



Scottish Government
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Marine Scotland Consenting and Licensing Guidance

For Offshore Wind, Wave and Tidal Energy Applications

marinescotland

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ABBREVIATIONS

AA	Appropriate Assessment
BEIS	Department for Business, Energy & Industrial Strategy
BT	British Telecom
CAA	Civil Aviation Authority
cSAC	candidate Special Area of Conservation
DECC	Department of Energy and Climate Change
dSAC	draft Special Area of Conservation
dSPA	draft Special Protection Area
EA	Environmental Assessment
ECU	Energy Consents Unit
EEA	European Economic Area
EEC	European Economic Community
EIA	Environmental Impact Assessment
EIA Report	Environmental Impact Assessment Report
ES	Environmental Statement
EMP	Environmental Management Plan
EPS	European Protected Species
FEAST	Feature Activity Sensitivity Tool
FLO	Fisheries Liaison Officer
HES	Historic Environment Scotland
HRA	Habitats Regulations Appraisal
HSE	Health and Safety Executive
IALA	International Association of Marine Aids to Navigation and Lighthouse Authorities
IROPI	Imperative Reasons of Overriding Public Interest
JNCC	Joint Nature Conservation Committee
LSE	Likely Significant Effect
MCA	Maritime and Coastguard Agency
MGN	Marine Guidance Note
ML	Marine Licence
MoD	Ministry of Defence
MPA	Marine Protected Areas
MPP	Marine Planning Partnership
MRFG	Marine Renewable Facilitators Group
MS	Marine Scotland
MS-LOT	Marine Scotland Licensing Operations Team
MSS	Marine Scotland Science
MW	Megawatt(s)
NATS	National Air Traffic Services
NLB	Northern Lighthouse Board
nm	Nautical Miles
NRA	Navigational Risk Assessment
OFTO	Offshore Transmission Operator
OMR	Offshore Marine Regulations
PA	Planning Authority
PAC	Pre-application Consultation
PEMP	Project Environmental Monitoring Programme

PLI	Public Local Inquiry
pSAC	proposed Special Area of Conservation
pSPA	proposed Special Protection Area
RAG	Regional Advisory Group
Ramsar	The Convention on Wetlands (Ramsar, Iran, 1971)
SAC	Special Area of Conservation
SCI	Sites of Community Importance
ScotMER	Scottish Marine Energy Research programme
SEA	Strategic Environmental Assessment
SEPA	Scottish Environment Protection Agency
SG	Scottish Government
SNH	Scottish Natural Heritage
SMP	Sectoral Marine Plan
SPA	Special Protection Area
SpORRAn	Scottish Offshore Renewables Research Framework
s.36	Section 36 of the Electricity Act 1989
s.105	Section 105 of the Energy Act 2004 (as amended)
TPC	Third Party Certification
TPV	Third Party Verification
VHF	very high frequency
WANE	Wildlife and Natural Environment (Scotland) Act

1. Introduction

1.1 Purpose

This Consenting and Licensing Guidance (herein known as the Guidance) is part of Marine Scotland’s licensing policy suite for all stakeholders, including developers, regulators, statutory advisors, the public and other interested parties. It provides guidance on applying for Section 36 (“s.36”) consents and marine licences for offshore renewable energy projects within both Scottish Territorial Waters (out to 12 nautical miles (“nm”)) and Scottish Offshore Waters (12-200 nm).

The Guidance updates and replaces the draft Marine Scotland Licensing and Consents Manual published in 2013. The Guidance will be a live document and will be updated as policy and legislative changes require.

Marine Scotland Licensing Operations Team (“MS-LOT”) oversees the application of the Guidance within the consenting and licensing application processes for offshore wind, wave and tidal energy development (hence forth referred to as “offshore renewables”).

1.2 Scope of the Guidance

The Guidance is specific to offshore renewable energy applications only and covers all scales of development. Separate guidance for other marine licence activities is available [on the Scottish Government website](#).

The Guidance covers the consenting and licensing process from pre-application, through to application and post-determination (including post consent condition requirements), highlighting legislative and process requirements¹.

The Guidance provides links to other relevant guidance documents where appropriate.

The Guidance will be supported by separate licensing policy guidance papers which go into more depth on specific issues, for example on decommissioning or survey, deploy and monitor policy. More information on these is available at section 1.5.5.

1.3 Key Organisations, Roles and Responsibilities

1.3.1 Marine Scotland

Marine Scotland is a directorate of the Scottish Government and is responsible for managing Scotland’s seas for prosperity and environmental sustainability. This contributes to the Scottish Government’s overall purpose of sustainable economic

¹ The Guidance provides a view from the Scottish Government on, amongst other matters, the legislative context of the subject matter. It is for the courts to interpret and to apply the law. We have made every effort to ensure the accuracy of the information contained in this document at the time of publication. You should check for any changes in the law and for fuller details you should refer to the current legislation. You are advised to obtain independent legal advice in relation to your rights and responsibilities under the legislation covered by this Guidance.

growth and the achievement of a shared vision of clean, healthy, safe, productive, biologically diverse marine and coastal environments, managed to meet the long term needs of people and nature.

Marine Scotland's key responsibilities are to:

- Work towards achieving good environmental status, through marine planning, licensing and other functions, to help ensure a healthy and sustainable environment;
- Promote sustainable economic growth from offshore renewables and other marine and maritime industries through integrated planning and, where appropriate, streamlined regulatory frameworks;
- Promote sustainable, profitable and well managed fisheries and aquaculture industries in Scotland;
- Ensure sustainably managed freshwater fish and fisheries resources;
- Ensure a sound evidence base to inform the development and delivery of marine policy, planning and services;
- Ensure effective compliance and enforcement arrangements; and
- Continue to integrate functions and resources, and to develop organisational skills, competencies and capacity to ensure effective and efficient marine management arrangements in Scotland.

The relevant roles within Marine Scotland are as follows:

Licensing and Operations

MS-LOT, a team within Marine Scotland, is the regulator responsible for the impartial assessment of Marine licence and s.36 consent applications, ensuring compliance with all relevant legislation and the issue of all marine related permissions. It operates a "one stop shop" to handle the entire consenting/licensing process, from initial queries through to the issuing of permissions and post-consent approvals. It is the single point of contact for all queries relating to the licensing of the deployment of offshore renewable energy devices in Scottish waters. **Early and adequate engagement with MS-LOT is essential** and will assist developers in determining the level of data collection required to inform impact assessments required to support applications. Informal consultation at the pre-application stage and ongoing dialogue with MS-LOT, its advisors and other stakeholders, including local interest groups and the public will also help to ensure that appropriate consideration is given to all stakeholder concerns (including the public) and that opinions are integrated into the project decision making process.

MS-LOT takes the lead role in facilitating engagement with relevant external parties in relation to applications and ensures that consultation proceeds in a timely and effective manner.

MS-LOT's main roles are:

- to provide developers with advice on the requirements for preparing and submitting competent applications for a marine development; and
- to provide Scottish Ministers with independent advice on the suitability and sustainability of a proposed development.

MS-LOT will ensure that screening opinions, scoping opinions, gate check review (including scientific review and Environmental Impact Assessment (“EIA”) audit), socio-economic advice, consultation analysis and expert opinion is provided to guide developers applications.

MS-LOT will also ensure that Scottish Ministers rely on independent advice and best available science when making decisions. It engages with MS specialist advisors as appropriate, including Marine Scotland Science (“MSS”) and Marine Scotland’s analytical unit and other policy and legal advisors to ensure that impartial and robust and independent advice is provided. In the case of sponsorship advice, or to formulate sector specific solutions, MS-LOT liaises with policy colleagues.

MS-LOT follows Licensing Policy Guidance which is produced to ensure clarity is provided to developers, statutory advisors, consultees and others with an interest in the development application process.

Where doubts, concerns or gaps in knowledge are identified, MS-LOT will advise policy colleagues. The policy team will then liaise with MSS, MS Analytical Unit and other parts of Scottish Government (i.e. the EIA/ Habitats Regulations Appraisal (“HRA”) team) to develop a solution in the form of research or additional monitoring. It is important that policy colleagues are advised of gaps in knowledge during the consenting and licensing process as additional research and monitoring can be targeted at resolving licensing issues and can be used to refine Sectoral Marine Plans in a co-ordinated fashion. A similar process is involved in informing the development of the national and regional marine plans.

Planning

Scottish Ministers have put in place a system of statutory marine planning. MS-LOT takes the statutory national and regional marine plan into account when providing views and opinions to developers, statutory advisors, consultees and within their advice to Scottish Ministers. Scottish Ministers have also, in line with environmental legislation, adopted a process of non-statutory Sectoral Marine Planning. This process is aimed at developing Ministerial sectoral policy, including spatial policy, based upon the use of Strategic Environmental Assessment (“SEA”), Habitats Regulations Appraisal (“HRA”), Socio-economics and Consultation Analysis. Ministers adopt these non-statutory Plans through the publication of an SEA, the Plan, an Appropriate Assessment (“AA”) and the Post-Adoption Statement.

Marine Scotland, as part of its planning role, is also responsible for strategic level outputs which guide renewable energy developments into areas of least constraint, principally through sectoral marine plans.

Marine Scotland ensures that the development of wave, tidal and offshore wind energy sectors is carried out in a planned and sustainable manner, by applying best regulatory practice supported by high quality science. Marine Scotland is responsible for the application of the processes and the provision of advice to Ministers on the development of Sectoral Marine Plans. MS-LOT has to take account of the Sectoral Plans and incorporate findings and advice into the Licensing process, particularly at

the screening and scoping stages of the EIA process. The Plan process helps to identify gaps in knowledge which in turn allow Marine Scotland to commission strategic research and data collection drawing upon MSS, MS Analytical Unit and other advice providers expertise.

Policy and Research

Part of Marine Scotland's policy role is to consider how to tackle problems, difficulties being faced by developers and facilitate other improvements through sectoral marine planning, policy guidance and coordinated research.

Marine Scotland also has a policy responsibility for the Strategic Research Programme covering offshore renewable energy. The remit of the programme is to establish, and produce an evidence map of the research priorities in specific priority areas. It will then consider mechanisms available to fund future research in order to deliver the priority research.

If there are gaps in scientific knowledge and there are important factors involving risks to the ecosystem and protected species, we can apply best available science, however we also have to adhere to the precautionary principle. The precautionary principle requires the consenting authority to either refuse the development application or undertake risk analysis and set up a research programme. In the case of project applications off Scotland, there are gaps in knowledge with regard to impact assessment and the supporting science. As such Marine Scotland has undertaken risk analysis covering gaps in scientific knowledge using the Scottish Renewables Research Framework ("SpORRAn") initiative. This has resulted in the production of a set of evidence maps highlighting the gaps in knowledge and the associated projects required to address these gaps. To complete the SpORRAn process Marine Scotland will undertake a project prioritisation process to establish the Scottish Marine Energy Research (ScotMER) programme. ScotMER will seek to take forward a set of priority projects using Scottish Government funding, Research Council funding and where appropriate in partnership with developers and others involved in ORJIP or other research initiatives.

Science

MS-LOT is supported by MSS which has expertise in a range of subject areas that are key to understanding the marine environment.

MSS provides independent scientific advice to MS-LOT. This advice must be based upon best available science. MSS will provide MS-LOT with a Scientific Review of the Environmental Impact Assessment Report ("EIA Report") and the HRA. In the case of the HRA, MSS may also draft the AA, however this will be approved by MS-LOT. MSS play a key role in undertaking strategic assessment and research which may help inform better HRA, especially in relation to Cumulative Effects Assessment.

Where further scientific input is required with regard to difficult or contentious issues MSS can ask its 'external' Scientific Advisory Group to provide a view. However, if specialist advice is required, MSS will, in liaison with MS planning and policy colleagues, MS-LOT, and its Advisory Group, form an Expert Panel. The Expert Panel will be formed of specialist scientists of international reputation whose task it

will be to advise on issues such as marine mammal response to noise in the marine environment.

1.3.2 Crown Estate Scotland

In Scotland, the foreshore and seabed out to a distance of 12 nm are presumed to belong to The Crown, with management of this resource being the responsibility of Crown Estate Scotland. Applicants need to obtain a lease from Crown Estate Scotland (or the holder of the rights) for the use of all sea areas in inshore waters (up to 12 nm) or out to 200 nm in Scottish offshore waters.

1.3.3 Statutory Consultees

There are four main statutory consultees for s.36 applications (under the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017): the planning authority/ies, Scottish Natural Heritage (“SNH”); Scottish Environment Protection Agency (“SEPA”); Historic Environment Scotland; and where required, any EEA State identified as being significantly affected by the development.

Statutory consultees for Marine Licence applications (under the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017) are any relevant local planning authority, SNH, SEPA, Historic Environment Scotland, and any relevant authority. Additional statutory consultees under the Marine Licensing (Consultees) (Scotland) Order 2011 are the Commissioners of Northern Lighthouses, the Maritime and Coastguard Agency (“MCA”) and any delegate for a region. Below is a short synopsis of each organisation and their role.

Scottish Natural Heritage (SNH)

SNH is Scottish Ministers’ independent statutory advisors on nature conservation in Scottish inshore waters and also now has delegated responsibility for providing advice on renewable energy applications in Scottish Offshore Waters. SNH will therefore advise MS on sectoral marine plans and development applications. SNH is a statutory consultee for both s.36 and ML applications. SNH has produced a [service level statement](#) for renewable energy consultation. This statement provides information regarding the level of input that can be expected from SNH at various stages of the EIA process. SNH, working closely with the offshore renewables industry, has developed a range of [guidance](#), including landscape and seascape assessment and survey/monitoring guidelines.

Planning Authorities

Planning Authorities are statutory consultees for s.36 applications and are also fully consulted on any deemed planning components of a s.36 application. In some cases, consultation with more than one Planning Authority may be necessary.

Applicants should ensure there is close and detailed liaison with the relevant Planning Authority/ies from the early project-planning stage even if terrestrial consents are not required as they will also be interested in the landscape and visual impact arising

from offshore developments and any socio-economic implications. The relevant local Planning Authority/ies must also be consulted with respect to marine licences.

Maritime and Coastguard Agency

The MCA is a statutory consultee for MLs and has responsibility for ensuring the navigational safety of the marine environment. Although the policy for offshore renewables industry is overseen by a specialist team at MCA headquarters in Southampton, the team will often consult with local MCA representatives. However, as Offshore Renewable Energy installations are considered “significant projects” within the MCA, the first point of contact should be the Navigation Safety Branch in Southampton. Further information on the agency and their role in relation to Navigation Risk Assessment (“NRA”) is set out in [section 4.7](#) of this Guidance.

Northern Lighthouse Board

The Northern Lighthouse Board is a statutory consultee for MLs and is responsible for advising on all buoys, lights, or other marking requirements and for issuing Statutory Sanction to deploy such markers.

Scottish Environment Protection Agency

The Scottish Environment Protection Agency (SEPA) is a statutory consultee for both s.36 and MLs and is Scotland’s environmental regulator whose main role is to protect the environment. The two primary regulatory mechanisms for SEPA, in relation to offshore energy, are:

Water Environment and Water Services Act 2003; and
Water Environment (Controlled Activities) (Scotland) Regulations 2011 (applicable out to 3 nm).

For the River Basin Management Planning process SEPA has established the Fish and Fisheries Advisory Group which, together with SEPA’s fisheries science staff, advises SEPA on strategic issues relating to the development of policy, guidance and research for the protection of fish and fisheries. SEPA will also advise and make recommendations during the appropriate licence application process or consultation, in relation to protecting the environment.

Historic Environment Scotland

[Historic Environment Scotland](#)’s (“HES”) role in the planning process is to provide advice on the potential impacts of development on the historic environment. HES is consulted on all qualifying EIA projects in Scotland, including those in the marine environment.

Marine Planning Partnerships

Regional marine planning will be undertaken by Marine Planning Partnerships, which will be made up of marine stakeholders who reflect marine interests in their region. Whilst some Marine Planning Partnerships are in place, it will take time for

them to be established across Scotland. The partnerships will vary in size and composition depending on the area, issues to be dealt with and the existing groups.

Regional marine planning powers will be delegated to the Partnerships by Scottish Ministers. These powers will not include licensing or consenting as these will remain the responsibility of consenting bodies such as Marine Scotland and Local Authorities. The first partnerships are in the [Clyde](#) and [Shetland Isles](#) regions.

Marine Renewables Facilitators Group

To assist in tackling complex issues and/or to resolve areas of dispute anytime in the application process, MS-LOT may decide to bring together an advisory group, the Marine Renewables Facilitators Group (“MRFG”). The group could also be called upon to consider changes in the assessment process which deviate from the advice given in the scoping opinion. This process should be used to help reduce any requests for further assessment following the acceptance of an application. The group normally, but not always, comprises representatives of the key regulators and statutory consultees who are suitably experienced and empowered by their organisations to provide advice and guidance. The potential members of a MRFG are drawn from the following bodies:

- Ministry of Defence (MOD);
- National Air Traffic Services (NATS);
- Civil Aviation Authority (CAA);
- Scottish Natural Heritage (SNH);
- Joint Nature Conservation Committee (JNCC);
- Maritime and Coastguard Agency (MCA);
- Northern Lighthouse Board (NLB);
- Scottish Environment Protection Agency (SEPA);
- Department for Business, Energy & Industrial Strategy (BEIS);
- Marine Scotland Science (MSS);
- Planning Authority (PA); and
- Marine Scotland Marine Policy and Planning Division

The Chair is nominated by MS-LOT and may be selected from the bodies listed above or, as specific circumstances dictate, from another stakeholder or independent third party. The MRFG’s function is not to take part in the final determination of an application but it will be expected to, where appropriate, advise and give direction to MS-LOT on aspects of the application process before the final determination and recommendation is made.

1.4 Legislation

1.4.1 Planning

Maritime Spatial Planning Directive

EU Directive 2014/89/EU came into force in July 2014 and establishes a framework for maritime spatial planning. It aims to promote the sustainable growth of the maritime economies, the sustainable development of marine areas and the

sustainable use of marine resources. In essence, the Directive places a legal requirement on Member States to develop and implement Maritime Spatial Plans by 2021 at the latest. It also sets out a number of minimum requirements that Maritime Spatial Plans are required to meet. More detail on Scotland's National Marine Plan can be found in Section [1.5.2](#).

Marine and Coastal Access Act 2009

Other than in relation to certain specified matters, the Scottish Ministers have executively devolved powers over marine planning, marine licensing and nature conservation in the offshore marine region (12-200 nm) in accordance with the Marine and Coastal Access Act 2009 (as amended) ("the 2009 Act"). As such, the Marine Management Organisation ("MMO") does not exercise such functions in Scottish waters or in the Scottish part of the renewable energy zone where the Scottish Ministers perform such functions.

The Scottish Ministers also have executively devolved powers in relation to applications for consent under s.36 of the Electricity Act 1989 throughout Scotland's entire marine region (inshore and offshore).

Where applications for both a marine licence under the 2009 Act and consent under s.36 of the Electricity Act are made, then in those cases where the Scottish Ministers are the determining authority, they may issue a note to the applicant stating that both applications will be subject to the same administrative procedure. Where that is the case then that will ensure that the two related applications may be considered at the same time.

Marine (Scotland) Act 2010

The Marine (Scotland) Act 2010 applies to the Scottish inshore region (0 – 12nm) and came into force in March 2010 in response to demands for improved management of the marine environment and its resources. The Act followed over 5 years of significant input from marine interests via a number of workgroups under consecutive administrations. Therefore while the detail in the Act was much debated via the Bill process, the overarching provisions of the Act were supported by the majority of marine stakeholders.

The Act introduced provisions for:

- **Marine planning:** a new statutory marine planning system to sustainably manage increasing and conflicting demands on our seas
- **Marine licensing:** a streamlined licensing system, minimising the number of licences required for development in the marine environment
- **Marine conservation:** enhanced powers to protect marine nature and historic areas of importance for marine wildlife, habitats and historic monuments
- **Seal conservation:** improved protection for seals and a new comprehensive licence system to ensure appropriate management when necessary
- **Enforcement:** a range of enhanced powers of marine conservation and licensing

1.4.2 Assessment

SEA Directive

The [Strategic Environmental Assessment Directive](#) is a European Union requirement that seeks to provide a high level of protection of the environment by integrating environmental considerations into the process of preparing certain plans and programmes.

The aim of the Directive is “to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the Directive, an environmental assessment is carried out of qualifying plans and programmes which are likely to have significant effects on the environment.”

The Directive requires an “environmental assessment” of certain plans and programmes. “Environmental assessment” is defined as a procedure comprising:

- preparing an Environmental Report on the likely significant effects of the draft plan or programme;
- carrying out consultation on the draft plan or programme and the accompanying Environmental Report;
- taking into account the Environmental Report and the results of consultation in decision making; and
- providing information when the plan or programme is adopted and showing how the results of the environmental assessment have been taken into account.

Environmental Assessment (Scotland) Act 2005

SEA is a systematic process for identifying, reporting, proposing mitigation measures and monitoring environmental effects of plans, programmes and strategies. It aims to ensure that environmental issues are taken into account at every stage in the preparation, implementation, monitoring and review of plans, programmes and strategies of a public nature.

EU legislation requiring the environmental assessment of plans and programmes came into force in 2001 through [Directive 2001/42/EC](#). In Scotland, the requirements of the Directive are taken forward by the [Environmental Assessment \(Scotland\) Act 2005](#). This Act requires environmental assessment is undertaken on all plans, programmes and strategies of a public nature which are likely to have significant environmental effects.

The Environmental Assessment (Scotland) Act 2005 only applies to plans and programmes that relate solely to the whole or any part of Scotland. The Environmental Assessment of Plans and Programmes Regulations 2004 (the UK Regulations) therefore applies to those plans and programmes that geographically fall within the 12-200nm limit.

The SEA played a prominent role in the development of the Sectoral Plans by identifying key environmental receptors, effects and mitigation measures and by providing an early indication of issues to be addressed at the project level.

SEA was applied to test and comment on the plan options for development from a strategic perspective. The process was applicable to strategic and regional level issues. The SEA findings and associated opinions arising from the consultation process led to broad recommendations for the Sectoral Plans as a whole. The findings from the SEA process also, where appropriate, were used as a starting point for further, more detailed data collection and environmental assessment, either for strategic review at a regional level or to aid consideration of developer project-level assessment.

Habitats Directive

Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and wild fauna and flora (as amended) (“the Habitats Directive”), provides for the conservation of natural habitats and of wild flora and fauna in the Member States’ European territory, including offshore areas. It promotes the maintenance of biodiversity by requiring Member States to take measures which include those which maintain or restore natural habitats and wild species listed in the Annexes to the Habitats Directive at a favourable conservation status and contributes to a coherent European ecological network of protected sites by designating Special Areas of Conservation (“SAC”) for those habitats listed in Annex I and for the species listed in Annex II, both Annexes to that Directive.

Articles 6 & 7 of the Habitats Directive provide *inter alia* as follows:

“6.2 Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

6.3 Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to an Appropriate Assessment (“AA”) of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

6.4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

7. Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4 (1) or similarly recognized under Article 4 (2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.”

The requirements of Article 6 and 7 are implemented through HRA in Scotland as described in section [2.6](#).

Birds Directive

The EU Wild Birds Directive (Council Directive 2009/147/EC) codified Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds. The Directive aims to halt decline in populations of bird species in European. It also seeks to ensure the preservation, maintenance or restoration of a sufficient diversity and area of essential habitat. The Directive requires the designation of Special Protection Areas for the bird species listed in Annex 1, as well as regularly occurring migratory species.

Article 7 of the EU Habitats Directive replaced the first sentence of Article 4.4 of the EU Wild Birds Directive with the obligations of Article 6 (2), (3) and (4) of the EU Habitats Directive, as shown in the above. This means that the same requirements apply to the assessment of effects on sites designated under the EU Wild Birds and Habitats Directives.

Regulations which require HRA to be undertaken

The Habitats Regulations is the collective term for the regulations which implement the EU Habitats Directive, and certain aspects of the EU Wild Birds Directive in Scotland. The following regulations are currently in force:

- The Conservation of Habitats and Species Regulations 2017 (apply to s.36 consent applications)
- The Conservation (Natural Habitats, &c.) Regulations 1994 as amended (apply to marine licence applications in relation to devolved matters in Scottish territorial waters)
- The Conservation of Offshore Marine Habitats and Species Regulations 2017 (referred to below as the “OMRs 2017”) (apply to marine licence and s.36 consent applications within Scotland’s offshore region beyond 12 nm.

When undertaking HRA on its plans Marine Scotland has used an iterative and auditable process drawing upon the [agreed guidance](#) for undertaking HRAs for plans in Scotland which has been set out in the report produced on behalf of SNH by David Tyldesley and Associates (2010 and later updated in 2015).

Aarhus Convention

The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. These include:

- the right of everyone to receive environmental information that is held by public authorities ("access to environmental information").
- the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it;
- the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

Public Participation Directive

[The Public Participation Directive 2003/35/EC](#) provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Marine Works (Environmental Impact Assessment) Regulations 2007 (herein referred to collectively as “the EIA Regulations”) take the requirements of the directive into account.

1.5 Planning and Policy

Marine Scotland is using a marine planning approach to ensure efficient, sustainable green energy generation. **Consenting and Licensing decisions will be taken in accordance with the Marine Acts, [UK Marine Policy Statement](#), [Scotland's National Marine Plan](#), Sectoral Marine Plans for Wind, Wave and Tidal Energy and, in due course, [Scottish Regional Marine Plans](#).** Applicants should consult available marine plans in development planning stages for clarity of Government objectives and policies for the marine environment.

1.5.1 The UK Marine Policy Statement

The UK Marine Policy Statement, which was created and adopted by the UK Government and devolved administrations, facilitates an integrated approach to marine planning across the UK and sets out the high level framework for preparing marine plans and taking decisions affecting the marine environment.

Importantly, the UK Marine Policy Statement outlines the requirement for marine plans within UK waters to be developed taking into account environmental, social and economic objectives (i.e. Strategic Environmental Assessment as well as a Social and Economic Impact Assessment).

1.5.2 Scotland's National Marine Plan

Scotland's National Marine Plan was published in accordance with the UK Marine Policy Statement and sets out a single statutory planning framework for all marine activity out to 200 nm in Scottish waters. It provides a structure which embeds

environmental protection in decision making, improving consistency of decision making and providing greater certainty for developers and users of the sea.

Of particular relevance are the 21 General Policies set out in [Chapter 4](#) and the 8 Objectives and 10 Marine planning policies for offshore wind and Marine Renewable Energy set out in [chapter 11](#). [Chapter 6](#) sets out sea fisheries policies, including Fisheries Policy 1 and 2 setting out what needs to be considered when deciding on uses of the marine environment and the potential impact on fishing and Policy 3, requiring a Fisheries Management and Mitigation Strategy to be prepared by developers in instances where the existing fishing opportunities or activity cannot be safeguarded. This should include full engagement with local fishing interests (and other interests as appropriate). In addition [chapter 14](#) covers policies in relation to submarine cables.

General Policies 2 and 3 of the National Marine Plan support the delivery of economic and social benefits from sustainable marine developments and ensure consideration is given to the use of **scenario mapping as a planning tool to assess socio-economic implications of commercial scale developments**.

1.5.3 Regional Marine Plans

Marine planning will be implemented at a local level within Scottish Marine Regions, extending out to 12 nm. Within these regions, Regional Marine Plans will be developed by Marine Planning Partnerships to take account of local circumstances and smaller ecosystem units. Marine Planning Partnerships (MPP) currently exist in Shetland and Clyde. These MPPs are currently working on a regional plan for their respective areas. Development proposals for these areas would benefit from early discussions with respective MPP.

1.5.4 Sectoral Marine Plans for Offshore Wind, Wave & Tidal Energy

Sectoral Marine Planning has been developed in Scotland to meet with the requirements of EU, UK and Scottish legal and policy instruments. Legislation on SEA and HRA require environmental assessment to support Ministerial Plans, Programmes and Strategies. An Appropriate Assessment is published following consideration of the strategic HRA taken forward on the Plan options. In addition, Socio-economic assessment is also required under the UK Marine Policy Statement and is necessary to consult properly under Public Participation Regulations with regard to strategic plan, programme or strategy making. In the case of Sectoral Marine Plans Scenario Mapping is applied in accordance with the Scottish National Marine Plan to better understand the social and economic benefits stemming from developer projects covered by the Plan.

The SEA, sHRA, Social and Economic (including any available Scenario Mapping report) are subject to statutory public consultation. Public Participation Statements, regional and sectoral consultation workshops, statutory body consultation and other consultation initiatives, both written and verbal, are undertaken to ensure effective debate is held on draft plan options. This engagement is reported and published in a Consultation Analysis documents.

Scottish Ministers consider all available information to allow them to select plan options for inclusion within their Plan. The information considered and reasons behind plan option selection are published within the Post Adoption Statement which is available alongside the final Ministerial approved Plan.

The Sectoral Marine Plans represent Scottish Ministers' spatial policy for the development of commercial scale offshore renewable energy at a national and regional level. All commercial scale offshore renewable developments should be included with a published sectoral marine plan before they can be considered by MS-LOT under consenting and licensing procedures. Non-commercial or demonstrator scale development do not need to go through Sustainability Appraisal or be included within a Sectoral Marine Plan.

The areas contained in the Sectoral Marine Plans are referred to as adopted Plan Options. Plan Options are strategic development zones in which commercial scale projects should be sited following further project specific zone appraisal, where appropriate, and consideration is given to the key strategic issues identified in the SMPs and Sustainability Appraisal.

In addition, the Plan, post-adoption statement, the related assessments and Scenario Mapping processes detail the key strategic environmental, social and economic considerations (for example key considerations for project consenting, potential research and data gaps to be addressed or the potential to increase benefits for developments) within the Plan Option areas. Developers should give considerations to the outputs of these documents when producing Scoping Reports for potential developments within Plan Option areas.

Regional Locational Guidance

Regional Locational Guidance has been developed to inform sectoral marine plans but it can also be used where there is no sectoral marine plan or no sectoral marine plan requirement to aid developers in terms of the best environment and economic advice to aid developers with site selection and other development considerations. Regional Locational Guidance has a role in marine licensing and is now used to identify Sectoral Marine Plan options, or to provide Marine Scotland's best available advice for demonstrator or non-commercial scale development.

1.5.5 Licensing Policy Guidance

In addition to this Guidance, there is operational draft policy guidance available on [draft Survey, Deploy and Monitor Licensing Policy Guidance](#), economic Impact Assessment and policy in relation to Dropped Objects at sea. Further policy guidance will be prepared on decommissioning of offshore renewable energy installations in Scottish waters.

2. Overview of Consents and Licences

2.1 Consenting and Licensing Requirements

Under the Marine Scotland Act 2010 the Scottish Ministers are responsible for marine licensing and enforcement in the Scottish inshore region (out to 12 nm). This includes the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide. Under the Marine and Coastal Access Act 2009 Scottish Ministers also have responsibility for licensing and enforcement in the Scottish offshore region (12-200 nm).

In addition, consent from Scottish Ministers under s.36 of the Electricity Act 1989 is also required for generating stations above 1 megawatt (MW) capacity in Scottish inshore region and above 50 MW in the Scottish offshore region. Further information on the consents and licenses required is provided throughout this chapter.

The following are the consents and approvals for which the Scottish Ministers are the competent or regulatory authority, namely:

- Marine Licences under Part 4 of the [Marine \(Scotland\) Act 2010](#) and Part 4 of the [Marine and Coastal Access Act 2009](#);
- Consent under S.36 of the [Electricity Act 1989](#);
- EPS licenses under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and the OMRs 2017;
- Basking Shark Licences under the Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011);
- Safety Zone applications (Energy Act 2004, as amended by the Scotland Act 2016); and
- Decommissioning programmes (Energy Act 2004, as amended by the Scotland Act 2016).

2.2 One-Stop-Shop

MS-LOT operates a one-stop-shop approach to consenting and licensing, meaning that applications for s.36 Consent and deemed planning permission, Marine Licences, EPS licences and basking shark licences are handled simultaneously where requested. This creates a simpler, more streamlined, process which aims to reduce the burden on applicants, stakeholders, and regulators alike.

2.3 Overview of Marine Licences

The Marine Licensing provisions of Part 4 of the Marine (Scotland) Act 2010 and Part 4 of the Marine and Coastal Access Act were introduced to streamline previous licensing and consenting mechanisms and play an important role in ensuring that the policies of marine plans are adhered to, by making licensing and enforcement decisions in line with the Marine Policy Statement and Scotland's National Marine Plan. The Marine Acts make it an offence to carry on, or cause or permit another person to carry on, a 'licensable marine activity' without a Marine Licence. It is a 'licensable marine activity' to do any of the following in Scottish Waters (from Mean

High Water Springs out to 12 nm under the Marine (Scotland) Act 2010 and 12-200 nm through devolved powers in accordance with the Marine and Coastal Access Act 2009):

- Deposit any substance or object in the sea or on or under the seabed;
- Deposit any substance or object in the sea or on or under the seabed from a vehicle, vessel, aircraft or marine structure loaded with the substance or object in Scotland or in the Scottish Waters;
- Construct, alter or improve works on or over the sea or on or under the seabed from a vehicle, vessel, aircraft or marine structure;
- Remove substances or objects from the seabed;
- Dredging (including plough, agitation, side-casting and water injection dredging);
- Deposit and/or use explosives; and
- Incinerate substances or objects.

2.3.1 Pre-application Consultation

For activity in the Scottish Inshore Region, the [Marine Licensing \(Pre-application Consultation\) \(Scotland\) Regulations 2013 \(“PAC Regs”\)](#), lists ‘prescribed classes’ of activity to which the PAC Regs apply. There is no provision for pre-application consultation (PAC) in the Marine and Coastal Access Act 2009, so these requirements do not apply in respect of relevant applications in the Scottish Offshore Region.

Prospective applicants for a marine licence for an activity of a ‘prescribed class’ may notify the Scottish Ministers requiring a pre-application consultation statement from them. The Scottish Ministers must issue a PAC statement if one is requested.

Applicants for a ‘prescribed class’ of activity must notify the MCA, NLB, SNH, SEPA, and any delegate for a relevant marine region. A period of at least 12 weeks must elapse between such notice being given and an application being submitted. Applicants must hold at least one pre-application event at which the bodies notified (as above) and members of the public may provide comments to the applicant. Applicants must publish in a local newspaper a notice containing a description of the activity, detail where further information may be obtained, the date and place of the event, how and when comments should be submitted to the applicant. The notice must also include a statement that the PAC comments are not representations to the Scottish Ministers and that there will be an opportunity to make such representations when an application is made. A PAC report, as per the schedule to the PAC Regs should be submitted alongside the marine licence application. The PAC event must be held no earlier than six weeks after the later of the date on which notification of such event is given and the date of notification that an application for a marine licence is to be submitted is given. PAC events may not be needed if a suitable event has been held in the year before the application is made. [Guidance on Marine Licensable Activities subject to Pre-Application Consultation](#) is available online.

2.3.2 Additional Marine Licensing requirements

It is a licensable marine activity to remove small quantities of sediment from the seabed over 1 m³ as part of scientific and/or investigative surveys. Liaison with MS-

LOT is therefore recommended to determine the licensing requirements of any pre-construction activities such as seabed surveys.

Having received an application, MS-LOT (on behalf of Scottish Ministers) will advise that notice of the application should be published. See section [4.10](#) for further details. MS-LOT determines applications for marine licences, on behalf of Scottish Ministers, having regard to the need to protect the environment, protect human health and prevent interference with legitimate use of the sea. In determining such applications to construct, alter or improve works, MS-LOT must have regard (among other things) to the effects of any use intended to be made of the works.

Applications for marine licences should contain sufficient information to enable determination. It is the applicant's responsibility to accurately record deposits in the marine licence application form. Where, in MS-LOT's view, insufficient information has been submitted, MS-LOT may refuse to proceed with an application until the applicant has conducted further investigations and submitted further information, as is reasonable, to enable determination of an application. In determining all licence applications, MS-LOT will consult any relevant local planning authority, SNH, SEPA, Historic Environment Scotland, the Commissioners of Northern Lighthouses, the MCA, any relevant authority and any non-statutory, consultees.

Subject to regulation 8 of [The Marine Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(as amended\)](#) the Scottish Ministers must not grant a regulatory approval (a marine licence) for an EIA project (as defined in the Marine works (EIA) Regs) unless an EIA has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

MS-LOT, having considered the application must either grant the licence unconditionally, grant the licence subject to appropriate considerations or refuse the application. Section 29 ("s.29") of the Marine (Scotland) Act 2010 and Section 71 ("s.71") of the Marine and Coastal Access Act 2009 provide for such conditions as may be attached to a marine licence.

Applications for Marine Licences may not be processed unless accompanied by payment of the appropriate fee, as laid down in the Marine Licensing (Fees) (Scotland) Regulations 2011 (as amended) (the "Marine Licensing fees Regs"). Where the activity forms part of a larger project, regulation 3A.-(2) of the Marine Licensing Fees Regs states that the fee is to be determined based on the likely cost of carrying out that project. Further information on application fees can be found in [section 4.9. Application forms and further marine licensing guidance](#) can be found on the Marine Scotland Website.

Part 7 of the Marine (Scotland) Act 2010 also makes specific provision for Marine Enforcement Officers. These officers have specific powers to enforce the marine licensing regime, and all issues relating to marine protection and nature conservation legislation.

2.4 Section 36 Consent

Any proposal to construct, extend or operate a generating station situated in the:

- Scottish territorial sea (out to 12 nm from the shore), with a generation capacity in excess of 1 MW²; or
- Scottish Offshore Region (12 to 200 nm), with a generating station in excess of 50 MW

will require consent under s.36 of the Electricity Act 1989.

Under [the Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) Scottish Ministers must not grant an Electricity Act consent for EIA development; or direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the Town and Country Planning Scotland Act 1997 in respect of an EIA development, unless an environmental impact assessment has been carried out in respect of that development and in coming to a decision the Scottish Ministers must take the environmental information into account and come to a reasoned conclusion (which must be up to date) on the significant effects of the development on the environment.

Developers have a duty under Schedule 9 of the Electricity Act 1989 to have regard to the preservation of amenity and fisheries. This requires the developer, when formulating proposals relating to the construction and operation of a generating station, to take account of the effects the proposal would have on the natural beauty of the countryside, on any flora, fauna, and geological and physiological features of special interest, and sites, buildings and objects of architectural, historic or archaeological interest. It is also required that the applicant take reasonable actions to mitigate the effects of the proposal on amenity and that steps are taken to avoid, as far as possible, causing injury to fisheries or the stock of fish in any waters.

The s.36 application should cover the generating station and any inter-array cabling, whilst any offshore platform or cabling to the platform or to shore should be considered through a marine licence application. This will allow an easier transfer process of the transmission assets to the offshore transmission operator at the relevant time.

The Energy Act 2004 introduced two additional sections into s.36 of the Electricity Act relating to navigation. In accordance with Section 36A, Scottish Ministers have the power to make a declaration, on application by a developer, which extinguishes public rights of navigation which pass through the place where the generating station will be established; or suspending rights of navigation for a specified period of time. The declaration can only be made at the same time as the s.36 consent being granted and extends only to the actual generating stations, not the wider development area, in territorial waters.

² The [Electricity Act 1989 \(Requirement of Consent for Offshore Generating Stations\) \(Scotland\) Order 2002](#) modifies Section 36 (2) of the 1989 Act in this respect.

Section 36B places a duty on Scottish Ministers that they may not grant consent for a generating station where the generating station, whether in the Scottish territorial sea or the Renewable Energy Zone, would interfere with recognised sea lanes essential to international navigation. The Scottish Ministers are also under a duty, in determining whether to grant consent to a particular application, to have regard to the extent and nature of any obstruction of or danger to navigation which is likely to be caused by or result from the generating station.

In exercising their duties, both in relation to interference with recognised sea lanes essential to navigation and obstruction of or danger to navigation, Scottish Ministers must take into account the cumulative impact of the generating station for which s.36 consent is being sought, together with those for which consents have already been granted and those for which it appears likely that consents will be granted.

2.4.1 Deemed Planning Permission

Planning permission will in most cases be required for the land based components of marine based electricity generating stations. In these cases a statutory provision in the Growth and Infrastructure Act 2013, amending s57 of the Town and Country Planning (Scotland) Act 1997, allows Scottish Ministers to direct that planning permission is deemed to be granted for the ancillary onshore components and related onshore infrastructure for a marine based electricity generating station consented under s.36.

Planning Authorities are statutory consultees for s.36 applications and are therefore consulted on any deemed planning components of a s.36 application. Where a s.36 application contains an onshore element of the generating station, then a Planning Authority objection will trigger an automatic PLI which will be confined to the onshore element. Paragraph 7a(7) of Schedule 8 to the Electricity Act 1989 gives the Scottish Ministers powers of direction in relation to the scope of any PLI.

Developers can still choose to apply for a s.36 consent from the Scottish Ministers, and planning consent for onshore components from the relevant Planning Authority, separately. The Scottish Government considers that, in most cases, however, a single consenting process will be more efficient and effective than applying for a separate consent and planning permission. In either event, developers should seek early pre-application consultation with the Planning Authority. Good communication and engagement between MS, developers and the Planning Authority on s.36 applications is important. Developers need to make it clear to MS-LOT at the earliest opportunity whether or not they are applying for deemed planning permission.

2.5 Overview of Environmental Impact Assessment

The main aim of the Environmental Impact Assessment Directive (“the EIA Directive”) ([2011/92/EU](#)) as amended by ([2014/52/EU](#)) is to ensure that the authority granting consent (the ‘competent authority’ (Scottish Ministers in this context) for a particular project makes its decision in full knowledge of any likely significant effects (“LSE”) on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before they can be given ‘consent’. This procedure is a means of drawing together, in a systematic way, an assessment of a project’s likely

significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and Scottish Ministers before a decision is made.

Any EIA must take account of the OSPAR List of threatened and/or declining species and habitats³.

The EIA Directive has been transposed into Scottish and UK legislation. The following regulations may apply to offshore renewable energy projects:

[The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) as amended by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) apply to all applications for s.36 consent in Scottish waters out to 200 nm.

[The Marine Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) (as amended by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#)) apply to applications that require an EIA (as defined in schedule 2 of the 2017 Marine Works Regulations) for a marine licence from 0-12 nm.

[The Marine Works \(Environmental Impact Assessment\) Regulations 2007](#) as amended by [The Marine Works \(Environmental Impact Assessment\) \(Amendment\) Regulations 2011](#), [The Marine Works \(Environmental Impact Assessment\) \(Amendment\) Regulations 2015](#) and [The Marine Works \(Environmental Impact Assessment\) \(Amendment\) Regulations 2017](#) apply to applications that require an EIA, for a marine licence from 12-200 nm.

In this Guidance, the various Regulations specifying the requirement for an EIA will be referred to collectively as the EIA Regulations. In circumstances where more than one set of EIA regulations apply to an offshore renewable energy project the most stringent requirements set out in the various regulations should be adhered to.

EIA includes the following broad stages:

Pre-application

- [Screening](#) - determines whether an EIA is required.
- [Scoping](#) - identifies the issues which must be addressed in the EIA Report.

Application

- [EIA Report](#) - assesses the likely significant effects of a project
- [Consultation/public participation](#) by Scottish Ministers - to gather views from stakeholders on the likely effects of the project.
- [Determination](#) – made by the Scottish Ministers having considered the environmental information, mitigation and consultation responses.

Post-consent

- [Multi-stage consent](#) / regulatory approval – will apply following consent.

³ OSPAR Recommendation 2010/5 on the assessment of environmental impacts on threatened and/or declining species

Benefits of EIA

For applicants, EIA can help to identify the likely significant environmental effects of a particular development at an early stage. This can produce improvements in the planning and design of the development and in decision making by both the developer and Scottish Ministers. In addition, applicants may find EIA a useful tool for considering alternative approaches to a development. This can result in a final proposal that is more environmentally acceptable, and can form the basis for a more robust application for consent. The presentation of environmental information in a more systematic way may also simplify Scottish Ministers' task of appraising the application and drawing up appropriate conditions, lead to more meaningful consultations, and can help enable swifter decisions to be reached.

2.6 Overview of Habitats Regulations Appraisal

HRA is the process through which it is determined whether a plan or project will have an adverse effect on the integrity of an SAC or SPA. Scottish Ministers must be satisfied that there will be no adverse effect before issuing a marine licence or s.36 consent. This consists of a three stage process which is described in section [2.6.1](#). The sites to be considered in this process are listed in section [2.6.2](#), and the relationship between HRA and EIA is discussed in section 2.6.3.

2.6.1 The 3 Steps of HRA

The HRA process can be summarised as three steps as illustrated in Figure 1 with the decision-making process illustrated in Figure 3, these are:

- Step 1: Is the proposal directly connected with or necessary for site management for nature conservation?
- Step 2: Is the proposal likely to have a significant effect on the site either alone or in-combination with other plans or projects? (see section [3.3.5](#))
- Step 3: Can it be ascertained that the proposal will not adversely affect the integrity of the site either alone or in-combination with other plans or projects (the AA). (see section [3.3.5](#))

If the HRA screening process concludes that the potential for LSE cannot be excluded then its scope should include the collation, and presentation, of information to enable an AA to be undertaken. The AA that is undertaken by Scottish Ministers must ascertain whether the proposed project will or will not adversely affect the integrity of the European site(s) concerned. In cases where there is doubt about the presence or absence of adverse effects on integrity, the proposal may not proceed unless there are no alternative solutions and there are imperative reasons of overriding public interest (IROPI).

The HRA is an integral document to the consent and licence applications and should be submitted as part of the application package of documents required under the EIA process.

The [SNH](#) website has useful information on general HRA requirements as well as specific guidance on [Habitats Regulations Appraisal \(HRA\) on the Firth of Forth](#) and [Habitats Regulations Appraisal \(HRA\) on the Moray Firth](#).

2.6.2 Sites to be considered

Under the Habitats Regulations the follow sites types have full legal protection:

- SAC - a site formally designated by a member state
- SPA - a site formally classified by a member state
- Sites of Community Importance (SCIs) – a site adopted by the European Commission but not formally designated.
- Candidate SACs (cSACs) – a site proposed by a member state but not yet adopted by European Commission

Under Scottish Government policy Ramsar sites are also protected under the same statutory regimes. There is no need to consider Ramsar sites separately if they overlap with SACs and/or SPAs.

Under Scottish Planning Policy the follow site types should be treated as if fully designated:

- Proposed Special Protection Area (pSPA) and proposed SACs (pSACs) – Sites which have been approved by Scottish ministers for public consultation.

The following have no legal status but should be given appropriate consideration: Draft SPAs (dSPAs) and draft SACs (dSACs) – Sites that the statutory nature conservation advisor has provided advice that the area is suitable for designation.

2.6.3 Relationship between HRA and EIA

HRA is undertaken by the developer and should provide Scottish Ministers with the information required for them to either complete an AA or to rule out the potential for LSE on the qualifying interests of European sites. It is a separate requirement from EIA, due to the specific assessment and legislative requirements for projects that may affect European sites, although both often need to be informed by the same information. It is also necessary for projects which do not require EIA to undergo HRA if there is a LSE. In these cases, full presentation of a HRA assessment and evidence will be required outwith the EIA process. Additionally, the terms 'significant', 'compensation' and 'mitigation' have different definitions/implications under the EIA and HRA legislation and these need to be clearly understood at the outset.

Where an appropriate assessment is required, the competent authority must consult SNH. However if the information on HRA is included in the EIA scoping report MS-LOT will consult with other relevant consultees to determine what information will be required from the applicant, including methods of data collection and the level of detail that will be required in the assessment. As with EIA, applicants should be aware of timescales for obtaining the necessary data.

In summary, the HRA process relates specifically to the consideration of habitats or species under the EU Habitats and Wild Birds Directives and associated transposing regulations. The process considers the potential effects of the development on internationally important habitats and/or species for which the sites are designated.

The assessment includes consideration of direct and indirect effects on these interests and must also consider cumulative and in-combination effects from other proposed plans or projects.

2.7 Overview of European Protected Species

European Protected Species (EPS) are animals and plants (species listed in Annex IV of the Habitats Directive) that are afforded protection under The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) and the OMRS 2017. All cetacean species (whales, dolphins and porpoise) are European Protected Species.

This makes it an offence to:

- deliberately capture, injure or kill any European Protected Species (EPS)
- to deliberately disturb them
- to damage or destroy a breeding site or resting place.

If any activity is likely to cause disturbance or injury to a European Protected Species a licence is required to undertake the activity legally.

A licence may be granted to undertake such activities if certain strict criteria are met:

- there is a licensable purpose
- there are no satisfactory alternatives
- the actions authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range

More information on pre-application and application requirements in relation to EPS can be found at Sections [3.3.7](#) and [4.4](#) respectively.

2.8 Overview of Marine Protected Areas

A network of Nature Conservation MPAs have been designated in Scottish waters under the Marine (Scotland) Act 2010 or the Marine and Coastal Access Act 2009 since 2014, protecting habitats and species such as maerl beds, flame shell beds, and common skate. Eight Historic MPAs have been designated to preserve sites of historical importance around the Scottish coast. One Demonstration and Research MPA has been designated. at Fair Isle.

Under section 83 of the Marine (Scotland) Act 2010 / section 126 of the Marine and Coastal Access Act 2009 Public Authorities (including the Scottish Ministers) are required to consider whether a project is capable of affecting (other than insignificantly) a protected feature in an MPA. The Public Authority must not grant authorisation to the activity unless satisfied that there is no significant risk of the activity hindering the achievement of the objectives of the site. A similar provision requires consideration of the stated purpose of a demonstration and research MPA, or the stated preservation objective of a Historic MPA.

It is Scottish Government policy that proposed MPAs (pMPAs), which are sites approved by Scottish Ministers for public consultation but not yet designated, should be treated for assessment purposes as if they were designated.

2.9 Overview of basking shark licences

Basking sharks are protected under the Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011 from intentional or reckless disturbance or harassment. The following licence may be required from Scottish Ministers to enable some of the works to commence under a Marine Licence and/or a s.36 consent:

- Basking Shark Licence (Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011)

2.10 Other Licences and Approvals

2.10.1 Seabed Lease

Applicants must obtain a lease from Crown Estate Scotland (or the holder of the rights) for the use of all sea areas in Scottish inshore and offshore waters. It is the sole responsibility of the developer to ensure that all necessary leases are acquired.

An Agreement for Lease granted by Crown Estate Scotland generally grants a developer an option over an area of seabed. Exercise of the option by the developer will be conditional on it satisfying certain conditions. If the conditions are satisfied and the developer exercises the option, The Crown Estate Scotland will be obliged to grant a lease of the seabed to the developer. The conditions to be satisfied before the developer may exercise the option will include the obtaining by the developer of all statutory consents for the proposed development. If the developer is unable to satisfy all the conditions within a certain time provided for in the Agreement for Lease, the option will lapse. During the option period the developer will be permitted to undertake surveys and deploy anemometry equipment. However, the developer is not permitted to commence construction of its development until and unless all statutory consents and a lease are granted.

2.10.2 Local Acts and Local Revision Orders

Local Acts and Orders can apply if the proposed project is within a designated area, e.g., a Statutory Harbour Authority area. These areas are under the control of Local Planning Authorities or Harbour Authorities and proposed projects require Local Development Consents or Work Orders to be granted. Where applications relate to such areas, developers will be notified by MS-LOT at an early stage and these approvals will be required in addition to s.36 consent and/or marine licence. In such cases, the power to permit the work rests with the relevant Local Planning Authority or Harbour Authority. It is the responsibility of the developer to obtain such permits or licences. Developers should ensure that early consultation is undertaken with the relevant authorities and that the application is made in good time.

2.10.3 Navigational Safety and Aids to Navigation

The UK Government has a responsibility to ensure navigational safety measures are implemented in order to honour its commitments under Article 60(7) of the United Nations Convention on the Law of the Sea relating to provisions for Artificial islands,

installations and structures in the exclusive economic zone'. This is addressed in a number of specific Acts.

If marks or lights are required in respect of marine developments, a project specific assessment must be made with Statutory Sanction applied for from the [Northern Lighthouse Board](#).

The Northern Lighthouse Board is also responsible for the inspection and audit of all Aids to Navigation within its area of jurisdiction, including Local Lighthouse Authority, offshore installations and aquaculture aids. Once Aids to Navigation are established as part of the design and build of marine developments, any alteration or removal within Scottish Waters requires the prior Statutory Sanction of the Northern Lighthouse Board.

2.10.4 Safety Zone Applications

Section 62 of the Scotland Act 2016 amends Section 95 of the Energy Act 2004, essentially making Scottish Ministers the “appropriate Minister” for safety zones around renewable energy installations wholly in Scottish waters or an area of waters in a Scottish part of the Renewable Energy Zone, and which are not being extended or proposed to be extended out-with those areas. The power of the appropriate Minister to issue a safety zone notice shall be exercisable on an application made to him/her for that purpose by any person, or where no such application has been made, on his/her own initiative after consultation with the Maritime Coastguard Agency.

Safety zones can be established for any phase of an offshore renewable energy project but are normally applied for the construction or aspects of operations and maintenance phases. The request for safety zones can be dealt with in one application with different safety zone requirements for the different phases.

It should be noted that for applications made under s.36 where there is an intention to apply for a safety zone as part of construction or aspects of the operation and maintenance phases this should have been detailed in the EIA Report. Failure to do so may mean that it is unlikely that safety zones could be approved.

Whilst standard safety zones of 500 metres can be applied for (max under international law), other constraints on navigable routes or access for other users may restrict the size possible and these will be dealt with on a case by case basis.

It is expected that in the request for safety zones there will be a clear plan of rolling safety zones which allows safe working conditions whilst minimising impacts on other stakeholders.

The safety zone plan submitted for consultation through public advertisement and an eight week stakeholder consultation should contain a clear communication strategy on how the details of the zones will be communicated and to whom. Details of contacts (FLO Fisheries Liaison Officers) and very high frequency (“VHF”) Channel to be used should be given along with contacts in MCA and local harbours. The developer will be responsible for providing guard ships to encourage compliance with safety zones.

2.10.5 Statutory Decommissioning Scheme

Section 62 of the Scotland Act 2016 transfers to Scottish Ministers powers under the Energy Act Part II Chapter 2, to require developers of offshore renewable energy projects in Scottish Waters and the Scottish part of a Renewable Energy Zone, to prepare a decommissioning programme. These powers constitute the regulatory functions of decommissioning including: powers for Scottish Ministers to approve such a programme; to require financial security for a programme to be put in place by responsible persons; and, should that responsible party default, to ensure that the decommissioning programme is carried out. Scottish Ministers will also have the power to determine their own approach to decommissioning including the form, timing and size of financial securities.

Under the statutory scheme, the appropriate Minister may require those persons with an interest in such installations to produce a fully costed Decommissioning Programme detailing how they intend to remove the installation when it comes to the end of its useful life and how the costs of doing so will be funded.

Marine Scotland will be producing guidance for the decommissioning of offshore renewable energy installations. However, until that guidance is finalised developers should ensure that they have fully read and followed the current UK Government [guidance on decommissioning offshore renewable energy installations](#) before approaching MS-LOT to discuss their proposals in greater detail.

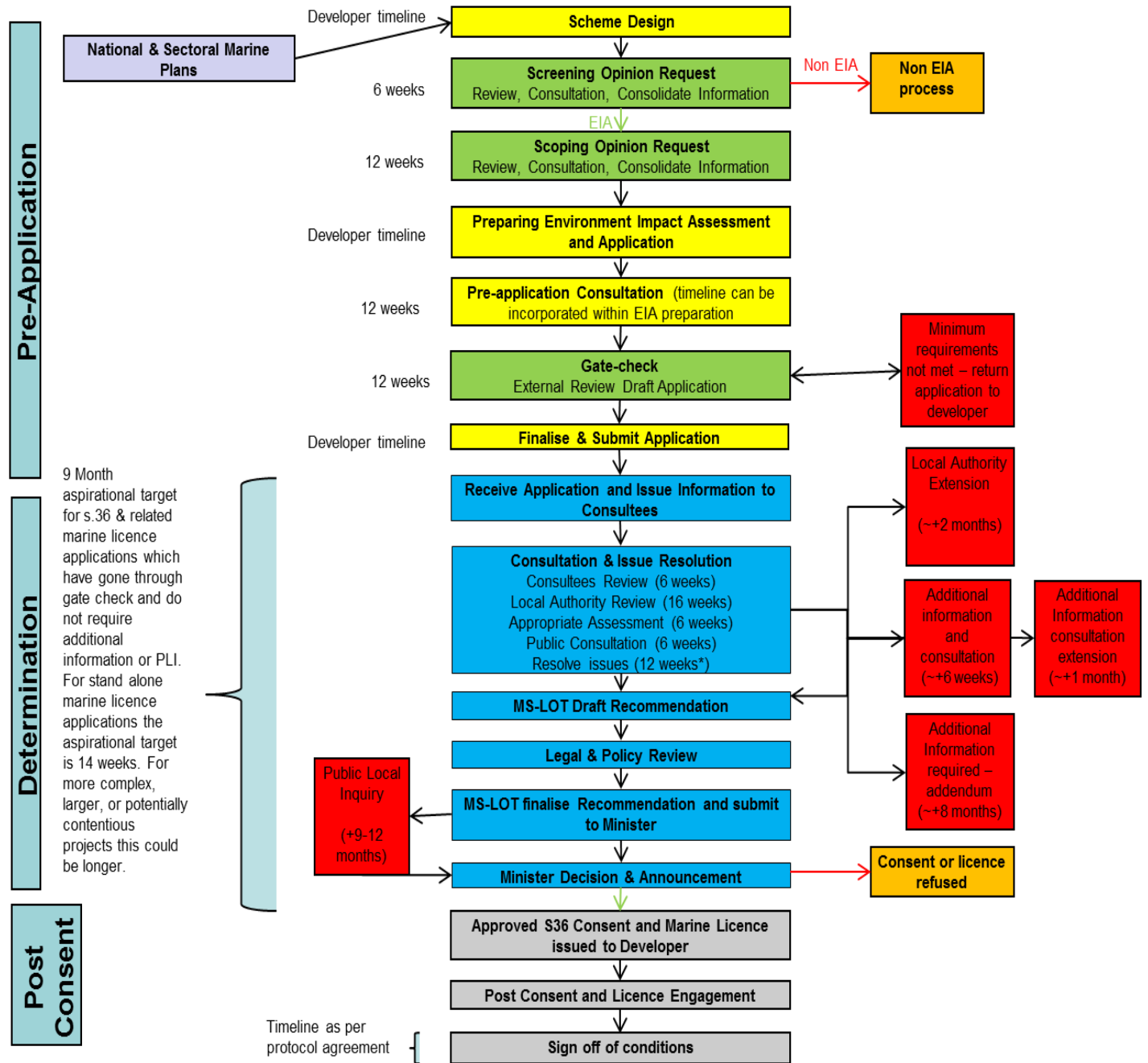
The requirement to prepare a decommissioning programme under Section 105 of the Energy Act 2004 (as amended) (“s.105”) applies to offshore renewable energy projects which generate electricity but does not for example apply to developments which are connected by a permanent structure to land. The requirement does extend beyond commercial developments and applies where investigations, trials or feasibility studies are being carried out with a view to ascertaining whether the generation of electricity is practicable. It should be noted that where an offshore transmission operator (“OFTO”) is to be appointed a separate s.105 notice will be issued for the offshore transmission works.

The regulator would normally issue a s.105 notice to a developer after a consent or marine licence has been issued. The developer must then submit a plan for the decommissioning works accompanied by details of costs and proposed financial securities. The developer will consult on the plan with an approved set of stakeholders and make the plan available to the public on both developer’s and MS-LOT websites. MS-LOT will consult on the plan, proposed costs and financial securities before seeking ministerial approval on the scheme. Whether or not security is required will be a ministerial decision based on the perception of risk to Scottish Ministers of default by the developer. It should be noted that statutory provisions make it an offence not to decommission in accordance with a notice issued by Scottish Ministers and they have the power to take remedial action and recover any expenditure where developers fail to do so.

2.11 Timescales

The timescales for the consenting and licensing processes are set out in figure 1 below.

Figure 1 – Consenting & Licensing Process Timeline



Scottish Ministers have an objective to, where possible, determine s.36 applications within nine months of start of consultation where there is no PLI. It is however worth noting that the nine month determination period is dependent on the submission of a complete, fit for purpose non-contentious application that fully addresses all issues raised by Scottish Ministers and consultees during the pre-application period including the scoping process. Early engagement is therefore key.

Marine licence applications that have been submitted alongside an application for a s.36 will be processed in parallel with this process and issued (where appropriate) at the time of the decision on the s.36 consent.

On other marine licence applications, following receipt of all required information, payment and confirmation that the relevant public notices have been approved and publicised, if there are no objections or complex issues raised during the consultation process these will be processed within 14 weeks. For more complex, larger or potentially contentious projects applicants should allow longer for an application to be processed.

2.12 Protocol Agreements

MS-LOT is content to enter into protocol agreements with developers and other stakeholders. The aim of protocol agreements is to set out and agree the proposed timescales and key stages for the pre-application, application and the post-consent process for individual developments. This will allow MS-LOT and stakeholders to forecast forthcoming workloads and for developers to be clear about their timescales. Outline protocol agreements for the pre-application and application stages and the post-consent stage are attached at Annex C and D respectively.

2.13 Gap Analysis

Throughout the consenting process and into the post-consent period it is important to ensure that issues specified in the Scoping Opinion (see section [3.3.2](#)) adopted by Scottish Ministers, and comments raised subsequently by consultees, are adequately addressed and taken to completion through an auditable process. MS-LOT requires that this is achieved through gap analyses.

The gap analysis methods will be applied at three stages in the licensing process.

a) The developer's Scoping Report results in the adoption of a Scoping Opinion by Scottish Ministers. This Opinion will specify a range of issues that are required to be addressed in the developer's EIA Report. As part of the package of documents supplied by the developer at gate-check in support of their application, the developer will provide a log of the issues raised in the Scoping Opinion, and of the actions taken in respect of each issue, together with a reference to the relevant section of the EIA Report. MS-LOT will review the gap analysis and identify where issues have not been addressed or have not been addressed in a sufficiently complete way. Developers will be advised to rectify these gaps prior to submission of the final EIA Report.

b) The final EIA Report and other elements of the application package will be subject to broad consultation. The consultee comments will be passed to the developer who will create a second gap analysis, and provide information on their views or action taken in response to each of the consultee comments, together with evidence of satisfactory resolution. MS-LOT will review this second gap analysis and identify where issues have not been addressed or have not been addressed in a

sufficiently complete way. Developers will be advised to rectify these gaps prior to determination of the application.

c) In the post-consent period, a third gap analysis will be prepared by the developer reflecting the comments raised by consultees on the various Plans prepared by the developer as required by the consent/licence conditions. Again, MS-LOT will review this and identify gaps where issues have not been addressed or have not been addressed in a sufficiently complete way. Developers will be advised to rectify these gaps before Plans can be approved.

3. Pre-Application

3.1 Pre-application Engagement

MS-LOT is the first point of contact for all queries relating to the consenting and licensing of offshore renewable energy projects in Scotland.

Early and adequate engagement with MS-LOT at the pre-application stage will assist developers in determining the level of data collection needed to inform supporting impact assessment. MS-LOT staff are trained in the issuing of the relevant consents and licences and in undertaking the various impartial assessments to underpin its decisions and advice. MS-LOT also has access to key information to support developers in preparation of applications. This includes support in the use of national datasets and detailed site specific information (e.g. baseline information on key environmental receptors, such as fish, marine mammals and birds).

A wide range of potential stakeholders will need to be consulted during the course of the application process and MS-LOT will provide advice in respect of specific proposals. **Annex A** lists consultees who are consulted on the majority of applications, however it is worth noting that there may be project specific consultees outwith that list.

Developers are also expected to have had prior discussion with groups and organisations, outside the application process. Examples include key local interest groups over the potential use of areas of sea (and land) sought for development, particularly where there is significant existing use of the area(s).

3.1.1 Early Stakeholder Engagement

Under the EIA Regulations, the EIA Report undergoes a formal public consultation process. However, in recognition of the potential issues arising, it is inherently valuable that developers engage with stakeholders well before the application stage.

MS-LOT recommends that developers recognise the importance of continuing engagement between developers, MS-LOT and its advisors, and other stakeholders (including local interest groups and the public). This will ensure that appropriate consideration is given to all stakeholder concerns and that opinions are integrated into the project decision making process. It is also worth highlighting the PAC requirements (outlined in Section 2.3.1 above) for certain prescribed activities in Scottish inshore waters.

3.1.2 Stakeholder Advice

During the course of performing regulatory duties, MS-LOT will seek advice and opinion from a variety of sources within MS, and also from expert external advisors, consultees, stakeholders and regulators. Where appropriate, such engagement will be coordinated to improve efficiency, with savings in cost and time.

Requests from developers to meet with MS-LOT, advisors and consultees should be supported by a draft meeting agenda. Supporting documentation / reports should be supplied to MS-LOT 14 calendar days before the meeting.

3.2 Project Design Envelope

Due to the frequent advances in technology development of equipment, and the nature of the design process, for offshore renewable energy projects, developers may not be able to provide precise design details in their consent applications. Some flexibility in the project description is acceptable, provided that the approach is fully described in the EIA Report to allow Scottish Ministers and consultees to fully understand the implications of the flexibility proposed.

At the time of application, any proposed flexibility in scheme parameters should not be so wide ranging as to represent effectively different types of project. The degree of flexibility in design parameters will need to be clearly defined in the application and EIA Report. It is a matter for the developer, in preparing a design envelope that will be the subject of an EIA Report to consider whether it is possible to robustly assess the scales of impacts resulting from projects within the proposed design envelope, which may contain a large number of flexible parameters. Developers should be in a position to be able to identify the most likely ranges of variations of options and so provide a more focused description.

For each of the different receptors, the EIA Report must identify what the worst case scenario will be within the design envelope and assess any impacts on that receptor on that basis. For example, the worst case scenario for marine mammals may be piled foundations, whereas the worst case scenario for benthic receptors is likely to be gravity base foundations.

Any EIA Report submitted must demonstrate that the ranges of likely significant environmental impacts have been assessed. Any limitations in the assessment should be identified and explained. The environmental information submitted should be sufficient for the relevant decision maker to determine the application. The EIA Report should set out the maximum and minimum parameters, for example in relation to the number of turbines, hub height, blade height tip, turbine separation distances etc.

Developers should note that the wider the design envelope the more difficult it may be to resolve issues with consultees and regulators and the more likely it will be to require consent conditions which will ensure that the, project if built, is within the parameters for which consent was granted and which were set out in the EIA Report. If a project is consented with a design envelope, the final design will be determined through the multi-stage regulatory approval / discharge of conditions such as the provision of a construction method statement, the design specification and the layout plan.

3.3 Environmental Screening and Scoping

All consent applications will require supporting information on the potential environmental effects of the development. This is likely to be through the production of a statutory EIA if the development has the potential for a significant adverse effect on the environment.

EIA is a procedure that must be followed for certain types of project before they can be given consent as outlined in the EIA Directive and associated regulations. The procedure is a means of drawing together, in a systematic way, an assessment of a project's significant environmental impacts.

An EIA is likely to be required for all offshore renewable energy developments, as outlined through the EIA Regulations.

3.3.1 Screening

The purpose of screening is to determine whether an EIA is required for a project listed in Schedule 2 of the EIA Regulations.

Offshore Renewable Energy projects requiring s.36 consent all fall under Schedule 2 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, projects requiring only a Marine Licence fall under Schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. Development of a type listed in Schedule 2 requires EIA if it is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

Development not requiring s.36 consent which does not exceed the thresholds set out in the second column of the table in Schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and which is not wholly or partly in a “sensitive area” as defined in Regulation 2(1), is not Schedule 2 works and therefore does not require EIA. An offshore renewable energy project which does not exceed the thresholds or meet the criteria in Schedule 2 but is in or partly in a “sensitive area”, is Schedule 2 works but will require EIA only if it is screened as being likely to have significant effects on the environment. (For projects from 12 to 200 nm, the Marine Works (Environmental Impact Assessment) Regulations 2007 have not transposed Annex I or II of the EIA Directive, therefore Annex II should be used in terms of screening).

Requesting a screening opinion

Before submitting an application for consent for a Schedule 2 development, applicants may ask the Scottish Ministers for a screening opinion. The screening process is an opportunity to ensure that EIA is only undertaken for those projects which are likely to have significant effects on the environment. When making a screening request, the developer should therefore clearly and succinctly set out the information specified in the EIA Regulations, taking into account, where relevant, the selection criteria in Schedule 3 to the EIA Regulations. In compiling this information, applicants should bear in mind that what is in question at this stage is whether or not

there are likely to be significant effects on the environment. It is not expected, that applicants will have full knowledge of every environmental effect. The information must include:

- a) a description of the location of the development, including a plan sufficient to identify the area in which the development is proposed to be sited;
- b) a description of the proposed development including -
 - i) a description of the physical characteristics of the proposed development and, where relevant, of decommissioning works;
 - ii) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- c) a description of the aspects of the environment likely to be significantly affected by the proposed development; and,
- d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from –
 - i) the expected residues and emissions and the production of waste, where relevant;
 - ii) the use of natural resources, in particular soil, land, water and biodiversity.

The applicant may also include a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

When compiling the above information, the EIA Regulations require the applicant to take into account, where relevant, the available results of any 'relevant assessment', which is defined in Regulation 2 of the EIA Regulations as meaning, "in relation to a proposed development, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the proposed development". For example, this could include the SEA of the National Marine Plan.

Consideration of a screening request

If Scottish Ministers consider that they have not been provided with sufficient information to adopt a screening opinion, they must notify the applicant, highlighting the points on which they require further information.

Under the EIA Regulations, Scottish Ministers must consult the relevant local planning authority/ies. SNH and SEPA are also likely to be consulted by the Scottish Ministers. The consultation period for screening is 3 weeks.

Scottish Ministers will issue their screening opinion within 3 weeks of the last consultation response, or such longer period not exceeding 90 days from the receipt of the screening request (in exceptional circumstances, this period may be extended). The screening opinion issued will give the reasons for Scottish Ministers' opinion on whether the project requires an EIA. If Scottish Ministers' opinion is that the project does not require an EIA, they must include information on mitigation measures being relied on in reaching their opinion. Applications proposing robust and achievable

mitigation at the screening stage can be screened out of a requirement for an EIA on that basis.

A copy of the screening opinion and the reasons for the decision will be sent to the applicant and the local planning authority, and may be sent to other bodies consulted.

Scottish Ministers may adopt a screening opinion at their own volition if it is apparent that a proposed development is in fact EIA development but the application has not been accompanied by an EIA Report.

3.3.2 Scoping

Scoping is a key phase of the EIA process, providing an opportunity for the developer to identify those potentially significant environmental effects that should be considered for further assessment in the EIA Report. A developer may ask Scottish Ministers (a 'scoping request' which is supported by a scoping report) for their formal opinion on the information to be supplied in the EIA Report (a 'scoping opinion'). This provision allows the developer to be clear about what Scottish Ministers consider the potentially significant effects of the development are likely to be and, the topics on which the EIA Report should focus. The scoping report supporting the scoping request should clearly state (i.e. provide robust evidence to demonstrate) why any particular impact should be scoped in or out of the EIA.

A scoping report must include:

- a description of the location of the development/works, including a plan sufficient to identify the area in which the works are proposed to be sited;
- a brief description of the nature and purpose of the development/works and of its likely significant effects on the environment, and;
- such other information or representations as the developer making the request may wish to provide or make.

As this information is similar to that required to be submitted to accompany a request for a screening opinion, an applicant may submit both requests at the same time.

The greater the detail within the scoping report, the more informative the scoping opinion. Important information includes project design parameters and details of the construction, operational and decommissioning phases as well as the proposed environmental impact assessment methodology (including data, assessment approach and determination of significance). A lack of detail in these respects can result in an increased degree of uncertainty about the potential environmental effects that could arise from a development. If detail is lacking, Scottish Ministers will scope the issue into the EIA. The developer should ask specific questions of Scottish Ministers within the scoping report relating to any areas where particular advice would be helpful.

If Scottish Ministers consider that further information is required to enable them to adopt a scoping opinion, the applicant will be asked to provide it. This request for further information will be made within 3 weeks of receipt of the scoping request.

Scottish Ministers will consult (see Annex A) on the scoping report for 30 days (or longer period as agreed between Scottish Ministers and the consultation body) before adopting their scoping opinion. MSS may also be asked by MS-LOT to provide advice on certain aspects within the scoping report or consultation responses received. Where conflicting advice is received by Scottish Ministers from different consultees, Scottish Ministers will provide an opinion on which advice should be followed.

Scoping meetings can be arranged during the consultation period with key stakeholders in order to help inform the formal scoping process. These should be agreed in advance with MS-LOT.

Scottish Ministers will adopt a scoping opinion within 5 weeks of receiving the last consultation response (or such longer period as Scottish Ministers may require). The adoption of a scoping opinion does not preclude the Scottish Ministers from requiring the applicant to provide additional information, if necessary, in relation to the EIA Report.

The scoping opinion will normally have a shelf life of 12 months from date of issue. If an EIA Report is likely to be submitted after this time period the developer should contact MS-LOT to discuss whether the scoping opinion requires updating.

Scoping is not a mandatory process. However is strongly encouraged and Scottish Ministers may adopt a scoping opinion at their own volition. The scoping opinion will be sent to the developer and the relevant local planning authority. It will also be placed on the MS-LOT website.

The content of the EIA Report must be based on, and cover the full scope of, the scoping opinion. However, MS-LOT encourages applicants through the pre-application period to ensure that they make themselves aware of the most up to date information and assessment methods.

3.3.3 Cumulative effects

The EIA Regulations state that cumulative effects should be addressed within an EIA. The scoping process can specify the plans/projects/on-going activities that need to be considered alongside the proposed development in determining cumulative/in-combination effects, or this can be agreed with the developer prior to cumulative assessment being completed for the EIA Report. The scope of the information required to enable assessment of cumulative effects should be identified within the pre-application process, together with the assessment methodologies that will be used to determine the significance of cumulative impacts. It is the responsibility of the developer to provide the information to support the assessment. Where a cumulative effects assessment is based upon an existing strategic assessment (which is the responsibility of Scottish Government under SEA Regulations) use of this existing information should also be approved at the scoping stage.

Cumulative effects can occur on a local, regional or global basis and can be additive, combined or synergistic. They are described as effects that result, or are likely to result, from additive effects caused by other past, present or reasonably foreseeable actions (e.g. in scoping), together with the plan, programme or project itself. More

specifically, they are defined as pressures of the same type acting on the same receptors across defined spatial areas and temporal periods. In-combination effects are defined as pressures of a different type but acting on the same receptors. The EIA needs to examine both cumulative and in-combination effects as part of the Cumulative Effects assessment. In-combination effects in relation to HRA is discussed in section [3.3.5](#).

These effects are not all necessarily controlled, or controllable by the applicant and, as such, it may not be straightforward to undertake the assessment. It is strongly recommended that applicants use the scoping process to anticipate potential difficulties that may arise in the cumulative assessment and resolve what methodologies are to be used in order to avoid the potential for unresolved issues to extend the timescales of the process at a later stage.

Engagement with MS-LOT is required to identify which plans/projects/on-going activities should be included in the in-combination element of the cumulative effects assessment. As well as other offshore renewable developments, the following activities may be included:

- Ports and shipping;
- Oil and gas;
- Fishing and aquaculture;
- Dredging; and
- Coastal developments.

Projects will include those that are:

- Already constructed;
- Under construction;
- Permitted application(s), but not yet implemented;
- Submitted application(s) not yet determined; and
- Plans and projects which are “reasonably foreseeable” (i.e. developments that are being planned, including, for example, offshore renewable energy projects which have a Crown Estate Agreement for Lease, offshore renewable energy projects that have been scoped).

Engagement with the local planning authorities will help identify any onshore projects which may need to be considered in the cumulative effects assessment.

3.3.4 Transboundary and cross border effects

The EIA Regulations require that if an EIA project is considered to have significant effects on the environment of another European Economic Area (“EEA”) state, then Scottish Ministers must engage with that EEA state to allow consultation if that state wishes to participate. The provisions to be followed are set out in the EIA Regulations. In terms of offshore renewable energy projects in Scotland, it will relate primarily to projects that may affect mobile species, to projects that are located close to the national boundaries or to areas administered by other relevant authorities. MS-

LOT will expect to see consideration of potential transboundary and cross border effects throughout the EIA from the scoping phase.

Where Scottish Ministers are required to undertake an appropriate assessment of cumulative impacts in relation to Natura interests, including transboundary and cross border effects, the developer's HRA will need to provide the required information.

3.3.5 Habitats Regulations Appraisal

It is important to consider HRA early in the pre-application process and early engagement with SNH is recommended. The HRA process is divided into a number of steps as follows:

HRA Step 1

Is the proposal directly connected with or necessary for site management for nature conservation?

It is highly unlikely that offshore renewable energy developments would be 'directly connected or necessary for site management for nature conservation' and MS-LOT will confirm that the project should be taken through to Step Two. This second step determines if a proposal has a LSE on a European site or a European offshore marine site and therefore if an AA is required (Step Three).

HRA Step 2

Is the proposal likely to have a significant effect on the site either alone or in-combination with other plans or projects?

Although commonly referred to as HRA screening, this step removes from the HRA those projects which clearly have no connectivity to qualifying interests or where it is very obvious that the proposal will not undermine the conservation objectives for these interests, despite a connection. When this screening step is undertaken at an early stage in the development process, it usually means that it takes the form of a desk-based exercise.

Step 2 of the HRA process should be undertaken and documented at the same stage of the process as EIA scoping. SNH have published a useful leaflet on '[how to consider proposals affecting SACs and SPAs in Scotland \(SNH, 2010\)](#)' which is the basis for the following guidance. In addition to determining whether LSE can be ruled out, the objective is to provide an audit of the information used to reach the conclusion. The developer should consider in their scoping report whether there are connections between the project/proposal and any of the qualifying interests (source - pathway - receptor) for which the sites are designated (including indirect effects). If there are none, or it is clear that there are no mechanisms for interaction between the project/proposal and any of the qualifying interests despite a connection, then no LSE can be concluded. The developer should consider all possible linkages. It is possible that the proposed project could be a long distance from a European site but still have LSE. The assessment of LSE is often quite straight forward but is an important step and must be fully justified, even if the conclusion is one of no LSE.

The information gathered through Step 2 of the assessment, and contained in the scoping report, will allow Scottish Ministers to establish a good understanding of:

- The designated sites that will potentially be affected, the Conservation Objectives, and the qualifying features for which they have been designated, e.g. threatened species of birds, seabed habitats, marine mammals, Atlantic salmon, etc;
- The baseline data being used in the assessment and the methods being applied for the purpose of assessment;
- A good understanding of the proposed development and the preferred methods by which the project will be achieved; and
- Other plans and projects which could affect the integrity of the site and will require to be included under Step 3 of the HRA.

Once the above have been considered, Scottish Ministers will be in a position to adopt an opinion on whether or not the proposed development is likely to have a significant effect on any qualifying interests of European sites. This will be communicated to the applicant through the scoping opinion by MS-LOT and/or ongoing informal consultation during the EIA process.

Determination of LSE is not just a record of presence or absence of a species/ habitat at a site, but also involves a judgement as to whether any of the conservation objectives might be undermined. Such judgement is based on a simple consideration of the importance of the area in question for the relevant species/habitats. Understanding the behavioural ecology of a species, and the characteristics and context of the proposed development site, will help in determining whether there are LSE.

There are three possible conclusions for this step of HRA:

- The likely impacts are such that there is clear potential for the conservation objectives to be undermined – conclude LSE;
- The likely impacts are so minimal (either because the affected area is not of sufficient value for the species/habitats concerned or because the risk to them is so small) that the conservation objectives will not be undermined – conclude no LSE;
- There is sufficient doubt about the scale of the likely impacts in terms of the conservation objectives – conclude LSE.

HRA Step 3

The requirements of this step must be considered at the pre-application stage to ensure that the application contains the necessary information for determination. The requirement is to determine whether a project will adversely affect the integrity of a European site or European offshore marine site either alone or in-combination with other plans or projects.

Step 3 of the HRA process is termed appropriate assessment, and it is undertaken by the Scottish Ministers based on information supplied by the developer, and with advice provided by SNH, and if considered appropriate by MS-LOT, other relevant consultees and MSS. The appropriate assessment considers the implications of the

proposed development for the conservation objectives of the qualifying interests for which LSE has been determined. SNH's website provides details on the conservation objectives for each European site. The conservation objectives primarily offer site-based protection and some of them will not directly apply to species when they are out-with the boundaries of a European site. Developers are expected however to consider all conservation objectives and provide justification for which are considered to be not relevant.

The appropriate assessment must conclude that a project will not adversely affect the integrity of any European site or European offshore marine site either alone or in-combination with other plans or projects before consent can be granted. Scottish Ministers can only consent a project despite the potential for an adverse effect on site integrity, if the project meets 3 tests: 1) that there are no alternative solutions which are less damaging; 2) that there are imperative reasons of overriding public interest to grant consent; and 3) compensation measures are put in place to ensure that the overall coherence of the network of European sites is maintained.

3.3.6 Marine Protected Area Assessment

The first step of the MPA assessment is to determine whether a project is capable of affecting (other than insignificantly) a protected feature in an MPA. This step should be done at the pre-application stage and sufficient information should be provided in the scoping report with regards to the area where the project is to be sited and the potential for effects on an MPA feature. The [FEAST](#) tool available on the Scottish Government website is useful in identifying potential impacts. Advice will be provided through the EIA scoping process on the assessment required to be included in the EIA Report.

3.3.7 European Protected Species

Certain activities in the marine environment may cause disturbance that would constitute an offence under the Habitats Regulations. It is an offence to deliberately or recklessly capture, injure or kill an EPS, and to deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean) without an EPS licence.

An EPS licence application (under Regulation 44 (2) of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) or 55(6) of the OMRs 2017) may be submitted alongside marine licence and s.36 applications and should include a detailed assessment to allow MS-LOT to make a decision on whether the licence should be granted, incorporating consideration of the criteria described in section [4.4](#) below. If sufficient information is not available to fully inform the EPS application at the time of the s.36 / marine licence application, then the application may be made at a later date, however some consideration of EPS will be required at the time of the main application. This may pose some risk to the developer. The assessment of the application will be carried out by MS-LOT on behalf of Scottish Ministers, using the information provided by the applicant and advice from SNH. MSS may also provide advice if requested by MS-LOT. Applicants should ensure that a risk assessment as outlined in the guidance below is included as part of their application.

Mitigation measures, such as alternative methods, locations and/or times for carrying out proposed activities might in some cases be sufficient to reduce the risk of committing an offence to negligible levels. This would then negate the requirement for a licence. If the purpose of an activity relates to science, research or conservation, an applicant should approach SNH as the relevant licensing authority.

Scottish Government, in partnership with SNH, has produced guidance for Scottish inshore waters on [the Protection of Marine European Protected Species from Injury and Disturbance](#). Full guidance on applying for EPS licences, as well as the relevant application forms, can be found [online](#). An EPS licence may be required for some activities prior to the application for the renewable energy project, for example geophysical surveys to help inform the impact assessment. Applicants should follow [JNCC guidelines for minimising the risk of injury to marine mammals from geophysical surveys](#). Applicants should contact MS-LOT for further advice on applying for an EPS licence.

3.3.8 Basking shark licences

Basking sharks are protected in Scotland from intentional or reckless disturbance or harassment under the Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011. If there is a risk of disturbance or harassment that cannot be removed or sufficiently reduced by using alternatives or mitigation measures, then the activity may still go ahead under licence (Basking Shark Licence).

When submitting a basking shark application, sufficient detail should be provided to allow MS-LOT to make a decision on whether the licence should be granted. This should include consideration of the criteria described in section [4.5](#) (Information for basking shark licensing).

Mitigation measures, such as alternative methods, locations and/or times for carrying out proposed activities might in some cases be sufficient to reduce the risk of committing an offence to negligible levels. This could negate the requirement for a licence.

Scottish Government, in partnership with SNH, has produced guidance for Scottish inshore waters on [the Protection of Marine European Protected Species from Injury and Disturbance](#). The guidance may be useful in identifying potential risks or impacts in relation to basking sharks, as well as guidance on the criteria described in section [4.5](#).

Application forms for a Basking Shark Licence can be found [online](#). Applicants should contact MS-LOT for further advice on applying for a licence. If the purpose of an activity relates to science, research or conservation, the applicant should approach SNH as the relevant licensing authority.

3.4 Procedures to Facilitate Preparation of EIA Report

Under the Environmental Information (Scotland) Regulations 2004, public bodies must make environmental information available to any person who requests it. The

EIA Regulations supplement these provisions in cases where a developer is preparing an EIA Report. Once a developer has given Scottish Ministers notice in writing that they intend to submit an EIA Report, Scottish Ministers must inform the consultation bodies, and any other public body they consider likely to have an interest to inform them of their obligations under the EIA Regulations to make available, if requested by the developer, any relevant information in their possession. The Scottish Ministers must also notify the developer of the names and addresses of the bodies to whom they have sent such a notice.

The consultation bodies are only required to provide information already in their possession. There is no obligation on the consultation bodies to undertake research or otherwise to take steps to obtain information which they do not already have. Nor is there any obligation to make available information which is not required to be disclosed under the Environmental Information (Scotland) Regulations 2004, although a decision to withhold particular information must be carefully considered under the terms of those Regulations. The consultation bodies may make a reasonable charge reflecting the cost of making available information requested by a developer.

3.5 MS-LOT Gate-checking

Marine Scotland expects applications for large scale renewable energy projects to go through a formal gate-check process. This includes a thorough EIA audit and science review being undertaken prior to submission of an application for s.36 consent. The gate-check process is estimated to take approximately 3 months.

This gate-check procedure aims to ensure that the EIA report and HRA are robust, meet with the scoping opinion, policy guidance and relevant quality standards. Marine Scotland and the statutory consultees have to use the scoping opinion and gate-check procedure to seek to comply with the Ministerial policy of meeting the nine month target for processing applications. Proactive engagement in these approaches will reduce the potential for Marine Scotland and statutory consultees to ask for additional information during the determination process which may cause delays and affect the ability to determine within 9 months.

If the applicant decides to bypass the gate-check procedure due to time constraint issues which apply to the project, then Marine Scotland cannot guarantee that there will be no need for additional information to the assessment report and further additional statutory consultation. In which case the 9 month handling target is not feasible.

The EIA Report, the non-technical summary, marine licence application forms, covering letter, draft public notice adverts and a gap analysis of what was requested through the scoping opinion should be submitted to MS-LOT for review. MS-LOT will inform the developer if the requirements of the EIA regulations have been met. If the requirements have been met, then the distribution arrangements for the EIA Report must be approved. MS-LOT will also confirm the application fees that are due and will approve the draft public notice advert, including the date when representations can be made (which is to appear on the adverts) (See section [4.10](#)).

MS-LOT will need to approve the consultee list provided by the developer at the gate-checking stage. The developer should contact all agreed consultees to see whether they require electronic or hard copies of the EIA Report. MS-LOT will instruct the developer to send hard copies of the EIA Report directly to consultees who have requested a hard copy. MS-LOT will send a consultation letter, requesting comments on the application, to coincide as closely as possible with the delivery of the documentation from the developer. Developers may wish to consult with other organisations over and above those on the list approved by MS-LOT and these organisations may represent to MS-LOT through the specified mailbox. A list of organisations contacted directly by the developer should be provided to MS-LOT.

4. Application

The following section describes the application process.

Following the requirements described in the preceding Gate Checking [section 3.5](#), final applications for consents/licences (following gate check) should be made to Scottish Ministers and applicants should ensure that they include:

- A covering letter (highlighting what is being applied for and by whom);
- All relevant completed [application forms](#) (as advised by MS-LOT) and associated public notices;
- All relevant documentation, EIA Report (including non-technical summary) and other supporting assessments (HRA, NRA etc.);
- All appendices as appropriate (as advised by MS-LOT, if necessary);
- Site drawings with a red line boundary;
- Pre-application consultation report (PAC) if required
- Gap analysis
- Any additional information that has been requested during the pre-application consultation process; and
- Payment for the full cost of the consenting and licensing process.

4.1 Environmental Impact Assessment Report

4.1.1 Submission of EIA report by the applicant

The EIA Report is the written output of the EIA process. The EIA Report should be presented as a complete document and must demonstrate that all potentially significant impacts have been assessed, any limitations (data, assessment process etc.) have been recognised and explained, and all residual impacts identified. The information submitted must be sufficient for Scottish Ministers to determine the application.

The EIA Report must contain the information specified in the EIA Regulations:

- (a) a description of the development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the development on the environment;
- (c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) a non-technical summary of the information in (a) to (d) above
- (f) any other information specified in schedule 4 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (or schedule 3 of the Marine Works (Environmental Impact Assessment) Regulations 2007 for projects out with 12 nm) and schedule 4 of the Electricity Works (Environmental Impact Assessment)

(Scotland) Regulations 2017 which are relevant to the specific characteristics of the development and to the environmental features likely to be affected.

The factors which need to be considered in the EIA Report are as follows:

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under the Habitats Directive and Wild Birds Directive.
- (c) land, soil, water, air and climate; and
- (d) material assets, cultural heritage and the landscape.

The assessment must include the expected effects deriving from the vulnerability of the development to risks of major accidents and disasters, in so far as relevant to the development.

The developer must ensure that the EIA Report is prepared by competent experts, and must be accompanied by a statement from the developer outlining the relevant expertise or qualification of the experts. The developer is required to submit 2 hard copies of the EIA Report (plus further hard copies if required) and an electronic copy.

If a scoping opinion has been issued, the developer must ensure that the EIA Report is based on the scoping opinion. The EIA Report must take into account current knowledge and methods of assessment.

On receipt of the EIA Report, Scottish Ministers will inform the applicant whether the requirements of the EIA Regulations have been met, and approve dates for the public notices to be placed in order to allow for public representations. Section [4.10](#) provides further information in relation to public notices.

Within 2 weeks of receiving the EIA Report Scottish Ministers will provide the consultees, and any other public body which in their opinion is likely to be concerned by the proposed development by reason of that body's specific environmental responsibilities, with a copy of the document or will direct the applicant to do so. A period of 30 days will be allowed for consultation, although consultees may request an extension to this period which must be approved by Scottish Ministers.

The applicant must also make a reasonable number of copies of the EIA Report available to the public at places named in the public notice. If a member of the public requests a copy of the EIA Report a reasonable cost, reflecting printing and distribution costs, may be charged.

4.1.2 Detail on EIA Report

Non-Technical Summary: The non-technical summary should be a stand-alone document and is particularly important for ensuring that the public can comment fully on the EIA Report. It should be clear, concise and written in a non-technical language to be accessible to the lay reader. It should be a fair reflection of the main EIA Report and should cover all aspects of the EIA process, not just a summary of the potential impacts. It should inform readers of the environmental effects of the project and

proposed mitigation measures and monitoring requirements. The use of graphics to illustrate issues is recommended, rather than the use of lengthy text.

Abbreviations, Acronyms and Glossary: A list of the abbreviations and acronyms used should be provided, together with a glossary to define any technical terms used within the EIA Report.

Introduction: This section should be used to introduce the project (briefly), the legislative policy and context within which the EIA is undertaken and the purpose and scope of the EIA Report. It should also include a list of the contributors to the EIA and their relevant experience.

Alternatives: This section should include a full assessment of the alternatives that were considered for the proposed project. This could include alternative sites, technologies and preliminary designs. The main reasons for selecting the chosen option should be provided. If no alternatives were considered, then this should be stated.

Description of the Proposed Development: The project should be described in sufficient detail and include site design and size or scale of the development in order to allow potential environmental impacts to be identified. This section should include consideration of installation and commissioning; operation and maintenance; and decommissioning aspects of both onshore and offshore facilities.

Environmental Baseline: The environmental baseline should describe the characteristics for each of the relevant receptors and highlight any particularly sensitive receptors or areas. These are usually split into receptor topics. Developers must have a sound understanding of all the different environmental aspects which could be significantly affected by the proposals and which must therefore be assessed through the EIA. The environmental description should include the physical, biological and human aspects of the environment, to provide a background of environmental conditions prior to development.

EIA Methodology, Scoping and Consultation: The explanation of EIA methodology should include each stage of the EIA process that the development went through covering screening, scoping and consultation, both formal and informal, to the assessment of potential impacts. The method by which the magnitude of effect is assessed should be defined, i.e. under which circumstances an impact is considered to be significant as well as any specialist studies which were undertaken. Details of all the consultation undertaken as part of the EIA, leading up to application, should also be documented (including how any concerns/issues have been addressed). The EIA Report must include a detailed table on how, and where, issues within the EIA Report have been addressed.

Assessment of Potentially Significant Impacts: Assessment of the potentially significant impacts which were highlighted during the EIA should be addressed in this section using the methodology defined in the previous section. This should include reference to specific studies which may need to be included as technical annexes/appendices to the EIA Report. Depending on the scale of the project, it may be easier for the applicant to address key issues as separate sections within the EIA

Report. The assessment section should be split into the key receptor/topic areas and include any mitigation which will be implemented to reduce environmental effects. The residual impacts including mitigation should be clearly defined using the EIA methodology. The assessment of cumulative/in-combination effects should also be documented within the assessment chapters. See section [3.3.3](#) for further information on cumulative effects. Data gaps and uncertainties identified during the EIA should be included within this section.

Mitigation: Methods or actions that will be implemented to reduce/avoid significant adverse environmental effects. Mitigation measures are most successful when they are considered from the outset of the project rather than as a late stage solution. Therefore, in some cases, mitigation can be incorporated into the project design through embedded impact avoidance or reduction measures. Mitigation required during the construction, operational and decommissioning phases of a project should be precisely defined to ensure developers understand their commitments (i.e. they should not be generalised) and in order to give confidence and certainty to consultees and Scottish Ministers. Where mitigation is to be relied upon to reduce the effects of the development, this should be deliverable and based on proven evidence. It is considered to be of benefit that all of the mitigation measures that have been identified throughout the EIA Report should be summarised in a dedicated chapter.

Monitoring: Monitoring measures must be incorporated into a consent or licence for a project if the project is likely to have significant adverse effects on the environment. Therefore monitoring measures proposed should be included in the EIA Report. Monitoring measures may be linked to other legal requirements, such as those identified within an AA. Monitoring measures should be linked to ensuring that mitigation measures are being carried out successfully. Monitoring provides an opportunity to identify whether forecasted impacts are developing as predicted, so that steps may be taken for remedial action if Scottish Ministers consider this appropriate. Monitoring measures should be specific and detailed enough to ensure their implementation, in some cases joint monitoring of projects within a region may be appropriate (see section [6.5.3](#) on regional advisory groups).

4.1.3 Additional Information

Scottish Ministers must satisfy themselves that the submitted EIA Report contains the information specified in the EIA Regulations. Where the required information has not been provided, the Scottish Ministers must, having regard in particular to current knowledge and methods of assessment, seek from the developer supplementary information about a matter to be included in the EIA Report which they consider is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment. Any information provided in response to such a written request must be publicised, and consulted on, in a similar way to the EIA Report.

Where a developer has voluntarily submitted any other information which, in the opinion of the Scottish Ministers, is substantive information about a matter to be included in the EIA Report, that information should be advertised, sent to the consultation bodies, and taken into account in reaching a decision on the application. It is worth highlighting again that, where additional information is required, it will not

be possible to meet the target application deadline (9 months for consent applications).

4.1.4 Verification of information in an EIA Report

Scottish Ministers can require a developer to produce such evidence as they may reasonably call for to verify any information in the EIA Report or such additional information as the case may be. Any such request for evidence will be made in writing.

4.2 Information for Appropriate Assessment

Information provided by the developer should be reported as 'Information for Appropriate Assessment (AA)' where the analysis, results and evidence based justification is summarised and presented strictly in regard to the predicted effects and how they relate to the conservation objectives of the relevant European sites.

The AA will come to a conclusion on whether the proposal will adversely affect the integrity of the site. If it is demonstrated that there will be no adverse effect on site integrity, and that is the case where no reasonable scientific doubt remains then consent may be granted. If this cannot be demonstrated consent will not be granted unless

- There are no alternative solutions,
- There are imperative reasons of over-riding public interest
- Any necessary compensatory measures are taken to secure the coherence of the European site network.

4.3 Information for Marine Protected Areas Assessment

If the scoping opinion advises that the project is capable of affecting, other than insignificantly, the features of an MPA, the EIA Report should include the information to inform an MPA assessment. This information will vary depending on the protected feature but advice in the scoping opinion must be followed.

Where it is considered that a project is capable of affecting, other than insignificantly, the features of an MPA the Public Authority (which is the Scottish Ministers for marine licences and s.36 consents) must complete an MPA assessment in consultation with SNH / JNCC in the case of a nature conservation MPA (or HES in the case of a historic MPA).

Scottish Ministers must not grant consent for the project unless satisfied that there is no significant risk of hindering the achievement of:

- a) the stated conservation objectives for the Nature Conservation MPA,
- b) the stated purpose for the Demonstration and Research MPA,
- c) the stated preservation objectives for the Historic MPA,

The conservation objectives for the nature conservation MPAs are either to conserve or restore the protected features, details are available on the [SNH](#) website for nature

conservation MPAs within 12 nm and the [JNCC](#) website for MPAs from 12-200 nm. Further information on historic MPAs is available from the [HES](#) website.

If there is a significant risk of the project hindering the achievement of the conservation objectives then a licence or consent will only be granted if:

- a) Scottish Ministers are satisfied that there is no other means of proceeding with the project which would create a substantially lower risk of hindering the achievement of those objectives.
- b) Scottish Ministers are satisfied that the benefit to the public of proceeding with the project clearly outweighs the risk of damage to the environment that will be created by proceeding with it.
- c) Scottish Ministers are satisfied the developer will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the project will or is likely to have in or on the MPA concerned.

4.4 Information for European Protected Species

Guidance on EPS licence requirements is available as set out in section [3.3.7](#) above. An EPS licence application (under Regulation 44 (2) of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) or 55(6) of The OMRs 2017) may be submitted alongside marine licence and s.36 applications and should include a detailed assessment of risk to allow MS-LOT to make a decision on whether a licence should be granted. MS-LOT can issue EPS licences if the following strict criteria are met:

- there is a licensable purpose as described in the Regulations
- there are no satisfactory alternatives;
- the actions authorised will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range

4.5 Information for basking shark licensing

A Basking shark licence may be required as set out in section [3.3.8](#) above. MS-LOT can only grant licences if it is satisfied:

- a. That undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and
- b. there is no other satisfactory solution.

The assessment of what would constitute a social, economic or environmental purpose is generally understood. However, in terms of the two subsequent criteria (a) and (b) above, it is useful to consider aspects of the licence assessment process (section 3) in the following guidance: [Protection of Marine European Protected Species from Injury and Disturbance](#).

4.6 Information for TraC-MImAS

Under the Water Framework Directive the UK and Republic of Ireland are required to manage hydromorphological change as a result of human activity to prevent ecological deterioration transitional and coastal waters. The Transitional and Coastal waters Morphological Impact Assessment System (TraC-MImAS) is a risk based decision support tool which helps regulators identify projects that may result in a deterioration of water body status as a result of hydromorphological changes. The assessment is geographically limited to aspects of projects within 3 nm of the coast.

TraC-MImAS will be used to help assess the impact of a new project on the system capacity of the waterbody into which the proposed project will be built. This assessment is currently carried out by MSLOT with results provided to SEPA for Water Framework Directive reporting. The assessment examines the total footprint of a project based on the individual types of pressures that may be applied to a waterbody from a new development.

The assessment requires details of a proposed project's built footprint, including morphological changes such as dredging. The application should include the spatial layout of any planned construction or morphological changes, for example, device location and individual footprints, cable routes, any protection work or dredging activity. More details may be requested by MSLOT as required.

Where an assessment indicates a potential impact, the proposal will be reviewed in accordance with regulatory guidance and current case law and Marine Scotland would seek expert advice to categorise the actual impact and what mitigation may be required.

4.7 Navigation Risk Assessment

An NRA should be produced as a stand-alone document to support the application, and a Preliminary Hazard Analysis may also be required. This needs to be specific to the device(s) and the area to which the applications refer, and should address all potential navigational effects on other users of the sea, including both commercial and leisure users. All efforts should be made to access as much up-to-date information as possible on vessel passage in, and other users of, the areas that will be affected by the proposed development. A summary of the NRA should be included within the EIA Report.

Various international treaties and conventions relating to safety, laws of the sea and pollution apply to shipping and ports. The UK Government has a responsibility to ensure that measures are implemented in order to honour its commitments to these protocols; not least of these is the UK's responsibility under Article 60(7) of the United Nations Convention on the Law of the Sea relating to provisions for 'Artificial islands, installations and structures in the exclusive economic zone'. An NRA is one process by which the necessary evaluations of the implications of developments can be made.

Within UK territorial waters, the UK Government upholds the right of innocent passage as defined in Article 17 of the United Nations Convention on the Law of the Sea. Beyond the 12nm limit of UK territorial waters, shipping has the freedom of

navigation. The regulation of shipping should be carried out by the 'flag state control' operated by the country in which the ship is registered. As this has proved unsatisfactory, 'port state control' has become common in national jurisdictions. Under this regime, the UK Government (represented by the inspection division of the MCA) exercises the rights of the port state to inspect and, if appropriate, to detain sub-standard ships.

The MCA is a consultee in the consent process for all UK offshore renewable energy projects and will liaise with developers and stakeholders. The Northern Lighthouse board is also a consultee and will respond on navigational requirements including aids to navigation.

MCA Marine Guidance Notes (MGN) should be closely followed. In particular, the agreement of the MCA to the construction of an offshore renewable energy project is dependent on the project meeting relevant navigational safety and emergency response requirements as contained within [MGN 543, the MCA's Offshore Renewable Energy Installations: Requirements, Guidance and Operational Considerations for Search and Rescue and Emergency Response](#) and the [Emergency Response Co-operation Plan \(ERCoP\)](#). Guidance is available to Mariners operating in the vicinity of UK offshore renewable energy projects through [MGN 372](#), whilst applicants should also be aware of MCA [guidance on Offshore Renewable Energy Installations: impact on shipping](#). The marking of offshore wave and tidal energy installations will be based on recommendations of the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA). [Guidance on the marking of offshore structures is available on the IALA website](#)

Section 99 of the Energy Act 2004 deals specifically with navigation and, in combination with Section 36B of the Electricity Act 1989, stipulates that a consent cannot be granted for an offshore renewable energy project which is likely to interfere with the use of 'recognised sea lanes essential to international navigation.

Sea ports and harbours provide the interface between the land, near-shore and open sea. The majority of port operations are administered by Statutory Harbour Authorities, which are governed by harbour-specific legislation tailored to the needs of each port. A range of national legislation places statutory responsibility on the harbour master to ensure navigation and safety within the harbour limits, this includes the 'Harbours, Docks and Piers Clauses Act 1847' and the 'Docks and Harbour Act 1972'. Under such legislation, the harbour master may issue general or specific directions to control movements of vessels within their harbour area in order to ensure safety. Harbour Authorities who have the power to issue work licenses under provisions in their special act(s) may choose to apply conditions including the completion of an NRA for developments in their areas.

4.8 Information for Fishing Impact Assessment

In line with the National Marine plan, the following factors need to be taken into account when assessing impacts on fishing:

- The cultural and economic importance of fishing, in particular to vulnerable coastal communities.

- The potential impact (positive and negative) of marine developments on the sustainability of fish and shellfish stocks and resultant fishing opportunities in any given area.
- The environmental impact on fishing grounds (such as nursery, spawning areas), commercially fished species, habitats and species more generally.
- The potential effect of displacement on: fish stocks; the wider environment; use of fuel; socio-economic costs to fishers and their communities and other marine users.

As part of the preparation of the Environmental Statement, the developer must fully engage with local fishing interests (and other interests as appropriate). Guidance on communication between developers and the fishing sector comes in the form of the [FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Liaison](#). The Environmental Statement should contain transparent and accurate information and data to help Scottish Ministers in the determination of the project.

The content of the Environmental Statement should be relevant to the particular circumstances and could include:

- An assessment of the potential impact of the development or use on the affected fishery or fisheries, both in socio-economic terms and in terms of environmental sustainability.
- A recognition that the disruption to existing fishing opportunities/activity should be minimised as far as possible.
- Reasonable measures to mitigate any constraints which the proposed development or use may place on existing or proposed fishing activity.
- Reasonable measures to mitigate any potential impacts on sustainability of fish stocks (e.g. impacts on spawning grounds or areas of fish or shellfish abundance) and any socioeconomic impacts.
- Where there is any divergence of views between the parties, this should be fully explained in the Environmental Statement with both sides views put forward.

4.9 Fees

Marine licence applications and s.36 applications will be subject to fees to recover costs incurred during the consenting and licensing process. However, if it is necessary for MS-LOT to carry out any additional investigations, examinations or tests to enable determination of a marine licence application, the applicants will be required to pay an additional fee towards such costs. It should be noted that fees may be incurred for marine licence applications for pre-construction activities. Both marine licence and s.36 fees vary according to the type of licence and consent being applied for, and the scale of the proposed works. Current marine licence and S.36 application fees can be found on [the Marine Scotland website](#). The fee payable for safety zone applications is set out in the [Electricity \(Offshore Generating Stations\) \(Safety Zones\) \(Application Procedures and Control of Access\) Regulations 2000](#).

4.10 Consultation/Public Notices

There are consultation and publication requirements for an application to the Scottish Ministers for:

- consent under section 36 of the Electricity Act 1989;
- a declaration under section 36A of the Electricity Act 1989;
- a marine licence under section 20 of the Marine (Scotland) Act 2010;
- a marine licence under section 65 of the Marine Coastal Access Act 2009;
- deemed planning permission under section 57(2) of the Town and Country Planning (Scotland) Act 1997;
- additional information in relation to EIA projects;
- decisions in relation to renewable energy projects.

On acceptance of an application, MS-LOT will advise the applicant of the publicity requirements and guide the applicant to the relevant public notice template.

Applicants should send a completed draft public notice template to MS-LOT for approval at least two weeks prior to publication.

All marine licence applications require public notice advertising, which should be agreed with MS-LOT. For marine licence applications for EIA development within 12 nm, MS-LOT will direct the applicant to publish a public notice in the Edinburgh Gazette, and such newspapers and fisheries publications as are likely to come to the attention of those likely to be affected by the proposed project. MS-LOT will place the notice on the Marine Scotland website. Any persons wishing to make representations to the application must do so within 30 calendar days. Additional information submitted under the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 must be publicised in the same manner.

From 12-200 nm, MS-LOT will direct the applicant to publish a public notice for two successive weeks in such newspapers or other publications as it thinks fit. If the proposed project is likely to have significant effects on the environment in another EEA State, a public notice must also be placed in the Edinburgh Gazette. MS-LOT will place the notice on the Marine Scotland website. Any persons wishing to make representations to the application must do so within 42 calendar days (2007 Marine Works EIA Regulations). Further information submitted under these regulations must be publicised in the same manner.

Notice of s.36 applications must be published in the Edinburgh Gazette, such newspapers as are likely to come to the attention of those likely to be affected by the proposed project, and one or more national newspapers (e.g. The Herald, Scotsman). MS-LOT will place the notice on the Marine Scotland website. Any persons wishing to make representations to the application must do so within 30 calendar days. Additional information submitted under these regulations must be publicised in the same manner, less the requirement for a public notice in the national newspaper.

The information to be included in the public notices is detailed in the EIA Regulations and reflected in the templates available on the Marine Scotland website.

The applicant must provide MS-LOT with copies of all adverts as published. These may be originals or scanned copies which must show the name and date of the publication. MS-LOT will forward all responses from the consultees to the applicant and inform the applicant of any approved extensions. MS-LOT will send the statutory consultee responses to the relevant Planning Authority and any other responses requested.

To ensure compliance with the relevant legislation, applicants should ensure that the points below are followed. If any of the legislative publicity requirements are not met, the public notice will need to be re-publicised:

- Ensure that any instructions given by MS-LOT are followed – a number of publicity requirements are set down in legislation and MS-LOT will advise and instruct on these on acceptance of an application;
- Complete a draft public notice using the templates provided. Applicants must input the requested information into the draft template (bracketed sections in bold e.g. [Applicant] require to be completed). Applicants should check that all details are accurate;
- Ensure accessible locations. The specified locations must be as close as practicable to communities likely to be affected by the development and readily available to members of the public;
- Double check dates. Correct dates are used within the advert;
- Factor in public holidays. When stating the deadline date for receipt of representations, applicants should consider any local or national Public Holidays which may affect this deadline;
- Submit a draft public notice for approval by MS-LOT. A draft public notice should be submitted to MS-LOT for approval at least 2 weeks in advance of the publication date.
- Provide documents on time. The documents listed in the public notice must be made available at the time stated and at the location(s) specified.
- Submit the public notice as published. Copies of the published notice(s), showing the date(s) and name(s) of publication, should be submitted to MS-LOT within 2 weeks of publication.

Formal consultation with consultees will follow the same timeframes for public representations as detailed above under the different EIA Regulations.

Public notices are also required for variation applications (see section [6.2](#))

4.10.1 Representations

The licensing authority must have regard to any representations which it receives from any person having an interest in the outcome of the application. Any unsolicited responses will be sent to the developer to be addressed.

Further information on how representations will be handled can be found on the [Scottish Government Website](#).

4.11 Public Local Inquiry (PLI)

If a s.36 application contains an onshore element of an offshore generating station, a maintained objection from a planning authority will automatically trigger a PLI, which will be confined to the onshore element of the application. Paragraph 7A(7) of Schedule 8 to the Electricity Act 1989 gives the Scottish Ministers powers of direction in relation to the scope of any PLI.

In addition, paragraph 3(2) of Schedule 8 to the Electricity Act provides that where objections, or copies of objections, have been sent to the Scottish Ministers in pursuance of the Electricity (Applications for Consent) Regulations 1990, in those cases where an automatic PLI is not triggered, then the Scottish Ministers “shall consider those objections together with all other material considerations” with a view to determining whether a PLI should be held with respect to the application. If they think it appropriate to do so, they shall cause a PLI to be held.

5. Determination

Prior to determining an application Scottish Ministers will take into consideration the environmental information, including the EIA Report, any additional information, any AA, any comments made by the consultation bodies, and any representations from members of the public about environmental issues. Scottish Ministers must reach a reasoned conclusion, on the significant effects of the development on the environment which is up to date.

Consent and licence applications are either determined by MS-LOT under executive powers or by Scottish Ministers taking account of recommendations from MS-LOT.

Small scale offshore renewable energy projects which require only a marine licence are likely to be determined by MS-LOT.

Applications for s.36 consents for offshore renewable energy projects are processed by MS-LOT and recommendations are made to the Minister for Business, Innovation and Energy for determination. The Minister will take account of the recommendation, and any other material considerations, when making the determination. The Minister may decide to call a Public Local Inquiry (PLI) before making the determination.

5.1 Use of Conditions

Consents and licences are usually granted subject to conditions, to which the developer will be required to adhere. Conditions will not be used as a means of shortcutting the consenting or licensing processes or employed on a purely precautionary basis.

Scottish Ministers will give careful consideration before recommending the imposition of any conditions. Conditions have to be both effective and necessary, and should be used to achieve a specific end, not to cover every eventuality.

Scottish Ministers must always have regard to the six criteria for planning conditions which are set out in the Scottish Government's Planning Circular 4/1998 i.e. conditions should be:

- 1) Necessary;
- 2) Relevant to Planning;
- 3) Relevant to the development to be permitted;
- 4) Enforceable;
- 5) Precise; and
- 6) Reasonable in all other respects.

The wording of conditions should be clear, concise and unambiguous and a reason will always be given for each condition imposed. For example, it may be appropriate to require developers to undertake pre and post installation monitoring to ensure that the projected impacts are within acceptable parameters, especially with regard to compliance with NATURA regulations.

5.2 Notification of decisions

Where a determination on an offshore renewable energy project requiring an EIA is made, public notices on the decision are required. Scottish Ministers will send the decision notice to the developer, send a copy to consultees and publish the notice on the Marine Scotland website.

The developer must, as soon as reasonably practicable, publish a notice on their own application website, in the Edinburgh Gazette and in a newspaper circulating in the locality in which the proposed development is sited, which is likely to come to the attention of those likely to be affected by the proposed development.

For s.36 applications, the planning authority must make the decision notice available for public inspection at an office of the planning authority and on a website.

Decision notices are also required for multi-stage consents (see Section [6.5.1](#)).

The decision notice must include the following information:

- a) a description of the development;
- b) the terms of the decision;
- c) the main reasons and considerations on which the decision is based;
- d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures; and
- e) a summary of—
 - i. the environmental information; and
 - ii. the results of the consultations and information gathered and how those results, in particular comments received from an EEA State pursuant to consultation, have been incorporated or otherwise addressed;
- f) if the decision is to grant consent—
 - i. any conditions to which the decision is subject;
 - ii. the reasoned conclusion on the significant effects of the development on the environment;
 - iii. a statement that the Scottish Ministers, are satisfied that the reasoned conclusion is still up to date;
 - iv. a description of any features of mitigation measures;
 - v. a description of any monitoring measures required;
- g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

If an application was also made under Section 36A for a declaration extinguishing etc. public rights of navigation, then there is also a requirement on Scottish Ministers to: (a) publish the declaration or determination in such manner as appears to them to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or (b) secure that it is published in that manner by the applicant for the declaration.

For Marine Licence determinations for developments from 12 – 200 nm, The Marine Works (Environmental Impact Assessment) Regulations 2007 require that the applicant must publicise a notice of the EIA consent decision, stating that copies of the EIA consent decision letter are available on the Public Register and giving details

of the times at which the Public Register may be inspected, in the newspapers or other publications in which notice of the application was published.

5.3 Refusal

Under s.26 of the 2010 Act and s.67 of the 2009 Act, the Scottish Ministers may refuse to proceed with a marine licence application if it has not been made in an acceptable form, or accompanied with any required information.

Should applications for consents/licences be refused, MS-LOT will advise on the reasons, and on the best way forward should applicants wish to revise and resubmit their applications.

6. Post-Determination

6.1 Judicial Review

Although the decision of the Scottish Ministers in relation to s.36 applications is final, it is subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the proper exercise of administrative functions, including how the Scottish Government carries out its statutory function to grant or refuse consents.

Guidance on the judicial review process can be found on the [Scottish Courts website](#). It should be noted that there is a 3 month time limit on seeking judicial review.

6.2 Appeals

Any applicant for a Marine Licence is entitled to appeal against a decision not to grant a licence or against any of the conditions attached to a licence for both the Scottish inshore and offshore regions. The Marine Licensing Appeals (Scotland) Regulations 2011 provide that an applicant may bring such an appeal by way of [summary application](#). The Sheriff Court provides an independent and impartial forum for these appeals. The rules applicable to the summary application process can be found on the [Scottish Courts website](#). Under these rules, the deadline for lodging an appeal is 21 days after intimation of the decision in question and applicants will need to bear this in mind in deciding on the best way forward.

6.3 Variation of Consent

The Growth and Infrastructure Act 2013 inserted a new section 36C into the Electricity Act 1989 which introduces a procedure for applications to vary s.36 consents and for planning permission to be deemed in connection with such applications.

Regulations came into force on 1 December 2013 and provide for variation applications to take place in a way that follows closely the existing rules for applications for s.36 consents, and which ensures that the relevant provisions of the EIA Directive (2011/92/EU) (as amended) are also implemented for s.36 variation applications as they currently are for a s.36 consent.

The aim of the variation process is to reduce the time that might otherwise be taken to consider the authorisation of a development which for some reason now needs to differ from that set out in an existing s.36 consent, and would therefore not be consistent with that consent. It is not intended to relax the standards to which a consent must conform. Nor is it intended as a way of authorising any change in a developer's plans that would result in development that would be fundamentally different in terms of character, scale or environmental impact from what is authorised by the existing consent.

If a developer is unsure whether their intended plans would constitute a development that would be fundamentally different in terms of character, scale or environmental

impact from what is authorised by the existing consent, then they should contact MS-LOT for advice.

The procedure is set out in [the Electricity Generating Stations \(Applications for Variation of Consent\) \(Scotland\) Regulations 2013](#) (as amended by the [Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017](#) (“the Variation Regulations”) and the [accompanying guidance note](#). The Variation Regulations provide for a consistent and transparent process for the making and publicising of applications to vary s.36 consents, and their subsequent consideration.

In order to determine whether EIA is required for a variation application, applicants should request a screening opinion if the proposed changes may have significant adverse effects on the environment. If EIA is required then MS-LOT advise that a scoping opinion should be requested.

The guidance note sets out current views on how the legislation should operate. It should be noted that the guidance covers both onshore and offshore s.36 applications but that references to the Energy Consents Deployment Unit (“ECDU”) should be read as MS-LOT for applications for offshore renewable energy developments.

Although the guidance note estimates that in the most straightforward cases, where the changes being proposed are minimal it may take around 4-5 months for a variation determination, and in more complex cases it could take 9 months or longer, past experience has shown that 9 months is the minimum a variation application will take to be determined if EIA is required.

6.4 Variation of Marine Licence

A marine licensee can make an application to MS-LOT seeking variation of a licence, but only where such changes are not material, as per s.30 of the Marine (Scotland) Act 2010. *De minimis* amendments can be made to applications and licences at any time. Changes to a licence to reduce the level of activity can be made within the process without further consultation. Applications to vary a marine licence can only be processed where changes are small enough to be considered not material.

If changes required are considered to be material, a new application may be required and a licensee should contact MS-LOT to establish the potential need for a new application.

No such provisions are made in the Marine and Coastal Access Act 2009 for licensees to apply for a variation. However, the licensing authority may vary a marine licence if it appears to them that the licence ought to be varied for any relevant reason. Licensees wishing to vary a marine licence granted under the 2009 Act must therefore contact MS-LOT to establish any requirement for a new application to be made. Where a marine licence has an associated s.36 consent and the s.36 consent is varied by Scottish Ministers, then Scottish Ministers will consider exercising their discretion to vary the marine licences granted in respect of the development in terms of section 72 (3) (d) of the Marine and Coastal Access Act 2009 and section 30(3)(d) of the Marine (Scotland) Act 2010 to ensure that the marine licence and consent granted under section 36 of the Electricity Act 1989 (as amended) are consistent. In

order to provide consistency in approach and transparency to the procedure MS LOT will deal with variations, suspensions, revocations and transfers of all marine licences (both under the Marine (Scotland) Act 2010 and the Marine and Coastal Waters Act 2009) in accordance with the procedures laid down in s.31 of the Marine (Scotland) Act 2010.

Public notices are required for s.36 variation applications for 2 successive weeks in one or more local newspapers, one week in the Edinburgh Gazette, a national newspaper, the Lloyd's List and an appropriate fishing trade journal.

6.5 Assignment

6.5.1 Assignment of s.36 consent

A developer who has received a s.36 consent from the Scottish Ministers is not permitted to assign, or transfer, the consent to another person without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit.

The assignment process undertaken by the Scottish Ministers is to safeguard the obligations of the consent if transferred to another company.

Information required

If a developer wishes to assign their consent to another company, there is certain information that the Scottish Ministers require. To assess the suitability for transfer of assignment of consent, the developer must provide to MS-LOT the following information -

Existing Company (Assignor)

Name:
Address (Registered Office):
Company Registration No:
Appointed Contact:

New Company (Assignee)

Name:
Address (Registered Office):
Company Registration No:
Appointed Contact:

Community Benefits

Is there an agreed community benefits package already in place?

Is the new assignee committed to honouring the community benefits package?

Determination

If the Scottish Ministers approve the assignation, it usually must take place within 4 weeks from the date of the approval letter, and it will be intimated by the Assignee sending the Scottish Ministers a certified copy of the assignation.

The Assignee is required to comply with all the conditions set out in the s.36 consent and the Assignee is not permitted to further assign the consent without further prior written authorisation of the Scottish Ministers.

6.5.2 Transfer of a Marine Licence

If a developer wishes to transfer a marine licence to another company, MS-LOT are required to vary the licence.

Section 30 (8) of the Marine (Scotland) Act applies and the developer must make a variation application to the Scottish Ministers. Please see section 6.3 above.

6.6 Discharging Consent and Licence Conditions

6.6.1 Overview of condition discharge requirements

Conditions will be used by Ministers in line with the 6 criteria set out in section [5.1](#) above. Conditions attached to offshore renewable energy consents or licenses will be used for the efficient operation of the development control process and will likely cover topics such as environmental monitoring, design of the project, construction methodology, and environmental management, or any other aspect of development control and mitigation.

Conditions can be applicable prior to and during construction, as well as through operation or decommissioning. Applicants should ensure that all project managers (and, if necessary, relevant subcontractors) are fully aware of all conditions and understand the need for compliance. MS-LOT will provide clarification of any conditions if they are not clear. Some conditions may be required to be discharged prior to the commencement of works. Others may include timing constraints on all or some of the works, so an early and concentrated assessment of consent conditions should be provided for in the schedule for the works.

6.6.2 Multi-stage Consents

Both the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 contain provisions for multi-stage consents. A multi-stage consent process arises where a consent procedure comprises more than one stage. The first stage involves a principal decision; this is followed by one or more other stages involving an implementing decision(s) within the parameters set by the principal decision. While the effects which a project may have on the environment should be identified and assessed at the time of the procedure relating to the principal decision if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.

The definition in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 is as follows: “application for multi-stage consent means an application for approval, consent or agreement required by a condition included in an Electricity Act consent where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun”. The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 have a similar definition.

Consents and licences, if granted, by the Scottish Ministers for offshore renewable projects are likely to have several conditions attached requiring approvals which fall under this definition, for example the approval of a construction method statement, piling strategy, cable laying plan etc.

When submitting a plan or programme requested by a consent condition for consideration by the Scottish Ministers the developer must also include within that plan or programme information to satisfy the Scottish Ministers that no significant effects have been identified in addition to those already assessed in the EIA Report.

In doing so, the developer must account for current (meaning at the time of the multi-stage application) knowledge and methods of assessment which address the likely significant effects of the activities on the environment to enable the Scottish Ministers to reach a reasoned conclusion which is up to date. Scottish Ministers will issue decision notices for all multi-stage consent applications.

If, during the consideration of information provided in support of an application for multi-stage consent, the Scottish Ministers consider that the activities may have significant environmental effects which have not previously been identified in the EIA Report (perhaps due to revised construction methods or updated survey information), then information on such effects and their impacts will be required. This information must be dealt with as additional information under the EIA Regulations, and appropriate procedures for consultation, public participation, public notice and decision notice of additional information will apply.

When considering applications for multi-stage consents, Scottish Ministers may be required to validate the AA which was completed in relation to the principal decision to determine whether the conclusions of that AA are still valid.

The multi-stage consent process is currently being reviewed and this chapter of the guidance will be updated as and when this process is complete.

6.6.3 Post-Consent Monitoring

Post-consent monitoring requirements are incorporated into licence conditions in order to:

- Validate, or reduce uncertainty in, predictions of environmental impacts recorded in supporting EIA and HRA Assessments;
- Provide evidence on the effectiveness of mitigation measures to inform future decisions through adaptive management processes;

- Allow identification of any unforeseen impacts;
- Ensure that appropriate and effective monitoring of the impacts of the development is undertaken.

6.6.4 Regional Advisory Groups

Consent and licence conditions can require companies to participate in a Regional Advisory Group (“RAG”) established by the Scottish Ministers for the purpose of advising on post-consent research, monitoring and mitigation programmes for, but not limited to, ornithology, diadromous fish, marine mammals and commercial fish.

Each Regional Advisory Group will have a particular focus on the monitoring activities for all developments in that region. Under the consent/licence conditions, each project will have to

- submit an Environmental Management Plan (“EMP”) and Project Environmental Monitoring Programme (“PEMP”) to Scottish Ministers for approval;
- provide information on monitoring and mitigation programmes for the project;
- where appropriate, feed into strategic research ideas and projects e.g. SpORRAn.

6.6.5 Commercial Fisheries Working Group

Consent and licence conditions can also require developers to participate in a Commercial Fisheries Working Group, or any successor group formed to facilitate commercial fisheries dialogue, to define and finalise a Commercial Fisheries Mitigation Strategy. The developer must produce and implement a mitigation strategy for each commercial fishery that can prove to the Scottish Ministers that they will be adversely affected by the Development.

In the first instance good practice in fisheries liaison and the application of mitigation measures should aim to minimise the levels of fisheries disruption or displacement, there may exist residual impacts upon fishing activities. Although in the UK there exists no legal basis for financial compensation associated with the loss of access to fishing grounds, disruption or displacement of fishing activities resulting from offshore renewable energy installations (OREIs) is recognised by both industries as a potential area of concern and one which may require discussion and an agreed resolution between the interested parties. [FLOWW Best Practice Guidance for Offshore Renewables Developments: Recommendations for Fisheries Disruption Settlements and Community Funds](#) provides guidance in this respect.

6.7 Enforcement

Under the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010, there are provisions for the Scottish Ministers to serve notice on those suspected of failure to comply with a condition in a marine licence, giving a reasonable period within which compliance must take place. On conviction of the offence of failing to comply with a condition in a marine licence, a fine of up to £50,000 may be imposed on summary conviction, while on indictment a fine and/or a sentence of up to 2 years imprisonment may be imposed.

There are no such provisions in the Electricity Act 1989, and therefore no intermediate procedures. Enforcement is by criminal proceedings by way of summary prosecution. It is however open to the Scottish Ministers to write to the consent holder pointing out the alleged contravention of condition, seeking a full response and requiring future compliance.

CONSULTEES

Statutory Consultees

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

- The planning authority/ies
- Scottish Natural Heritage (SNH)
- Scottish Environment Protection Agency (SEPA) - appropriate area office
- Historic Environment Scotland
- Where a development in Scotland is likely to have significant effects in a European Economic Area(EEA) state Scottish Ministers must contact that EEA state to ask whether they wish to be consulted on the application

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

- Any relevant local planning authority (as defined in the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017)
- Scottish Natural Heritage⁴
- The Scottish Environment Protection Agency (“SEPA”) – Refer to [SEPA's standing advice on marine licence consultations](#)
- Historic Environment Scotland
- Any relevant authority (as defined in the Marine Works (Environmental Impact Assessment) Regulations 2017)

Marine Licensing (Consultees) (Scotland) Order 2011

- the Commissioners of Northern Lighthouses;
- the Maritime and Coastguard Agency;
- the Scottish Environment Protection Agency; and
- Scottish Natural Heritage.
- any delegate for a region (e.g. Marine Planning Partnerships)

Non Statutory Consultees (Marine Scotland will confirm which consultees to consult at the scoping and application stage)

- Fisheries Management Scotland
- BT (Radio Network Protection Team)
- UK Chamber of shipping
- Civil Aviation Authority
- The Crown Estate Scotland
- Defence Infrastructure Organisation (Ministry of Defence)
- Health and Safety Executive (see responses detailed in scoping opinion)

⁴ Under the 2007 Marine Works Regulations JNCC would be consulted on non-renewable applications outside 12 nm.

- Inshore Fishery Group (use appropriate regional group)
- Joint Radio Company (only for wind farms)
- Maritime and Coastguard Agency (statutory for Marine Scotland Act)
- Marine Safety Forum
- Marine Scotland Compliance (local fisheries offices)
- National Air Traffic Services (only for wind farms) + Aberdeen airport where applicable
- Northern Lighthouse Board (Statutory for Marine Scotland Act)
- Royal Society for the Protection of Birds
- Royal Yachting Association Scotland
- Scottish Canoe Association
- Scottish Creel Fishermen's Federation
- Scottish Fishermen's Federation
- Scottish Fishermen's Organisation
- Scottish Government Planning (Scoping only)
- Scottish Surfing Federation
- Scottish Wildlife Trust
- Sports Scotland
- Surfers Against Sewage
- Transport Scotland
- Transport Scotland Ports and Harbours
- Whale and Dolphin Conservation
- Visit Scotland
- Any other local stakeholder organisations potentially impacted by the development

ANNEX B

THIRD PARTY VERIFICATION/THIRD PARTY CERTIFICATION

1. MS-LOT requires an independent Third Party Verification/Certification (“TPV/TPC”) Report and Certificate of the detailed device design, to the same standard as is likely to be required by developers for insurance purposes.
 - Third Party Verification is required for test designs where an assessment of the design against the local environmental conditions is required.
 - Third Party Certification is required for commercial developments where “Type certification” is available for off the shelf products. This then has to be assessed against the local environmental conditions.
2. The period of validity of certification should be the same as the duration of the consent. If necessary, additional certificates may be required during the operational life of a project.
3. The focus is on the assessment of the structural integrity and stability of the equipment. The developer is not required to provide an assessment of the whole development and its ability to generate power. The purpose of the requirement is to provide evidence to Scottish Ministers, the regulator and appropriate stakeholders that due diligence has been undertaken. The requirement should include the assessment of the design and, where appropriate, the constructed engineering to ensure survival of the structure in the environmental conditions prevalent at the site. The report must be provided by an independent accredited agency of recognised international standing and reputation. Applicants need to ensure that the verifying party is sufficiently experienced and reputable in the field.
4. The TPV is likely to take the form of a detailed report produced by the verifier in accordance with a specified level of resource and conditions (e.g., produced to ensure survivability of the structure at the specific location, to withstand a 50-year or a 100-year wave). The specific conditions to which the verifying body makes their assessment are for the applicant and verifier to discuss and agree. The level of assessment applied by the third party verifier should be made clear in the report.
5. Applicants should obtain a certificate, issued by the verifying body, which clearly states the level and, where appropriate, the limits of assessment to which the proposal has been verified. Where a developer is proposing new technology or technology that has limited deployment, and hence, there are limits with regard to safe installation and operation of equipment or structure this circumstance has to be set out by the verifier. In addition a monitoring plan must be provided in such circumstances to ensure that safety standards are met during the lifetime of the new or partially trialled technology.
6. Further guidance is available through the HSE and MCA document titled [Regulatory expectations on moorings for floating wind and marine devices](#).

ANNEX C

PRE-APPLICATION & APPLICATION PROTOCOL AGREEMENT

This protocol agreement between Marine Scotland and <Developer > identifies the key milestones in the Section 36 and Marine Licensing application processes and sets out the information required to process the applications and the dates by which this will be done. This protocol agreement is not legally binding and is entered into without prejudice to the determination by the Scottish Ministers of the application to which it relates.

Reference number:

<A reference number will be generated by Marine Scotland>

Development site location:

<Site>, approximately <XX> km from <reference location>, Region

Brief description of proposal:

Construction and operation of an offshore <XXX> with a maximum generating capacity of <XX> megawatts (“MW”)

Decision: Subject to the achievement of the timetable set out in this document, including provision of all necessary information by the applicant/developer and consultees, the Scoping Opinion will be issued by <date> and the application will be referred to the Scottish Ministers for determination by <date>.

PROJECT DETAILS	
Reference number	<A reference number will be generated by Marine Scotland>
Development site location	Including <Description of location and central grid reference and lat/long.>
Description of development	An offshore <XX> with a maximum generating capacity of up to <XX> MW comprising: <ul style="list-style-type: none"> 1. <Detail XX> 2. <Detail XX> 3. <Detail XX> (...)
Application type	OFFSHORE XX – RENEWABLES <e.g. Section 36, Marine licence etc...>
Other consents/licences required?	<list>
Deemed Planning Permission also requested ?	<yes/no> <Nature of development to be covered by deemed planning permission>

KEY CONTACTS	
The persons identified below are the key contacts between Marine Scotland and the Developer/Applicant. The key contacts will liaise regularly on the progress of the application and will contact each other as soon as possible should any matter arise which is considered likely to delay progress with processing the application. (Include names, phone numbers and email addresses)	
Applicant	Developer Address (Registered) <designated person 1 (Post) and contact details> <designated person 2 (Post) and contact details>
Agent	<details of agent, if any>
MS-LOT Casework Officer	<designated person (Post) and contact details>
MS-LOT Casework Manager	<designated person (Post) and contact details>

Pre-application - EIA Scoping			
Key meeting dates and purpose	<date(s)> - <purpose> e.g. pre-scoping meetings		
EIA Scoping Report Preparation	<dates>		
Submission of Scoping Request to Scottish Ministers	<date>		
Scoping Gatecheck	<date> (MS-LOT will notify applicant within 3 weeks of receipt of request)		
Scoping consultation	<proposed date of issue (Developer/Applicant) and deadline for response (MS-LOT to agree with stakeholders (minimum of 30 days or longer period as Scottish Ministers may have agreed with any such body)>		
Issue Scoping Opinion	<date – within [5 weeks] of last consultee deadline or within such longer period as agreed with Developer/Applicant>		
Further pre-application discussions required?	<date(s)> - <purpose> Receptor specific scoping meetings		
Liaison by developer/applicant with consultees	<Outline what liaison is required with consultees at this stage>		
Further information required to inform the adoption of a scoping opinion	Type	Date due	Date received
		<date>	<date>
		<date>	<date>
		<date>	<date>
		<date>	<date>
		<date>	<date>
Details of information required to support an Appropriate Assessment (if necessary)			

Environmental Statement Development	
Offshore EIA and ES preparation	<dates>
Survey dates	<e.g. Aerial Surveys, benthic surveys etc.>

Pre-application	
Key meeting dates and purposes	<date> - <purpose – e.g. gate check meeting>
Pre-application stakeholder engagement	<dates>
Pre-application Public Exhibitions	<dates>
Date Application to be Submitted for gatecheck	<date>
Application gatecheck to be completed by	<date>

Application			
Regular liaison meetings between developer/applicant and MS-LOT	<who> <dates> or 'every <x> weeks on <day> at <time>'		
s.36 Consent and Marine Licence applications submission date	Agreed Target	Actual	
	<date>	<date>	
Public notices in press (draft notices to be submitted to MS-LOT 2 weeks in advance for agreement prior to arranging publication)	<dates> <where will be published>		
Consultation on submitted application with statutory consultees	Who	Start date	End date
	<name>	<date>	<date>
	<name>	<date>	<date>
	<name>	<date>	<date>
Consultation on submitted application with non-statutory consultees	Who	Start date	End date
	<name>	<date>	<date>
	<name>	<date>	<date>
	<name>	<date>	<date>
Date by which submission expected be put to Scottish Ministers with recommendation for determination, subject to satisfactory legal review	<date>		

The Developer/Applicant will give Marine Scotland notice of any changes to the timetable at least one month in advance of the earliest changed date.

Signed On behalf of Marine Scotland –
Licensing Operations Team
Name:
Date:
Position:

Signed On behalf of <Developer>
Name:
Date:
Position:

ANNEX D

PROTOCOL AGREEMENT FOR DISCHARGE OF CONSENT/LICENCE CONDITIONS

This protocol agreement between Marine Scotland and **developer/applicant** identifies the key milestones in the Section 36 and Marine Licensing application post consent processes and sets out the information required to process the discharge of consent/licence conditions and agree the target dates by which this will be done. This protocol agreement is not legally binding. This agreement is entered into without prejudice to the determination by the Scottish Ministers of the post consent discharge of conditions. However, all signatories to this agreement agree to meeting the timescales outlined and recognise that in missing the target date they have missed an opportunity to input their views.

Reference number:

<A reference number will be generated by Marine Scotland>

Development site location:

<Site>, approximately **<XX>** km from **<reference location>**, **Region**

Brief description of proposal:

Construction and operation of an offshore **<XXX>** with a maximum generating capacity of **<XX>** megawatts (“MW”)

PROJECT DETAILS	
Reference number	<A reference number will be generated by Marine Scotland>
Development site location	Including <Description of location and central grid reference and lat/long.>
Description of development	An offshore <XX> with a maximum generating capacity of up to <XX> MW comprising: <ul style="list-style-type: none"> 1. <Detail XX> 2. <Detail XX> 3. <Detail XX> (...)
Application type	OFFSHORE XX – RENEWABLES <e.g. Section 36, Marine licence etc...>
Other consents/licences required?	<list>
Deemed Planning Permission also requested ?	<yes/no> <Nature of development to be covered by deemed planning permission>

KEY CONTACTS	
<p>The persons identified below are the key contacts between Marine Scotland and the Developer/Applicant. The key contacts will liaise regularly on the progress of the discharge of conditions and will contact each other as soon as possible should any matter arise which is considered likely to delay progress with the post-consent process. (Include names, phone numbers and email addresses)</p>	
Applicant	<Developer> <Address (Registered)> <Designated person 1 (Post)> <Contact details> <Designated person 2 (Post)> <Contact details>
Agent	<Details of agent, if any>

MS-LOT Casework Officer	<Designated person (Post)> <Contact Details>
MS-LOT Casework Manager	<Designated person (Post)> <Contact Details>
Key meeting dates	<Regular meeting dates to be agreed, together with the purposes of meetings>

Discharge of Conditions

The documents required to discharge conditions fall into various categories and are often linked to the processing timescale. Processing timescales are set out in the table below and the consent plan submission timetable to be produced by <the Developer> and show the category assigned to each document. The various categories of documents will be considered by MS-LOT and stakeholders according to the following timescale.

Document Category	<Developer> sign off and issue plan to MS-LOT	MS-LOT complete initial check and issue for Consultation	End of Consultation	MS-LOT issue Consultation comments to <Developer>	<Developer> submit revised plan and gap analysis to MS-LOT	MS-LOT Issue Decision
A	Day 1	Day 11	Day 39	Day 46	Day <?>	Day <?>
B	Day 1	Day 11	Day <?>	Day <?>	Day <?>	Day <?>
C	Day 1	Day 11	Day <?>	Day <?>	Day <?>	Day <?>

<The Developer> will issue a fully populated consent plan submission programme, together with a Gantt chart (Microsoft Project file) to MS-LOT. The programme as at the date of this agreement is attached. <The Developer> will give MS-LOT notice of any changes to the programme or Gantt chart at least one month in advance of the earliest proposed change to the date for issue of the relevant consent plan to MSLOT.

The Developer must submit a detailed log of their responses to all comments raised by consultees, including how the issues have been addressed and where within the plan this has been done.

MS-LOT may decide to send consent plans for a further round of consultation depending on the nature and extent of the comments received.

Signed On behalf of Marine Scotland

..... Name

..... Title

..... Date

Signed On behalf of <The Developer>

..... Name

..... Title

..... Date



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