



Guidance Document: Key Legislation for Consenting in Scotland

The guidance documents are intended to be available for regulators and advisors as they carry out their decision-making and for developers and their consultants as they prepare consenting and licensing applications. This country-specific document presents an overview of key consenting requirements relevant for marine renewable energy development in Scotland from pre-application, through to application and post-consent and is intended mainly for developers and consultants.¹ It is not intended to replace any formal guidance or prescribe action, but rather provide a starting point for understanding the key requirements of the regulatory framework.

Scotland regulatory context

In Scottish waters a marine licence must be obtained in order to undertake activities to develop a marine renewable energy (MRE) site. The consenting process in Scotland is dependent on the generation capacity of the proposed project and whether it is located in Scottish inshore or offshore waters. Marine licences are issued by the Marine Scotland – Licensing Operations Team (MS-LOT), on behalf of Scottish Ministers.

In Scotland, the foreshore and seabed out to a distance of 12 nm are presumed to belong to The Crown, with management of this resource being the responsibility of Crown Estate Scotland.

The primary consents and permissions for MRE projects in Scottish waters are shown in Table 1. Guidance on the overall consenting and licensing regime in Scotland is available from the Scottish Government.² Additional details on receptor- and impact-specific legislation and further guidance are provided in later sections of this document.

Table 1. Primary consents and permissions, as well as the legislation and associated authority, for MRE energy projects in Scottish waters (inshore or offshore).

Legislation	Details	Issuing Authority
Marine Scotland Act 2010 & Marine and Coastal Access Act 2009	<p>Under the Marine Scotland Act 2010 the Scottish Ministers are responsible for marine licensing and enforcement in the Scottish inshore region (out to 12 nm). This includes the waters of every estuary, river, or channel, so far as the tide flows at mean high water spring tide.</p> <p>Under the Marine and Coastal Access Act 2009 Scottish Ministers also have responsibility for licensing and enforcement in the Scottish offshore region (12-200 nm).</p> <p>A Marine Licence application will be submitted to the Marine Scotland Licensing Team (MSLOT).</p>	Marine Directorate

¹ This country-specific document should be read in conjunction with the background guidance document, which can be found on *Tethys*: <https://tethys.pnnl.gov/guidance-documents>.

² <https://www.gov.scot/publications/marine-scotland-consenting-licensing-manual-offshore-wind-wave-tidal-energy-applications/>



	<p>An Environmental Impact Assessment Report (EIAR) may also be required if projects fall under Schedule 2 of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.³</p> <p>For relatively simple applications where there are no objections or complex issues raised during consultation, MS-LOT have a target of determination within 14 weeks. For more complex, larger, or potentially contentious projects applicants should allow longer for an application to be processed.</p>	
The Energy Act 2004	<p>Crown Estate Agreement for Lease – Crown Estate Scotland manages virtually the entire seabed out to the 12 nm territorial limit, including the rights to explore and utilise the natural resources of the United Kingdom (UK) continental shelf. The Energy Act 2004 also vested rights to Crown Estate Scotland to lease the generation of renewable energy and grant leases for seabed on the continental shelf within the exclusive economic zone (EEZ) out to 200 nm.</p>	Crown Estate Scotland
The Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013	<p>Pre-application Consultation (PAC)</p> <p>Prospective applicants for marine licences must undertake consultation where their activities have the potential to have significant impacts upon the environment, local communities, and other legitimate uses of the sea.</p> <p>Guidance on Marine Licensable Activities subject to Pre-Application Consultation is available from MS-LOT.⁴</p>	Marine Directorate
Electricity Act 1989	<p>Any proposal to construct, extend, or operate a generating station will require a Section 36 Consent under s.36 of the Electricity Act 1989 if situated in the:</p> <ul style="list-style-type: none"> • Scottish territorial sea (out to 12 nm from the shore), with a generation capacity in excess of 1 MW; or • Scottish Offshore Region (12 to 200 nm), with a generating station in excess of 50 MW <p>The s.36 application should cover the generating station and any inter-array cabling, whilst any offshore</p>	Marine Directorate and Scottish Ministers

³ <https://www.legislation.gov.uk/ssi/2017/115/schedule/2/made>

⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/02/marine-licensing-applications-and-guidance/documents/guidance/guidance-on-activities-subject-to-pre-application-consultation/guidance-on-activities-subject-to-pre-application-consultation/govscot%3Adocument/Guidance%2Bon%2Bactivities%2Bsubject%2Bto%2Bpre-application%2Bconsultation.pdf>



	<p>platform or cabling to the platform or to shore should be considered through a marine licence application.</p> <p>Offshore MRE projects requiring s.36 consent all fall under Schedule 2 of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.⁵</p> <p>Development of a type listed in Schedule 2 requires an EIA if it is likely to have significant effects on the environment by virtue of factors such as its nature, size, or location.</p>	
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In addition to the Section 36 consent and the Marine Licence(s), there may be additional offshore approvals, consents and licences that are required. These may include:

- EPS licences under the [Conservation \(Natural Habitats, &c.\) Regulations 1994 \(as amended\)](#) and the [Offshore Marine Regulations 2017](#).
- Basking Shark Licences under the [Wildlife and Countryside Act 1981 \(as amended\)](#) and the [Wildlife and Natural Environment \(Scotland\) Act 2011](#).
- Safety Zone applications ([Energy Act 2004](#), as amended by the Scotland Act 2016).
- Decommissioning programmes ([Energy Act 2004, as amended by the Scotland Act 2016](#)).

Further detail on each of these and other applicable regulations is provided in the sections below organized by effects on species and/or populations at risk (Table 2), habitat alteration or loss (Table 3), effects on water quality (Table 4), and effects on social and economic systems (Table 5).

Species and/or populations at risk

Potential effects on species and/or populations in Scotland are regulated by Marine Directorate, following the key legislation detailed in Table 2.

Table 2. Key legislation related to protecting species and/or populations.

Legislation	Details
Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2017	<p>The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2017⁶ implement the species protection requirements of the Habitats and Birds Directives offshore (more than 12 nm from the coast). The Offshore Marine Regulations apply to:</p> <ul style="list-style-type: none"> • The offshore marine area, • Offshore marine installations, and • Certain ships and crafts. <p>Scottish Ministers may grant licences to permit activities that would otherwise constitute an offence under the Offshore Marine Regulations.</p>

⁵ <https://www.legislation.gov.uk/ssi/2017/101/schedule/2/made>

⁶ <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species/legal-framework/offshore-marine-regulations-2017>



	<p>Before a licence can be issued:</p> <ul style="list-style-type: none"> • certain tests must be passed – these vary according to the species concerned • the Joint Nature Conservation Committee (JNCC) must advise on whether or not a licence should be granted <p>JNCC may approach NatureScot for advice on some occasions – for example, where a licence application affects species using inshore waters as well as offshore waters.</p> <p>MRE projects likely to affect marine habitats or species are subject to licensing through Marine Directorate as directed by these regulations.</p>
Wildlife and Countryside Act 1981 (as amended)	<p>Basking sharks are protected under the Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011 from intentional or reckless disturbance or harassment.</p> <p>A licence under the Basking Shark Licence (Wildlife and Countryside Act 1981 (as amended) and the Wildlife and Natural Environment (Scotland) Act 2011 may be required from Scottish Ministers to enable some of the works to commence under a Marine Licence and/or a s.36 consent.</p>
Marine Noise Registry	<p>A proposed activity form is required for any development expected to produce loud, low to medium frequency (10 Hz – 10 kHz) impulsive noise. Completion and submission during the planning application process is mandatory for consent and granting of Marine Licences and should assess and address baseline and noise impacts from the project on marine life. Regulated by Joint Nature Conservation Committee (JNCC).</p>

Habitat alteration or loss

Potential effects on habitats in Scotland are regulated by Marine Directorate, while activities relating to scientific research or conservation are licensed by NatureScot, following the key legislation detailed in Table 3.

Table 3. Key legislation related to habitat alteration or loss.

The Conservation (Natural Habitats &c.) Regulations 1994 (as amended)	<p>Under The Conservation (Natural Habitats &c.) Regulations 1994 (as amended), commonly referred to as Habitats Regulations, a development that is considered by the Competent Authority to have the potential for a likely significant effect on a European site cannot be consented until an Appropriate Assessment, undertaken by the Competent Authority, has ascertained that the development will have no adverse effect on the integrity of those European sites.</p> <p>In accordance with Regulation 48 of the Habitats Regulations, anyone applying for development consent should provide the Competent Authority with such information as may reasonably be required to enable it to determine whether an Appropriate Assessment is required. For the purposes</p>
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	of an application in Scottish offshore waters, there is one competent authority, Marine Directorate.
Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2017	<p>The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2017 implement the species protection requirements of the Habitats and Birds Directives offshore (more than 12 nm from the coast). The Offshore Marine Regulations apply to:</p> <ul style="list-style-type: none"> • The offshore marine area, • Offshore marine installations, and • Certain ships and crafts. <p>Scottish Ministers may grant licences to permit activities that would otherwise constitute an offence under the Offshore Marine Regulations. MRE projects likely to affect marine habitats or species are subject to licensing through Marine Directorate as directed by these regulations.</p>
Wildlife and Countryside Act 1981	Defines the process for determining whether habitat features of Sites of Special Scientific Interest (SSSI) may be affected by a project.

Effects on water quality

Potential effects on water quality in Scotland are regulated by Marine Directorate the key legislation detailed in Table 4.

Table 4. Key legislation related to effects on water quality.

Legislation	Details
The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended)	<p>More commonly known as the Controlled Activity Regulations (CAR) – this legislation arose from the European Community (EC)’s Water Framework Directive (WFD) becoming law in Scotland as the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act) and applies regulatory controls over activities which may affect Scotland’s water environment including rivers, lochs, transitional waters (estuaries), coastal waters groundwater, and groundwater dependant wetlands. MRE developers must be authorised by the Scottish Environment Protection Agency (SEPA) to carry out any controlled water activity. A controlled water activity is any activity which directly or indirectly has, or is likely to have, a significant adverse impact on the water environment.</p>

Effects on social and economic systems

Potential effects on social and economic systems in Scotland are regulated by the Scottish Government, following the key legislation detailed in Table 5.

Table 5. Key legislation related to effects on social and economic systems.

Legislation	Details
Energy Act 2004	<p>The Energy Act 2004 introduced two additional sections into s.36 of the Electricity Act relating to navigation. In accordance with Section 36A, Scottish Ministers have the power to make a declaration, on an application by a developer, which extinguishes public rights of navigation which pass</p>



	<p>through the place where the generating station will be established; or suspending rights of navigation for a specified period of time.</p> <p>Section 62 of the Scotland Act 2016 amends Section 95 of the Energy Act 2004, essentially making Scottish Ministers the “appropriate Minister” for safety zones around renewable energy installations. Safety zones can be established for any phase of an MRE project but are normally applied for the construction or aspects of operations and maintenance phases.</p> <p>Section 62 of the Scotland Act 2016 transfers to Scottish Ministers powers under the Energy Act Part II Chapter 2, to require developers of MRE projects in Scottish waters to prepare a decommissioning programme.</p>
<p>Historic Environment Policy for Scotland</p>	<p>Consultation with Historic Environment Scotland (HES) is required on all qualifying EIA projects in Scotland, including all Marine License applications. HES plays a role in the planning process by providing advice on the potential impacts of development on the historic environment.</p>

Additional information and key relevance for MRE consenting

This section outlines additional legislation, guidance, or planning documents that should be considered in the early stages of an MRE development in Scotland.

Marine Spatial Planning

- The main legislation for marine spatial planning, relating to all marine activities and developments, is Marine (Scotland) Act 2010, and Marine and Coastal Access Act 2009. Protected areas and species are highlighted within these plans and activities are detailed which may be permitted within protected areas including what licenses may be required and restrictions in place.
- The National Marine Plan⁷ covers the management of both Scottish inshore waters and offshore waters. This National Marine Plan sets out strategic policies for the sustainable development of Scotland's marine resources. It is required to be compatible with the UK Marine Policy Statement⁸ and existing marine plans across the UK, in particular where there is interaction between England inshore and offshore marine plans and Northern Ireland marine plans.

Adaptive Management

Adaptive management is a tool used to allow developments to potentially be consented when the environmental effects are not well understood. There is currently no specific adaptive management guidance officially adopted within Scotland. However, research into best practice has been undertaken and documented in *Adaptive management: an overview of the concept and its practical application in the Scottish context* (2016).⁹ This is a useful guide to consider and was authored by James Hutton Institute and SNH (now NatureScot) for the Scottish Government.

⁷ <https://www.gov.scot/publications/scotlands-national-marine-plan/>

⁸ <https://www.gov.uk/government/publications/uk-marine-policy-statement>

⁹ [RESAS_srp143_aD1_ReportOnRelevantAdaptiveManagementApproachesForScotland_v0.8Final.pdf](https://www.hutton.ac.uk/RESAS_srp143_aD1_ReportOnRelevantAdaptiveManagementApproachesForScotland_v0.8Final.pdf) (hutton.ac.uk)



Survey, Deploy and Monitor

Marine Directorate's draft Survey, Deploy and Monitor Licensing Policy¹⁰ aims to provide regulators and developers with an efficient risk-based approach for wave and tidal energy proposals. This policy will only be applied after developers have engaged in discussion with Marine Directorate. It should be noted that developers will still be required to provide information as required as part of the statutory licensing and consenting process, for example, an Environmental Impact Assessment (EIA) for compliance with the relevant legislation.

Additional key stakeholders and networks

- Local planning authority – Local planning authorities are statutory consultees for s.36 applications and are also fully consulted on any deemed planning components of a s.36 application. In some cases, consultation with more than one Planning Authority may be necessary.
- NatureScot – A lead public body that advises consenting authorities from local council to Scottish Ministers on natural heritage matters, provides reports and guidance annually for Scottish Government on natural heritage matters as well as offering guidance for developers during all stages of planning and pre-planning.
- Scottish Environmental Protection Agency (SEPA) – A designated consultee for planning applications under Marine Directorate although not directly responsible for licensing or regulations for any marine development (unlike for terrestrial development where SEPA would be a licensing authority).
- Northern Lighthouse Board (NLB) – is a statutory consultee for Marine Licences (MLs) and is responsible for advising on all buoys, lights, or other marking requirements and for issuing Statutory Sanction to deploy such markers.
- Marine Coastguard Agency (MCA) - is a statutory consultee for MLs and has responsibility for ensuring the navigational safety of the marine environment.
- Offshore Renewables Joint Industry Programme (ORJIP) Ocean Energy is an advisory and network programme. The programme aims to ensure that the principal EIA and Habitats Regulations Assessment consenting risks for early array deployments in the wave and tidal sectors are addressed by facilitating a strategic, coordinated, and prioritised approach to monitoring and research which is endorsed by industry, regulators, and Statutory Nature Conservation Bodies. ORJIP Ocean Energy is sponsored by The Crown Estate, Marine Directorate, Welsh Government, NatureScot, Natural Resources Wales, and Crown Estate Scotland.
- Fisheries and other sea users should be consulted through local and national fisheries associations and other sector representatives.

Useful links

- Marine Directorate marine licensing webpage: <https://www.gov.scot/publications/marine-licensing-applications-and-guidance/>
- Marine Scotland Consenting and Licensing Guidance document: [Offshore wind, wave and tidal energy applications: consenting and licensing manual](#)

¹⁰ <https://tethys.pnnl.gov/sites/default/files/publications/Survey-Deploy-Monitor-Licensing-Policy-Guide.pdf>



Guidance Documents



Country Specific Documents



Scotland

- Marine Scotland licensing and consent webpage: [Marine, fisheries and seal licensing: Marine licensing: general guidance](#)
- NatureScot wave and tidal energy webpage: [Wave and tidal energy consenting Guidance | NatureScot](#)
- EMEC Consenting webpage: [EMEC: European Marine Energy Centre Consenting information](#)
- NatureScot HRA webpage : <https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra>