heat, transport and industrial energy demand as we move towards 2045 and net zero. The 2020 Future Energy Scenarios, published by National Grid ESO, includes the potential requirement for 24 GW of offshore wind capacity dedicated solely to hydrogen production" (Scottish Government, 2020b).

51. The OWPS also states with confidence that the current 2 GW of operational and under construction offshore wind capacity in Scottish waters could grow to between 8 GW to 11 GW by 2030, based on estimated forecasts of growth trends (Scottish Government, 2020b).
52. The Proposed Development will be a key contributor towards the offshore wind capacity growth required in Scottish waters to aid net zero goals.

### 2.2.5. SCOTTISH MARINE PLANNING POLICY

53. The Scottish Government has introduced a system of marine planning that covers Scottish offshore waters (12 nm to 200 nm) waters under the MCAA 2009 and territorial waters (within 12 nm) under the Marine (Scotland) Act 2010. Decisions are made based on these Acts and in accordance with the appropriate Marine Plans, which are summarised below.

#### Scottish National Marine Plan

54. The Scottish National Marine Plan (NMP) was adopted in 2015, covering the management of both Scottish inshore waters (within 12 nm) and offshore waters (12 nm to 200 nm). The NMP “sets out strategic policies for the sustainable development of Scotland’s marine resources and is compatible with the UK MPS and existing Marine Plans across the UK” (Marine Scotland, 2015). The NMP has been prepared in accordance with, and gives consideration to, the EU Directive 2014/89/EU, which introduces a framework for marine spatial planning and aims to promote the sustainable development of marine areas and the sustainable use of marine resources. It also sets several minimum requirements including:
- achieving a sustainable marine economy;
  - ensuring a strong, healthy and just society;
  - living within environmental limits;
  - promoting good governance; and
  - using sound science responsibly.
55. General policies have been developed to support these five strategic objectives, and sectoral objectives (e.g. offshore wind and marine renewable energy) are presented in the context of these strategic objectives and general policies set out in the NMP. The NMP sets out ambitions for Scotland’s renewables and clean electricity to go beyond the 2020 targets (Marine Scotland, 2015). The NMP is relevant to the Proposed Development as it addresses the potential for interactions between renewable energy development and other marine users, while recognising that significant development of the offshore wind energy sector will require investment.
56. The NMP has been recently reviewed in 2021 (Marine Scotland, 2021), covering the following:
- findings set out in the Scottish Marine Assessment (2020);
  - existing data monitoring programmes;
  - the global climate emergency;
  - the COVID-19 pandemic;
  - UK Exit from the EU; and
  - implications of wider Marine Scotland strategies including the Blue Economy Action Plan and the Future Fisheries Management Strategy.

#### Regional Marine Plans

57. Eleven Scottish Marine Regions (SMRs) have been created covering sea areas extending out to 12 nm. Regional Marine Plans (RMPs) are being developed at a regional level within SMRs by Marine Planning Partnerships, to take account of local circumstances and smaller ecosystem units. Unless relevant

considerations indicate otherwise, they are required to be in accordance with the NMP and MPS to ensure they are consistent with national objectives and priorities. They are subject to adoption by Scottish Ministers (Marine Scotland, 2015).

58. The Proposed Development lies within the Forth and Tay SMR. At the time of writing (October 2022) there is no RMP in place for the region.

#### Sectoral Marine Plan for Offshore Wind Energy

59. Scotland is committed to ensuring secure, reliable and affordable energy supplies, within the context of long-term decarbonised energy generation. In 2011, the first Sectoral Marine Plan (SMP) for Offshore Wind Energy was adopted (Marine Scotland, 2011). In 2013, draft wind, wave and tidal SMPs were produced for consultation (Marine Scotland, 2013).
60. Building upon the work undertaken in the 2011 and 2013 plans, the SMP for Offshore Wind Energy (Scottish Government, 2020c) incorporates recent technological, policy, regulatory and market development to create a new strategic planning process. The SMP seeks to contribute to the achievement of Scottish and UK energy and climate change policy objectives and targets, through the provision of a spatial strategy to inform the seabed leasing process for commercial offshore wind energy in Scottish waters, which:
- minimises the potential adverse effects on other marine users, economic sectors and the environment resulting from further commercial scale offshore wind development; and
  - maximises opportunities for economic development, investment and employment in Scotland, by identifying new opportunities for commercial scale offshore wind development, including deeper water wind technologies.
61. The SMP for Offshore Wind Energy identified 15 plan options (POs), split across four regions, which can generate several GW of renewable energy. The POs identified have been subject to Strategic Environmental Assessment (SEA), Habitats Regulations Appraisal (HRA) and socio-economic assessments, and reports have been produced to summarise these.
62. The SMP guides relevant consenting bodies with decision making on licence and consent applications but does not predetermine the decision making processes. The SMP has been developed to ensure consistency with the objectives and principles set out within Scotland’s NMP (Marine Scotland, 2015) and the UK MPS (HM Government, 2011b). As part of the recent ScotWind Offshore Wind Leasing Round, 20 potential development sites have been awarded, with a total generating capacity of just under 27.6 GW (Crown Estate Scotland, 2022).

## 2.3. CONSENTING PROCESS AND ASSOCIATED LEGISLATION

### 2.3.1. INTRODUCTION

63. This section provides a summary of the consenting process and associated legislative requirements being followed for the Proposed Development.
64. As the Proposed Development is a generating station with a capacity of greater than 50 MW, it requires Section 36 consent under the Electricity Act 1989.
65. The Proposed Development also requires the following:
- a marine licence under the MCAA 2009 for the generating station including wind turbines, foundations and inter array cables;

- marine licence(s) for the offshore transmission infrastructure (offshore substation platforms (OSPs)/offshore converter station platforms, interconnector cables and export cables) under the Marine (Scotland) Act 2010 for infrastructure in Scottish inshore waters (0-12nm) and the MCAA 2009 for infrastructure in Scottish offshore waters (12-200 nm);
- planning permission under the Town and Country Planning (Scotland) Act 1997 for all infrastructure located landward of Mean Low Water Springs (MLWS).

66. Should additional pre-construction licences be required, these will be discussed and agreed with the relevant consent authority during the pre-construction phase of the Proposed Development.

67. Figure 2.1 illustrates the stages of the licensing process.

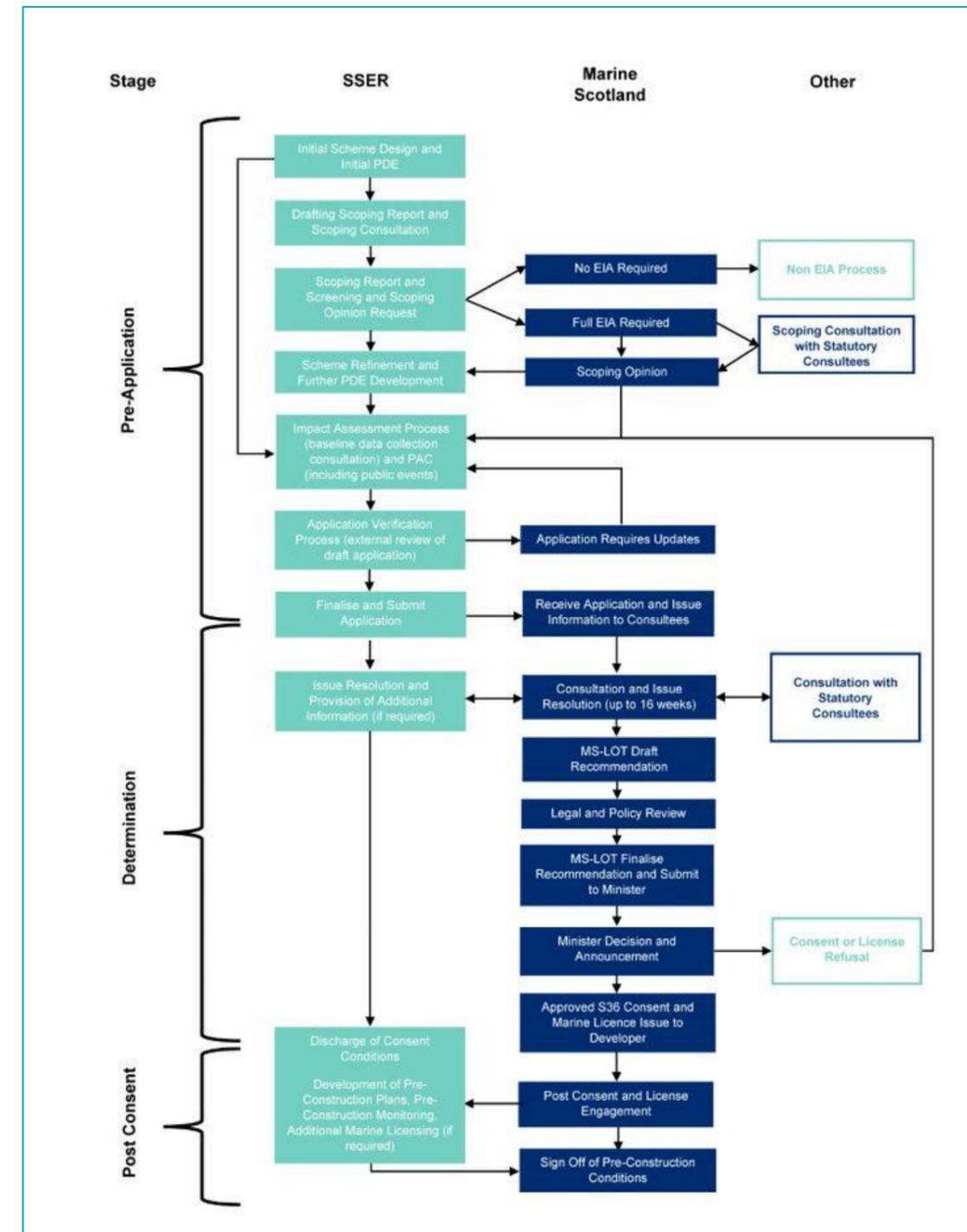


Figure 2.1 Stages of the Licensing Process in Scottish Waters

### 2.3.2. SECTION 36 CONSENT

68. As the Proposed Development is an offshore generating station greater than 50 MW capacity and located in the Scottish offshore waters (12 nm to 200 nm) within the Scottish Renewable Energy Zone (REZ), there is a requirement for consent under Section 36 of the Electricity Act 1989. Section 36 will allow for the installation, operation and maintenance of the following:
- wind turbines and their supporting structures;
  - wind turbine foundations and substructures; and
  - subsea cabling including inter-array cables and cabling up to and onto the Offshore Substation Platform (OSP)/Offshore convertor station platform.
69. A detailed description of the Proposed Development components is provided in volume 1, chapter 3.
70. Where a consent is granted in relation to construction or operation of an offshore generating station under Section 36 of the Electricity Act 1989, a declaration under Section 36A for extinguishment of rights of navigation may be made at the same time. Under Section 36B, Scottish Ministers may not grant Section 36 consent where the generating station, whether in the territorial seas or the REZ, would interfere with recognised sea lanes essential to international navigation. Consideration of the potential for impact on shipping and navigation is provided in volume 2, chapter 13. The Applicant does not consider that the grant of consent for the Proposed Development would interfere with recognised sea lanes essential to international navigation. Furthermore, there are no designated Traffic Separation Scheme (TSS) areas affected by the development.
71. Schedule 9 of the Electricity Act 1989, in respect of preservation of amenity and fisheries, requires the licence holder when formulating any relevant proposals to:
- have regard to the desirability of preserving natural and historical features of special interest; and
  - do what they reasonably can to mitigate any effects which the proposals would have on such interests.
72. When considering the application for consent under Section 36 of the Electricity Act 1989, the Scottish Ministers must have regard to the extent to which there has been compliance with the duty to do what can be reasonably done to mitigate the effects of the proposals. This Offshore EIA Report sets out in full the assessment and the proposed mitigation of potential environmental effects as a result of the construction, operation and decommissioning of the Proposed Development and accordingly the Applicant has had regard to the desirability of preserving natural and historical features of special interest and it has done what it reasonably can to mitigate any effects which the proposals would have on such interests.

### 2.3.3. MARINE LICENSING

73. The MCAA 2009 applies within the REZ in UK offshore waters (12 nm to 200 nm). Under the MCAA 2009 there is the requirement for a marine licence to be obtained prior to the construction, alteration or improvement of any works or deposit of any object in or over the sea, or on or under the seabed (HM Government, 2009e). Similarly, under the Marine (Scotland) Act 2010, which applies to Scottish territorial waters (between 0 nm and 12 nm from Mean High Water Springs (MHWS)), there is also the requirement for a marine licence prior to the construction, alteration or improvement of any works or deposit any object in or over the sea, or on or under the seabed (HM Government, 2010).
74. Given that the Proposed Development is located within both Scottish offshore waters (Proposed Development array area) and Scottish inshore waters (Proposed Development export cable corridor), the following marine licences will be required:
- marine licence for the generating station including wind turbines, foundations and inter array cables under the MCAA 2009; and
  - marine licence(s) for the offshore transmission infrastructure including offshore substation platforms (OSPs)/offshore convertor station platforms, interconnector cables and export cables under both the MCAA 2009 and the Marine (Scotland) Act 2010.
75. Marine licence applications are determined by MS-LOT on behalf of Scottish Ministers. Where marine licence applications are submitted with an application for consent under Section 36 of the Electricity Act 1989, which are determined by Scottish Ministers, both applications will be processed by MS-LOT on behalf Scottish Ministers and therefore subject to the same administrative procedure. That will ensure that the related applications are considered at the same time.

### 2.3.4. PLANNING PERMISSION

76. Landward of MLWS, works associated with the Project will require consent under the Town and Country Planning (Scotland) Act 1997. In defining an appropriate consenting strategy for the onshore transmission works, the Applicant has drawn from a wide range of experience of comparable projects, both in East Lothian and elsewhere. The consenting strategy is underpinned by the onshore Project's national development status by way of NPF 3's national development 4, as well as NPF 3's identification of the Torness area as a hub for energy related investment.
77. It is intended that separate offshore and onshore applications will be made to Marine Scotland and East Lothian Council (ELC), respectively, the latter being a single application for full planning permission, in accordance with the Town and Country Planning (Scotland) Act 1997. It is currently anticipated that both these applications will be made in 2022.
78. There is an overlap between MHWS and MLWS in the jurisdiction for marine and terrestrial planning systems. All works associated with the Proposed Development within this intertidal zone (landward of MLWS) including the onshore grid connection infrastructure, will therefore seek consent under:
- the Town and Country Planning (Scotland) Act 1997 (as part of the Onshore EIA Report); and
  - the Marine (Scotland) Act 2010 (as part of the Offshore EIA Report).
79. The Project requires onshore grid connection infrastructure to be installed from MLWS to the Branxton substation, south-west of Torness power stations. These works will be the subject of a separate Onshore EIA Report and application to East Lothian Council for planning permission under the Town and Country Planning (Scotland) Act 1997 and will be assessed separately from the Offshore EIA Report as part of that

process. The onshore works are assessed in this Offshore EIA Report in the cumulative effects assessment.

80. The Applicant is also developing an additional export cable and grid connection to Blyth, Northumberland (hereafter the “Cambois connection”). Applications for the necessary consents (including marine licences) will be applied for separately once further development work has been undertaken on this offshore export corridor. The Cambois connection has been included as a cumulative project for the purposes of the offshore EIA and assessed based on the information presented in the Cambois connection Scoping Report submitted in October 2022 (SSER, 2022e). An EIA and HRA will be prepared to support any relevant consent applications that are required to deliver the Cambois connection which will also consider cumulative effects with the Proposed Development.

### 2.3.5. ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

81. The EIA Directive (2011/92/EU, as amended by Directive 2014/52/EU) has traditionally directed the assessment of effects on certain public and private projects on the environment in Scotland. Following the UK’s departure from the European Union, EU-derived legislation continues to have effect in domestic law under the European Union (Withdrawal) Act 2018. The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 which came into force on EU Exit Day (31 January 2020) applied minor changes to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>2</sup>. As such, the EIA Directive continues to apply to any application in Scottish waters for a Section 36 consent and/or marine licence and continues to set the framework for the EIA process in Scotland.

82. Under the EIA process, an EIA Report is required to be prepared and submitted to support applications for a Section 36 consent, a marine licence or planning permission relating to offshore renewable energy developments if the proposed activities are likely to have a significant effect on the environment due to factors such as the size, nature or location of the proposal. The purpose of the EIA Directive is to ensure that any consenting authority gives due consideration to likely significant effects on the environment when giving consideration to or giving consent for a proposed project. An EIA is specifically required (Schedule 2) for installations for the harnessing of wind power for energy production (wind farms) if:

- the development involves the installation of more than two wind turbines; or
- the hub height of any wind turbine or height of any other structure exceeds 15 m; and
- the project is likely to have significant effects on the environment.

83. The Proposed Development meets these criteria and therefore requires an EIA to be undertaken.

84. This Offshore EIA Report has been undertaken in accordance with the following regulations and therefore, fulfils their requirements:

- in relation to the Section 36 consent application: The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017;

- in relation to the marine licence applications: The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and The Marine Works (Environmental Impact Assessment) Regulations 2007; and
  - The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.
85. Regulation 5 of the EIA Regulations (The Marine Works (Environmental Impact Assessment) (Scotland) Regulations) sets out what the environmental assessment process comprises, while Regulation 6 sets out the content of an EIA Report.<sup>3</sup> This is supplemented by Schedule 4 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>4</sup> which specify the requirements of the information for inclusion in environmental impact assessment reports.
86. In addition to this, the EIA Report must consider the following factors during the assessment:
- population and human health;
  - biodiversity, in particular species and habitats protected under the Habitats Directive;
  - land, soil, water, air and climate; and
  - material assets, cultural heritage and the landscape<sup>5</sup>.
87. The main stages of the EIA process, as outlined in Figure 2.1, include the following:
- decision to undertake an EIA (screening);
  - scoping to determine the subject matter of the EIA and to identify potentially significant effects;
  - data review involving compiling and reviewing available baseline data and/or undertaking of baseline surveys to generate site-specific data;
  - assessment and design iterations, whereby the potential impacts of the development during the construction, operation and maintenance, and decommissioning stages of its life are assessed. Feedback is provided to the design and engineering team(s) to modify the design of the development where possible in order to avoid, prevent, reduce and/or offset any significant adverse effects on the environment;
  - identifying any further mitigation or compensation requirements;
  - identifying residual effects;
  - preparing the EIA Report (i.e. reporting on the EIA process and continuing with design iteration and consultation);
  - consultation with the consultation bodies, stakeholders and the community, in accordance with all relevant requirements (the Marine (Scotland) Act 2010, the MCAA 2009, EIA Regulations and the associated regulations and guidance);
  - consideration of the EIA Report by Marine Scotland; and
  - controlling and where necessary monitoring the effects of the project during construction, operation and maintenance, and decommissioning in accordance with the mitigation measures identified in the EIA Report and/or the requirements identified in the relevant licences which have been drawn from the findings of the EIA.
88. Table 2.3 below outlines where the requirements of Schedule 4 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>6</sup> are addressed within the Offshore EIA Report.

<sup>2</sup> Similar arrangements are provided for in the Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 in respect of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 in respect of the Marine Works (Environmental Impact Assessment) Regulations 2007

<sup>3</sup> Similar provisions are set out at Regulations 4 and 5 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and Regulations 4 and 12 of the Marine Works (Environmental Impact Assessment) Regulations 2007

<sup>4</sup> Similar provisions are set out in Schedule 4 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and Schedule 3 of the Marine Works (Environmental Impact Assessment) Regulations 2007

<sup>5</sup> Regulation 4 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and Regulation 5 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

<sup>6</sup> Similar provisions are set out in Schedule 4 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and Schedule 3 of the Marine Works (Environmental Impact Assessment) Regulations 2007

**Table 2.3: Where Requirements Under Schedule 4 of The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 are Addressed in the Offshore EIA Report**

Information Required Under Schedule 4 of the EIA Regulations	How Requirements are Addressed in the Offshore EIA Report
<b>Information Requirement</b>	
A description of the qualifications and experience of the technical authors involved in the preparation of the Offshore EIA Report.	Qualifications and experience of the relevant technical authors are included in volume 1, chapter 1.
A description of the development, including in particular: <ul style="list-style-type: none"> <li>a description of the location of the works;</li> <li>a description of the physical characteristics of the whole works, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operation and maintenance phases;</li> <li>a description of the main characteristics of the operation and maintenance phase of the works (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used; and</li> <li>an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.</li> </ul>	The Offshore EIA Report contains a detailed project description. This includes details of the physical characteristics of the Proposed Development including construction, operation and maintenance, and decommissioning phases. The Offshore EIA Report also provides consideration of the mitigation measures adopted by the Applicant and will set out the realistic maximum adverse scenario (Rochdale Envelope) for each topic.
A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the Applicant, which are relevant to the proposed works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.	The Offshore EIA Report provides detail of the site selection process undertaken by the Applicant, including the consideration of alternatives and the rationale for the selection and progression of the Proposed Development. A comparison of the environmental effects of alternatives and consideration of potential alternatives for topic specific mitigation is provided, where relevant.
A description of the relevant aspects of the current state of the environment (the “baseline scenario”) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.	Each of the technical topics within the Offshore EIA Report contains a ‘Current Baseline’ and a ‘Future Baseline’ description, which will provide consideration of the likely future baseline and natural changes which may occur for the given technical topic without the development of the Proposed Development.
A description of the factors specified in regulation 5 (3) likely to be significantly affected by the works: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.	The Offshore EIA Report contains technical chapters with descriptions of the existing conditions and identification of the topic specific receptors which may be impacted by the Proposed Development. A stand-alone chapter for human health has not been developed within the Offshore EIA Report as this has been assessed within technical topics such as airborne noise and air quality. Where topics are scoped-out of further assessment, it is concluded that there will be no likely significant effects on these receptors. The Scoping Opinion

Information Required Under Schedule 4 of the EIA Regulations	How Requirements are Addressed in the Offshore EIA Report
<b>Information Requirement</b>	
A description of the likely significant effects of the works on the environment resulting from, inter alia: <ul style="list-style-type: none"> <li>the construction and existence of the works, including, where relevant, demolition works;</li> <li>the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;</li> <li>the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;</li> <li>the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);</li> <li>the cumulation of effects with other existing and/or approved works, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;</li> <li>the impact of the works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;</li> <li>the technologies and the substances used.</li> </ul>	has confirmed that there are no likely significant effects on a number of receptors and therefore these can be scoped out of the EIA. A stand-alone appendix covering climate assessments has been developed as part of the Offshore EIA Report (volume 3, appendix 21). Each of the topic chapters within the Offshore EIA Report provides an assessment of the likely significance of effect for each topic. This assessment follows the process for assessment of significance. Likewise, the Offshore EIA Report contains the cumulative effects assessment as per the methodology outlined in volume 1, chapter 6. A stand-alone appendix covering climate assessments has been developed as part of the Offshore EIA Report (volume 3, appendix 21).
The description of the likely significant effects on the factors specified in regulation 5 (3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the works. This description should take into account the environmental protection in retained EU law or under the law of the UK which are relevant to the works including in particular those initially established under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (as effected by the UK Habitats Regulations 2017 by the Conservation of Habitats and Species (Amendment) (EU Exit) (Scotland) Regulations 2019) and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds <sup>7</sup> .	The approach and methodology which has been followed in the Offshore EIA Report is outlined in volume 1, chapter 6 and covers direct, indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the Proposed Development. An assessment of the potential for adverse effects on European and Ramsar site integrity will be presented within the Report to Inform Appropriate Assessment (RIAA).

<sup>7</sup> The primary implementation of this Directive in the UK is the Wildlife & Countryside Act 1981, which has not been amended by specific EU Exit legislation)

Information Required Under Schedule 4 of the EIA Regulations	How Requirements are Addressed in the Offshore EIA Report
<b>Information Requirement</b>	
A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.	Each of the topic chapters of the Offshore EIA Report contain a summary of the topic-specific methodology, including modelling methods and an overview of the evidence used and any limitations of the data. There is also consideration of the uncertainty in each of the topic chapters of the Offshore EIA Report, including a discussion on how this uncertainty has been dealt with.
A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operation and maintenance phases.	The Offshore EIA Report contains a detailed project description. The project description contains primary 'built in' mitigation measures for the Proposed Development. Topic specific mitigation measures are discussed within each relevant topic chapter of the Offshore EIA Report. If mitigation measures are required, these are discussed and summarised in an Annex of the Offshore EIA Report, together with how they will be secured and their means of delivery.
A description of the expected significant adverse effects of the works on the environment deriving from the vulnerability of the works to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation derived from the European Union. For example, Directive 2012/18 on the control of major-accident hazards involving dangerous substances (amending and subsequently repealing Council Directive 96/82/EC). Relevant assessments carried out pursuant to national legislation may be used provided that the requirements of the Directives are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.	Individual topic chapters contain an assessment of the potential effects arising from major accidents and disasters and the associated control measures which will be employed to address these.
A non-technical summary of the information.	A Non-Technical Summary (NTS) of the Offshore EIA Report is submitted with this Offshore EIA Report.
A reference list detailing the sources used for the descriptions and assessments included in the EIA report.	Each topic chapter contains a list of key sources of information used to support the development of the technical assessment. Further, all cited literature and webpages is detailed in a bibliography in the Offshore EIA Report. Project specific data such as survey data is discussed in the relevant topic chapter, with a full survey report appended to the Offshore EIA Report.

## 2.4. OTHER CONSENTS AND LEGISLATION

### 2.4.1. THE HABITATS AND BIRDS DIRECTIVES

89. The Council Directive (92/43/EEC) (the Habitats Directive) was adopted in 1992, providing a means for the EU to meet its obligations under the Bern Convention. The Habitats Directive provides for the conservation of natural habitats and of wild flora and fauna, including offshore waters. This protection is granted through the designation of European sites and European Protected Species (EPS).
  90. The European Directive (2009/147/EC) on the conservation of wild birds (The Birds Directive) provides a framework for the conservation and management of wild birds in Europe, including their eggs, nests and habitats.
  91. The UK is no longer an EU Member State. Notwithstanding, the Habitats Directive (and transposing Regulations, as set out in Table 2.3) continue to provide the legislative backdrop for Habitats Regulation Appraisal (HRA) in the UK through the EU (Withdrawal) Act 2018 and the EU Exit Regulations 2019. The HRA process implemented under the Habitats Regulations continues to apply (subject to minor changes effected by the EU Exit Regulations) and the UK is bound by HRA judgments handed down by The Court of Justice of the European Union (CJEU) prior 31 to December 2020<sup>8</sup>.
  92. The Directives were transposed into Scottish law by various regulations, those of relevance to the Proposed Development include:
    - the Conservation (Natural Habitats, &c.) Regulations 1994 – transposes the Habitats Directive into Scottish law. Apply to Scottish waters out to 12 nm;
    - the Conservation of Habitats and Species Regulations 2017 – transposes the Habitats Directive in England and Wales. Applies in Scotland in relation to certain activities (reserved matters), including consents granted under Sections 36 and 37 of the Electricity Act 1989; and
    - the Conservation of Offshore Marine Habitats and Species Regulations 2017 – applies to Scottish waters beyond 12 nm.
  93. The instruments above are collectively referred to hereafter as the Habitats Regulations. Under the Habitats Regulations, a network of protected sites for birds and certain habitats and species have been established in the UK. Following EU Exit, the network of sites is collectively known as the Natura 2000 network (where the sites are located within Member State countries) and the National Site Network (or UK site Network<sup>9</sup>) where the sites are located within the UK. These sites are hereafter collectively (whether located in the UK or the EU) referred to as 'European sites' and include:
    - Special Areas of Conservation (SACs) or candidate SACs;
    - Special Protection Areas (SPAs) or proposed SPAs;
    - Sites of Community Importance (SCIs);
    - Ramsar sites (where also designated as one of the above).
- Habitats Regulations Appraisal
94. Where a plan or project is likely to have a significant effect on a European site, regardless of whether the project location is within or beyond the 12 nm boundary, there is a requirement, under the Habitats

<sup>8</sup> The UK Supreme Court may overturn binding pre-EU Exit case law if they consider it 'right to do so'

<sup>9</sup> The term "national site network" is used in the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017. The two terms refer to the same network of sites ((Scottish Government, 2020d).

Regulations for the competent authority (Marine Scotland) to carry out an appropriate assessment. The Habitats Regulations require sufficient information to be provided the competent authority to enable it to assess whether there are likely to be any significant effects, and to carry out the appropriate assessment (and any subsequent stages of the HRA), where necessary, as part of an HRA. This information and the legislative and policy background to the assessment is provided by the Applicant in the Berwick Bank Wind Farm Report to Inform Appropriate Assessment (RIAA) which accompanies this Offshore EIA Report and has not been re-iterated here. There is overlap between the information presented to support the baseline in the Offshore EIA Report and the HRA, and between some of the assessments undertaken although the appropriate thresholds and benchmarks (tests) are applied appropriately and independently to each assessment. The main international and national policy and legislation that form the framework for the consideration of nature conservation designations in relation to the Proposed Development are set out in the relevant topic chapters (volume 2, chapters 7 – 21).

#### 2.4.2. EUROPEAN PROTECTED SPECIES LICENCE

95. EPS are animals and plants (species listed in Annex IV of the Habitats Directive and referred to in the schedules of the Habitats Regulations) that are afforded protection under the Habitats Regulations. All cetacean species (whales, dolphins and porpoise) are EPSs. If any activity is likely to cause disturbance or injury to an EPS, a licence is required to undertake the activity legally.
96. Activities which can be licenced under EPS licences include those such as subsea noise disturbance to marine mammals due to piling construction activities. EPS licences are obtained from NatureScot or the Scottish Ministers, depending on the reason for the licence application. The grant of such a licence is separate to the main Section 36 and Marine Licence application process.

#### 2.4.3. ENERGY ACT 2004

##### Safety Zones

97. Safety zones are intended to ensure the safety of the renewable energy installation or other installations in the vicinity during construction, operation, extension or decommissioning. They may exclude non-project vessels from navigating through a designated area for a designated period.
98. The safety zone scheme, as set out in the Energy Act 2004 and the Electricity (Offshore Generating Stations) (Safety Zones) (Applications Procedures and Control of Access) Regulations 2007 applies to territorial waters (within 12 nm) in Scotland and to waters in the UK REZ. This scheme applies to all Offshore Renewable Energy Installations (OREIs) but not to offshore export cables or inter-array cables (DECC, 2011).
99. The Scotland Act 2016 amends the Energy Act 2004, transferring functions to Scottish Ministers in relation to the declaration of safety zones around offshore renewable energy developments in Scottish offshore waters.
100. Further information on safety zones can be found in volume 1, chapter 3 and in volume 2, chapter 13.

##### Decommissioning

101. Sections 105 to 114 of the Energy Act 2004 (as amended by the Energy Act 2008 and the Scotland Act 2016) (hereafter referred to as the Energy Act) contain statutory requirements in relation to the decommissioning of OREIs and their related electricity lines. Under the terms of the Energy Act, Scottish Ministers may require a person who is responsible for these installations or lines in Scottish waters or in a

Scottish part of a REZ to prepare (and carry out) a costed decommissioning programme for submission to and approval by Scottish Ministers (Scottish Government, 2019b).

102. The responsibilities and powers associated with decommissioning for OREI within Scottish Waters transferred from the Secretary of State to Scottish Ministers in April 2017. Up to this point, the Department for Business, Energy and Industrial Strategy (BEIS) was responsible for requiring decommissioning programmes and securities for OREI (Scottish Government, 2019b). As part of this change in responsibilities, Marine Scotland are seeking to establish robust policies and procedures covering decommissioning, including securities, for offshore wind, wave and tidal projects. A consultation on future plans for decommissioning for OREIs in Scottish waters ended in March 2020. Following this consultation, guidance will be finalised and made available to industry.
103. The draft Offshore Renewable energy decommissioning guidance (Section 5 – Submission, approval and review of decommissioning programmes) states that “an indication of the decommissioning proposals should be included as part of the statutory consenting or licensing process so that the feasibility of removing the infrastructure can be assessed as part of the application process”. Furthermore, it states that it should be possible to provide a detailed description of the items to be decommissioned prior to construction, and that the decommissioning programme should be informed by the EIA Report with a final draft submitted to the Scottish Ministers no later than six months prior to construction (Scottish Government, 2019b).
104. Scottish Ministers also have the power to determine specific approaches to decommissioning, including stipulating what form, timing and size of financial securities are required. The expected content of a decommissioning programme includes:
  - decommissioning standards;
  - financial security;
  - residual liability; and
  - industry cooperation and collaboration.
105. The scope of decommissioning requirements in Scotland is between the MLWS mark and the seaward limits of the territorial waters, including coastal water and the Scottish part of the REZ. The Energy Act does not cover the intertidal zone, however decommissioning of infrastructure within the intertidal zone should be carried out under any conditions attached to a Marine Licence (under the Marine Scotland Act 2010).

#### 2.4.4. MARINE STRATEGY FRAMEWORK DIRECTIVE

106. The Marine Strategy Framework Directive (MSFD) requires Member States to prepare national strategies to manage their seas to achieve Good Environmental Status (GES) by 2020. The Directive came into force on 15 July 2008 and was transposed into UK law by the Marine Strategy Regulations in 2010. The UK’s approach and targets for achieving GES were outlined subsequently in a ‘UK programme of measures’ (Defra, 2015). The approach ensures that all developments comply with the regulatory regime, and that regulatory assessments take full consideration of any potential impacts that may compromise GES. This is currently implemented in the UK through the Marine Strategy Regulations SI 2010/1627. There is currently no EU exit amendment to these regulations.

#### 2.4.5. WATER FRAMEWORK DIRECTIVE REGULATIONS

107. In the UK, coastal waters are protected under the Water Framework Directive (WFD) which requires that “the project or activity does not cause or contribute to deterioration in water body status or jeopardise the water body achieving good status” (UK Government, 2014).

108. The EC WFD has become law in Scotland as the Water Environment and Water Services (Scotland) Act 2003. Relevant to the Project, this legislation covers certain activities in coastal waters (3 nm from the limit of the highest tide) (SEPA, 2021).

#### 2.4.6. MARINE PROTECTED AREA REGULATIONS

109. The Marine (Scotland) Act 2010 and the MCAA 2009 introduced provisions to support the management of Nature Conservation (NC) Marine Protected Areas (MPAs). Under section 126 of the MCAA 2009 and section 83 of the Marine (Scotland) Act 2010, MS-LOT, as the public authority, is required to consider whether an activity is capable of affecting (other than insignificantly) a protected feature in a NC MPA or any ecological or geomorphological process on which the conservation of any protected feature in a NC MPA is dependant.
110. MS-LOT must not grant authorisation for the activity unless the person applying for the authorisation satisfies MS-LOT that either (a) there is no significant risk of the activity hindering the achievement of the conservation objectives for the NC MPA; or (b) there is no other means of proceeding with the activity which would create a substantially lower risk of hindering the achievement of those objectives, that the benefit of the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it and that the person will undertake measures of equivalent environmental benefit to the damage which the act will or is likely to have on the NC MPA concerned. If MS-LOT believe that there is or may be a significant risk of the proposal hindering the achievement of the conservation objectives, then they must notify the appropriate statutory conservation bodies (NatureScot for MPAs within 12 nm or the Joint Nature Conservation Committee (JNCC) for MPAs out with 12 nm) of that fact.
111. Further information on how the Applicant has assessed potential impacts on the MPAs in the vicinity of the Proposed Development is included in volume 2, chapters 8, 9 and 11 and the MPA Assessment Report (SSER, 2022b).

#### 2.4.7. PRE-APPLICATION CONSULTATION

112. Where activity is planned within the Scottish Territorial Waters, the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013 (hereafter referred to as the PAC Regulations) apply. There is no provision for PAC in the MCAA 2009, so these requirements do not apply in respect of relevant applications in the Scottish Offshore Region. There are no statutory requirements for consultation during the pre-application stage for Section 36 consent applications, however the principles of the PAC Regulations will be followed for all offshore components of the Proposed Development (below MHWS). The stakeholder engagement and public consultation carried out in relation to the Proposed Development is detailed in volume 1, chapter 5.

## 2.5. REFERENCES

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