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## Abbreviations and Acronyms

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AA	Appropriate Assessment
EIA	Environmental Impact Assessment
ICOL	Inch Cape Offshore Limited
NGET	National Grid Electricity Transmission
MW	Megawatt
OfTO	Offshore Transmission Operator
OfTW	Offshore Transmission Works
OnTW	Onshore Transmission Works
STW	Scottish Territorial Waters
WFD	Water Framework Directive
WTG	Wind Turbine Generator
UK	United Kingdom

## 3 Regulatory Requirements

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### 3.1 Introduction

- 1 This chapter describes the key regulatory requirements, applicable to the Development. In addition, it considers the broader legal and regulatory context applicable to the applications required for the construction, operation and decommissioning of the Development (see *Section 3.2*). The Wind Farm is located in Scottish Territorial Waters (STW) so is within Scottish jurisdiction but applicable United Kingdom (UK) legislation is also relevant and has been included in this chapter. The legislation and policy framework for the Development is described in *Chapter 2: Policy and Legislative Context*.

### 3.2 Development Consents

#### 3.2.1 Marine Strategy Framework Directive

- 2 The *European Marine Strategy Framework Directive (2008/56/EC)* requires Member States to prepare national strategies to manage their seas to achieve or maintain Good Environmental Status by 2020. These requirements are implemented in Scotland through the *Marine (Scotland) Act 2010*.

#### 3.2.2 Marine (Scotland) Act 2010

##### The Purpose of the Marine (Scotland) Act 2010

- 3 The *Marine (Scotland) Act 2010* introduced a framework for sustainable management of the STW, aiming to ensure environmental protection is balanced with economic growth of marine industries. The *Marine (Scotland) Act 2010* establishes that decisions by the Scottish Ministers on Marine Licence applications must be made in accordance with specified marine plans and policy documents unless relevant considerations indicate otherwise.

##### The Marine Licence Process

- 4 Marine Licences are issued by the Scottish Ministers, through Marine Scotland. The primary objectives of the legislation are to protect both the marine ecosystem and human health, and to minimise interference and nuisance to other legitimate users of the sea. Part 4 of the *Marine (Scotland) Act 2010* outlines licensable activities including the deposit of substances and objects, and the construction, alteration or improvement of works within the Scottish Marine Area.

#### 3.2.3 Electricity Act 1989 (as amended)

- 5 The Inch Cape Offshore Wind Farm is subject to an application for consent to Scottish Ministers under Section 36 of the *Electricity Act 1989 (as amended)* for construction, operation and decommissioning of the Wind Turbine Generators (WTGs) and inter-array cables.

- 6 Where consent is granted under Section 36 of the *Electricity Act 1989* (as amended), a declaration under Section 36A may be made at the same time, which will restrict rights of navigation where this is prevented.
- 7 Under Section 36B of the *Electricity Act 1989* (as amended) (as outlined in Section 99 of the *Energy Act 2004*) the Scottish Ministers may not grant Section 36 consent where the Generating Station would interfere with ‘*recognised sea lanes essential to international navigation*’. In deciding whether navigation will be obstructed, the Scottish Ministers must take into account how they intend to exercise their powers in relation to any application for a declaration to remove public rights of navigation (see *Chapter 15: Shipping and Navigation*).

### 3.2.4 Energy Act 2004

#### Safety Zones (Section 95)

- 8 Under Section 95 of the *Energy Act 2004*, where the construction of a renewable energy installation is proposed, and the Scottish Ministers consider it is appropriate for the purposes of securing the safety of the: the renewable energy installation or its construction, extension or decommissioning; other installations in the vicinity of the installation or the place where it is to be constructed or extended; individuals in or on the installation or other installations in that vicinity; or vessels in that vicinity or individuals on such vessels, they may issue a notice declaring that specified areas are to be designated as safety zones may be issued. Such zones are intended to secure the safety of the above installations, individuals or vessels. The requirement and extent of any safety zones during construction and/or operation will be determined through further consideration and consultation. Should a future application be made in relation to the Development the impacts associated with these zones are considered in the relevant sections of this Environmental Impact Assessment (EIA) Report (*Chapter 14: Commercial Fisheries and Chapter 15: Shipping and Navigation*).

#### Decommissioning Programme

- 9 Sections 105 to 114 of the *Energy Act 2004* establish the legal framework for decommissioning programmes for offshore installations including renewable energy installations. This incorporates the requirements of the *Convention for the Protection of the Marine Environment of the North-East Atlantic* (the OSPAR Convention). This regional convention, which applies to specific sea areas of the north-east Atlantic, including the North Sea and parts of the Arctic Ocean, replaced and updated the 1972 *Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft* and the 1974 *Paris Convention for the Prevention of Marine Pollution from Land-Based Sources*. The OSPAR Convention came into force in March 1998 (OSPAR, 1998).
- 10 These provisions of the *Energy Act 2004* allow the Scottish Ministers to require that a decommissioning programme is submitted in respect of that renewable energy installation. The *Energy Act 2004* also sets out the requirements for the content of decommissioning programmes, as well as the procedure for reviews of and revisions to decommissioning

programmes and the implementation requirements in respect of such decommissioning programmes.

### **The Offshore Transmission Operator Process**

- 11 The *Energy Act 2004* requires that an Offshore Transmission Operator (OfTO) will own and operate the transmission infrastructure that is required to connect a wind farm to the national grid. The transmission infrastructure will include the Offshore Transmission Works (OfTW) and the Onshore Transmission Works (OnTW).
- 12 An OfTO will be appointed through a tendering process managed by The Office of Gas and Electricity Markets. Inch Cape Offshore Limited (ICOL) is currently acting as an 'interim OfTO' and will submit consent applications for the transmission infrastructure. It is anticipated that ICOL will also construct the OfTW and OnTW before ownership is transferred to an independent third party to operate, this is known as 'Generator Build'.

### **3.2.5 Terrestrial Planning**

- 13 Planning permission under the *Town and Country Planning (Scotland) Act 1997* as amended by the *Planning etc. (Scotland) Act 2006* is required for the OnTW. A separate application for the OnTW has been made to East Lothian Council. Specific assessment of the OnTW has been undertaken as part of the separate application. The cumulative impacts with the OnTW are considered in this EIA Report where relevant.

### **3.2.6 National Grid Electricity Transmission-Connection Agreements**

- 14 ICOL has a connection agreement with National Grid Electricity Transmission plc (NGET) for the electrical connection of the Inch Cape Wind Farm to the national electricity transmission system (national grid). At the time of writing the connection capacity is up to 700 megawatt (MW), as WTG turbine technology and capacity is continually evolving, the actual capacity will be determined when a WTG is selected. Any change in capacity will have no material impact on the assessment in this EIA.

## **3.3 Environmental Impact Assessment**

### **3.3.1 The Environmental Impact Assessment Directive**

- 15 The *EIA Directive (85/337/EEC)* introduced a Europe-wide procedure to ensure that environmental consequences of projects are identified and assessed before authorisation is given. The purpose of the *EIA Directive* is to ensure that, in considering whether to grant consents for developments that are likely to have significant environmental effects, the consenting authorities have all the necessary environmental information on which to base their decision.
- 16 In Scotland, the *EIA Directive* has been brought into Scots law through a number of Scottish Statutory Instruments relevant to individual consenting regimes as noted in *Section 3.2* above and explained in more detail in *Section 3.3.2*.

### 3.3.2 EIA Regulations

- 17 The *EIA Directive* is applied to the different consent regimes in the UK by different sets of regulations (which can differ slightly in approach) as outlined above. The need for an EIA for electricity generation projects is defined in Scotland by the *Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017* (as amended). These set out the statutory process and minimum requirements for EIA.
- 18 The *Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017* (as amended) prohibit consent from being granted unless the environmental information, as defined in those Regulations, has been taken into consideration. These 2017 EIA Regulations revoke *The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000* (as amended), which remain applicable for this application as it falls under the transitional arrangements (see Chapter 1 and 4 of this EIA Report for more detail).
- 19 Applications for a Marine Licence required for the Development will be subject to consideration, assessment and reporting in compliance with the *Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017* (as amended). These 2017 EIA Regulations revoke *The Marine Works (Environmental Impact Assessment) Regulations 2007* (as amended).
- 20 The 2017 Marine Works EIA regulations apply to this application as modified by regulation 40 under the transitional arrangements.

## 3.4 Protecting the Water Environment

### 3.4.1 The Water Framework Directive

- 21 The *Water Framework Directive (WFD) (2000/60/EC)* was introduced in 2000 to establish systems to manage the water environment. The *WFD* applies to the water environment - rivers, lochs, estuaries, coastal and underground water. Under the *WFD*, European Union member states are required to protect and improve their inland and coastal waters.

### 3.4.2 Water Environment and Water Services (Scotland) Act 2003

- 22 The *WFD* was enacted in Scotland through the *Water Environment and Water Services (Scotland) Act 2003*. Section 2 imposes a duty on the Scottish Ministers to secure compliance with the requirements of the *WFD* when exercising their functions. The most relevant *WFD* requirement is the need to prevent deterioration in the status of a water body. In Scotland, this requirement extends up to three nautical miles from land.

## 3.5 Protection of Habitats and Species

- 23 A separate report has been prepared to inform the *Appropriate Assessment (AA)* by Scottish Ministers of impacts on sites designated for their European nature conservation value. The regulatory requirements of the relevant legislation for the protection of habitat and species are therefore contained within the report to inform the AA.

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