

# Navigating the Consenting Processes for Renewable Energy Developments

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**i** Information Sheet



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# Introduction

This information sheet is aimed at anyone involved with or affected by a proposal for **onshore renewable energy-related development** such as electricity generating stations (e.g. windfarms, solar farms, hydro schemes and battery energy storage systems) and related transmission infrastructure, the construction of pylons and overhead lines and electricity substations.

This information sheet provides impartial information about the Scottish planning system and was written by chartered planners.

## Important to note

This is the first time we have prepared an information sheet on renewable energy developments. We welcome any feedback on anything you think is missing or we can improve upon.

Legislation regarding the consenting of energy developments is currently under review and some aspects of the process may change in due course.

## Want to know more?



We have a range of different information sheets which complement this information sheet.

We recommend you have a look at the following:

- [Development Management](#)
- [Material Considerations](#)
- [Planning Appeals and Local Reviews](#)
- [Rights and Challenges in the Scottish Planning System](#)



# Common Terms

S36	<b>Section 36 Consent</b> is required to build, operate or modify onshore electricity generating stations with capacities exceeding 50 megawatts (MW). Section 36 refers to the Electricity Act 1989.
S37	<b>Section 37 Consent</b> is required to install certain overhead power lines from 11kV up to 400kV. Section 37 refers to the Electricity Act 1989.
SEPA	Scottish Environment Protection Agency
HES	Historic Environment Scotland
ECU	Energy Consents Unit
EIA	Environmental Impact Assessment
LDP	Local Development Plan
LRB	Local Review Body
DPEA	Directorate for Planning and Environmental Appeals
MW	Megawatts
NPF4	National Planning Framework 4
kV	Kilovolts

# What are the different types of renewable energy?

There are a wide range of energy related developments that are associated with the generation, storage and transmission of electricity. They can range from small-scale proposals like a solar panel on a house roof to a large-scale solar farm. For the purposes of the consenting process, we differentiate between two types of energy development - **those that generate energy** and **those that transmit energy**.



## 1. Development generating energy

- **Wind energy:** This is produced by wind turbines which can range in size from smaller individual turbines 15 metres in height up to groups of wind turbines of 150-200 metres in height in an onshore windfarm or even higher in an offshore windfarm.
- **Solar energy:** Electricity can be generated by solar panels sited either individually on buildings or garden ground or within larger scale solar farms which can cover many hectares of land (60 to 190). In these cases, the solar panels can be up to 3m in height and raised off the ground to allow room e.g. for the grazing of sheep.
- **Hydroelectric:** There is a long history of using water to generate electricity in Scotland and a range of schemes are now coming forward including smaller scale projects which may power hundreds of houses for larger proposals or whole towns. There are several different types of hydro schemes – these are ‘Diversion’ (or Run of River), ‘Storage’ and ‘Pumped Storage’.
- **Battery Energy Storage Systems (BESS):** For the purposes of deciding which consenting route is required; the Scottish Government considers that the storage of energy through BESS falls under energy generation. BESS is technology that stores electrical energy in batteries for later use, and they have a role in managing the variability and intermittency of renewable energy sources like solar and wind. During periods of excess energy production, such as when the sun is shining and the wind is blowing strongly, a BESS stores the surplus energy.



## 2. Development transmitting energy

- **Overhead power lines (and pylons):** The ‘transmission’ networks transport electricity from where it is made to regional substations at high voltages (400kV, 275kV or 132kV). The pylons used to support the high voltage overhead power lines typically range in height between 42 metres and 65 metres. The ‘distribution’ network transports electricity at a much lower voltage (lower than 132kV) from substations to homes and businesses. These typically consist of overhead electric lines mounted on wooden poles.
- **Underground power lines:** Electrical cables can also be laid underground. Underground cables cover more distance in the Scottish Power Energy Network than overhead lines. Placing underground lines at 11kv and above can be technically challenging and often comes at a higher cost.
- **Electricity substations/switching station:** These host the equipment required to increase or decrease the voltage of an electrical supply and as a result, they ensure the reliable and safe delivery of electricity. These are found where electricity enters the transmission network (often near a major power source), or where it leaves the transmission network for distribution to homes and businesses.

# What are the two consenting processes for energy development?

There are **two** different application/consenting routes for energy development, depending on the type (**generating or transmitting**) and 'scale' of the energy development proposed.

The appropriate application/consenting route depends on the 'scale' of energy development. In this case, the scale is expressed based on **how much** energy a development either generates or transmits. This defines which consenting procedures a proposal must follow.

## A note on Hydrogen

Hydrogen is chemical, not electrical, energy produced from the electrolysis of water. Therefore, such development is considered under the Planning Act. However, other electricity generation stations may be developed to power the hydrogen process. These may fall under the consenting process of the Electricity Act.

## 1. Planning Applications

Applications for electricity generating stations with a generating capacity of **50MW or less** and distribution lines with a capacity of **11kV or less**, are considered under the **Town and Country Planning (Scotland) Act 1997**, as amended ("the Planning Act").

This application process is administered by and determined by the **planning authority** i.e. your local council or, if you live in a National Park, the National Park Authority.

## 2. Section 36 and 37 Applications (Energy Consents Applications)

Under the **Electricity Act 1989** ("the Electricity Act"), electricity generating stations with a capacity **exceeding 50MW**, or overhead lines with a transmission capacity **exceeding 11kV**, require the consent of an 'appropriate' authority. In Scotland, applications for Electricity Act consent are considered and determined by the **Scottish Ministers**.

The process for these applications is outlined under Section 36 (generating stations) and Section 37 (overhead electric lines) of the Electricity Act. These applications are therefore often referred to as Section 36 (S36) or Section 37 (S37) applications.

Energy Consents applications are administered by the **Energy Consents Unit** (ECU), an operational division of the Scottish Government, on behalf of Scottish Ministers.

These applications are **NOT** planning applications and are **NOT** determined by the planning authority.

Generation, transmission, distribution and supply of electricity is a reserved matter in the Scotland Act 1998 and decisions on such applications are taken in accordance with UK legislation.

Where consent is granted under Section 36 or 37 of the Electricity Act 1989, Scottish Ministers have the power under the Town and Country Planning (Scotland) Act 1997 to grant 'deemed' planning permission. This avoids the need to apply for planning permission after the granting of energy consent.





# Why should you get involved in early engagement?

This section is a general note on early engagement with the applicant **before** their formal application is submitted.



A **representation** is a comment made by the public or a community supporting or objecting to an application.

Applicants will often undertake early engagement with communities and other interested parties on their proposals before an application for development consent is submitted.

**Planning Aid Scotland would strongly encourage individuals and communities to take advantage of any opportunity to engage with the applicant, and to do so at the earliest possible opportunity in the process.**

Early engagement provides individuals and communities with the most effective opportunity to contribute to the design and delivery of proposed developments.

**Comments submitted at this stage are not official.** Nevertheless, they can meaningfully influence changes to the proposal.

Applicants often summarise the changes they have made to the design following consultation when submitting their application as proof of engagement.

It is important to inspect the application documents following submission and make official representations at this stage.

## Requesting Changes

At this early stage it can be helpful to consider to what extent concerns could be addressed through the modification of the development proposal. Is there a particular feature of the development proposal that could be modified to make it acceptable?

You may be able to suggest a change in scale; diversion of construction traffic; outdoor and environmental improvements for example to local paths and signage; additional planting or protection of species; or contributions to adjacent local community assets such as village halls or park etc. Notably, the applicant will have more leverage to deliver improvements on their application site than on neighbouring sites which they may not own.

**Engaging in discussions to make changes to the proposal does not affect one's right to object to the principle of the development.** It is an opportunity to propose mitigation measures for the benefit of the community should the development go ahead.

## Community Liaison Person

The early stages have the most potential for alterations to the proposals. Many applicants, particularly for Section 36 and 37 applications, will have a nominated 'community liaison' person. This person is the point of contact for the community and will be keen to speak to people affected by a proposal and to understand their concerns.

Planning Aid Scotland would also encourage any community groups who are affected by proposals to nominate one person within their group to act as a point of contact with the relevant community liaison person. This reduces duplication and probably increases the likelihood of developing an effective and influential relationship with the prospective applicant.

## Early engagement for planning applications

For certain proposals, there is a legal requirement for early engagement to take place. This is known as Proposal of Application Notice (PAN). This requirement applies to **major developments and national developments**.

Applicants are required to submit a Proposal of Application Notice to the planning authority 12 weeks before submitting a major planning application. A 12-week (minimum) Pre-application Consultation process then follows during which the applicant must hold two public events at which members of the public can make comments. At the second event the applicant should feedback on the outcomes of the first event.

A notice of the proposal and public events must be published in a local newspaper. Every community council whose area is in or borders the proposed site must be consulted.

## Early engagement for Section 36 and 37 Applications

There is no legal requirement to carry out early engagement for Section 36 and 37 applications. However, the Energy Consents Unit encourages developers to engage with affected communities from an early stage prior to an application being submitted. Applicants often use a similar approach to the requirements as set out for major planning applications.

Applicants will often host engagement events which can be advertised on-line or in person. They are usually advertised in a relevant local newspaper. Applicants usually also reach out to the relevant community councils and give out the contact details of the **community liaison person**. Such engagement events can provide communities with an opportunity to provide comments on a proposed development during the design stages.

## A note on Community Benefits

There may also be discussion of Community Benefits before an application is submitted. **Community Benefits are additional voluntary benefits a developer may choose to provide to the community.**

These benefits are independent from the planning and consenting system. **Therefore, Community Benefits are not a material consideration in deciding an application.**

This is because some of these benefits cannot be enforced under planning legislation; for example, monetary contributions from income generated by the development.

Community Benefits are a well-established part of energy developments in Scotland and are supported by the Scottish Government. Contributing to discussion on Community Benefits does not affect an individual's, community or organisation's right to express a view on the development proposals. Objecting to or supporting the development does not affect their right to discuss community benefits proposals.





# How are the different applications processed?

## A note on Permitted Development

Some development falls within the definition of 'permitted development' and does not require an application for planning permission. These developments are defined under the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992 \(as amended\)](#).

With regard to renewable energy, this includes underground power lines, smaller substations and some smaller domestic and non-domestic renewable energy proposals, such as certain types of solar panels. This means that there is no requirement to make a planning application and consequently there is no mechanism to make representations on such proposals.

If you have a proposal to install some form of renewable energy development at your house or business (such as a solar panel), it is important to check with your planning authority as to whether you comply with all the criteria to qualify as permitted development. You can also access our free [Advice Service](#) for any planning queries.

### Underground Lines

Unless underground lines meet a certain threshold and require an [Environmental Impact Assessment](#), they fall under permitted development for statutory undertakers only.

However, any sealing end compounds required at the point of transition between overhead lines and underground cables may require permission from the relevant authority.

## 1. Planning Applications

As explained in [Section 2](#), planning applications are determined by the planning authority i.e. your local council or National Park Authority<sup>1</sup>.

A planning application for development (including energy development) will typically be allocated to a case officer who will visit the application site and review all the material that the applicant has submitted along with all consultations and representations received.

The case officer will write a 'Report of Handling' outlining what policies were considered as relevant to the planning application and whether any material considerations were identified. The case officer then either determines the application or writes a recommendation to planning committee. The committee consists of elected members who then determine the application, rather than the case officer.

Local applications may go to planning committee if the proposal goes against the development plan or if a number of objections have been received (this varies on a planning authority basis). Major applications tend to go to planning committee, but some councils schemes of delegation enable larger scale applications to be decided by planning officers.

As a matter of law all planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the National Planning Framework 4 and the Local Development Plan for the area. Material considerations include comments submitted by the public as part of their representations. More details on this in [Section 5](#) and [Section 6](#) of this information sheet.

For more information on the consenting process regarding planning applications, see our information sheet [2. Development Management](#).

<sup>1</sup>The Loch Lomond NPA determines planning applications in its area, but in the Cairngorms NPA the applications are submitted to the relevant councils, and the park authority can call in the application for its decision.





### Local Development (Up to 20MW)

Proposals for all types of energy development up to 20MW generating capacity are described as 'local' development. These developments require planning permission and are referred to as 'local' planning applications.

Early engagement is not legally required for 'local' planning applications. However, applicants may still choose to undertake some form of early engagement on a voluntary basis.

These planning applications are typically advertised in the local press and notification of neighbours will take place. The public is given the opportunity to submit their representation within the given consultation period which should be at least 21 days following notification.

### Major Development (20-50MW)

Proposals for onshore generating stations with a capacity of 20-50MW are described as 'major' development. These developments require planning permission and are referred to as 'major' planning applications.

There is a legal requirement for pre-application consultation with the community for major applications.

Many smaller scale developments such as wind farms, solar farms, hydro schemes and BESS with a generating capacity of between 20MW and 50MW would therefore require pre-application consultation.

Following the Proposal of Application Notice process, and once the application is formally submitted, applications are typically advertised in the local press and the notification of neighbours will take place. This is the stage where you can make formal representation to the planning authority. You should do so within the given time period which is typically 21 days.

## 2. Section 36 and 37 Applications

As explained in [Section 2](#), under the Electricity Act developments which fall under the definition outlined within Section 36 and 37 of the Act, are determined by Scottish Ministers.

The Energy Consents Unit (ECU) has published [good practice guidance](#) on the procedures for applications for onshore generating stations and overhead lines under Section 36 and Section 37 of the Electricity Act 1989.

Developments of electricity generating stations with a capacity of **50MW or over** require consent from Scottish Ministers under [Section 36 of the Electricity Act 1989](#). BESS applications also fall under this definition.


The installation of power lines transmitting **11kV or more** requires consent from Scottish Ministers under [Section 37 of the Electricity Act 1989](#).

### The determination process for both Section 36 and 37 Applications

In both cases, Energy Consents Applications are administered by the **Energy Consents Unit (ECU)**, an operational division of the Scottish Government, on behalf of Scottish Ministers. The authority to grant or refuse consents rests with Scottish Ministers. Applications must be processed and determined in accordance with the Electricity Act and all other legislation that may apply according to the circumstances of each case.

When an application for consent is received, the application will typically be allocated to a case officer within ECU. This case officer gathers and reviews **all the public representations and consultation responses**. This includes those from statutory consultees such as planning authorities and if an EIA is required, also SEPA, NatureScot and Historic Environment Scotland (HES).

The relevant planning authority becomes a statutory consultee for Energy Consents applications. This means that Scottish Ministers are required to seek their views on the application for consent, but the planning authority does not determine the application.



The ECU recommendation typically sets out whether and how development meets legislative and policy requirements and a summary of all consultation responses and objections. Scottish Ministers then review the application alongside the recommendation and make a decision based on the information available to them.

As noted earlier, prospective applicants often carry out early engagement with members of the public. Once an application is submitted, it is advertised in the local and national press and should be advertised for two consecutive weeks. Following this, there is a 28-day consultation period to give representation. Representations are to be sent to the ECU.

## A note on conditions following permission/consent

Planning conditions are often attached to planning permissions or energy consents. These conditions make sure certain aspects of a proposal are delivered according to specific requisites.

**In the case of a planning permission**, the attached planning conditions are to be discharged to the planning authority who oversees the correct this discharge. Further information on planning conditions can be found within the [Scottish Government Circular 4/1998](#).

**In the case of S36 and S37 consents**, the decision letter outlines what conditions are 'deemed planning permission conditions.' These conditions are similar to planning conditions to be discharged to the planning authority. Some conditions, however, remain the responsibility of Scottish Ministers; for example, conditions on aviation or if conditions cut across multiple planning authorities. These are known as Section 36 conditions. Scottish Government has published [Guidance on standard planning conditions for onshore wind development](#).



# What policy and legislation is considered to determine applications?

## 1. Planning Applications

The **Development Plan** is made up of [National Planning Framework 4](#) (NPF4) and the council's own **Local Development Plan (LDP)**.

The NPF4 sets out Scottish Government planning policy and the LDP sets out the council's planning policies along with its approach to various types of development. It is a legal requirement that planning applications are assessed against the Development Plan. The planning officer reads the Development Plan as a whole and determines what weight to attach to policies on a case-by-case basis.

For further information on the consenting process regarding planning applications please see our information sheet 3, [Material Considerations](#). Further information on planning conditions can be found within the [Scottish Government Circular 4/1998](#).

### National Planning Framework 4

NPF4 sets out Scottish Ministers' vision for working towards a net zero Scotland by 2045 and influences all planning and consenting decisions. NPF4 signals the key priorities for 'where' and 'what' development should take place at a national level. It is combined with national planning policy on 'how' development planning should manage change and how applications should be determined.

It is important to understand that Scottish Government planning policy as expressed in NPF4 currently places climate and nature at the centre of Scotland's planning system. Particularly [Policy 11 of the NPF4](#) supports all forms of renewable, low-carbon and zero emission technologies, including transmission and distribution infrastructure. However, potential impacts on communities, nature and cultural heritage, including cumulative effects, are important considerations in the decision-making process. It is a good idea to read up on Policy 11 to be aware of the principal considerations.

### Local Development Plan

The planning authority will also take into account its own Local Development Plan (LDP). The LDP will be available to view on the planning pages of the relevant planning authority website.

## 2. Section 36 and 37 Applications

Section 36 and 37 applications are determined under [Schedule 9 of the Electricity Act](#). Schedule 9 states the applicant must 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.

Schedule 9 also notes that the applicant has a duty to do what they 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. Often these considerations are covered within an [Environmental Impact Assessment](#). If no EIA is required, separate assessments on different environmental aspects will still have to be submitted.

The desirability of these features, and the extent to which the above duty has been complied with must be considered by Scottish Ministers. Other assessments, for example those which may be required under the Conservation of Habitats and Species Regulations 2017, may also be relevant considerations.

Scottish Ministers consider the application with all its documents. Other material considerations, like those used for planning applications, can also be raised. The planning authority becomes a statutory consultee. SEPA, NatureScot and HES are statutory consultees on applications where the project requires an Environmental Impact Assessment (EIA).

Scottish Ministers also consider representations from third parties including local communities.





## National Developments designation

The National Planning Framework 4 (**NPF4**) defines National Developments. NPF4 describes National Developments as “significant developments of national importance that will help to deliver our spatial strategy”.

National Development 4 “Strategic Renewable Electricity Generation and Transmission Infrastructure” designates the following as ‘National Developments’:

- a. On and offshore electricity generation, including electricity storage, from renewables exceeding 50 megawatts capacity;
- b. New and/or replacement upgraded on and offshore high voltage electricity transmission lines, cables and interconnectors of 132kV or more; and
- c. New and/or upgraded infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.

**For planning applications:** This designation means that the principle of the development does not need to be agreed in later consenting processes.

**For S36 and 37 consent:** This designation means that the principle of development becomes a material consideration.

**The status does not however grant planning permission for the development and all relevant consents are required, whether that is via a planning application or a Section 36 or 37 application.**





# What are Material Considerations?

## 1. Planning Applications

**Section 25 of the Planning Act** states that planning applications must be determined in accordance with the development plan **unless material considerations indicate otherwise**.

The possibility of material considerations informing a decision gives an element of discretion in the decision-making framework.

The Scottish Government's **Planning Circular 3/2022 on Development Management Procedures** provides explanation on material considerations on pages 57 and 58. The planning circular notes:

*'The question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan.'*

**The planning circular notes that Local Place Plans are a potential material consideration.** However, it is for the decision maker to decide how much weight is given to each consideration.

When reviewing the application, the case officer considers both the Development Plan and material considerations. This includes comments submitted by statutory consultees, individuals and community groups alongside other guidance, national and local strategies and plans. The case officer then decides whether:

- any of these material considerations are so significant that they 'override' policies within the development plan and therefore influence the outcome of a planning decision; or
- whether additional conditions and obligations attached to the planning permission could mitigate some of those considerations.

The case officer's report should outline how much weight was given to those considerations.

For further information on the consenting process regarding planning applications please see our information sheet **3. Material Considerations**.

### Examples of Material Considerations

Courts have previously set out that a material consideration must meet two test points:

- It should serve or be related to the purpose of planning. This means it should relate to the development and use of land.
- It should fairly and reasonably relate to the planning application.

[✓] Accepted material considerations	[X] Not accepted material considerations
Public objection (on relevant planning ground)	Cost of energy in your area
Site history	Your property value
Additional guidance and policies	Moral, religious or political arguments
Comments from statutory and other consultees	Property rights including boundary, access and ownership disputes
Nuisances such as noise, smell, fumes, strong lights	Business conflict
Visual appearance and its relationship to its surroundings	Change in personal view or dislike of proposal

## Fire Safety

Fire risk and safety is often a matter that individuals and communities can be concerned about, and we know that people may be worried about the safety of battery units located near residential or other property types. To ensure safety, BESS projects in Scotland are required to adhere to a range of regulations. These are in addition to those aspects of fire safety which can, in certain circumstances, be considered through the planning process.

An applicant may include a 'Site Management Plan' which sets out any proposed safety measures such as:

- a battery monitoring system
- separation of components
- automatic fire alarms
- gas and smoke detection

Therefore, some land use aspects of fire safety are considered during the application process. These can be reasonably referenced by individuals and communities when making representation.

**However, material considerations are ultimately a matter of law. As of August 2025, no court has given definitive views on whether fire safety and risk are material considerations. Therefore, fire safety is not included within this list of material considerations.**

This section will be updated once further guidance on fire safety regarding Battery Energy Storage Systems is available.

## 2. Section 36 and 37 Applications

There is no equivalent guidance or definition of material consideration in the Electricity Act 1989. Nevertheless, Scottish Ministers can take material considerations into account to determine an application. Similar considerations like those used for planning applications can therefore be raised when commenting on S36 and S37 consent applications.

Scottish Ministers do not determine S36 and S37 applications primarily in accordance with the development plan. However, they can take into account the NPF4 and the Local Development Plan which serve as material considerations only.

Compliance with these policies is balanced alongside the range of other relevant considerations depending on the facts and circumstances of each application.





# How can I find out about applications?

## 1. Planning Applications

The planning authority is required to notify neighbours when they receive an application for planning permission. This is typically done by post. The purpose of this is to alert those most affected by a proposed development of their opportunity to make representations to the planning authority regarding the application.

'Notifiable neighbours' are those neighbours who are located within 20 metres of an application site. Consequently, for many types of energy development this may be only a small number of properties.

It is very often the case that applications for energy development are of a scale and nature that they will also be advertised by the planning authority in the local press again with a similar period for making a representation.

Each planning authority has a section of its website that allows you to search and view planning applications and the various documents associated with them. You will be able to find this by searching for '*planning applications online in <insert local authority name>*'.

There are multiple search options. You can use the 'simple search' facility if you know the application number or search for a 'key word' such as an address or plot name. You can also use the 'advanced search' facility which allows you to filter your search using a range of options such as dates, the type of application made, or the type of decision issued.

There is also usually a 'map-based search'. You should be aware that the default setting for the map-based search is only to show the last 6 months but you should be able to toggle the timeframe for the search up to 2 years, 5 years or all time.

Community Councils are statutory consultees on planning applications within their area. They should be sent a weekly list of all validated planning applications by the planning authority. Community Councils have a right to request an extension in time to respond to a planning application. Communities Councils should discuss the details of this process with their planning authority.

## 2. Section 36 and 37 Applications

Developers are required to notify the public in the local and national press when they apply for Section 36 or 37 consent to the Energy Consents Unit (ECU). The ECU reviews and advises on public notification details two weeks prior to the public being notified.

The legal requirements are:

- Advertising in one or more local newspapers for two successive weeks
- Advertising in one or more national newspapers (e.g. The Herald, The Scotsman) on one occasion
- Advertising in the Edinburgh Gazette on one occasion

Applicants will often also advertise the development on their website. This becomes a legal requirement if the application is complemented by an [EIA](#).

Information about current Section 36 and 37 applications is also made available on the Energy Consents Unit (ECU) website ([Scottish Government - Energy Consents Unit](#)).

Once you have found an application you are interested in on the ECU website, you have the option to opt in and be notified when a decision has been made.

[The details on publicity requirements can be found in this Scottish Government website.](#)



# When can I make a formal representation?

At the application stage for both planning applications and Section 36 and 37 applications, anyone can make representations on a proposed development. How you do this differs depending on which application type you have an interest in. The procedures for both are described below.

Please note that you have the option to request an extension of time for most applications. However, an extension is only granted in exceptional circumstances.

## 1. Planning Applications

Members of the public or groups can make representations on planning applications for energy development using the online planning portals that each planning authority has. You should be able to find how to do this in your council area by searching online with a phrase like *'how to make a representation to a planning application in <enter area name>'*.

Each planning authority typically has advice and guidance on how you can make a representation online.

You will have a period of at least 21 days to make your representation. Planning Aid Scotland would advise making any comments well within the time specified. Make sure that your points reflect policies mentioned with the [Development Plan](#) or are relevant ['material considerations'](#).

## 2. Section 36 and 37 Applications

Following the final day of advertisement, **you will have a period of at least 28 days** to make your representation to the Energy Consents Unit. You must send your representation to: [Representations.Mailbox@gov.scot](mailto:Representations.Mailbox@gov.scot)

**Do not send your representation to the planning authority.**

We suggest you quote the relevant ECU reference number which you can find when [searching for the application on the ECU website](#).

Planning Aid Scotland would advise making any comments well within the time period specified and ensuring that your points either reflect policies mentioned with the [Development Plan](#) or are relevant ['material considerations'](#).





# How can an applicant challenge a decision?

It is important to note that it is only the applicant that has a right of appeal. There is no third-party right of appeal. This means communities or members of the public cannot appeal the outcome of a decision, other than through courts.

## 1. Planning Applications

Once a planning application is determined, the applicant can appeal. The appeal is submitted either to the planning authority's Local Review Body (LRB) or the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA). Which body to appeal to depends on various factors.

The appeal could be seeking to overturn a refusal or to amend or delete planning conditions that have been imposed. The applicant must submit their appeal within three months of the planning decision being issued.

Any representations made against the original planning application will be considered in the determination of the appeal.

Anyone who submitted a representation to an application should be notified by the planning authority if an appeal is received. Consequently, there is an opportunity for someone who has made a representation on a planning application to make further representations.

Prohibition on raising a matter that was not before the planning authority at the time the original determination was made. It is therefore wise to ensure that any representation made at the application stage covers all the matters that you are concerned about.

However, if it is felt that a planning authority or Scottish Ministers have acted in any way unlawfully in coming to a decision, applicants, third parties or anyone with an interest can pursue the process of a statutory right of appeal to the Court of Session. This process must be initiated within 6 weeks of the decision being made. Third parties cannot challenge the decision but only the process by which a decision was taken.

Further information on this can be found within our information sheet

[\*\*7. Rights and Challenges in the Scottish Planning System.\*\*](#)

## 2. Section 36 and 37 Applications

There is no applicant right of appeal for decisions made under the Electricity Act 1989. These decisions are final, except where a person with sufficient interest believes the decision was made unlawfully. Any person who proves that they have sufficient interest in the matter may petition the Court of Session for judicial review. This must be done within three months of the date of the decision being issued.

# What is the public inquiry process for S36 and S37 applications?

If a relevant planning authority objects to a Section 36 or 37 application within a period set out in the [Electricity \(Applications for Consent\) Regulations 1990](#), and does not withdraw the objection, then Scottish Ministers must hold a public inquiry. However, Ministers will consider whether modifications or additional planning conditions could tend to the planning authority's objection first.

Where the planning authority has not objected but other consultees, including Community Councils have, Scottish Ministers will consider those objections together with all other material considerations and determine whether a public inquiry should be held at their own discretion.

In both circumstances the application is passed on to the Scottish Government's Planning and Environmental Appeals Division (DPEA) to undertake the public inquiry. The DPEA consists of reporters who take the case forward. The Scottish Ministers appoint the reporter (or reporters) to hold the inquiry and provide a report of the inquiry which must be taken into account in determining the application.

The reporter might decide to have a mix of inquiry, hearing and written procedures. Further information can be found in the [Code of Practice for Handling Inquiries](#).

Following the holding of the inquiry, the reporter submits the completed report back to the ECU, where recommendations are reviewed. This is then submitted to Scottish Ministers for consideration.

A public inquiry is a formal event, where witnesses give their evidence in front of the reporter. Evidence can be cross-examined by other parties (normally by their legal representatives), similar to what you might see in the law courts. The public inquiry process can be intimidating, complex and time-consuming for all participants. With this in mind, DPEA have taken several steps to ensure that all parties are as comfortable as possible taking part in an inquiry and these are detailed in the ["Planning appeals and other cases: guidance on taking part"](#).







# What is the role of Environmental Impact Assessments (EIA)?

The main aim of an Environmental Impact Assessment is to ensure that the decision maker takes the decision in full knowledge of any likely significant effects on the environment.

An EIA can cover a variety of environmental topics if relevant, such as population, human health, biodiversity, land, soil, water, air, climate, cultural heritage and landscape and can cover both direct and indirect effects.

The two different consenting regimes have their own associated Environmental Impact Assessment Regulations.

1. For **planning applications**, the key legislation relating to EIA development is '[The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) regulations 2017](#)' and this is supported by Circular 1/2017 on the EIA Regulations.
2. For **Section 36 and Section 37 applications**, the key legislation relating to EIA development is [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#).

As a brief overview, there are five broad stages to EIA:

- **Screening** – This is to **determine** whether a proposed project requires an EIA. In both regulations, Schedule 1 and Schedule 2 give detailed descriptions. Those identified in Schedule 1 are automatically considered to be EIA Development and require an EIA. Those falling within Schedule 2 require to be screened, to determine whether the likely environmental effects are significant.
- **Scoping** – This is **an opportunity to understand** the extent of environmental issues that need to be considered within the EIA and outlined in the EIA Report. Prior to submission, an applicant can opt to request an opinion from the decision maker on what information needs to be included in the EIA Report. This is called a 'scoping opinion.'
- **Preparing an EIA Report** – If EIA is required, the applicant must prepare and submit an EIA report alongside the application. Where an earlier scoping opinion has been sought, the EIA report must reflect that opinion.
- **Consultation** - The EIA report (and the application for development to which it relates) must be publicised together. The consultation bodies and the public must then be given an opportunity to have their views on the development and the EIA report. The consultation period on EIA is at least 30 days.
- **Decision making** - The EIA report, together with any other information which is relevant to the decision, and any comments and representations made on it, must be taken into account in deciding whether to grant consent for the proposed development. Where a decision is made to grant consent or permission, a reasoned conclusion on the likely significant effects of the proposed development on the environment must be included in the decision, alongside a description of any mitigation measures. The decision must be publicised and the public and consultation bodies informed.

You can find screening and/or scoping opinions on your local e-planning portal if they relate to a planning application or on the ECU website if they relate to Section 36 and 37 applications.

# Additional Information

## Professional Support

Most individuals and communities making representations to energy development proposals will do so without professional help. However, it is possible to obtain the services of a planning consultant to act on your behalf, although there will be a cost associated with this.

Planning Aid Scotland is an impartial organisation and does not recommend consultants. RTPI Scotland publishes a [directory](#) of planning consultants. Planning Aid Scotland would recommend employing a chartered/MRTPI planner, and you will probably find more through google searches than are listed in the directory.

## Scottish Government Guidance

Scottish Government has prepared extensive guidance relating to certain aspects of energy development here:

- [Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989](#)
- [DPEA Guidance Note 23 – managing an efficient inquiry process](#)
- [Energy consents - Energy infrastructure - gov.scot](#)
- [Electricity Act 1989 - Sections 36 and 37: applications guidance - gov.scot](#)
- [Energy consents: application procedure and publicity requirements - gov.scot](#)
- [Energy consents: applications for variation of Section 36 consent guidance - gov.scot](#)
- [Standard onshore wind conditions – Section 36 consent and deemed planning permission: form and guidance - gov.scot](#)



## How can Planning Aid Scotland help?

If you are still unsure or need independent and impartial advice, then Planning Aid Scotland may be able to help.

Contact us by filling out our [online form](#) to get free planning advice or check out [our website](#).





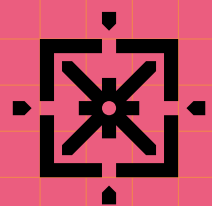


# Appendix

## Summary of energy development types (consenting routes, representations and appeals).

Development scale and/or type	Type of application required	Consenting authority	Pre-application consultation	Can I make representation?	Is there an appeal process? <i>Note: There is no third-party right of appeal.</i>
<b>Underground electric line*</b>	None (permitted development)	Not applicable	No	No	No
<b>Electricity Substation up to 45 cubic metres in capacity*</b>	None (permitted development)	Not applicable	No	No	No
<b>Development generating electricity &lt;20MW</b>	Planning permission (Local)	Planning authority	No	Yes. To the planning authority following submission.	Yes. The applicant can appeal to LRB or DPEA. No third party right of appeal but representation can be made to LRB or DPEA.
<b>Electricity Substation on a site less than 2ha in size</b>	Planning Permission (Local)	Planning authority	No	Yes. To the planning authority following submission.	Yes. The applicant can appeal to LRB or DPEA. Representation can be made to LRB or DPEA.
<b>Electricity Substation on a site of or exceeding 2ha in size.</b>	Planning Permission (Major)	Planning authority	Yes. Statutory requirement.	Yes. To the applicant at pre-application stage and to the planning authority at application stage.	Yes. The applicant can appeal to DPEA. Representation can be made to DPEA.
<b>Development generating electricity 20-50MW</b>	Planning Permission (Major)	Planning authority	Yes. Statutory requirement.	Yes. To the applicant at pre-application stage and to the planning authority at application stage.	Yes. The applicant can appeal to DPEA. Representation can be made to DPEA.
<b>Development generating electricity &gt;50MW</b>	S36 consent	Scottish Ministers through ECU	No statutory requirement. Encouraged by Scottish Government.	Yes. To the applicant at pre-application stage and to the ECU at application stage.	Potential for a public inquiry. The applicant can appeal to the Court of Session.
<b>Overhead electric line and pylons</b>	S37 consent	Scottish Ministers through ECU	No statutory requirement. Encouraged by Scottish Government.	Yes. To the applicant at pre-application stage and to the ECU at application stage.	Potential for a public inquiry. The applicant can appeal to the Court of Session.

\*Only applicable to statutory undertakers.



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**i Visit [our website](#) for information  
sheets on other planning topics**