William Black

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Strategic Co-ordination and Energy Consents

Directorate for Energy and Climate Change

Scottish Government

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Glasgow, G2 8LU

*CC. Claire Jones, Head of Onshore Electricity Policy, The Scottish Government
Rebecca Young, Senior Planner, The Scottish Government*

25 May 2022

Dear Mr Black,

**Recommendations of reform to the Electricity Act 1989 (EA1989) to improve consenting timescales for renewable energy projects in Scotland**

Scottish Renewables is the voice of Scotland’s renewable energy industry. Our vision is for Scotland leading the world in renewable energy. We work to grow Scotland’s renewable energy sector and sustain its position at the forefront of the global clean energy industry. We represent over 300 organisations that deliver investment, jobs, social benefit and reduce the carbon emissions which cause climate change.

Our members work across all renewable energy technologies, in Scotland, the UK, Europe and around the world, ranging from energy suppliers, operators and manufacturers to small developers, installers, and community groups, as well as companies throughout the supply chain. In representing them, we aim to lead and inform the debate on how the growth of renewable energy can help sustainably heat and power Scotland’s homes and businesses.

I am writing to share with you Scottish Renewables’ recommendations of reform to the Electricity Act 1989 (EA1989) to improve consenting timescales for renewable energy projects in Scotland.

The context for these recommendations is that renewable energy developments requiring consent under Section 36 (S36) of the EA1989 are the projects which will contribute the most to meeting The Scottish Government’s target of reducing greenhouse gas emissions by 75% by 2030 and Net-Zero by 2045.

There are currently no statutory periods for determining S36 applications in general or, which regulate the inquiry process, meaning that timescales vary hugely and are unpredictable. The average application under S36 takes approximately 3 years to determine. As a result, consenting timescales are being outpaced by technological advancements, which results in applicants re-entering the planning system to obtain variations, further adding to total consenting timescales. The length of determination period needs to be significantly reduced if Scotland is to meet its 2030 target.

In addition, developers and investors in renewable energy projects require greater certainty on when a statutory process will yield an outcome. This is required to plan their route to market and to match the timing of the likely determination of a consent with the planned dates for investment decisions, arrangements for grid connections and applications for support through the Contract for Difference scheme.

For all the reasons above, developers of renewable energy projects consider that legislative reform is now essential, to provide a system which consistently enables timely delivery of renewable energy projects with predictable timescales.

A set of proposed legislative amendments has been prepared and are enclosed with this letter. If implemented, these changes will increase the clarity and certainty of the S36 consent process, so that all participants are aware of what is required from them and the timings of their involvement.

In summary, if Scotland is to achieve its 2030 targets and go on to become Net-Zero by 2045, then we strongly believe that these recommendations need to be implemented.

Many thanks for your time and consideration.

Yours sincerely,

**Mark Richardson
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Scottish Renewables

**Electricity Act 1989 Reform Proposals**

**Explanatory Note**

1. **INTRODUCTION**
	1. This note sets out proposals to reform the statutory framework and related administrative process for consents under section 36 of the Electricity Act 1989 (**EA1989**) to streamline the consenting process for renewable energy projects > 50MW, with a particular focus on onshore wind energy developments. Changes that might be made to appeal/inquiry processes for planning applications are beyond the scope of this note.
	2. The proposals at this stage relate to 3 specific elements highlighted as being of interest to the Energy Consents Unit (**ECU**)[[1]](#footnote-2):
		1. amendments to aspects of the EA1989 relating to determination process and timescales;
		2. new guidance to introduce a voluntary pre-application consultation mechanism for developers to pay for meeting(s) with and meaningful/bespoke advice from key consultees; and
		3. an amendment to the Code of Practice for Handling Inquiries (the **Code**) under Section 62 and Schedule 8 to the Electricity Act 1989 to strengthen the use of agreed statement of common ground.
2. **PROPOSED LEGISLATIVE AMENDMENTS**
	1. The proposed amendments to the EA1989 are set out at Appendix 1 of this Explanatory Note.[[2]](#footnote-3)

Fixed determination timescales

* 1. The introduction of fixed *maximum[[3]](#footnote-4)* determination timescales is the key aspect of the proposals set out in this Explanatory Note. As a minimum it is proposed that statutory longstop periods are introduced for key stages, to ensure cases are determined in a timely fashion and to provide increased predictability for all parties, with broadly consistent timescales, in particular:
		1. a maximum period to determine S36 application from receipt by Energy Consents Unit (**ECU**) of 9 months if no PLI is to be held[[4]](#footnote-5). The Scottish Ministers would be required to confirm whether or not a PLI is to take place within 6 months from receipt of the application.[[5]](#footnote-6),[[6]](#footnote-7)
		2. if a PLI is to be held:
			1. a maximum period within which the DPEA must schedule and hold a PIM or otherwise confirm inquiry programme in writing of 2 months.[[7]](#footnote-8)
			2. a maximum period within which the inquiry must be concluded following (a) above of 4 months.[[8]](#footnote-9)
			3. a maximum period within which the inquiry report must be written and submitted by the Reporter to the Scottish Ministers of 3 months.[[9]](#footnote-10)
			4. a maximum period for the Scottish Ministers to issue a decision from receipt of Inquiry Report of 3 months.[[10]](#footnote-11)
			5. taking the above together, the maximum period to determine a S36 application from receipt by the ECU with a PLI would be 18 months.
		3. A diagram showing the proposed fixed timescales applicable to those applications subject to PLI is included at Appendix 2.
		4. In each scenario (with or without PLI), it would remain the case that timescales could be extended but only by agreement between the applicant and the Scottish Ministers. In making a request for an extension of time, the Scottish Ministers would be required to give reasons for the extension.
	2. New supporting definitions are added in the new paragraph 9 of Schedule 8.
	3. Our proposal is that timescales can be paused if there is a need to consider additional environmental information. Consequential amendments to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 may be required to provide for this.

Mechanism to deal with LPA failure to respond

* 1. Paragraph 2 of Schedule 8 is amended to introduce new subparagraphs 3A and 3B. The new wording provides that where no response is received from the relevant planning authority within the timescales required by the relevant regulations, the applicant has the option to request that a public inquiry is held. While this option may be used sparingly, it ensures that an application can progress and is not left in limbo for long periods. A public inquiry would not be triggered by default in the absence of a response from the relevant planning authority.
	2. The public inquiry procedures set out in section 62 and the remainder of Schedule 8 would apply in the same manner to public inquiries instigated by an applicant’s request.

Alignment of statutory challenge period for onshore projects with those applicable offshore

* 1. Section 36D(3) is amended to remove the qualification that the statutory proceedings for questioning decisions under S36 applies to all projects, not just those in “relevant waters” (i.e. offshore).
	2. This would provide uniformity of the challenge period across S36 offshore, appeals under the Town and Country Planning (Scotland) Act 1997 and S36 onshore, which is currently an anomaly at 3 months. A related amendment in respect of the available grounds of challenge is proposed to paragraph 5B of Schedule 8.

Power for Scottish Ministers to make regulations

* 1. At section 36(8A), it is proposed that the power to make regulations which make provision about the grant of S36 consents is broadened so that it covers the Scottish Ministers as well as the Welsh Ministers. This would allow adjustments of the S36 consenting framework to be made by secondary legislation rather than requiring further amendments to the EA1989. If this amendment were to be accepted, Schedule 8 would be repealed, with the contents replicated in regulations.[[11]](#footnote-12)
1. **NEW GUIDANCE & PROTOCOLS ON PRE-APPLICATION CONSULTATION**
	1. Another proposal is the introduction of stronger guidance and protocols to facilitate voluntary pre-application consultation for developers, with the option to pay for meeting(s) with and receive bespoke advice from key consultees. We do not believe any statutory changes would be required to implement this.
	2. The aim would be to get tailored and meaningful advice during pre-application, going beyond the “template” or “pro-forma” responses that are common in the context of EIA scoping requests, to front-load discussions on a project’s principal issues and allow parties to work towards early resolution.
	3. The difficulties that key stakeholders have with resourcing consideration of application proposals are understood. If any issues which arise because of a proposal can be resolved or at least clarified earlier in the process, this will save time and cost for all later. The potential for this advice to be funded separately by a developer will allow stakeholders to dedicate more staff and time to their consideration of proposals pre-application and provide bespoke commentary.
	4. We would anticipate this guidance being applicable to NatureScot, SEPA and Historic Environment Scotland. Given the broader statutory duties applicable to these bodies under their founding legislation, we do not consider there to be a conflict between the neutrality of the advice provided and payments made by the developer.
2. **AMENDMENTS TO CODE OF PRACTICE TO STREAMLINE & STRENGTHEN ROLE OF SOCG.**
	1. Paragraph 23 of the Code encourages those participating in hearing or inquiry sessions to provide statements of agreed matters (**SOAM**) wherever possible. The Code highlights that the SOAM should include one covering the relevant policies applicable to the case and another covering suggested conditions and heads of terms of any legal agreement.
	2. In practice, SOAMs tend to cover similar themes and have similar content. In our view, the process for preparing and agreeing SOAMs could be streamlined by replacing SOAMs with statements of matters in dispute (SOMIDs). This would assist in narrowing the matters at issue in any further procedure and avoid the need to make submissions on matters which are agreed among the applicant and key interested parties. The SOMID could begin as a style or “model” SOAM, which would allow parties to opt in or out of particular statements. Matters which are agreed would then be deleted from the SOMID to reduce the length and complexity of the document.
	3. For illustration purposes, the table below presents an outline of the SOMID proposal, with suggested topics provided by way of example. The Code would be amended to refer to the style SOAM and the use of development specific SOMIDs and encourage parties to use the style SOAM to produce a SOMID. The use of a SOMID developed from standard form SOAM would not preclude parties from entering additional SOAM or SOMID to address project or topic specific matters.

|  |  |  |
| --- | --- | --- |
| **Subject Matter** | **Planning Authority Comment** | **[Insert column for other PLI participants]** |
| **Legal, energy and planning policy context** |
| The applicant has complied with the applicable statutory duties set out in Schedule 9 of the EA1989.  | [Agreed / Not Agreed, with reasons] |  |
| The climate emergency is a material consideration in planning terms and should be afforded significant weight.  | [Agreed / Not Agreed, with reasons] |  |
| There is a specific need to provide additional onshore wind capacity, which is in line with government policy. | [Agreed / Not Agreed, with reasons] |  |
| The relevant national policy documents are as follows: * Onshore Wind Policy Statement
* Scottish Energy Strategy
* *[drafting note: expand list as appropriate]*
 | [Agreed / Not Agreed, with reasons] |  |
| In terms of the spatial framework set out in Table 1 of SPP, the application site lies within a Group [1 / 2 / 3] area.  | [Agreed / Not Agreed, with reasons] |  |
| Relevant policy in the development plan will be a material consideration. | [Agreed / Not Agreed, with reasons] |  |
| The development plan is [*insert details*]. | [Agreed / Not Agreed, with reasons] |  |
| The relevant development plan policies are: [*insert details*]. | [Agreed / Not Agreed, with reasons] |  |
| *[Further statements to be inserted*…] | [Agreed / Not Agreed, with reasons] |  |
| **Environmental Impact Assessment (EIA)** |
| The EIA Report has been carried out in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and industry practice. | [Agreed / Not Agreed, with reasons] |  |
| The methodologies used in and the studies undertaken for the EIA Report follow relevant guidance or are otherwise appropriate. | [Agreed / Not Agreed, with reasons] |  |
| There is adequate environmental information on the likely significant effects of the proposed development for the purposes of the inquiry and for determination of the application.  | [Agreed / Not Agreed, with reasons] |  |
| The following are likely significant effects of the development that are relevant to the council’s objection:*[insert site specific effects*] | [Agreed / Not Agreed, with reasons] |  |
| *[Further statements to be inserted*…] |  |  |
| **Habitat Regulations Assessment** |
| Sufficient information has been provided by the applicant to allow the competent authority to undertake any necessary appropriate assessment. | [Agreed / Not Agreed, with reasons] |  |
| The proposed development (alone or in combination) is not predicted to give rise to an adverse effect on the integrity of any European site(s).  | [Agreed / Not Agreed, with reasons] |  |
| **Position on Relevant Issues** |
| Subject in some cases to application of appropriately worded conditions, the development is acceptable in relation to the following planning considerations:**[add / adjust list as applicable]**1. Climate and carbon emissions;
2. Ecology;
3. Ornithology;
4. Hydrogeological;
5. Noise
6. Tourism
7. Cultural heritage
8. Aviation
9. Shadow flicker
10. Residential amenity
11. *[drafting note: list to be developed as appropriate]*
 | [Agreed / Not Agreed, with reasons] |  |
| There is disagreement as to the acceptability of the proposed development in relation to the following planning considerations:**[add / adjust list as applicable]**1. Landscape and visual effects
 | [Agreed / Not Agreed, with reasons] |  |
| **Conditions** |
| *[Attach schedule (tabular format) of agreed conditions and those where areas of dispute remain, with reasoning in the centre and right hand columns. List here the conditions which are the subject of disagreement.]* |  |  |
| **Legal Agreement** |
| A legal agreement under section 75 of the TCPA is not necessary in order to make the proposed development acceptable. | [Agreed / Not Agreed, with reasons] |  |

**Appendix 1 – Proposed amendments to the Electricity Act 1989**

Note: The following extract includes only provisions which are relevant for section 36 projects in Scotland.

**36.‑ Consent required for construction etc. of generating stations.**

* 1. Subject to subsections [(1A) to][[12]](#endnote-2) (2) and (2C) below, a generating station shall not be constructed [at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be][[13]](#endnote-3) extended or operated except in accordance with a consent granted by the [appropriate authority][[14]](#endnote-4).
		1. **[**So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).
		2. So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.**]**[[15]](#endnote-5)
		3. **[**This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).**]**[[16]](#endnote-6)
		4. **[**Subsection (1) does not apply to an English or Welsh onshore wind generating station.
		5. "English or Welsh onshore wind generating station" means a generating station that‑
			1. generates electricity from wind, and
			2. is situated in England or Wales, but not in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea.**]**[[17]](#endnote-7)
	2. Subsection (1) above shall not apply to a generating station whose capacity‑
		+ 1. **[**in the case of a generating station otherwise than in Wales,**]**[[18]](#endnote-8) does not exceed the permitted capacity, that is to say, 50 megawatts; **[...]**[[19]](#endnote-9)
			2. in the case of a generating station which is to be constructed or extended **[**otherwise than in Wales**]**[[20]](#endnote-10), will not exceed the permitted capacity when it is constructed or extended;
			3. **[**in the case of a generating station in Wales, does not exceed the devolved capacity, that is to say, 350 megawatts; and
			4. in the case of a generating station which is to be constructed or extended in Wales, will not exceed the devolved capacity when it is constructed or extended;**]**[[21]](#endnote-11)

and an order under this subsection may make different provision for generating stations of different classes or descriptions.

* 1. The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
	2. The **[**appropriate authority**]**3 may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.
	3. **[**Subject to subsections (5A) and (5B), a**]**[[22]](#endnote-12) consent under this section—
		+ 1. may include such conditions (including conditions as to the ownership or operation of the station) as appear to the **[**appropriate authority**]**3 to be appropriate; and
			2. shall continue in force for such period as may be specified in or determined by or under the consent.
		1. **[**In the case of a generating station in respect of which a controlled activity, the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
		2. In the event that the conditions of a consent granted under subsection (1) on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ, and cannot reasonably be reconciled, the relevant conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.**]**[[23]](#endnote-13)
	4. Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
	5. No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of **[**—**]**[[24]](#endnote-14)
		+ 1. **[**the Welsh Ministers, if they are the appropriate authority, or
			2. the Secretary of State, in all other cases.**]**13
	6. The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.
	7. [The appropriate authority may by regulations make provision about the grant of consents under section 36 in relation to generating stations in respect of which they are the appropriate authority, including in particular provision about—
		+ 1. the making and withdrawal of applications;
			2. fees;
			3. publicity and consultation requirements;
			4. rights to make representations;
			5. public inquiries;
			6. consideration of applications.
		1. The Welsh Ministers may by regulations make provision for applications in respect of which they are the appropriate authority to be determined by a person appointed by them for that purpose.**]**[[25]](#endnote-15)
	8. In this Part "extension", in relation to a generating station, includes the use by the person operating the station of any land **[**or area of waters**]**[[26]](#endnote-16) (wherever situated) for a purpose directly related to the generation of electricity by that station and "extend" shall be construed accordingly.
	9. **[**In this section "appropriate authority" means—
		+ 1. the Scottish Ministers, in relation to a generating station in or to be constructed in Scotland;
			2. the Welsh Ministers, in relation to a generating station in or to be constructed in Welsh waters that—
				1. does not exceed the devolved capacity, that is to say, 350 megawatts;
				2. in the case of a generating station which is to be constructed or extended, will not exceed the devolved capacity when constructed or extended;
			3. the Secretary of State, in all other cases.
	10. In this section -

"Scotland" has the same meaning as in section 32(2) (see section 32(3));

"Welsh waters" means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone;

"Welsh zone" has the meaning given in section 158 of the Government of Wales Act 2006.**]**[[27]](#endnote-17)

[36D Proceedings for questioning certain decisions under section 36

* 1. If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the "aggrieved person") may make an application to the Inner House of the Court of Session under this section.
	2. The grounds are that -
		+ 1. the decision is not within the powers of the Scottish Ministers under this Part,
			2. one or more of the relevant requirements have not been complied with in relation to the decision.
	3. This section applies to a decision under section
	4. in relation to an application for consent to construct, extend or operate a generating station.
	5. An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.
	6. On an application under this section, the Inner House of the Court of Session -
		+ 1. may suspend the decision until the final determination of the proceedings,
			2. may quash the decision either in whole or in part if satisfied that -
				1. the decision in question is not within the powers of the Scottish Ministers under this Part, or
				2. the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
	7. In this section -

**[**"relevant waters" means -

* + - 1. waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
			2. waters in the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 as the area in which the Scottish Ministers are to have functions;**]**[[28]](#endnote-18)

"the relevant requirements", in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.**]**[[29]](#endnote-19)

[36E Applications under section 36D: requirement for permission

* 1. No proceedings may be taken in respect of an application under section 36D(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.
	2. The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that -
		+ 1. the applicant can demonstrate a sufficient interest in the subject matter of the application, and
			2. the application has a real prospect of success.
	3. The Court may grant permission under subsection (1) for an application to proceed -
		+ 1. subject to such conditions as the Court thinks fit, or
			2. only on such of the grounds specified in the application as the Court thinks fit.][[30]](#endnote-20)l

**38.‑ Preservation of amenity and fisheries.**

The provisions of Schedule 9 to this Act (which relate to the preservation of amenity and fisheries) shall have effect.

[[31]](#endnote-21)

**62.— Public inquiries.**

(1) The Secretary of State may cause an inquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of [ the Authority] 1 under section 25 above are or may be exercisable [ or a matter relating to a function which is exercisable by the Scottish Ministers] 2 [or the Welsh Ministers] 3 .

[(1A) The Scottish Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of a function under this Part. ] 4

[(1B) The Welsh Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of any function under this Part. ] 5

(2) The provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 or subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local inquiries) shall apply in relation to any inquiry held under this Part as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.

(3) Where— (a) an inquiry is to be [ caused to be held by the Secretary of State ] 6 under this Part [ or Schedule 16 to the Energy Act 2004 ] 7 in connection with any matter; and (b) in the case of some other matter required or authorised (whether by this Part [ , that Schedule ] 8 or by any other enactment) to be the subject of an inquiry (“the other inquiry”), it appears to the relevant Minister or Ministers that the matters are so far cognate that they should be considered together, the relevant Minister or Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.

(4) In subsection (3) above “the relevant Minister or Ministers” means the Secretary of State or, where causing the other inquiry to be held is a function of some other Minister of the Crown, the Secretary of State and that other Minister acting jointly.

[(5) Where– (a) an inquiry is to be caused to be held by the Scottish Ministers under this Part in connection with any matter; and (b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Scottish Ministers, it appears to the Scottish Ministers that the matters are so far cognate that they should be considered together, the Scottish Ministers may direct that the two inquiries be held concurrently or combined as one inquiry. ] 9

[(6) Where— (a) an inquiry is to be caused to be held by the Welsh Ministers under this Part or Schedule 16 to the Energy Act 2004 in connection with any matter; and (b) in the case of some other matter required or authorised (whether by this Part, that Schedule or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Welsh Ministers, it appears to the Welsh Ministers that the matters are so far cognate that they should be considered together, the Welsh Ministers may direct that the two inquiries be held concurrently or combined as one inquiry. ] 10

**SCHEDULE 8**

**CONSENTS [OF THE SECRETARY OF STATE AND THE SCOTTISH MINISTERS]**[[32]](#endnote-22) **UNDER SECTIONS 36 AND 37**

**Section 36(8)**

1. Applications for consent
	1. An application for a consent under section 36 or 37 of this Act shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land -
		* 1. on which the generating station is proposed to be constructed, extended or operated; or
			2. across which the electric line is proposed to be installed or kept installed.
	2. An application for a consent under section 37 of this Act shall also state -
		* 1. the length of the proposed line and its nominal voltage; and
			2. whether all necessary wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,

and shall be supplemented, if the Secretary of State so directs, by such additional information as may be specified in the direction.

* 1. The Secretary of State may by regulations make provision for determining the fees to be paid on applications for consent under section 36 or 37 of this Act, and the circumstances in which they are to be paid.
	2. Any sums received by the Secretary of State under this paragraph shall be paid into the Consolidated Fund.
1. Objections by relevant planning authority
	1. Where an application is made to the Secretary of State for his consent under section 36 or 37 of this Act, notice of the application shall be served on the relevant planning authority.
	2. Where the relevant planning authority notify the Secretary of State that they object to the application and their objection is not withdrawn, the Secretary of State -
		* 1. shall cause a public inquiry to be held; and
			2. before determining whether to give his consent, shall consider the objection and the report of the person who held the inquiry.
	3. For the purposes of sub-paragraph (2) above the Secretary of State may make regulations limiting the time within which notification of objections may be made to the Secretary of State by relevant planning authorities, and providing that objections which are not notified within the time so limited may be disregarded for those purposes.

[(3A) Where:

(a) the Secretary of State or the Scottish Ministers have made regulations under paragraph 2(3) limiting the time within which notification of objections may be made;

(b) the relevant time period has expired; and

(c) no objection by the relevant planning authority has been notified to the Scottish Ministers,

the applicant may by notice request that the Scottish Ministers cause a public inquiry to be held.

(3B) Where the Scottish Ministers receive a notice under paragraph (3A), and the notice is not withdrawn, the relevant planning authority shall be deemed to have objected to the application in question and the Scottish Ministers shall cause a public inquiry to be held.]

(3C) Where:

(a) the Secretary of State or the Scottish Ministers have made regulations under paragraph 2(3) limiting the time within which notification of objections may be made and that such time period may be extended by agreement; and

(b) the relevant planning authority wishes to seek agreement to an extension of the relevant time period,

then:

(i) the relevant planning authority must request the extension of the relevant time period by notice in writing no later than the expiry of the relevant time period;

(ii) the notice under paragraph (3C)(i) must be accompanied by a statement of reasons setting out the reasons why the relevant planning authority is unable to respond within the relevant time period and the actions being taken by the relevant planning authority to address those reasons; and

(iii) the extension of the relevant time period shall be no greater than a period of 30 days following the expiry of the relevant period.

(3D) The Scottish Ministers shall take into account any statement of reasons provided in accordance with paragraph (3C) in deciding whether to agree to any request for an extension of the relevant time period.

* 1. Sub-paragraph (2)(a) shall not apply where any of the following applies [(a) the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection of the relevant planning authority [or (b) the [Secretary of State] is satisfied that the objection does not raise matters of [national importance] or (c) the [Secretary of State] is satisfied that the objection does not raise any novel or complex matters or factual disputes where the public interest would be served by examining or testing such matters through an oral process].
	2. The Secretary of State may make regulations providing that, in relation to applications for consent under section 37 of this Act for electric lines of a nominal voltage less than 132 kilovolts, the provisions of this paragraph shall have effect with such modifications as may be prescribed.
	3. In this Schedule "relevant planning authority" -
		+ 1. in relation to **[**land in England **[**...**]**[[33]](#endnote-23) which is not in a National Park for which a National Park authority is the local planning authority**]**[[34]](#endnote-24), means a local planning authority within the meaning of **[**the Town and Country Planning Act 1990**]**[[35]](#endnote-25), except that in relation to a non-metropolitan county and an application for consent under section 37 of this Act it includes the county planning authority only -
				1. **[**…**]**[[36]](#endnote-26)
				2. where the line will have a nominal voltage of not less than 132 kilovolts;

**[**(aa) in relation to land in England **[**...**]**[[37]](#endnote-27) which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; **[**and**]**[[38]](#endnote-28) **]**[[39]](#endnote-29)

**[**(aa) in relation to Wales, means a local planning authority;**]**6

* + - 1. in relation to Scotland, means a general planning authority, or a district planning authority, within the meaning of Part IX of the Local Government (Scotland) Act 1973.
1. Objections by other persons
	1. The Secretary of State may by regulations make provision for securing -
		* 1. that notice of any application for consent under section 36 or 37 of this Act shall, in such circumstances as may be prescribed by the regulations, be published in such manner as may be so prescribed;
			2. that notice of any such application shall, in such circumstances as may be prescribed by the regulations or where the Secretary of State so directs, be served on such persons as may be so prescribed or, as the case may be, specified in the direction;
			3. that every notice published or served in pursuance of the regulations shall state the time within which, and the manner in which, objections to the application may be made by persons other than the relevant planning authority, and that the time so stated shall not be less than such minimum period as may be prescribed by the regulations; and
			4. that, in so far as any such notice requires objections to be sent to any person other than the Secretary of State, copies of the objections shall be sent to the Secretary of State by that person;

and in relation to applications for consent under section 36 of this Act to the extension of a generating station or to the operation of such a station in a different manner, the regulations may include provision for enabling the Secretary of State to give directions dispensing with the requirements of the regulations in such cases as he thinks fit.

* 1. Where in the case of an application for consent under section 36 or 37 of this Act -
		+ 1. the Secretary of State is not required by virtue of paragraph (2) above to cause a public inquiry to be held; but
			2. objections or copies of objections have been sent to the Secretary of State in pursuance of regulations made under this paragraph,

the Secretary of State shall consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

1. Public inquiries
	1. Where in accordance with paragraph 2(2), 2(3B) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act, the Secretary of State shall inform the applicant accordingly; and the applicant shall in two successive weeks publish a notice stating—
		* 1. the fact that the application has been made, and the purpose of it, together with a description of the land to which it relates;
			2. a place in the locality where a copy of the application, and of the map referred to in it, can be inspected;
			3. the place, date and time of the pre-inquiry meeting; and
			4. the place, date and time of the public inquiry.
	2. A notice under sub-paragraph (1) above shall be published in one or more local newspapers circulating in the locality in which the land in question is situated, or circulating respectively in the several localities in which different parts of that land are situated, as the applicant may consider appropriate.
	3. If it appears to the Secretary of State that, in addition to the publication of a notice in accordance with sub-paragraphs (1) and (2) above, further notification of the public inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in paragraphs (1)(a) to (1)(c) of sub-paragraph (1) above is sufficiently made known to persons in the locality, the Secretary of State may direct the applicant to take such further steps for that purpose as may be specified in the direction.
	4. Where in accordance with paragraph 2(2)4.– (2) or 3(2) above a public inquiry is to be held in respect of an application for consent under section 36 or 37 of this Act and the Secretary of State is proceeding concurrently as mentioned in section 61(2) or (4) of this Act, the public inquiry shall extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry (in addition to any other matters required to be stated in it) shall indicate the extent of the inquiry accordingly.
	5. In the application of this paragraph to Scotland, for sub-paragraphs (1) to (3) there shall be substituted the following sub-paragraph-

"
(1) Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held, and it appears to the Secretary of State that in addition to any public notice of such an inquiry any further notification concerning the inquiry is necessary or expedient (either by way of service of notice upon any person or in any other way), the Secretary of State may direct the applicant to take such further steps for this purpose as may be specified in the direction.
"

[(6) A notice under this paragraph 4(1) must be served within the earlier of:

(a) 6 months of the date of receipt by the Scottish Ministers of an application made under paragraph 1; and

(b) 28 days of the date of receipt by the Scottish Ministers of a notice by the applicant under paragraph 2(3A).

(7) Where additional information is provided by the applicant, the timescales set out at paragraph (6) shall be extended by a period of [30 days]. ]

**[4A. – Timescales for decisions where no public inquiry to be held**

(1) Where the Scottish Ministers:

(a) have received an application made under paragraph 1; and

(b) have not served notice that a public inquiry is to be held under paragraph 4,

the Scottish Ministers must give notice to an applicant of their decision within 9 months beginning with the date of receipt by the Scottish Ministers of an application made under paragraph 1.

* 1. Paragraph (1) does not apply where the applicant and the Scottish Ministers agree an extended period is to apply.
	2. Where the Scottish Ministers make a request of the applicant for agreement to extend the period specified in paragraph (1), such a request must be accompanied by a statement of reasons setting out the reasons why the Scottish Ministers are unable to comply with the timescale specified in paragraph (1).
	3. Where additional information is provided by the applicant, the timescales set out at paragraph (1) shall be extended by a period of [30 days].

**4B. – Procedure where a public inquiry is to be held**

(1) This paragraph applies where the Scottish Ministers:

 (a) have received an application made under paragraph 1; and

 (b) have served notice that a public inquiry is to be held under paragraph 4.

(2) The Scottish Ministers must either:

(a) cause a pre-inquiry meeting to be held; or

(b) confirm in writing the procedure which is to apply to the public inquiry to-

 (i) the applicant;

 (ii) the relevant planning authority;

(iii) the any other person on whom notice of the public inquiry has been served under paragraph 4; and

 (iv) any other person the Scottish Ministers consider appropriate,

within 2 months of the date of first publication of the notice under paragraph 4(1).

(3) Where the Scottish Ministers cause a pre-inquiry meeting to be held under paragraph 4(2), the Scottish Ministers must invite to the pre-inquiry meeting-

 (a) the applicant;

 (b) the relevant planning authority;

 (c) any other person on whom notice of the public inquiry has been served under paragraph 4; and

 (d) any other person the Scottish Ministers consider appropriate.

(4) The purposes of the pre-inquiry meeting are –

 (a) to enable invitees present at the meeting to make representations to the Scottish Ministers about how the application should be considered; and

 (b) to discuss any other matter that the Scottish Ministers consider appropriate.

(5) Paragraphs (2) – (4) do not prevent the Scottish Ministers from holding additional meetings regarding how the application should be considered.

(6) The Scottish Ministers must conclude the procedure for the public inquiry within 4 months beginning on the date of the pre-inquiry meeting or the written confirmation of the procedure applicable to the public inquiry under paragraph 4B(2).

(7) Where a person is appointed to conduct the public inquiry and report to the Scottish Ministers thereon under section 210(2) of the Local Government (Scotland) Act 1963 (the “appointed person”), the appointed person must issue their report to the Scottish Ministers within 3 months beginning on the date of conclusion of the public inquiry under paragraph 4B(6).

(8) The Scottish Ministers must give notice to an applicant of their decision within the earlier of:

 (a) 3 months of their receipt of the report from the appointed person; and

 (b) 6 months of the conclusion of the public inquiry under paragraph 4B(6).

(9) The time periods set out in paragraphs 4B(2), (6), (7) and (8) do not apply where the applicant and the Scottish Ministers agree an extended period is to apply.

(10) Where the Scottish Ministers make a request of the applicant for agreement to extend any of the periods specified in paragraph 4B(2), (6), (7) and (8), such a request must be accompanied by a statement of reasons setting out the reasons why the Scottish Ministers are unable to comply with the relevant timescale.

(11) Where additional information is provided by the applicant, the timescales set out at paragraph 4B(2), (6), (7) and (8) shall be extended by a period of [30 days].

**Notes**

Extent

Sch. 8 para. 4A and 4B: Scotland

1. Provisions supplementary to paragraphs 2 to 4
	1. Where in accordance with paragraph 2(2) or 3(2) above a public inquiry is to be held and the application for consent relates to land in the areas of two or more relevant planning authorities—
		* 1. the application shall not be the subject of a public inquiry in so far as it relates to land which is not within the area of a planning authority who have notified the Secretary of State that they object to the application, unless the Secretary of State otherwise directs having regard to objections by other persons of which he has notice; and
			2. in so far as the application is to be the subject of a public inquiry in relation to land in the areas of two or more relevant planning authorities, the Secretary of State may direct that separate public inquiries shall be held;

and, where the Secretary of State gives any such directions, the provisions of paragraphs 2 to 4 above shall apply with the necessary modifications.

* 1. For the purposes of sub-paragraph (1)(a) above a relevant planning authority who have notified the Secretary of State that they object to the application shall be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as will give effect to the objection.

[5B Proceedings for questioning certain decisions under paragraph 3(2)

* 1. If a person is aggrieved by a decision of the Scottish Ministers to which this paragraph applies, and wishes to question the validity of the decision on either of the grounds mentioned in sub-paragraph (2), the person (the "aggrieved person") may make an application to the Inner House of the Court of Session under this paragraph.
	2. The grounds are that -
		+ 1. the decision is not within the powers of the Scottish Ministers under this Schedule,
			2. one or more of the relevant requirements have not been complied with in relation to the decision.
	3. This paragraph applies to a decision under paragraph 3(2) as to whether a public inquiry should be held with respect to an application for consent to construct, extend or operate a generating station.
	4. An application under this paragraph must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.
	5. On an application under this section, the Inner House of the Court of Session -
		+ 1. may suspend the decision until the final determination of the proceedings,
			2. may quash the decision either in whole or in part if satisfied that -
				1. the decision in question is not within the powers of the Scottish Ministers under this Schedule, or
				2. (the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
	6. In this paragraph

**[**"relevant waters" means

* + - 1. waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
			2. waters in the area designated by the Renewable Energy Zone (Designation of Area) (Scottish Ministers) Order 2005 as the area in which the Scottish Ministers are to have functions;

**]**[[40]](#endnote-30)

"the relevant requirements", in relation to a decision to which this paragraph applies, means the requirements of this Act, or of any regulations made under this Schedule, which are applicable to that decision.**]**[[41]](#endnote-31)

[5C Applications under paragraph 5B: requirement for permission

* 1. No proceedings may be taken in respect of an application under paragraph 5B unless the Inner House of the Court of Session has granted permission for the application to proceed.
	2. The Court may grant permission under sub-paragraph (1) for an application to proceed only if it is satisfied that -
		+ 1. the applicant can demonstrate a sufficient interest in the subject matter of the application, and
			2. the application has a real prospect of success.
	3. The Court may grant permission under subsection (1) for an application to proceed -
		+ 1. subject to such conditions as the Court thinks fit, or
			2. only on such of the grounds specified in the application as the Court thinks fit.**]** [[42]](#endnote-32)

[7A Generating stations not within areas of relevant planning authorities

* 1. This paragraph applies to every case where an application for a consent under section 36 of this Act relates to -
		+ 1. the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
			2. the extension of a generating station at or to a place the whole or a part of which is not within such an area.
	2. This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
	3. In paragraph 1(1), for the words from `land to which' onwards substitute `place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated.'
	4. Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
	5. In paragraph 4 -
		+ 1. in sub-paragraph (1) -
				1. in paragraph (a), for `land' substitute `place'; and
				2. in paragraph (b), for `in the locality' substitute `in the area specified in or determined in accordance with regulations made by the Secretary of State';
			2. in sub-paragraph (2), for the words from `the locality' onwards substitute `the area specified in or determined in accordance with regulations made by the Secretary of State.'; and
			3. in sub-paragraph (3), for `in the locality' substitute `who are likely to be affected by the consent applied for if it is given'.
	6. Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
		+ 1. a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and
			2. the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
	7. Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.
	8. The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
	9. The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following -
		+ 1. so much of the application as relates to land within the area of a particular relevant planning authority;
			2. so much of the application as relates to anywhere that is not within the area of a relevant planning authority.
	10. For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.**]**[[43]](#endnote-33)
1. Supplemental
	1. In this Schedule "relevant planning authority" has the meaning given by paragraph 2(6) above.
		1. **[**In this Schedule references to applications for consent shall not include applications to the Welsh Ministers.**]**[[44]](#endnote-34)
	2. In section 149 of the Local Government, Planning and Land Act 1980, each of the following, namely -
		* 1. subsection (3)(a) (power of Secretary of State to confer on urban development corporation functions of local planning authority in England and Wales); and
			2. subsection (8)(a) (which makes corresponding provision in relation to Scotland),

shall have effect in relation to the provisions of this Schedule (so far as applying to applications for consent under section 37 of this Act) as it has effect in relation to the provisions referred to in that subsection.

* 1. **[**Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.**]**[[45]](#endnote-35)

**[9. Interpretation of Schedule 8**

In this Schedule,

“additional information” has the meaning given to that term in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017;

“appointed person” has the meaning given to that term in paragraph 4B(6) of Schedule 8; and

“pre-inquiry meeting” has the meaning given to that term in paragraph 4B of Schedule 8.]

**Notes**

Extent

Sch. 8 para. 9: Scotland

**SCHEDULE 9**

**PRESERVATION OF AMENITY AND FISHERIES.**

*Preservation of amenity and fisheries: Scotland*

* 1. In formulating any relevant proposals, a licence holder or a person authorised by an exemption to **[**generate, **[**distribute, supply or participate in the transmission of**]**[[46]](#endnote-36) electricity**]**[[47]](#endnote-37) —
		+ 1. shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and
			2. shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
	2. In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State shall have regard to—
		+ 1. the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and
			2. the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph.
	3. Without prejudice to sub-paragraphs (1) and (2) above, in exercising any relevant functions each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity and the Secretary of State shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.
	4. In this paragraph -

"building" includes structure;

"relevant proposals" has the same meaning as in paragraph 1 above and, for the purposes of this paragraph, any such order as is mentioned in sub-paragraph (4) of that paragraph may be made under this sub-paragraph;

"relevant functions" means any powers conferred and any duties imposed by or under this Act.

* 1. This paragraph and paragraphs 4 and 5 below extend to Scotland only.
	2. A licence holder shall within twelve months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 3(1) above, including in particular the consultation procedures which he intends to follow.
	3. Before preparing or modifying a statement under this paragraph, a licence holder shall consult with **[**Scottish Natural Heritage**]**[[48]](#endnote-38) , **[**...**]**[[49]](#endnote-39) **[**and with the National Park authority for any National Park which would be affected by the relevant proposals**]**[[50]](#endnote-40).
	4. As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such a manner as he considers appropriate

**Appendix 2 – Diagram showing proposed fixed timescales for applications subject to PLI**



1. This note is therefore not exhaustive and there may well be other useful changes to legislation or administrative process that could be considered to streamline the section 36 consenting process, such as to the Electricity (Applications for Consent) Regulations 1990 or to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. [↑](#footnote-ref-2)
2. Amendments to the PLI process may also require amendments to s210 of the Local Government (Scotland) Act 1973. [↑](#footnote-ref-3)
3. We would suggest that the S36 consent application guidance is updated to stress that the timescales are maxima and stakeholders are expected to work within the timescales and should not routinely expect extensions of timescales. Insofar as there are timescales for S36 applications (in guidance or legislation) currently these are often treated as minimum periods rather than maximum periods. [↑](#footnote-ref-4)
4. See new paragraph 4A of Schedule 8 of the EA 1989 (Appendix 1) [↑](#footnote-ref-5)
5. Note: under Regulation 8 of the Electricity (Applications for Consent) Regulations 1990, the relevant local planning authority needs to notify any objection within 4 months of the date of the application or such longer period as agreed in writing with the applicant. [↑](#footnote-ref-6)
6. See new paragraph 4(6) of Schedule 8 of the EA 1989 (Appendix 1) [↑](#footnote-ref-7)
7. See new paragraph 4B(2) of Schedule 8 of the EA 1989 (Appendix 1). While it may physical/face to face meetings may be appropriate or necessary for full hearing and inquiry sessions, it is considered that, given their largely procedural nature, most if not all PIMS could be virtual (Teams, Webex etc) which would assist with some of the current scheduling difficulties. [↑](#footnote-ref-8)
8. See new paragraph 4B(6) of Schedule 8 of the EA 1989 (Appendix 1). The 2-month plus 4-month period for the PIM and PLI would provide a total inquiry period of 6 months. This aligns with the period under the DCO regime, pursuant to which the Examining Authority has a 6-month period within which to carry out the examination of the application. [↑](#footnote-ref-9)
9. See new paragraph 4B(7) of Schedule 8 of the EA 1989 (Appendix 1). This aligns with the period under the DCO regime for submission of the Examination Report to the Secretary of State (which is always met in practice) and should be adequate provided the DPEA is adequately resourced such that reporters are afforded the required time and space post PLI to complete their report. [↑](#footnote-ref-10)
10. See new paragraph 4B(8) of Schedule 8 of the EA 1989 (Appendix 1). Again this aligns with the period given to the Secretary of State to determine DCO applications, which are of at least comparable if not greater complexity and scale to S36 applications. [↑](#footnote-ref-11)
11. See paragraph 8(1A), Schedule 8, which states that Schedule 8 does not apply to applications to the Welsh Ministers due to the introduction of s36(8A). [↑](#footnote-ref-12)
12. Words inserted by Planning Act 2008 c. 29 Sch.2 para.32(2) (March 1, 2010) [↑](#endnote-ref-2)
13. Words inserted by Energy Act 2004 c. 20 Pt 2 c.2 s.93(1) (March 1, 2005) [↑](#endnote-ref-3)
14. Words substituted by Wales Act 2017 c. 4 Pt 2 s.39(8) (April 1, 2018: substitution has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-4)
15. Added by Planning Act 2008 c. 29 Sch.2 para.32(3) (March 1, 2010) [↑](#endnote-ref-5)
16. Added by Marine and Coastal Access Act 2009 c. 23 Pt 1 c.2 s.12(7)(a) (April 1, 2010) [↑](#endnote-ref-6)
17. Added by Energy Act 2016 c. 20 Pt 5 s.78 (July 12, 2016 subject to transitional provisions specified in SI 2016/602 art.4) [↑](#endnote-ref-7)
18. Words inserted by Wales Act 2017 c. 4 Pt 2 s.39(9)(a)(i) (April 1, 2018: insertion has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-8)
19. Word repealed by Wales Act 2017 c. 4 Pt 2 s.39(9)(a)(ii) (April 1, 2018: repeal has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-9)
20. Words inserted by Wales Act 2017 c. 4 Pt 2 s.39(9)(b) (April 1, 2018: insertion has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-10)
21. Added by Wales Act 2017 c. 4 Pt 2 s.39(9)(c) (April 1, 2018: insertion has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-11)
22. Words inserted by Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006/1054 Sch.1(1) para.1(2)(a) (April 1, 2006) [↑](#endnote-ref-12)
23. Added by Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006/1054 Sch.1(1) para.1(2)(b) (April 1, 2006) [↑](#endnote-ref-13)
24. S.36(7)(a) and (b) substituted for words by Wales Act 2017 c. 4 Pt 2 s.39(10) (April 1, 2018: substitution has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise) [↑](#endnote-ref-14)
25. Added by Wales Act 2017 c. 4 Sch.6(3) para.47 (April 1, 2019: insertion has effect as SI 2017/1179 reg.5(b) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8) [↑](#endnote-ref-15)
26. Words inserted by Energy Act 2004 c. 20 Pt 2 c.2 s.93(3) (March 1, 2005) [↑](#endnote-ref-16)
27. Added by Wales Act 2017 c. 4 Pt 2 s.39(11) (April 1, 2018: insertion has effect on April 1, 2018 as SI 2017/1179 reg.3(h) for the purposes of 2017 c.4 Sch.1 subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8; April 1, 2019 as SI 2017/1179 reg.5(a) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 otherwise)

**Commencement**

Pt I s. 36: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

**Extent**

Pt I s. 36-(11) definition of "Welsh zone": England, Wales, Scotland [↑](#endnote-ref-17)
28. Definition substituted by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2019/911 art.2(a) (May 2, 2019) [↑](#endnote-ref-18)
29. Added by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015/374 art.4(2) (February 26, 2015)

**Extent**

Pt I s. 36D(1)-(6) definition of "the relevant requirements": England, Wales, Scotland [↑](#endnote-ref-19)
30. Added by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015/374 art.4(2) (February 26, 2015)

**Extent**

Pt I s. 36E(1)-(3)(b): England, Wales, Scotland [↑](#endnote-ref-20)
31. **Commencement**

Pt I s. 38: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

Extent

Pt I s. 38: England, Wales, Scotland [↑](#endnote-ref-21)
32. Words inserted by Wales Act 2017 c. 4 Sch.6(3) para.50(2) (April 1, 2019: insertion has effect as SI 2017/1179 reg.5(b) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8 [↑](#endnote-ref-22)
33. Words repealed by Local Government (Wales) Act 1994 c. 19 Sch.18 para.1 (April 1, 1996 as SI 1996/396) [↑](#endnote-ref-23)
34. Words substituted by Environment Act 1995 c. 25 Sch.10 para.30(3)(a) (November 23, 1995) [↑](#endnote-ref-24)
35. Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11), s. 4, Sch. 2 para. 83(1) [↑](#endnote-ref-25)
36. Repealed by Environment Act 1995 c. 25 Sch.24 para.1 (April 1, 1997 as SI 1996/2560) [↑](#endnote-ref-26)
37. Words repealed by Environment Act 1995 c. 25 Sch.10 para.30(3)(c) (November 23, 1995) [↑](#endnote-ref-27)
38. Words repealed by Local Government (Wales) Act 1994 c. 19 Sch.6(II) para.22 (April 1, 1996) [↑](#endnote-ref-28)
39. Added by Environment Act 1995 c. 25 Sch.10 para.30(3)(b) (November 23, 1995)

**Commencement**

Sch. 8 para. 2: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

**Extent**

Sch. 8 para. 2-(6)(b): England, Wales, Scotland [↑](#endnote-ref-29)
40. Definition substituted by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2019/911 art.2(b) (May 2, 2019) [↑](#endnote-ref-30)
41. Added by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015/374 art.4(3) (February 26, 2015)

**Extent**

Sch. 8 para. 5B(1)-(6) definition of "the relevant requirements": England, Wales, Scotland [↑](#endnote-ref-31)
42. Added by Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015/374 art.4(3) (February 26, 2015)

**Extent**

Sch. 8 para. 5C(1)-(3)(b): England, Wales, Scotland [↑](#endnote-ref-32)
43. Added by Energy Act 2004 c. 20 Pt 2 c.2 s.93(2) (March 1, 2005)

**Extent**

Sch. 8 para. 7A(1)-(10): England, Wales, Scotland [↑](#endnote-ref-33)
44. Added by Wales Act 2017 c. 4 Sch.6(3) para.50(3) (April 1, 2019: insertion has effect as SI 2017/1179 reg.5(b) subject to transitional provisions specified in 2017 c.4 s.70 and Sch.7 paras 1, 6 and 8) [↑](#endnote-ref-34)
45. Added by Energy Act 2004 c. 20 Pt 2 c.2 s.99(2) (March 1, 2005 subject to exclusions specified in SI 2005/442 Sch.1; not yet in force otherwise)

**Commencement**

Sch. 8 para. 8: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

**Extent**

Sch. 8 para. 8-(1), (2)-(3): England, Wales, Scotland

Sch. 8 para. 8(1A): (extent not available) [↑](#endnote-ref-35)
46. Words substituted by Energy Act 2004 c. 20 Sch.19 para.16 (September 1, 2004) [↑](#endnote-ref-36)
47. Words substituted by Utilities Act 2000 (Transitional Provisions) (No. 2) Regulations 2001/3264 reg.6 (October 1, 2001)

**Commencement**

Sch. 9 para. 3: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

**Extent**

Sch. 9 para. 3-(5): England, Wales, Scotland [↑](#endnote-ref-37)
48. Words substituted by Natural Heritage (Scotland) Act 1991 c. 28 Sch.10 para.13 (April 1, 1992: represents law in force as at date shown) [↑](#endnote-ref-38)
49. Words repealed by Public Appointments and Public Bodies etc. (Scotland) Act 2003 asp 4 (Scottish Act) Sch.4 para.10 (May 31, 2003) [↑](#endnote-ref-39)
50. Added by National Parks (Scotland) Act 2000 asp 10 (Scottish Act) Sch.5 para.14(2) (September 8, 2000)

**Commencement**

Sch. 9 para. 4: March 31, 1990 (SI 1990/117 art. 3, Sch. 1 para. 1)

**Extent**

Sch. 9 para. 4-(3): England, Wales, Scotland [↑](#endnote-ref-40)