

# **Energy Consents Unit**

## **Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989**

**Updated July 2022**

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# 1. Introduction

## 1.1. Purpose and Background

- 1.1.1 This guidance is intended to set out the procedure for applications made under section 36 or section 37 of the Electricity Act 1989 (“Electricity Act”), principally where the development concerned is Environmental Impact Assessment (EIA) development.
- 1.1.2 In Scotland, any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of over 50 megawatts (MW), or to install and keep installed an overhead electric line, requires the consent of Scottish Ministers under sections 36 and 37 of the Electricity Act respectively. Such applications are processed on behalf of the Scottish Ministers by the Energy Consents Unit (“ECU”) [Scottish Government - Energy Consents](#). Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“TCP(S)A”) also allows the Scottish Ministers, on granting consent under section 36 or 37, to direct that planning permission for that development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- 1.1.3 Electricity generating stations encompass a range of technologies including wind turbines, thermal generation and solar arrays. In addition, as set out in the [Chief Planner Letter](#) dated 27 August 2020, the Scottish Government considers that a battery installation generates electricity and is therefore to be treated as a generating station.
- 1.1.4 This guidance does not relate to applications for variations of consent made under section 36C of the Electricity Act, nor does it specifically deal with applications made under section 36 or 37 of the Electricity Act where the development concerned is not EIA development. Guidance on the process for applying for variations to existing section 36 consents under section 36C of the Electricity Act is available at the following link: [Energy consents: applications for variation of section 36 consents guidance](#). Guidance on the process of applying for consent under section 37 of the Electricity Act for overhead lines which are not EIA development is available at the following link: [Energy consents: overhead line applications without an EIA report](#).
- 1.1.5 Onshore generating stations which will have a capacity of 50MW or less when constructed are not within the scope of the Electricity Act, and such applications require an application for planning permission to be submitted to the relevant local planning authority under the TCP(S)A. Applications that relate to a generating station with a capacity of 50MW or less are not dealt with in this guidance.
- 1.1.6 The Scottish Ministers are also responsible for determining applications for consent for generating stations offshore with an installed capacity

exceeding 1MW in Scottish Territorial waters and over 50MW in the Scottish Renewable Energy Zone. Such applications are processed on behalf of Scottish Ministers by Marine Scotland Licensing Operations Team. This guidance does not relate to offshore generating stations and advice on such applications can be found at [Marine and fisheries](#).

1.1.7 The main legislation applicable for onshore applications made under section 36 and 37 of the Electricity Act and relevant to this guidance is as follows:

- The Electricity Act 1989;
- The Town and Country Planning (Scotland) Act 1997 in relation to the ability for the Scottish Ministers to direct that planning permission shall be deemed to be granted for the development under section 57(2);
- The Electricity (Applications for Consent) Regulations 1990; and
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

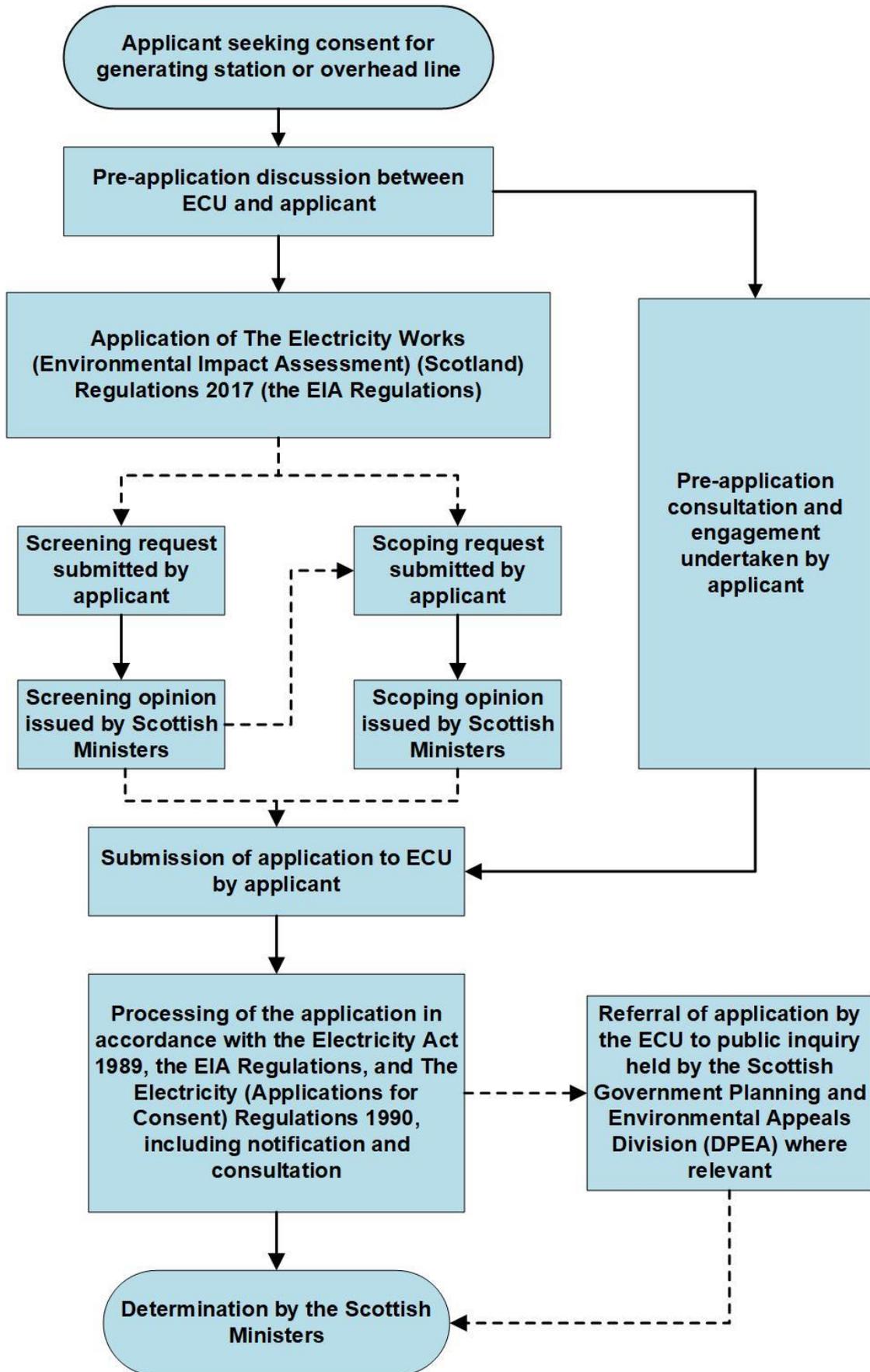
## 2. Application and Determination Process

### 2.1. Key stages

2.1.1 To ensure an efficient process, the ECU expects all parties to actively participate and respond timeously at all times throughout the application and determination process.

2.1.2 Figure 1 below sets out the key stages of the application process. Further information and detail on each stage is provided in the following sections.

**Figure 1: Application and determination process under the Electricity Act**



### 3. Pre-Application

#### 3.1. Pre-Application Discussion

- 3.1.1 Early engagement with ECU is encouraged to manage resources and casework and it is requested that applicants complete a Pre-application Form which is available at the following link: [Pre-application – Notification of New Project Form](#). The service provided by ECU at this initial stage very much depends on the scope and scale of the project, and this can be discussed with the applicant following receipt of the Pre-application Form.
- 3.1.2 Following receipt of the form, ECU will contact the applicant within 21 days to discuss pre-application requirements – this would usually involve arranging a short introductory meeting to discuss the proposed development and the anticipated programme.
- 3.1.3 At pre-application discussions, it is useful for ECU to meet with the applicant and project team, and for the applicant to set out information on: the proposed development; site location and local context; planning policy and guidance; environmental designations and considerations; public consultation and engagement; the anticipated timescales for submission of the pre-application and application documentation; and project programme.

#### 3.2. Pre-Application Consultation and Engagement

- 3.2.1 The carrying out of pre-application consultation with the public is considered good practice and applicants are encouraged to have meaningful engagement at the earliest possible stage with any communities or groups who would be affected by development proposals.
- 3.2.2 Whilst there are no statutory pre-application consultation procedures for section 36 and section 37 applications under the Electricity Act, the minimum expectation is that applicants carry out pre-application consultation as set out in Table 1 below. The applicant is asked to set out in advance to ECU how they will carry out pre-application consultation. Applicants for section 36 and 37 consents are asked to submit a pre-application consultation report with their application for proposed developments that are EIA developments.

**Table 1: Pre-application consultation**

Pre-application consultation events	<p>The applicant is expected to hold at least two public consultation events prior to submitting the application. The final public event should be held at least 14 days after the first public event.</p> <p>The public events are to give members of the public the opportunity to make comments to the applicant as regards the proposed development.</p>
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	<p>At the final public event, the applicant should provide feedback to members of the public in respect of comments received by the applicant as regards the proposed development.</p>
<p>Notice of the pre-application consultation events</p>	<p>At least seven days before holding a public event, the applicant should publish on the applicant's website and in a local newspaper circulating in the locality in which the proposed development is situated a notice containing:</p> <ul style="list-style-type: none"> <li>• a description of, and the location of, the proposed development;</li> <li>• details as to where further information may be obtained concerning the proposed development;</li> <li>• the date and place of the public event;</li> <li>• a statement explaining how, and by when, persons wishing to make comments to the applicant relating to the proposal may do so; and</li> <li>• a statement that comments made to the applicant are not representations to the Scottish Ministers and if the applicant submits an application there will be an opportunity to make representations on that application to the Scottish Ministers.</li> </ul>
<p>Details of the pre-application consultation events</p>	<p>The applicant should provide the following details at the public event and publish these details on the applicant's website:</p> <ul style="list-style-type: none"> <li>• a description of the development to be carried out;</li> <li>• a plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site; and</li> <li>• details as to how the applicant may be contacted and corresponded with.</li> </ul>
<p>Content of public event and pre-application consultation report</p>	<p>The applicant is expected to prepare a pre-application consultation report ("PAC Report") setting out what has been done to accord with the guidance set out above. The PAC Report should be submitted with the application.</p> <p>The PAC Report should contain the following information:</p> <ul style="list-style-type: none"> <li>• the dates on which and places where public events were held;</li> </ul>

	<ul style="list-style-type: none"> <li>• a description of any additional steps taken by the applicant to consult with members of the public regarding the development;</li> <li>• a list of bodies, groups and organisations who were consulted by the applicant and a description of how they were consulted;</li> <li>• a description of any materials sent to consultees and materials provided to those attending public events;</li> <li>• copies of any visual presentation shown or displayed at a public event, and photographs of any display boards or models at public events;</li> <li>• confirmation as to whether consultees and attendees at public events were informed that pre-application consultation does not remove the right or the potential need to comment on the final application once it is made to the Scottish Ministers;</li> <li>• a summary of the written responses to consultations and views raised at public events, including an indication of the number of written responses received and the number of persons who attended the public events;</li> <li>• an explanation of how the applicant took account of views raised during the pre-application consultation process; and</li> <li>• an explanation of how members of the public were given feedback on the applicant's consideration of the views raised during the pre-application consultation process.</li> </ul>
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## 4. Environmental Impact Assessment

### 4.1. EIA

4.1.1 EIA is a means of drawing together, in a systematic way, an assessment of the likely significant environmental effects arising from a proposed development. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) apply to applications under sections 36 and 37 of the Electricity Act and set out the legislative requirements of the EIA process.

4.1.2 EIA is a process that consists of:

- the preparation of an EIA report by the applicant;
- the carrying out of consultation, publication and notification at certain stages of the process;

- the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information; and
- the reasoned conclusion by the Scottish Ministers on the significant effects of the development on the environment, and the integration of that reasoned conclusion into the decision notice issued in respect of the application.

4.1.3 Developments falling within a description in Schedule 1 to the EIA Regulations always require EIA. Schedule 1 specifies that the following will require EIA:

- the carrying out of development to provide a nuclear generating station or other nuclear reactors (except research installation for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load);
- the carrying out of development to provide a thermal generating station with a heat output of 300 megawatts or more;
- construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

Any change to or extension (including a change in the manner or period of operation) of such development, where the change or extension in itself meets the thresholds or description of development above, will require EIA.

4.1.4 Development of a type listed in Schedule 2 to the EIA Regulations may also require EIA. The following developments will require EIA where the development is likely to have significant effects on the environment by virtue of facts such as its nature, size or location:

- the carrying out of development to provide a generating station;
- the carrying out of development to provide an electric line installed above ground with a voltage of 132 kilovolts or more; in a sensitive area; or with the purpose of connecting to a generating station requiring consent under section 36;
- any change to or extension (including a change in the manner or period of operation) of these types of development (or of development of a description listed in schedule 1) where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment.

4.1.5 A prime consideration in developing a proposal is whether it is likely to have significant adverse impacts on the environment. If the development is EIA development, an EIA report will be needed to support an

application. As an indication, most section 36 applications for onshore wind development will constitute applications for EIA development requiring an EIA to be carried out.

## 4.2. EIA Screening

- 4.2.1 The applicant may themselves decide at the outset that an EIA is required, or alternatively they have the option of asking for the Scottish Ministers' opinion as to whether an EIA will be required in support of their proposed development. The Scottish Ministers' formal opinion on whether a development is EIA development or not is termed a “screening opinion”. Scottish Ministers may also adopt a screening opinion at their own volition.
- 4.2.2 Part 2 of the EIA Regulations sets out the steps both the applicant and Scottish Ministers must take in relation to screening opinions. Where an EIA screening opinion is requested by the applicant, the applicant must submit the request for a screening opinion and accompanying information in accordance with Regulation 8 of the EIA Regulations. The supporting information required is set out in Regulation 8(2), and should be compiled taking into account the selection criteria set out in Schedule 3 of the EIA Regulations. Applicants can submit screening requests via the [Energy Consents Portal](#).
- 4.2.3 The Scottish Ministers must consult the relevant planning authority for its views on whether the proposed development is EIA development (unless the planning authority has already conveyed its views to the Scottish Ministers). Depending on the nature of the proposed development and/or environmental designations or sensitivities within the proximity of the proposed development, the Scottish Ministers may also seek advice from environmental agencies (NatureScot, Scottish Environment Protection Agency, and Historic Environment Scotland). The planning authority has three weeks to provide its views to the Scottish Ministers, or the Scottish Ministers may determine that a longer period applies.
- 4.2.4 Where an EIA screening opinion is requested, Regulation 9 sets out that screening opinions should be adopted by the Scottish Ministers on or before the “relevant date”, meaning the earlier of:
- three weeks, or such longer period as may be agreed in writing between the Scottish Ministers and the developer, beginning with the date by which the planning authority are required to give their views (or the date on which the Scottish Ministers received their views, if earlier); or
  - 90 days beginning with the date the screening request is received.

Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the

proposed development that it is not practicable for them to adopt a screening opinion within 90 days of receipt of the request, they may extend that period by notice in writing given to the developer.

## 4.3. EIA Scoping

- 4.3.1 A scoping opinion is an opinion adopted by the Scottish Ministers outlining the scope and level of detail of information to be provided in an EIA report that will accompany an application under section 36 or 37 of the Electricity Act. A scoping request can be submitted by the applicant seeking the scoping opinion. Part 4 of the EIA Regulations outlines the steps both the applicant and Scottish Ministers must take in relation to scoping requests and scoping opinions.
- 4.3.2 A request for a scoping opinion must be accompanied by the information set out in Regulation 12(2) of the EIA Regulations, and include key details of the site and the proposed development. When an applicant requests a scoping opinion, they are required to set out the key details and matters for consideration in a scoping report which is included with the request.
- 4.3.3 All scoping requests are submitted by the applicant via the [Energy Consents Portal](#). Where applicants have undertaken initial site survey work to inform the scoping process (such as initial bird surveys or peat probing), this information should be provided within or alongside the scoping report.
- 4.3.4 The Scottish Ministers must consult the following consultation bodies before adopting a scoping opinion:
- the relevant planning authority;
  - NatureScot;
  - the Scottish Environment Protection Agency (SEPA);
  - Historic Environment Scotland (HES); and
  - any other relevant public bodies with specific environmental responsibilities or local and regional competencies who the Scottish Ministers consider are likely to have an interest.
- 4.3.5 The applicant should submit a consultee list for review by the ECU that will include the names and contact details (including up to date email addresses) of the relevant consultees as set out in paragraph 4.3.4 above.
- 4.3.6 Following the receipt of the scoping request, ECU will consult consultees (directing parties to the ECU portal to view relevant information) on the proposed scope of the EIA report.
- 4.3.7 Once the consultation responses are received, they are taken into account in the preparation of the scoping opinion. Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion

and must include the information that may reasonably be required for reaching a reasoned conclusion on the likely significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

- 4.3.8 The Scottish Ministers should adopt the scoping opinion within nine weeks of the request, or such longer period as they may reasonably require. As a guide, Table 2 below sets out the consultation timescales for the scoping stage (although timescales may be longer where required):

**Table 2: Scoping Consultation Timeframes**

<b>Scoping stage</b>	<b>Indicative timeframe</b>
From receipt of scoping request to issuing of consultation to consultees	3 weeks
Consultation period	3 weeks
From close of consultation period to scoping opinion issued by ECU	3 weeks
<b>Issue scoping opinion</b>	<b>9 weeks</b>

## 5. Submission of the Application

### 5.1. Gate Check

- 5.1.1 Prior to an application being submitted, there is a two-stage “gate check” process. For gate check stage 1, the applicant provides a gate check 1 report which sets out the how the applicant is going to address the matters set out in the scoping opinion in the EIA report. The principal function of gate check stage 2 is to manage the administrative requirements of the submission of the application. Further details on each gate check stage is provided below.

#### **Gate Check Stage 1**

- 5.1.2 The purpose of gate check stage 1 is to set out how the Scottish Ministers’ and consultee comments provided in the scoping opinion are to be addressed by the applicant and taken forward in the EIA report. This process seeks to ensure efficient determination timescales and has been found to reduce the need for additional information during the application process (see section 6.4 below).
- 5.1.3 At gate check 1, the applicant submits a gate check 1 report to the ECU. ECU review the report and seek comments from key consultees (for example SEPA, NatureScot, HES and the planning authority) on the

approach of the proposed EIA report. This allows for further dialogue with ECU, the applicant and key consultees, and allows the applicant to:

- seek feedback on departures from methodology agreed at scoping stage;
- seek feedback on the scope of the assessment following any changes to the proposed development from the scoping stage; and
- provide an opportunity to highlight any key matters prior to the application being submitted.

5.1.4 Where appropriate, ECU can assist in further engagement with key consultees to discuss potential issues with the intention of the applicant addressing them prior to the submission of the application.

5.1.5 The gate check 1 report is submitted nearing the time of design freeze (i.e. when the applicant has finalised the design and layout of the proposed development) and in any event at least 3 months prior to the application being submitted. The submission of the gate check 1 report should ensure sufficient time to take into account any comments received prior to the completion of the application.

5.1.6 As a guide, the gate check 1 report will contain but is not limited to details of:

- the iterations of the design;
- interactions with the statutory (and non-statutory) consultees, as well as engagement with the local community;
- the advice the applicant has received since the scoping consultation and how it has taken that advice forward;
- a summary of how the applicant has approached or proposes to approach (if it has not already done so) the key matters raised in the scoping opinion and subsequent engagement; and
- the timeline for the submission of the application with anticipated dates for adverts, consultees lists, and proposed locations of the EIA report for public viewing.

## **Gate Check Stage 2**

5.1.7 The principal function of gate check stage 2 is to manage the administrative requirements of submission of an application under section 36 or 37 of the Electricity Act. This stage consists of confirming the administration process with ECU regarding the formal submission of the application, including uploading the documents to the ECU portal, payment of application fees to the ECU, and dealing with notices.

5.1.8 This process should take place not less than two weeks before submission of the application.

## 5.2. Content of Application

5.2.1 The information for inclusion in EIA reports is set out in Regulation 5 and Schedule 4 of the EIA Regulations.

5.2.2 As a guide, an application under section 36 or 37 of the Electricity Act for EIA development should contain the following:

- a cover letter requesting the consent and where relevant the deemed planning permission;
- a planning statement;
- a detailed map showing the land where the proposed development would be built or the electric line(s) installed including detailed infrastructure, access routes etc. Further detailed maps on specific aspects of the EIA report will also be required;
- the fee to be paid as set out in section 5.3 below;
- a hard copy of the EIA report, including references to the technical appendices;
- a CD copy of the EIA report;
- a non-technical summary of the EIA report setting out, in lay terms, the significant environmental effects of the proposed development; and
- a separate schedule of mitigation.

5.2.3 A section 36 application should also clearly set out the detail of the generation station(s) that consent is being sought for. For each generating component, details of the proposal should include:

- the scale of the development (for example dimensions of the wind turbines, solar panels, battery storage);
- components required for each generating station; and
- for battery storage, the approximate export capacity in megawatts and megawatt hours.

5.2.4 A section 37 application should also state the length of the proposed line, its nominal voltage and whether all necessary wayleaves have been agreed with the owners and occupiers of land proposed to be crossed by the line. Separate guidance on necessary wayleaves is available here: [Necessary wayleaves: application form and guidance](#).

## 5.3. Fees

5.3.1 Applications that need the consent of Scottish Ministers incur a fee under The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019. In order to determine the correct fee to be

paid on making an application, an online fee calculator is available. Further details on application fees can be found at “Application and fee requirements” on the relevant [ECU webpage](#).

## 5.4. Consultation

5.4.1 Following the submission of an application and EIA report to ECU, a notice is published by the applicant in the relevant newspapers and on the application website. Similar to the scoping stage, a consultee list is prepared and includes the names and contact details (including up to date email addresses) of all consultees. The consultation bodies to be consulted by the Scottish Ministers at application stage are the relevant planning authority, NatureScot, SEPA and HES and any other relevant public bodies with specific environmental responsibilities or local and regional competencies who the Scottish Ministers consider are likely to have an interest.

## 6. Processing of the Application

### 6.1. Notification Requirements

6.1.1 The details of the consultation requirements in relation to applications, including the consultation processes, when and where public notifications should be published, and timeframes are set out in Part 5 of the EIA Regulations and in the Electricity (Applications for Consent) Regulations 1990.

6.1.2 Public notifications are the responsibility of the applicant and these take the form of advertisements placed in certain prescribed newspapers to inform local communities and the general public of an application being made to the Scottish Ministers. This gives the public an opportunity to make representations to the ECU, where they can provide comments, or support or object to an application. The public notice of the application can be combined with the notification that an application has been accompanied by an EIA report. ECU case officers can provide draft notice templates for use on request and agree dates regarding placing notices at the point of submission of the application.

6.1.3 Applicants should provide a draft notice to the ECU case officer in advance of submitting application documents, and the timescale for publishing the notices requires to be discussed with ECU. As noted at section 5.1 above, at gate check stage 2, two weeks are required to prepare the application for publication on the ECU website. Notice dates require to be discussed and agreed with the ECU case officer to ensure the application is available on the website when the notice is published.

6.1.4 There are additional requirements in Part 5 of the EIA Regulations including a requirement for the applicant to send a copy of the EIA report to the planning authority, and inform the Scottish Ministers of the date this

occurred. If the applicant sends a copy of the EIA report to any consultation body (including the planning authority), it must also send with the EIA report a copy of the application and plan, inform the consultation body that representations may be made to the Scottish Ministers, and inform the Scottish Ministers of the name of every consultation body to which the applicant has sent a copy of the EIA report and the date on which the applicant did so.

## 6.2. Consultation Responses

- 6.2.1 Consultation responses to the application are published on the ECU portal as soon as reasonably practicable after they are received.
- 6.2.2 For section 36 applications, the planning authority must serve notification of any objection to the application within four months, or such longer period as may be agreed in writing by the planning authority, the Scottish Ministers and the applicant. For section 37 applications, the planning authority has two months from the date of the application within which to object the application or such longer period as may be agreed in writing by the planning authority, the Scottish Ministers and the applicant.
- 6.2.3 The ECU expects planning authorities to respond within the relevant statutory periods (four months for section 36 applications and two months for section 37 applications), and any objection not notified within those timeframes may be disregarded by the Scottish Ministers. These periods will only be extended in exceptional circumstances. Where longer periods are necessary, a processing agreement which sets out agreed dates would be drafted by the ECU case officer and agreed between the Scottish Ministers, the planning authority and the applicant.
- 6.2.4 Where issues or points of clarification require to be resolved, applicants should engage with the relevant party or parties to address or clarify matters during the consultation period. It is important that ECU are kept fully informed of this type of engagement and are involved where required.

## 6.3. Public Representations

- 6.3.1 Members of the general public or groups may make representations and comment to the Scottish Ministers on section 36 and 37 applications. Detailed guidance on how to submit representations via the ECU portal is available at the following link: [Scottish Government - Energy Consents Unit - Help](#).
- 6.3.2 Use of the ECU portal to make representations is preferable. Representations can also be emailed to [representations@gov.scot](mailto:representations@gov.scot) or in writing to: Energy Consents Unit, Scottish Government, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU.
- 6.3.3 Representations are published on the portal as soon as reasonably practicable after they are received.

## 6.4. Additional information and evidence relating to EIA Reports

- 6.4.1 To ensure the completeness and quality of the EIA report and to enable Scottish Ministers to reach a reasoned conclusion on the significant effects of the proposed development on the environment, the Scottish Ministers may require the applicant to submit supplementary information known as “additional information”, as defined in Regulation 2 of the EIA Regulations.
- 6.4.2 This can be required in some circumstances to address any issues raised by consultees in relation to insufficient information or to verify information in the EIA report. Details of the requirements relating to additional information, including evidence relating to EIA reports and the publication of additional information, are set out in Part 6 of the EIA Regulations.
- 6.4.3 It is crucial that applicants make very clear how the additional information interacts with the EIA report. The two documents in effect together become the EIA report for the proposed development going forward and should be easy to read together. The information contained in the additional information should be referenced appropriately to the original EIA report and it should be clear what information, if any, is being replaced.
- 6.4.4 If the planning authority has yet to formally respond to the initial consultation, any further consultee responses and public representations made in relation to the additional information will be collated and forwarded to the planning authority.
- 6.4.5 If the planning authority has formally responded to the initial application, it will be asked to respond within 30 days unless an extension is granted, and asked whether it wishes to carry forward previously issued consultation recommendations/conditions, if they remain relevant to the proposed development.
- 6.4.6 When the ECU receives additional information, a further public notice is required to be placed in the newspapers by the applicant, and a further 30 day consultation period begins. The requirements regarding publication of additional information can be found in Regulation 20 of the EIA Regulations.

## 7. Public Inquiry

### 7.1. Inquiry Process

- 7.1.1 If a planning authority objects to a section 36 or 37 application within the time periods set out in section 6.2 above, and its objection is not withdrawn, Scottish Ministers must cause a public inquiry to be held and

the application will be passed from the ECU to the Scottish Government Planning and Environmental Appeals Division (DPEA). However, a public inquiry is not required where the Scottish Ministers propose to grant the application subject to modifications or conditions that will give effect to the planning authority's objection. Where the planning authority has not objected but other parties have, Scottish Ministers will consider those objections together with all other material considerations and determine whether a public inquiry should be held at their own discretion.

- 7.1.2 An independent Reporter will be appointed by Scottish Ministers to conduct the inquiry. Once passed to the DPEA, the Scottish Ministers usually cease to have a role in the application until the inquiry has concluded and the Reporter's report is received.
- 7.1.3 Following the close of the inquiry process, the Reporter submits a report to the Scottish Ministers including a summary of the evidence, conclusions and recommendations including the conditions that should apply in the event that consent is granted. Previous reports from the DPEA can be searched for and viewed at the following link: [Scottish Government - DPEA - Case List](#).
- 7.1.4 The Scottish Ministers must take the inquiry report provided by the Reporter into account in reaching their final decision on the application. The inquiry report will be published at the same time as the Scottish Ministers' decision on an application.
- 7.1.5 [The DPEA website](#) provides a range of information and guidance relevant to the inquiry process. Of particular relevance is [Guidance Note 23: Managing an Efficient Inquiry Process](#) which sets out the main steps required to ensure a tightly managed and efficient inquiry and hearing process. This guidance supplements the [Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989](#).
- 7.1.6 Guidance Note 23 sets out an overall target timescale of 50 weeks from registration for section 36 applications that go through the inquiry process. Reporters will project manage the case towards this target. However, achieving it will require the co-operation of all involved. Parties should note the indicative timescales in Guidance Note 23 and plan availability accordingly. Where there are delays beyond the Reporter's control in terms of timetabling and/or the submission of additional information under the EIA Regulations, the target may be consequently delayed.

## 7.2. Changes to the Proposed Development at Public Inquiry Stage

- 7.2.1 Changes or modifications to the proposed development should be made during the application process while the application is with the ECU and before an application is at the public inquiry stage. Where in the rare case that this is not possible (such as where a change is instigated to give

effect to an objection from the planning authority and the case is already at public inquiry) and modifications are proposed, requirements on advertising and consulting on the information in relation to the change or modification may be engaged.

- 7.2.2 In general, where changes fall to the inquiry process these are likely only to be proposed to mitigate environmental effects and should not result in the proposed development becoming in substance a different development.

## 8. Decision stage

### 8.1. Determination

- 8.1.1 When the application is ready to be determined (either with or without a public inquiry taking place), the Scottish Ministers will consider all relevant material available to them before making any decision on an application. The Scottish Ministers shall take into account the application documentation, EIA report, additional information if applicable, consultation responses, representations and any other material information in making the decision.
- 8.1.2 The merits of each proposal are considered on a case by case basis, and a careful balance must be struck between the potential impacts of the proposed development and the associated environmental, economic, renewable energy and climate change benefits.
- 8.1.3 In reaching their decision, the Scottish Ministers will determine applications in accordance with legislative requirements and relevant policy. The time taken to process the determination will depend on the complexity of the individual case.
- 8.1.4 When a decision is made, the Scottish Ministers will send the decision notice to the applicant, and a copy to the planning authority, the other consultation bodies and any other public bodies consulted on the EIA report. The Scottish Ministers will also publish a notice containing the terms of the decision on the ECU website. The planning authority must make a copy of the decision notice available for public inspection. The applicant must also publish a notice on the application website, in the Edinburgh Gazette, and in a newspaper circulating in the locality of the proposed development. Details of the requirements relating to decision notices, monitoring measures and notification of decisions are set out in Part 7 of the EIA Regulations.
- 8.1.5 Although the decision of the Scottish Ministers is final, it is subject to the right of any aggrieved person to apply to the Court of Session for a judicial review of the decision.

## 9. Information

### 9.1. ECU Contact

9.1.1 A range of publically available documents for the ECU including information on using the ECU portal as well as useful links to other information are available at the following link: [Scottish Government - Energy Consents Unit - Help](#).

9.1.2 For any specific queries not addressed on the ECU portal or in this guidance, please contact [Econsents.Admin@gov.scot](mailto:Econsents.Admin@gov.scot) for advice.

### 9.2. Other Legislative Requirements

9.2.1 Other legislative regimes may apply to applications under section 36 and 37 of the Electricity Act, including the Conservation of Habitats and Species Regulations 2017. Further information on habitat regulations appraisal in Scotland is available at the following link: [Habitats Regulations Appraisal \(HRA\) | NatureScot](#). Proposed developments may also require licences, such as those under the Controlled Activities Regulations and wildlife legislation. The applicant should familiarise itself with any other consenting regimes that may apply to the proposed development.

## 10. Glossary

**Applicant:** Any person, company or organisation submitting a section 36 or section 37 application to Scottish Ministers.

**Deemed Planning Permission:** The decision of Scottish Ministers, on granting consent under the Electricity Act, to direct that planning permission for a proposed development shall be deemed to have been granted under section 57(2) of the TCP(S)A.

**Environmental Impact Assessment (EIA):** an assessment of the likely significant environmental effects arising from the proposed development.

**Environmental Impact Assessment (EIA) report:** Document submitted by the applicant to support their application. This is the result of an EIA and is an unbiased consideration of the potential environmental impacts of their proposal.

**Planning statement:** Document submitted by the applicant describing how their proposal accords with local and national planning policy. This can be used to present the case in favour of a proposal, and as such must be kept separate from the EIA report.

**Representation:** Views (positive or negative) on a proposed development communicated to the ECU or to Scottish Ministers by any third party.

**Scoping opinion:** The opinion of Scottish Ministers as to the content which should be included in a forthcoming EIA report. This document does not provide comment on the merits, or otherwise, of the proposal, but details the minimum information that Scottish Ministers must be provided with in order to adequately consider any application.

**Scoping report:** Report provided by the applicant detailing their initial proposals, the work to be undertaken and the possible effects of those proposals on the environment. This document should include a plan sufficient to identify the site which is the subject of the proposed development. This document is consulted upon and the results of this consultation provide the basis of the scoping opinion.

**Scoping request:** Request made under the EIA Regulations to the Scottish Ministers for a scoping opinion. It will be accompanied by a scoping report which will be duly consulted upon.

**Section 36 / Section 37 application:** An application made for the construction, extension and operation of an electricity generating station or for the installation of an overhead electric line under the Electricity Act.

**The Electricity Act:** The Electricity Act 1989.

**TCP(S)A:** The Town and Country Planning (Scotland) Act 1997

**The EIA Regulations:** The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.



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