Guidance Notes

Offshore Wind Farm Consents Process

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FOREWORD

These guidance notes have been prepared by DTI in consultation with the Department for Environment, Food and Rural Affairs (Defra), the Department for Transport (DfT) and other interested parties. If you would like to offer comments on the content and usefulness of this document, please email them to: offshore.windfarms@dti.gsi.gov.uk

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Introduction

This document is essentially the same as that produced as guidance for developers awarded sites in Round 1 of offshore wind farm leasing in April 2001 but it has been updated to reflect recent developments in respect of Round 2 lease awards.

The guidance clarifies the roles and responsibilities of those involved in the consents process in England and Wales only, including the DTI and other statutory consenting authorities (the Department for the Environment, Food and Rural Affairs (Defra), the Department for Transport (DfT) and the National Assembly for Wales (NAW)). (The Scottish Executive is responsible for consents for wind farm projects in Scottish territorial waters, but there are no Round 2 sites in those waters.) It also covers the safety zones and decommissioning provisions of the Energy Act 2004 which, whilst not formally part of the consents process, may be of interest to Round 2 developers.

Rationale for Round 2 arrangements

In November 2002, the DTI published a consultation document *"Future Offshore"* (www.dti.gov.uk/energy/leg_and_reg/consents/future_offshore) which outlined a proposed strategic approach to the arrangements for site leasing for offshore renewable development. Future Offshore identified three areas - the Thames Estuary, the Greater Wash (extending from the north Norfolk coast towards Flamborough Head and out into the North Sea) and the North West (the eastern Irish Sea between the north Wales coast and the Solway Firth) - where the potential for offshore wind development appeared most promising and proposed that these areas should be the focus for Round 2 of offshore wind farm leasing.

Future Offshore proposed that offers of leases in future leasing rounds should be limited to defined areas of sea, and that applications for these leases would not be invited until the areas in question had been subject to a Strategic Environmental Assessment (SEA), which would thoroughly consider the impact of future offshore wind farm development including the impact on other users of the sea. An SEA for the three areas was, therefore, set in motion.

The SEA for the three Round 2 strategic areas was completed in July 2003. The assessment looked at the potential impact of various scenarios of wind farm development. The policy framework and specific constraints within which The Crown Estate was asked to conduct Round 2 took into account the consultation responses to the SEA Environmental Report, as well as responses to the Future Offshore consultation.

As a consequence of the assessment and consultation, DTI stated that a coastal strip would be excluded from all three strategic areas. The excluded coastal strip has a minimum width of 8km but extends to 13km in areas of particular sensitivity. In addition, certain shallow water regions were excluded from the North West strategic area. This was in recognition of the potentially higher sensitivity of shallow coastal waters to wind farm development, in particular the possible disturbance to birds, the visual impact from

the shore, the potential impact on inshore fishing and recreational activities. Developers were able to tender for any sites within the boundaries of the Strategic Areas other than in these excluded regions.

Round 2 Offshore wind farm announcement

Building on the success of the first competition to bring forward development of offshore windfarms, in July 2003, the Secretary of State for Trade and Industry asked the CE to invite developers to bid for site option agreements in the second offshore windfarm round. Arrangements for Round 2 were designed to facilitate development in three strategic areas in territorial waters and the Renewable Energy Zone (see the next section on the Energy Act 2004) on a much more ambitious scale than in the first round in 2001. Bids for site options were assessed against a range of criteria including financial standing, offshore development expertise and wind turbine expertise, and on 18 December 2003, the CE offered 12 companies/consortia options for 15 site lease agreements spread across each of the three strategic areas. Developers were strongly advised to take into account the advice given in the SEA Environmental Report, including the possible impact on fishing and navigation and other users of the sea. They were also informed of the need for consents from the relevant statutory consenting authorities before these projects can proceed.

Energy Act 2004

The main purpose of the Offshore Production of Energy part of the Energy Act 2004 is to put in place a comprehensive legal framework for offshore renewable energy projects – wind, wave and tidal – beyond the UK's territorial waters. The Act establishes a Renewable Energy Zone (REZ), adjacent to the UK's territorial waters, within which renewable energy installations can be established. The Act enables The Crown Estate to award licences for wind farm sites in the REZ on much the same basis as it currently leases sites within territorial waters.

The Act gives the Government the additional powers it requires to regulate renewable energy projects in the REZ, principally by extending the requirement for consent under section 36 of the Electricity Act 1989. The Act facilitates a streamlining of the consents process for projects within the REZ and also in inshore waters by providing for navigation matters within section 36 – see section 3.2 below for further details.

The legislation introduces two new features – a safety zone scheme and a statutory scheme for the decommissioning of offshore renewable energy installations and related electric lines. Further information is given in section 6.

A copy of the Energy Act 2004 can be viewed at http://www.legislation.hmso.gov.uk/acts/acts2004/20040020.htm. A programme of work is underway to bring into force the provisions of the Act which are relevant to

offshore renewable energy projects. Further guidance will be issued as this programme of work is implemented.

1.1. WHO IS THIS GUIDANCE NOTE FOR?

This document is primarily intended to explain the consents process to anyone with an interest in the planning process for offshore wind farms around the coastline of England and Wales. (The Scottish Executive is responsible for administering the consents process for offshore wind farms in Scottish waters. Developers with proposals for wind farm projects within Scottish waters should contact the Scottish Executive: Lesley Thomson - tel. 0141 242 5795, e-mail – Lesley.Thomson@scotland.gsi.gov.uk)

The guidance aims to encourage developers to use DTI as the focal point for applications and promotes good practice procedures throughout the development process.

1.2. WHAT DOES IT COVER?

This guidance document explains:

- the package of consents that will or may be required by a developer of an offshore wind farm site in territorial waters around England and Wales and beyond in the REZ;
- the action required of a developer in the preparation of an Environmental Statement under the Environmental Impact Assessment (EIA) regulations;
- the role of DTI's 'Offshore Renewables Consents Unit' as the co-ordinating body for offshore wind farm applications; and,
- the streamlined consents process to help the developer pursue the necessary consents for a project.
- the provisions of the Energy Act 2004 dealing with safety zones and decommissioning.

The document also:

- encourages early dialogue between the developer, consenting authorities, statutory bodies and other stakeholders to help identify potential issues at the earliest possible stage in the planning of any wind farm project;
- encourages the developer to undertake a scoping exercise to determine the main issues/concerns that should be addressed within the Environmental Statement; and,

- encourages the developer to implement established best practice procedures during offshore surveying and construction works.

This document ***DOES NOT*** lay down a mandatory application process to be followed by a developer in order to obtain all the required consents for a proposed offshore windfarm development. It does, however, provide the developer with a streamlined approach, identifying best practice by which the processing of applications will be co-ordinated by DTI. Decisions on whether to follow this approach are a matter for developers.

Finally, the information provided in this document is neither definitive nor exhaustive and should be read in conjunction with the legislation to which it refers and other legislative guidance or advice where available.

1.3 Other useful guidance material:

In cooperation with various stakeholders, the British Wind Energy Association (BWEA) has produced best practice guidelines on the consultation process primarily for use by developers of offshore wind farm projects:
http://www.offshorewindfarms.co.uk/reports/bweabpgcons.pdf

The BWEA, on behalf of and in conjunction with the Fishing Liaison for Offshore Wind group, has produced draft guidance notes to ensure wind farm developers are aware of the need for early communication with fishing interests that might be affected by their proposals:
http://www.bwea.com/ref/fisheriesBP.pdf

Rotating wind turbine blades can have an impact on the civil and military radar systems so there is a need for separate pre-consents consultation with the Ministry of Defence and the Civil Aviation Authority. For further information on that consultation process see:
http://www.bwea.com/aviation/wind-energy-and-Aviation-interim-guidelines.pdf

The BWEA also maintain a bespoke web page dealing a range of associated topics relating to air space usage: this includes birds, telecommunication signals, radio links, electromagnetic interference, electrical transmission lines and radar at:
http://www.bwea.com/aviation/index.html

For guidance on navigational risk assessment produced by the Maritime and Coastguard Agency see:
https://mcanet.mcga.gov.uk/public/c4/mld/section03/275.pdf

For guidance on environmental impact assessment produced by the Centre for Environment, Fisheries and Aquaculture Science (CEFAS) see:
http://www.cefas.co.uk/publications/files/windfarm-guidance.pdf

Guidance on nature conservation issues is being prepared jointly by the statutory nature conservation agencies (Joint Nature Conservation Agency Guidance on Offshore Windfarm Development). For more information contact the relevant agency in English and Welsh waters or JNCC beyond territorial waters.

Guidance is available from CCW on carrying out surveys and making judgements in terms of landscape quality and value for seascape assessment in Guide to best practice in seascape assessment, Maritime Ireland/Wales INTERREG Report No. 5. March 2001. **http://www.ccw.gov.uk**

2. CONSENTING AUTHORITIES AND KEY CONTACTS

Following discussions with Defra, the Department for Transport (DfT), the Welsh Assembly Government (WAG) and the Crown Estate (CE), the DTI will act as the coordinating body to facilitate the processing of applications for offshore windfarms around England and Wales [except in the case of Transport and Works Act (TWA) Order applications where ORCU and the MCEU will receive the TWA and FEPA documentation separately].

2.1. DTI: OFFSHORE RENEWABLES CONSENTS UNIT (ORCU)

The DTI`s ***Offshore Renewables Consents Unit (ORCU)*** serves as a focal point for offshore wind farm consent applications, and promotes a co-ordinated and streamlined approach to administering the package of consents required by developers.

The purpose of the ORCU is to be specifically responsible for handling applications for wind farm consents received under the Electricity Act (EA) and the Transport and Works Act (TWA). The Unit will also provide developers with a single liaison point for questions regarding the administration of applications, clarify issues and provide updates on the progress of all the required consent applications.

CONTACT:

DTI
Offshore Renewables Consents Unit (ORCU)
1 Victoria Street
London, SW1H OET

Contact:	Robert Lilly	Tel: 020 7215 6122
	Keith Welford	Tel: 020 7215 0478
		Fax: 020 7215 2601

Although it is strongly recommended that developers lodge their consent applications with the ORCU, there is no obligation to do so and a developer may choose to send applications for the various consents directly to the relevant consenting authorities.

Each application for a consent for an offshore wind farm is considered on its merits and the involvement of the ORCU does not prejudge the outcome of a particular application. Nor does it override the statutory roles of Defra and DfT in determining the outcome of consents under the Food and Environment Protection Act 1985 (FEPA) (including those on behalf of WAG for projects in Wales) and the Coast Protection Act 1949 (CPA) respectively. [Note that responsibility for CPA consents will be passed to Defra from 1 October.]

2.2. DEFRA/DFT: MARINE CONSENTS AND ENVIRONMENT UNIT (MCEU)

While it is the focal point for requests for EA, TWA, FEPA and CPA consents, the ORCU will work closely with the **Marine Consents Environment Unit** (***MCEU)***, an alliance of Defra's Marine Environment Branch and DfT's Ports Division, which co-ordinates requests for consent for the full range of marine works for which each Department has responsibility. Though a number of MCEU's statutory functions are devolved to the WAG, it will still receive and coordinate applications with respect to Wales as well as England.

The statutory controls for marine works are exercised under the legislation shown below:

- **The Food and Environment Protection Act 1985**
- **The Coast Protection Act 1949**
- **The Telecommunications Act 1984** and,
- **Other Legislation** - such as local Harbour Acts - where the respective Secretary of State's approval is required for marine works

CONTACT:

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East Coast
Brian Hawkins (020 7238 1092)
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3. OVERVIEW OF REQUIREMENTS

3.1. CROWN ESTATE AGREEMENT FOR LEASE

The Crown Estate owns the seabed out to the limit of territorial waters. Offshore windfarm development on the CE's marine estate requires the CE to grant a lease over a particular site. Similar considerations will apply in the REZ, although here the CE will issue a licence to develop a wind farm rather than a lease (as the CE does not own the seabed beyond the territorial limit). In consultation with DTI, the CE will seek bids for site leases in rounds of leasing. The most recent round – the second – concluded in December 2003.

The Agreements for Lease over Round 2 sites grant developers a development option for 7 years during which time the successful bidders have to obtain the relevant statutory consents. Once the necessary statutory consents are in place, developers will be able to convert their agreements for lease into full leases.

3.2. CONSENTING REQUIREMENTS

It is impossible to define all the consents required by a developer for each individual offshore windfarm project, as some consents are site dependent in both the offshore and onshore environments. There are however certain consents that will be required for any offshore wind site. These are:

Electricity Act 1989 (EA) – Section 36	For offshore wind power generating stations within territorial waters adjacent to England and Wales. The Energy Act 2004 extends the requirement for this consent to the REZ.
Transport and Works Act 1992 Order (TWA)	Provides an alternative route to the EA route above (with FEPA) for obtaining certain statutory rights necessary for the development of an offshore wind farm <u>in territorial waters only.</u> It displaces the need for EA and CPA consents.
***Food and Environment Protection Act 1985 (Part II) (FEPA)* – Section 5**	For depositing articles or materials in the sea / tidal waters below MHWS (mean high water springs) around England and Wales including the placement of construction material or disposal of waste dredgings etc. Will be needed irrespective of whether the EA or TWA approach is used.

Coast Protection Act 1949 (CPA) - Section 34	Construction under or over the seashore lying below the level of MHWS. The Energy Act 2004 disapplies the requirement for a CPA consent for projects in English and Welsh territorial waters and the REZ which have a section 36 consent granted after commencement of section 99 of the Energy Act. A CPA consent is not required if the TWA route is followed as navigation matters are dealt with as part of the process.

3.2.1. Electricity Act 1989 - Section 36

Under section 36 of the EA, a consent is required from the Secretary of State for Trade and Industry for the construction, extension or operation of a generating station of over 50MW in capacity, unless otherwise exempted. The Energy Act 2004 confirms that a section 36 consent is required for generating stations within GB territorial waters and extends the requirement for such a consent to such stations within the REZ. To bring smaller windfarm and water driven developments within the ambit of the EA and thus subject to the EIA Regulations (see section 3.3.1) the Secretary of State's powers under the Act were extended on 1 December 2001 by means of a Statutory Order (SI 2001/3642) to cover all offshore wind and water driven developments of above 1 MW capacity.

In granting consent under section 36, the Secretary of State may impose conditions to control and mitigate the impact of a development.

The Energy Act introduces two new sections relating to navigation, 36A and 36B, into section 36 of the EA. The first new section, 36A, gives the power to the Secretary of State (for Trade and Industry) 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. The declaration can only be made at the same time as the section 36 consent is being granted. There is separate provision for the Secretary of State to make a declaration extinguishing public rights of navigation in relation to generating stations which have already been granted a section 36 consent, but this power can only be exercised where the consent was granted before the commencement of the new section on navigation. In both cases the power to extinguish public rights of navigation extends only to generating stations in territorial waters.

The second new section, 36B, places certain duties in relation to navigation on the Secretary of State. First, the Secretary of State may not grant a section 36 consent where the generating station, whether in the territorial sea or the REZ, would interfere with recognised sea lanes essential to international navigation. In carrying out this duty the Secretary of State must take into account how she intends to exercise her powers in relation to any application for a declaration to extinguish public rights of navigation and any application for a safety zone (see section 6 below). Further guidance will be issued on what is meant by the term "recognised sea lanes essential to international navigation".

Assuming the granting of a section 36 consent is not precluded because interference would be caused to recognised sea lanes essential to international navigation, the Secretary of State must then 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 deciding whether to grant a section 36 consent. Again, she must take into account any application for a declaration to extinguish public rights of navigation and any application for a safety zone.

In exercising her duties both in relation to interference with recognised sea lanes essential to navigation and obstruction of or danger to navigation the Secretary of State must take into account the cumulative impact of the generating station for which section 36 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.

Where the Secretary of State grants a section 36 consent after commencement of these provisions, no consent under section 34 of the CPA is required.

Deemed Planning Permission for Electrical Sub Stations

In applying for section 36 consent, it is possible that the site specified in the application may include associated onshore works such as an electrical sub-station In those circumstances, the applicant can apply to the Secretary of State for Trade and Industry for deemed planning permission under Section 90 of the Town and Country Planning Act 1990 to cover those associated works. Alternatively, a developer could apply for planning permission direct to the relevant planning authorities under section 57 of the Town and Country Planning Act 1990.

3.2.2. Electricity Act 1989 - Section 37

Where an offshore windfarm project includes the development of a new onshore overhead electric power line, a consent is likely to be required under section 37 of the EA. It is unlikely that such onshore work, involving connection to the system, will fall within the scope of the section 36 application and deemed planning permission (para 3.2.1).

Where applications for authorisation of power stations under section 36 of the EA, and overhead lines under section 37 are connected, a decision on both applications will normally be made at the same time. Given that the section 37 application may involve

issues such as compulsory access to land, it is essential that relevant information should be made available as soon as possible to those whose interests are likely to be affected.

In applying for section 37 consent, a developer may also apply for deemed planning permission under section 90 of the TCPA and, as a result, the Secretary of State may impose appropriate conditions to control and mitigate the impact of the overhead line.

3.2.3. Food and Environment Protection Act (Part II) 1985

Under FEPA, a licence is required from the Secretary of State for Environment, Food and Rural Affairs (or in Welsh waters, the WAG) – the 'Licensing Authority' – for the following works:

i	the placing of materials in the marine environment during construction, and related actions;
ii	the disposal of waste at sea (primarily dredged material including its use for beneficial purposes);
iii	the introduction of tracers and biocides and certain other activities in the marine environment.

The scope of the legislation applies to deposits made in UK territorial waters and on the UK Continental Shelf. Although the WAG now holds statutory responsibility for control of works within Welsh waters, consideration of applications within Welsh waters will be coordinated by MCEU who currently administer any applications on behalf of WAG.

Each offshore wind farm development will require a FEPA licence for a variety of works that either will or may be associated with the project. These are listed below:-

- Installation of a meteorological mast & foundations
- Installation of turbine masts & foundations
- Depositing scour protection
- Rock armouring/burial of cables at the site and connection to the shore
- Associated construction works (e.g. junction boxes; cable landings involving coastal defence modifications etc)

The primary objectives of the legislation are to protect both the marine ecosystem and human health, and to minimise nuisance and interference to other legitimate uses of the sea. In deciding whether to grant a licence, the Licensing Authority will pay particular regard to the environmental implications and other effects of the work including:

i	the potential hydrological effects (including physical effects at the site and adjacent coastline through changes to wave patterns, tidal streams, sediment transport etc)
ii	interference with other marine activities
iii	potential risk to fish and other marine life, including mammals, from contaminants, noise and vibration
iv	the effects of increased turbidity and potential for smothering/burial of benthic flora and fauna
v	any adverse implications for designated marine conservation areas

3.2.4 Coast Protection Act 1949 – Section 34

Marine works requiring consent from the Secretary of State for Transport under section 34 of the Act are:

i	the construction, alteration or improvement of any works on, under or over any part of the seashore lying below the level of mean high water springs (MHWS);
ii	the deposit of any object or materials below the level of MHWS;
iii	the removal of any object or materials from the seashore below the level of mean low water springs (MLWS)

Under section 34 of the CPA, the Secretary of State must determine whether marine works will be detrimental to the safety of navigation.

As noted above a CPA consent will not be required where consent has been given under section 36 of the EA, after commencement of section 36B.

Depending on the nature and location of the project, there are other consents that may also be required by the developer of an offshore wind farm;-

Other Regulatory Requirements

3.2.5 Water Resource Act 1991 – Section 109

Under the Water Resources Act 1991, a consent is required from the Environment Agency to erect a structure, e.g. cabling, in, over or under a watercourse that is part of a main river. If there is any uncertainty about whether a watercourse is part of a main river developers should contact the Environment Agency for advice. The Water Resources Act can be viewed at:
http://www.hmso.gov.uk/acts/acts1991/Ukpga_19910057_en_1.htm.

3.2.6. Town and Country Planning Act 1990 – Section 90 or Section 57

While the planning regime does not apply below the low water mark, planning consent may be required for onshore elements of the offshore wind farm development, such as the construction of electrical sub-stations. Two approaches are possible:

a) (section 90) deemed planning permission is sought, either as part of a Section 36 application or as part of an application for an Order under the TWA (see section 3.2.6 below); or

b) (section 57) planning permission is sought separately, from the relevant local planning authority (LPA).

In either approach, the developer will need to establish whether an EIA is required for the onshore elements. To do this the developer should make early contact with the appropriate LPA as to the environmental information they are likely to require. If a separate planning application is to be made for the onshore elements, the developer should consider carefully the timing of that related application. It is possible that an LPA would be reluctant to take a decision in isolation from the wider development or to provide a view on the wider development when the onshore elements have yet to be clarified.

In either approach, the developer can expect to have planning conditions imposed to control and mitigate the impact of the onshore elements. Further guidance for England can be found in the Planning Policy Guidance PPG1 – General Policy and Principles, available at: http://www.planning.odpm.gov.uk/ppg/ppg1/index.htm
For Wales see Planning Guidance (Wales) Planning Policy, which can be accessed from the following, website: http://www.wales.gov.uk/subiplanning/

3.2.7. Orders under the Transport and Works Act 1992

Offshore generating stations fall within the definition of "offshore installation" in the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992 (SI 1992/3230) for England and Wales. A TWA Order provides an alternative route for authorising offshore wind farm projects in territorial waters only. [There are no plans to extend the TWA to the REZ.]

Under Section 3(1)(b) of the TWA, the Secretary of State for Trade and Industry, and, in Wales, the National Assembly, can make an Order relating to the carrying out of works which interfere with rights of navigation in the territorial sea around England and Wales.

An Order can provide the statutory means by which public rights of navigation may be extinguished or changed temporarily to accommodate the scheme. A TWA Order can also authorise ancillary works, such as onshore works that are genuinely ancillary to an offshore wind farm scheme. An Order may also provide, amongst other things, powers for the compulsory acquisition of land or rights. Where an Order authorises the carrying

out of works that would interfere with the rights of navigation, this would provide a statutory defence against claims for such interference or public nuisance claims.

In considering whether to make a TWA Order the Secretary of State will take the same approach to navigational matters as are outlined above in relation to section 36 of the EA.

As all applications concerning TWA Orders in England will be processed by DTI, developers considering this route are urged to make contact with the ORCU at an early stage. For a guide to the Transport and Works Act, please refer to: http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.hcst?n=8013&1=1

Exemption from consent under Section 34 of the Coast Protection Act and Section 36 of the Electricity Act

Section 19 of the TWA disapplies the need for consent under Section 34 of the CPA if the works are authorised by a TWA Order but this does not obviate the need for a FEPA licence. A TWA Order can also be used to disapply section 36 of the EA.

Deemed planning consent under the Town and Country Planning Act 1990 Section 90(2A)

The making of a TWA Order does not itself confer planning permission for any development provided for in the Order. However, when applying for an Order, the developer can at the same time apply to the Secretary of State for planning permission to be deemed to be granted (for example, for any related onshore development) by means of a planning direction under Section 90(2A) of the TCPA.

Alternatively any planning consent required can be sought separately by an application to the LPA. In that event the Secretary of State would wish to be satisfied that any required planning permission has been granted by the LPA before making an Order.

3.3. RELEVANT ENVIRONMENTAL LEGISLATION

3.3.1. Environmental Impact Assessment

The EIA Directive (85/337/EEC as amended by 97/11/EC) ensures that, in considering whether to grant consents for developments that are likely to have a significant effect on the environment, the consenting authorities have all the necessary environmental information on which to base such decisions.

The EIA Directive has been transposed into UK law through a number of regulations (see below): these require developers of offshore wind farms likely to have a significant effect on the environment to undertake an environmental impact assessment to consider

both the positive and negative environmental impact of a development from the construction stage through to decommissioning. The results of these assessments are brought together in an Environmental Statement (ES) and
submitted with the various licence/consent applications.

Rather than prepare a separate ES for each consent application for a particular project, the consenting authorities will normally be content for a developer to provide a single document covering each of the consents applied for, provided that its scope is sufficient to embrace the range of environmental issues which each can be expected to consider. This may, for example, take the form of separate volumes addressing particular topics, such as the foreshore and land-based issues and sub-tidal matters.

The Directive has been applied to the EA (see section 3.2.1) through the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (SI 2000/1927): http://www.legislation.hmso.gov.uk/si/si2000/20001927.htm
For guidance notes on the Regulations see:
http://www.dti.gov.uk/energy/leg_and_reg/consents/guidancenotes_en.pdf

For the CPA (see section 3.2.3), the Directive is applied through the Harbour Works (Environmental Impact Assessment) Regulations 1999 (SI 1999/3445) and covers developments sited in or partly within a port or harbour. For a TWA Order (see section 3.2.7) the Directive has been partly applied through the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2000 (SI 2000/2190). While the Directive has not yet been directly applied under FEPA regulations [although regulations are being prepared with a view to them coming into effect later in 2004] there are existing provisions within FEPA to require developers to provide information equivalent to that of a formal ES.

An EIA should not be confused with an Appropriate Assessment required under the Habitats Regulations (see section 3.3.2), although the ES prepared during the EIA will often help to inform the competent authority when it comes to carry out the Appropriate Assessment. Where an offshore wind farm project is likely to require an Appropriate Assessment, it is recommended that the ES should address, in detail, the likely significant effects on the internationally important habitats and/or species as listed in the Conservation (Natural Habitats &c) Regulations 1994.

3.3.2. Habitats and Birds Directives

Under the EU Habitats Directive (European Commission Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) Member States are required to nominate sites to be designated as Special Areas of Conservation (SACs). Likewise under the EU Birds Directive (European Commission Directive on the Conservation of Wild Birds (79/409/EEC) Member States are required to nominates sites to be designated as Special Protection Areas (SPA). These SACs and SPA will be known as the Natura 2000 network, a European-wide network of sites designed to promote the conservation of habitats, wild animals and plants, both on land and at sea.

These sites will be subject to the protection measures provided by the Directive to ensure that they will not be adversely affected by activities taking place. Any plan or project which either alone or in combination with other plans or projects that would be likely to have a significant effect on a site will be subject to an appropriate assessment of its implications on the site's conservation objectives.

For further details on the EU Habitats and Birds Directives and the implications for wind farms please see the Joint Nature Conservation Agency Guidance on Offshore Windfarm Development[1].

Other Conservation Designations

In addition to the protection afforded under the above Directives, it should be noted that there exist a number of related nature conservation site designations which may be relevant when decisions are taken on offshore windfarm proposals. For example, the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the 'Ramsar Convention'), provides the framework for the conservation and wise use of wetlands and their resources. One of the main means by which the Ramsar Convention seeks to conserve wetlands and wetland interests is through the listing of Ramsar sites. Since November 2000 these have been afforded a level of protection which is consistent with their international importance, and which is broadly equivalent to the framework provided for the Natura 2000 network.

Also important are Sites of Special Scientific Interest (SSSIs), which are notified under the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000. SSSIs generally only extend to the Mean Low Water Mark, but windfarms could have an impact on nearby adjacent SSSIs and proposals may include land based plant located within an SSSI. Public bodies are required by the 1981 Act to conserve and enhance the features of SSSIs and, where they are considering granting a consent which might affect an SSSI, they are required to consult EN and CCW and to take their advice into account (sections 28G and 28I of the 1981 Act, as amended refer).

3.3.3. Strategic Environmental Assessment Directive

The Directive on the Assessment of Certain Plans and Programmes on the Environment (2001/42/EU) came into force on 21 July 2001 and regulations to implement into UK law were put in place on 20 July 2004. Its purpose is to ensure that the likely significant environmental effects of certain plans and programmes are identified and taken into account during their preparation and before their adoption. Under the directive an

[1] (Countryside Council for Wales, English Nature, Joint Nature Conservation Committee (In prep) Joint nature conservation agency guidance on offshore windfarm development (2004). Will be available from: www.jncc.gov.uk)

environmental assessment, including public consultation, will be compulsory for plans and programmes in specific sectors, including energy, that set frameworks for development consents for projects listed in the EIA Directive and for those requiring an Appropriate Assessment under the Habitats Directive. Any Strategic Environmental Assessment will be undertaken by or for Government.

It is intended that this directive will contribute to the integration of environmental considerations into decision-making on plans and programmes, and will help to promote sustainable development.

As indicated elsewhere in the document, the DTI commissioned a strategic environmental assessment ahead of the announcement about Round 2 of offshore wind farm leasing. For further information on the programme of work see: http://www.og.dti.gov.uk/offshore-wind-sea/

3.4. CUMULATIVE IMPACTS

As part of the EIA process, developers are required to take into account the likely significant effects of a development on the environment. The process should cover direct and indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects.

Cumulative impact assessment needs to identify, describe and evaluate the cumulative effects that are likely to result from a project in combination with other projects and activities that have been or will be carried out in the foreseeable future. It needs to cover potential impact of plans and projects in all sectors not just offshore wind (including, for example, coastal inshore wind farms, aggregate extraction, dredging and disposal of dredged material, shipping, oil and gas exploration and production). EC guidance defines cumulative impacts as "impacts that result from incremental changes caused by other past, present or reasonably foreseeable actions together with the project". (Hyder 1999) To carry out an assessment of cumulative effects, developers should, therefore, include:

- existing completed projects;
- approved but uncompleted projects;
- ongoing activities (e.g. discharge consents, fisheries) – these may or may not require formal consent;
- plans or projects for which an application has been made and are under consideration by the consenting authorities; and,
- plans and projects which are "reasonably foreseeable" (i.e. developments that are being planned, including other offshore windfarms which have a CE Agreement for Lease).

Developers should take all reasonable steps to determine whether there are plans for windfarms or other developments in the region, where application for consents is likely to

be made in a similar timescale. In such cases, it would be beneficial for developers to cooperate with one another and share information so that their respective EIAs can take into account the potential cumulative impacts of both developments. Statutory consultees (such as EN and CCW) would be able to provide advice on key issues that should be considered and on the level of detail required. For example, the cumulative visual impact should almost certainly be considered, and there may be other aspects where the cumulative impact could be significant (e.g. on bird populations). The geographical scope of the cumulative impact assessment will need to be determined on a case-by-case basis. For example, visual assessment limits will be determined by inter-visibility: for assessments on bird populations, cumulative effects will need to reflect the movement of birds and interdependence on sites and will need to cover impacts of collisions and habitats loss at a flyway level.

The Habitats Directive and 1994 Habitats Regulations bring obligations in connection with cumulative impacts. The consenting authorities will need to make an Appropriate Assessment of any plan or project which is likely to have a significant effect on a European site (designated under the Birds or Habitats Directives), either alone or in combination with other plans and projects. This is a specialist type of cumulative impact assessment, limited in scope to other plans and projects (excluding, for example, activities for which no consent was required) and focusing on protected sites and the features for which they were selected. Guidance is provided by English Nature (2001). If an Appropriate Assessment is required, the EIA will need to contain sufficient information on such "in combination" effects for this assessment to be carried out by the consenting authority.

3.5. LANDSCAPE AND SEASCAPE

As part of the EIA process it is important that landscape and seascape issues are considered. Guidance is available from CCW on carrying out surveys and making judgements in terms of landscape quality and value for seascape assessment in: Guide to best practice in seascape assessment, Maritime Ireland/Wales INTERREG Report No. 5. March 2001 (www.ccw.gov.uk)

4. CONSENTS ROUTES

4.1. THE OPTIONS

The number of consents/licences developers will need will differ according to the specific nature of individual sites, the particular preferences of developers and also to some extent the demands of financial institutions providing the necessary project funding. Details on the full range of possible consents/licences are covered in section 3.2.

Having said that, the more obvious potential consent mixes or routes available to developers appear to be:

1. **Electricity Act / FEPA /CPA and other consents as required**
2. **Transport and Works Act (only within territorial waters)/FEPA and other consents as required**

4.2. ELECTRICITY ACT / FEPA /CPA AND OTHER CONSENTS

The principal consents/licences required for offshore windfarms in GB territorial waters and the REZ are

- Electricity Act 1989 – Section 36
- Food and Environment Protection Act (Part II) 1985
- Coast Protection Act 1949 – Section 34 (not required after commencement of section 36B EA under the Energy Act 2004)

Other consents may also be required depending on the nature of the site and onshore development proposals:

- Town and Country Planning Act 1990 – Section 57 or 90 (e.g. for onshore substations)
- Electricity Act 1989 – Section 37 (for onshore overhead lines)
- Water Resources Act 1991 - Section 109 (if erecting structures in a water course)

4.3. Transport AND WORKS ACT/FEPA AND OTHER CONSENTS

The principal consents/licences required for offshore windfarms in UK territorial waters under this route are:

- Transport and Works Act 1992
- Food and Environment Protection Act (Part II) 1985

Other consents may also be required depending on the nature of the site and onshore development proposals:

- Town and Country Planning Act 1990 – Section 57 or 90 (e.g. for onshore substations)
- Water Resources Act 1991 - Section 109 (if erecting structures in a water course)

5. SIMPLIFIED CONSENTS PROCESS

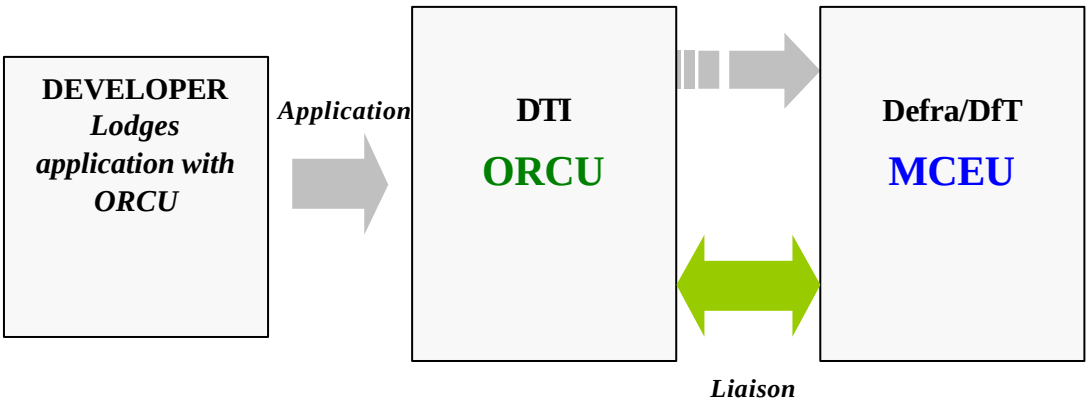
5.1. APPLICATION PROCEDURE FOR CONSENTS

Where a developer chooses the Electricity Act/ FEPA/CPA route, the ORCU would be happy to receive and co-ordinate all consent/licence applications. *NB: This coordination service is not really appropriate for developers choosing the TWA/FEPA route because TWA applications are normally handled by Parliamentary Agents on a developers behalf and the consultation processes under the TWA and FEPA are markedly different.*

It is anticipated that it will be possible for applications under the Electricity Act/FEPA/CPA route for consent for Round 2 projects to be made using an online application form. Whilst applications can be submitted on-line it is very likely that it will still be necessary to submit hard copies of supporting documents to both ORCU and the MCEU. Developers are advised to check whether some of the key consultees will accept environmental statements in electronic (CD-Rom) format before deciding how many paper copies of the documents will be needed.

5.2. HANDLING OF APPLICATIONS

Applications will be processed simultaneously by the ORCU and MCEU as required through database registering, correspondence acknowledgement and in starting the consultation. The various stages of the process are set out more fully in 5.3.



The ORCU will play a pivotal role in:

- the co-ordination of applications
- acting as a point of direct liaison with regard to consultation arrangements
- clarification of issues in relation to EA consents
- provision of status updates

This administrative arrangement does not affect the statutory role of government departments such as Defra and DfT (and the NAW in respect of FEPA) in the consideration and granting of FEPA licences and CPA consents.

Data Protection

Application data will be retained on the MCEU consents database. This database is owned by Defra but access to it has been given to DfT. It is proposed that DTI will also have access to this database during the Round 2 application process. Access is also being considered for both NAW and the Scottish Executive. The data will only be used by the MCEU and ORCU/DTI in connection with the processing and administration of the consents to which it relates, including consultation with such parties as the regulatory bodies consider to have an interest.

However, access to information provided in support of a FEPA application is subject to the provisions of the Deposits in the Sea (Public Registers of Information) Order 1996 (S.I 1996/1427) and may also be accessible under the Environmental Information Regulations 1992 and Freedom of Information Act 2000. Data is also open to inspection by the National Audit Office and the European Commission.

5.3 SIMPLIFIED CONSENTS PROCESS: SECTION 36 ROUTE ONLY

This section provides a project management style guide to the key elements of the consents process i.e. pre-application, application, consultation and the determination stage. The process is understandably front loaded and places the onus very much on the developer to ensure all the necessary field work/studies are undertaken at the pre-application stage of the process and to facilitate a smooth passage through the later stages.

Why are scoping reports necessary?

A key recommendation is that developers should prepare a scoping report for consultees. It will be through this document that developers will be able to demonstrate a full understanding of the project and of potential environmental concerns that need to be addressed as part of the EIA process. While the preparation of a scoping report is generally regarded as best practice and goes beyond that suggested in the various EIA regulations (covered in section 3.3.1) the report in itself provides no guarantee of successful outcome later on, particularly where projects give rise to serious environmental concerns. Nevertheless, such reports should lead to the early identification of possible problems and help generate confidence and a greater understanding among the various stakeholders about a developer's willingness to address environmental concerns in a responsible manner.

But can developers still use the EIA regulations on scoping?

There is nothing to prevent a developer from using the regulations to request a 'scoping opinion' where guidance on the content of an ES is needed but it is recommended this is done on the basis of a scoping report prepared by the developer. There is also provision

in the regulations for obtaining required environmental information from the relevant agencies.

How quickly will cases be processed?

As most of the work at the pre-application stage falls on the developer, it is not possible to provide any firm information on timing. One estimate is that this stage will take between 12-18 months but much will depend on the site-specific information requirements and availability of such information. For example for Round 2 developments, where there is no reliable data on birds likely to be present for a particular site it is likely to be necessary to undertake a 2 year survey in order to provide the necessary baseline data. However, where reliable data already exists this timescale may be reduced.

If applications are in good shape

Provided a developer follows best practice at the pre-application stage and prepares a complete ES that raises few issues requiring further examination it is anticipated that the application, consultation and determination stages of the process will take between 6-9 months to complete after the public consultation period.

DTI, Defra and DfT anticipate that **Stages 2/3** will take around 3-4 months. This provides for further exchanges between the developer and consultees on issues of concern and a reasonable period for the regulatory authorities to consider matters further in consultation with internal and external consultees as required. (Please note that developers have to undertake a public consultation where the latter must be given at least 42 days to register objections to DTI).

It is anticipated that the determination stage will take a further 2-3 months. This provides for an exchange of information between the regulatory authorities; follow up/resolution of any outstanding points [possibly in month 1]; circulation of draft consent/licence conditions to all interested parties, where appropriate [in month 2]; the determination of either a FEPA licence and CPA consent followed by determination of the EA application by the Secretary of State for Trade and Industry [in month 3]. At this point, either the various consents/licences will be issued or the application could be referred to a public inquiry or refused.

But there may be delays

The timescales given above only provide *guidance* and probably reflect the best possible outcome for a developer where the former has done all the groundwork and provided a comprehensive ES, and where there are no substantive objections and consequently a reduced input is required from consultees and consenting authorities. Where incomplete information is provided and/or where further additional survey work is necessary the decision timetable may slip considerably.

For Round 1 wind farms, the average processing time for EA, FEPA and CPA application was 9 months from date of application.

6. THE ENERGY ACT 2004 – SAFETY ZONES AND DECOMMISSIONING

6.1. SAFETY ZONES

The Energy Act 2004 introduces a new scheme to enable a safety zone (or zones) to be established around offshore renewable energy installations. In the case of wind farms a safety zone is likely to be established around each turbine.

The purpose of the safety zone is to minimise the risk of collisions between vessels and offshore renewable energy installations by establishing a zone around or adjacent to an installation which it will be a criminal offence to enter. The notice which establishes the safety zone may give permission for certain vessels to enter into the safety zone and to undertake specified activities within it. Standard permissions to enter into any safety zones, for example for the purposes of rendering assistance to a vessel in distress or other emergency situation, will be set out in regulations.

A safety zone can be established to cover the main stages in the life of a renewable energy installation – the construction (and extension phase if appropriate) and decommissioning phases, as well as the longer operational phase. The safety zone cannot exceed a distance of 500 metres, measured from the outer edges of the installation around which it is to be established, unless permission is granted by the International Maritime Organisation on a case by case basis.

The power of the Secretary of State to declare a safety zone is discretionary and the applicant must make a case, based on safety grounds, for the establishment of the zone. Any safety zone which is approved will be tailor-made for the circumstances of the particular installation in question. An application for a safety zone does not have to be made at the same time as development consent (whether under section 36 EA or the TWA) is being sought for the renewable energy installation around which it would be established. However, the Secretary of State must take any safety zone into account in deciding whether to grant consent for the installation – see section 3.2.1 above – and it would be useful therefore for applicants for the development consent to give the Secretary of State information about their intentions in regard to a safety zone, if a formal application for such a zone is not being made at the same time.

Where nobody makes an application for a safety zone and the Secretary of State is of the view that one is needed, she may herself take the initiative to establish such a zone.

6.2. DECOMMISSIONING

Chapter 3 of Part 2 of the Energy Act sets out a comprehensive statutory scheme for the decommissioning of offshore renewable energy installations and related electric lines, which will apply to all Round 2 installations.

The main elements of the scheme are as follows. It is important that an approved decommissioning programme is in place for an installation before construction in situ begins or before the related electric line is installed. Once at least one of the statutory consents outlined in section 3 above has been granted (or is likely to be granted) for an installation, the Secretary of State has the power to require a person (or persons) to submit a costed programme for the decommissioning of the installation. Under section 112 of the Act persons who become responsible for a renewable energy installation or related line under the circumstances outlined in the section have a duty to inform the Secretary of State. This information will be used to determine who the Secretary of State will require to submit the decommissioning programme. The Secretary of State may direct that the person who has the obligation to submit the decommissioning programme consults certain organisations, for example The Crown Estate, prior to submitting the proposal. Also the Secretary of State may require the responsible person to give details of the arrangements for ensuring that funds will be available to carry out the decommissioning programme.

Section 111 of the Act gives a power to the Secretary of State to make regulations about such matters as decommissioning standards and the arrangements which the Secretary of State may require to be put in place to ensure funds are available to carry out the decommissioning programme. Any such regulations must be followed in drawing up the decommissioning programme.

The Secretary of State can either approve the programme submitted to her, or may give her approval subject to certain modifications or conditions. If approval of the programme is dependent on its modification or subject to conditions, the Secretary of State must give the person who submitted it the opportunity to make representations to her. If the Secretary of State rejects the programme she can require a further programme to be prepared or she may decide to prepare one herself. She can also prepare a programme herself if the person who has the duty to submit the programme fails to do so. Where the Secretary of State prepares a programme herself she can recover her costs from the person who had the duty to submit the programme.

In normal circumstances the actual decommissioning of the installation will take place many years after the decommissioning programme has been approved. Much can

change in the intervening years and the decommissioning scheme needs to have the flexibility to respond to such changes in circumstances. Under section 108 the Secretary of State has a duty to review the decommissioning programme from time to time to make sure that it continues to be appropriate. Where necessary, she may propose modifications to the programme or the conditions to which the programme is subject, in which case she must give the persons likely to be affected by the changes an opportunity to make representations. Equally the person who has responsibility for the decommissioning programme may propose modifications to it to the Secretary of State. Section 108 also provides a process for dealing with changes in ownership of renewable energy installations or related electric lines.

Sections 109 and 110 provide for the implementation of the decommissioning programme and establish a process for dealing with situations where the person responsible for carrying out the programme fails to do so or not in accordance with the conditions to which approval of the programme was subject.

Further guidance will be issued on both decommissioning and safety zones.