This short briefing aims to explain how the Scottish Government and local authorities plan for the long term development of Scotland’s wind energy infrastructure. It goes on to explain how decisions are taken on individual wind energy development proposals. It also includes two case studies which demonstrate how the approvals processes work in practice.
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INTRODUCTION

The Scottish Government has set a target for 100% of Scotland’s electricity demand to be produced from renewable resources by 2020 (Scottish Government 2011a). Wind farm developments, both on and offshore, will play a major role in meeting this target. This short briefing explains the role of the Scottish Government and local authorities in the production of spatial strategies for the location of wind farm developments and goes on to describe the consenting processes in place for wind farm developments. Finally, it includes two case studies which show how the consents process works in practice.

PLANNING FOR WIND FARM DEVELOPMENTS

Proposals for wind farm developments are a matter for developers. Decisions on the location of wind farm developments in Scotland are influenced by a series of policies and plans with national, regional and local purpose. The following section explains what these plans and policies are and how they interact.

National Planning Framework 2 (published June 2009): The Scottish Government is required to prepare a long term (20-25 years) spatial development strategy for Scotland, which is normally updated once every five years. This considers how Scotland should develop over that time and where things should happen to make it possible. The Framework is a statutory document and a statement of policy. It is not a funding document. One of the main elements of the spatial strategy is to:

“realise the potential of Scotland’s renewable energy resources and facilitate the generation of power and heat from all clean, low carbon sources.”

Scottish Government Planning Policy: The Scottish Government sets out its policy on the location of wind farm developments in paragraphs 187 to 191 of the Scottish Planning Policy (SPP) (Scottish Government 2010a), which was published on 4 February 2010. This clearly states that:

“Planning authorities should support the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed.”

The Scottish Government provides additional online advice to local authorities on planning and onshore wind farms (Scottish Government 2011b) and the development of Spatial Frameworks for Wind Farms (Scottish Government 2011c). Spatial Frameworks are developed by planning authorities as a supplement to their development plans and aim to guide wind farm developments to appropriate locations, to maximise renewable energy potential and to minimise wasted effort and resources on inappropriately located proposals.

Strategic and Local Development Plans: There are two types of development plan:

Strategic Development Plans: Strategic development plans set out a vision for the long term development of Scotland’s four main city regions (these are regions centred on Aberdeen, Dundee, Edinburgh and Glasgow), focusing on issues such as land for housing, major business and retail developments, infrastructure provision and green belts/networks. A strategic development plan is drafted by a Strategic Development Planning Authority (SDPA), the membership of which is defined in statutory designation orders, e.g. the Edinburgh and South East Scotland Strategic Development Plan Authority (SESplan) SDPA comprises the City of Edinburgh, East Lothian, Fife, Midlothian, Fife and Scottish Borders Councils.
Strategic Development Plans can, if the SPDA considers it necessary or prudent, set out the broad policy and spatial framework for the development of wind farms within a region.

**Local Development Plans:** Local development plans cover the whole of Scotland and identify sites for new developments and set out policies that guide decision-making on planning applications. Each planning authority (i.e. local authority or national park authority) is required to publish and then update local development plan(s) covering their area at least once every five years.

Local development plans, where the planning authority considers it appropriate, set out more detailed policies on wind farm development and can indicate specific sites that may be suitable for wind farm development.

The first round of strategic and local development plans is still under development. Current approved structure and adopted local plans, which are broadly equivalent to strategic and local development plans, remain in force until they are replaced by the new plans.

In addition to the development plans described above, planning authorities can produce supplementary planning guidance, which can form part of the development plan where it has met certain requirements on public participation. Planning authorities may also publish other non-statutory guidance that does not form part of the development plan but is adopted by the authority for development management purposes – although it will carry less weight. Wind farms are a common topic for supplementary guidance (SG), particularly due to renewable energy developments outpacing progress on development plans and the fact that SG can contain more detail on this topic than would normally be included in a development plan. An example of supplementary guidance is Highland Council’s [Highland Renewable Energy Strategy](https://www.highland.gov.uk/wind-energy-strategy) (Highland Council 2006). This is being replaced by [Draft supplementary guidance for onshore wind energy](https://www.gov.scot) (2010/11).

**APPROVAL PROCESS FOR WIND FARM DEVELOPMENTS**

Two separate approval systems control the development of electricity generating stations, including wind farms, in Scotland. The system that applies depends on the generating capacity of the proposed development.

Proposals for large scale electricity stations are considered and authorised by Scottish Ministers under the provisions set out in Section 36 of the Electricity Act 1989, i.e. all generating stations with an installed capacity above the following thresholds:

- in excess of 50 megawatts (MW) for onshore wind farms, power stations that are not wholly or mainly driven by water (such as coal/gas fired or nuclear plant) and hydroelectric generating stations
- in excess of 1 MW for offshore wind farms and generating stations wholly or mainly driven by water, such as wave or tidal generating stations, but not including hydroelectric generating stations.
- overhead power lines and associated infrastructure, as well as large gas and oil pipelines.

Such applications cover new developments as well as modifications to existing developments.

It should be noted that a change occurred from the 1 June 2011 whereby the threshold for applications for hydroelectric generating stations was raised to in excess of 50MW. This means that applications for hydroelectric stations of 50MW or below are now made to the relevant
planning authority rather than the Scottish Government, meaning planning authorities have more control over smaller scale hydro schemes than ever before.

Where the capacity of a proposed land based station lies below these thresholds then the application for consent must be made to the relevant planning authority. The proposed development will then be considered under the Town and Country Planning (Scotland) Act 1997.

It is worth noting that the policies set out in the National Planning Framework, Scottish Planning Policy, Planning Advice, Development Plans and Supplementary Guidance are material considerations in both the decision making processes described below.

While the two systems are reasonably similar, there are some differences. The following sections summarise the key stages of each system:

**ELECTRICITY ACT 1989**

The process adopted by Scottish Ministers for considering and approving applications for electricity generating stations, including wind farms, under Section 36 of the Electricity Act 1989 can be summarised as follows:

**Initial enquiries:** Developers approach the Scottish Government for initial discussions about a potential wind farm development, establishing whether the scheme will be considered by Scottish Ministers or the relevant planning authority.

**Screening:** Developers can ask Scottish Ministers for a decision on whether a full Environmental Impact Assessment (EIA) is required for the proposed development. This formal opinion is known as “screening”.

**Scoping:** Where an EIA is required, the applicant should identify the key issues for inclusion before detailed studies commence, a process known as “scoping”. The purpose of scoping is to focus the EIA on the issues of greatest concern or potential impact, to identify areas that do not need study and to provide a formal mechanism for discussions on the best EIA methodology with the Scottish Government and its agencies, e.g. SNH and SEPA. The Scottish Government has produced a set of Section 36 Scoping Guidelines (Scottish Government 2010b) to assist developers in this process.

**Application:** The developer submits the formal application to Scottish Ministers, along with an environmental statement if required. The application must be advertised for two successive weeks in one or more local newspapers circulating in the area of the proposed development, in the Edinburgh Gazette for one week and in one or more national newspapers for one week.

**Consultation:** The developer is required to consult with the relevant planning authority, SNH and SEPA and may also wish to consult with other organisations including NATS (National Air Traffic Services), Civil Aviation Authority, Defence Estates and the Health and Safety Executive. The relevant planning authority has four months to respond while all other organisations and members of the public are required to respond within 28 days of the date of the last advert.

**Addendum:** In certain cases e.g. where consultees request additional information or there are outstanding issues to be dealt with, a developer can submit additional information in support of their application, known as an addendum. Where this happens, the consultation process begins again.
Public local inquiry (PLI): A PLI must be held if the local Planning Authority maintains an objection to the proposed development. Scottish Ministers can also choose to hold an inquiry at their own discretion.

A PLI will be conducted by a Reporter from the Directorate for Planning and Environmental Appeals (DPEA) appointed by the Scottish Ministers. The Reporter will consider all the evidence from the various parties at the inquiry and will compile a report based on these findings. The Reporter will submit their report and recommendations to the Scottish Ministers following the close of the inquiry. Scottish Ministers will take this report into account in reaching their final decision.

Determination: Scottish Ministers will consider the details of the proposals, any PLI Report and all opinions gathered during consultation. Ministers may either grant consent with or without conditions or reject the application. There is no time limit for ministerial decision making.

Scottish Ministers’ decision is final. The only way to challenge the decision is via judicial review. More information on judicial review is available in SPICe Briefing 09/75 Judicial Review (Harvie-Clark 2009).

The Scottish Ministers are supported in this work by the Scottish Government’s Energy Consents Unit, which is responsible for administering the system described above. The Energy Consents Unit also provides more detailed information on the operation of this system and maintains a database of past and current applications.

It is worth noting that Scottish Ministers can direct that a development authorised under Electricity Act 1989 also benefits from “deemed planning permission”, i.e. Ministers can direct that planning permission has been deemed to be granted, subject to any conditions Ministers consider appropriate, without the need for the developer to separately apply for planning permission.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

The process used by a planning authority considering a planning application for a wind farm with an installed capacity of 50MW and under can be summarised as follows:

Category of Development: All proposed wind farm developments that will be considered by a planning authority fall within one of two categories in the hierarchy of developments, namely:

- **Major developments:** Nine classes of large scale development are defined as major developments in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
- **Local developments:** Any wind farm development which is not a major development is automatically categorised as a local development.

The decision-making process for each category of development is briefly outlined below:

**Major Developments**

Any proposed new wind farm with an installed capacity of 20MW or greater, or a 20MW or greater extension to an existing wind farm, is categorised as a major development under the

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1 The Planning etc. (Scotland) Act 2006 introduced a three tier hierarchy of developments – national, major and local. More details are available in SPICe Briefing 11/30 Town and Country Planning in Scotland

**Pre-application discussions and processing agreement:** The Scottish Government encourages developers, planning authorities and Government agencies to informally discuss proposed developments at an early stage. The Scottish Government also encourages planning authorities to enter into processing agreements with developers of major projects, these agreements set out the roles and responsibilities of each party, information requirements for the decision making process, the decision making framework, key milestones and timescales.

**Pre-application consultation (PAC):** Developers proposing a major development are statutorily required to undertake PAC with the community potentially affected by the development. PAC should aim to improve the quality of the planning application, mitigate negative impacts where possible and deal with any community issues that can be tackled. PAC is an additional measure and does not take away the right of individuals and communities to lodge formal objections during the planning application process.

**Application:** The developer submits a formal application for full planning permission or planning permission in principle (formerly known as outline planning permission) along with any design and access statement (if required), environmental impact assessment (if required) and any other information requested by the planning authority in support of the planning application.

**Neighbour Notification and Publicity:** The planning authority is required to notify those with an interest in land neighbouring the site of the proposed development of the planning application as soon as possible after it has been received. Notification must be made in writing to the address(es) concerned. Where there are no premises on the land to which a notice can be sent a notice must be placed in a local newspaper. The authority must allow at least 21 days for responses to written neighbour notification and 14 days for responses to an advertisement – these time limits run from the date the notice was sent or placed in the newspaper.

**Consideration of application:** The planning authority will evaluate the planning application and supporting information and can request additional information if this is required to reach a decision. The planning authority may also be required to consult with various Scottish and UK Government agencies depending on the location and nature of the development, including the Scottish Environment Protection Agency, Scottish Natural Heritage and the Civil Aviation Authority.

**Pre-determination hearing:** Where a proposed wind farm is significantly contrary to the local development plan the planning authority is required to hold a pre-determination hearing. The authority can also choose to hold such a hearing for other applications at its own discretion. Anyone who has submitted representations during the formal consultation period should be given the opportunity to appear at a pre-determination hearing, together with the applicant. The purpose of a pre-determination hearing is to allow the views of applicants and objectors to be heard directly by the councillors making the decision on the grant of planning permission.

**Decision:** The decision on a major development must be made by councillors. They can choose to grant permission unconditionally, subject to conditions or refuse permission.

Where permission has been refused, or granted subject to conditions that the applicant considers unreasonable, then the applicant can appeal to Scottish Ministers within three months of the date that the decision notice was issued by the planning authority.
Minor Developments

The process for considering and approving a local development is fairly similar to that for a major development, as described above. The key differences are:

- **Pre-application discussions and processing agreements**: Given their smaller scale, local developments are unlikely to be the subject of processing agreements.
- **Pre-application consultation**: There is no statutory requirement for the developer to undertake any pre-application consultation.
- **Pre-determination hearing**: There is no statutory requirement for the planning authority to hold a pre-determination hearing.
- **Decision**: Decisions on local developments may be taken by an appointed person, usually a planning officer, rather than councillors, under a scheme of delegation.
- **Appeals**: If a planning application for a local development is considered by an appointed person and either refused permission, or granted permission subject to conditions which the applicant considers unreasonable then any subsequent appeal will be heard by a local review body and not Scottish Ministers. A local review body is made up of at least three elected members who were not involved in the original decision.

Domestic Wind Turbines

Free-standing wind turbines, i.e. those not attached to a building, located within the curtilage of a dwelling house may not need planning permission under the provisions of Class 6G of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. However, there are a number of restrictions on this exemption including:

- it would result in the presence within the curtilage of a dwelling of more than one free standing wind turbine; or
- the wind turbine would be situated less than 100 metres from the curtilage of another dwelling.
- the development would occur within a:
  - a conservation area
  - a World Heritage Site
  - a site of special scientific interest
  - a site of archaeological interest

Even where a proposed development would benefit from this exemption the developer must obtain approval for the design and location of the turbine from the planning authority prior to development.

Environmental Impact Assessment

Environmental Impact Assessment (EIA) is a process which identifies the environmental effects, both negative and positive, of development proposals. It aims to prevent, reduce and offset any adverse impacts. The final report of an EIA is known as an Environmental Statement (ES).

The types of development that require an EIA are set at an EU wide level. Details of how the EIA system works in Scotland can be found in Planning Circular 3/2011 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

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2 Every planning authority is required to produce a “scheme of delegation” which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee.
EIA Regulations split large scale developments likely to be subject to an EIA into two groups. "Schedule 1" developments are of very large scale and are likely to have significant environmental impacts and include oil refineries, larger power stations and steel works but not wind farm developments. Developments defined as "Schedule 2" include larger developments which may have a significant environmental impact and include developments involving the installation of more than two wind turbines or where the hub height of any wind turbine exceeds 15 metres.

An EIA is always required for Schedule 1 developments due to their significant environmental effects. An EIA is only required for Schedule 2 development if it is judged (by the decision making body) likely to have significant environmental effects. Developments that fall outside the scope of Schedules 1 and 2 do not normally require an EIA.

EIA should not be confused with Strategic Environmental Assessment (SEA) which:

- Provides a framework for the systematic assessment and monitoring of significant environmental effects arising from public sector strategies, plans and programmes
- Requires those drafting such plans to seek the views of experts from SNH, SEPA, Historic Scotland and the general public at various points in the process
- Requires a public statement as to how such opinions have been taken into account during the development of such plans.
APPENDIX 1: WIND FARM APPROVAL PROCESS CASE STUDIES

HADYARD HILL WIND FARM – PLANNING PROCESS UNDER THE ELECTRICITY ACT 1989

Hadyard Hill Wind Farm is situated in South Ayrshire, close to the village of Barr. It covers approximately 12 km² of farmland and was selected partly because the topography helped screen some of the turbines.

Developed by SSE Generation and DP Energy, 52 turbines were installed, with a maximum generating capacity of 2.3MW. The project also includes substation and control buildings, anemometers and 16kms of overhead line to the sub-station at Maybole (consented separately under Section 37 of the 1989 Act).

The wind farm has been fully operational since September 2006, and the approval process progressed as follows:

<table>
<thead>
<tr>
<th>STAGE</th>
<th>COMMENTARY</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial enquiries</td>
<td>First contact made with local communities (including public and one to one meetings), South Ayrshire Council and the Scottish Executive Energy Consents Unit. At this time 68 turbines with a capacity of up to 2MW each were being considered.</td>
<td>July – December 2001</td>
</tr>
<tr>
<td>Screening</td>
<td>A formal screening opinion on whether an EIA was required was not sought. It was assumed that to ensure best practice, an EIA should be carried out.</td>
<td></td>
</tr>
<tr>
<td>Scoping</td>
<td>At this stage, key issues for inclusion in the EIA were identified in consultation with statutory and non-statutory consultees. The Scoping Opinion sets these out, and includes some of the following areas for assessment:</td>
<td>February – July 2002</td>
</tr>
<tr>
<td></td>
<td>- Landscape and visual impact</td>
<td></td>
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<tr>
<td></td>
<td>- Ecology</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Fish and Hydrology</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Noise</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Archaeology</td>
<td></td>
</tr>
<tr>
<td></td>
<td>By now, the number of turbines being considered had dropped to 52 however with an increased capacity of up to 2.5MW each. A number of layout changes were also made in response to further consultation with Prestwick Airport. They raised concerns over potential “radar clutter”.</td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>The application was submitted to Scottish Ministers, including an Environmental Statement. Advertisements were placed in local and national</td>
<td>April 2003</td>
</tr>
</tbody>
</table>
### Consultation
South Ayrshire Council voted in support of the project within the four month consultation period.

Some 12 public objections to the project were sent to the Scottish Executive within the 28 day consultation period.

The Ministry of Defence (MoD) initially objected to the proposal as the site lies within their south of Scotland tactical training area and there were concerns about the impact on low flying operations. They subsequently withdrew it following further consideration of the project and a site assessment by helicopter.

### Addendum
During the consultation period SNH raised some concerns, and SSE Generation was required to clarify the Environmental Statement in a number of areas. However, no addendum or supplementary information was needed.

### Determination
Following the withdrawal of the MoD’s objection Scottish Ministers granted consent and deemed planning permission subject to conditions, including:

- Restricted construction and operational noise
- Provision of technical data to MoD
- Clarification of construction methods taking account of e.g. peat depth, hydrology, and fish spawning grounds
- Surveys to locate black grouse and their habitat prior to construction, as well as fences marked to reduce collision risks

These are conditions are summarised in the decision letter, and detailed in the consent document.

Consent for the overhead line (under Section 37 of the 1989 Act) followed in 2005 after permission had been secured with relevant landowners.
GALSON COMMUNITY WIND FARM – PLANNING PROCESS UNDER THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Galson is located in the north west of the island of Lewis. The community purchased its estate and set up a Trust, Urras Oighreachd Ghabhaisn (UOG), to run it.

The community buy-out was prompted in order to maximise local benefit from a proposed private large-scale windfarm on part of the estate. With the agreement of the developer, UOG carried out a feasibility study to investigate the potential for a separate community owned wind farm on the grounds that it did not interfere with the other development. Ultimately, the private windfarm was not consented; however the feasibility study identified the potential for three community owned wind turbines.

Due to the small scale of the proposal, it is considered to be a minor development under the Town and Country Planning (Scotland) Act 1997. The planning application and accompanying documents were submitted in August 2008, and the main components of the scheme comprise:

“Construction of a wind energy project through installation of three wind turbine generators with a total maximum generating capacity of 2.7MW, with ancillary development including access tracks, underground cables, crane hard standings and site control building.”

The approval process progressed as follows:

<table>
<thead>
<tr>
<th>STAGE</th>
<th>COMMENTARY</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application discussions</td>
<td>UOG met with Scottish Natural Heritage (SNH), Comhairle Nan Eilean Siar (CnES), Scottish Environment Protection Agency (SEPA) and the Royal Society for the Protection of Birds (RSPB) to gauge initial opinions on the site.</td>
<td>January 2006</td>
</tr>
<tr>
<td>Pre-application consultation</td>
<td>As a minor development, there is no statutory requirement for this, however UOG:</td>
<td>January 2006</td>
</tr>
<tr>
<td></td>
<td>• Displayed the feasibility study, and made copies available locally</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Held open meetings for the public to discuss the project</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Consulted with Community Councils and the local Grazings Committee.</td>
<td></td>
</tr>
<tr>
<td>Screening</td>
<td>UOG submitted a request to CnES for a Screening Opinion (to find out whether an EIA was required). The response confirmed that significant environmental impacts were expected; therefore an EIA should be carried out.</td>
<td>March 2007</td>
</tr>
<tr>
<td>Scoping</td>
<td>UOG submitted a scoping study to CnES. This identified the key issues for EIA before detailed studies started, statutory consultees then responded with comments. Subsequently, consultants provide technical</td>
<td>October 2007</td>
</tr>
<tr>
<td><strong>Application</strong></td>
<td>Planning application submitted, including an Environmental Statement. Some ornithology work was incomplete but the Council agreed to early submission to allow more time for responses to the consultation.</td>
<td>August 2008</td>
</tr>
<tr>
<td><strong>Neighbour notification and publicity</strong></td>
<td>A total of seven representations were submitted to CnES within the allotted time for consultation. Three individuals objected, as well as the RSPB, who objected until remaining ornithology work had been completed and submitted.</td>
<td>August 2008 - March 2009</td>
</tr>
<tr>
<td><strong>Consideration of application</strong></td>
<td>National Air Traffic Services, CnES technical officers, SEPA and SNH neither objected nor requested any further information. Historic Scotland requested some further information. Completed bird survey work satisfied the RSPB so they withdrew their objection.</td>
<td>January 2009 - March 2009</td>
</tr>
<tr>
<td><strong>Pre-determination hearing</strong></td>
<td>There is no statutory requirement for this when considering minor developments.</td>
<td></td>
</tr>
<tr>
<td><strong>Decision</strong></td>
<td>Due to the number of representations received, Councillors on the CnES Planning Committee considered the application, rather than a delegated planning officer. It was recommended that the application be approved subject to certain conditions, including “land restoration and decommissioning and the taking out of a reinstatement bond to ensure acceptable restoration” (under Section 75 of the 1997 Act), as well as an archaeological evaluation.</td>
<td>May 2009</td>
</tr>
<tr>
<td><strong>Land restoration and decommissioning</strong></td>
<td>Whilst a Section 75 agreement has still to be put in place, construction is not scheduled to commence before December 2012 due to grid connection constraints. This agreement is expected to be concluded in time.</td>
<td>August 2011</td>
</tr>
</tbody>
</table>

In July 2010 this development, along with five other community renewable energy projects in the Western Isles were given permission to connect to the grid. This *interim derogation* allows 25MW of electricity to connect to the distribution system by ‘constraining off’ generators in Skye to free up capacity on the interconnector back to Fort Augustus on the mainland.

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3 This is a form of ‘active management’ whereby the grid takes less electricity from connected generators when there are limits on the existing network.
SOURCES


RELATED BRIEFINGS

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