

The Highland Council

Agenda Item	9
Report No	HC/08/25

Committee: Highland Council

Date: 27 March 2025

Report Title: Review of the Scheme of Delegation

Report By: Chief Officer Legal and Corporate Governance

1 Purpose/Executive Summary

1.1 This primary purpose of this report is to detail proposed amendments to the Council's Scheme of Delegation and Administration which are required to facilitate timeous responses to energy consent consultations. These amendments are to existing Planning Applications Committee and Officer delegations in respect of section 36 and section 37 energy consent applications which are determined by Scottish Ministers. The proposed amended Scheme reflects the following changes:

- i. To respond to consultations relating to applications made under Section 36 or Section 37 of the Electricity Act 1989, following consultation with the Chair and Vice Chair of the relevant Planning Applications Committee, where it is not possible to report the application to the relevant Committee before the expiry of the 4-month or 2-month deadline (or any other agreed extension); and
- ii. To allow Officers following consultation with the Chair and Vice Chair of North Planning Applications Committee and/or South Planning Applications Committee (as appropriate) to respond to consultations relating to Further Environmental Information (FEI) without requiring additional Committee consideration provided that the FEI does not in the professional opinion of the Officer:
 - a. Materially increase the scale of the proposed development;
 - b. Result in additional significant adverse environmental effects; or
 - c. Undermine or remove mitigation previously secured in the Council's consultation response.

In this regard, an electronic link to the current version of the Scheme is highlighted here and the relevant changes:

The proposed changes to the Scheme of Delegation in respect of planning matters are detailed in red on page 2 and 12 (also referred to as page 101 within the current scheme of delegation) of Appendix 1.

- 1.2 In addition to the proposed amendments in respect of planning matters Council is being asked to agree a number of changes in respect of both licensing and trading standards matters. The amendments in licensing allow the Chief Officer – Legal and Corporate Governance to suspend immediately a licence on receipt of medical advice and secondly to recall such a temporary suspension prior to consideration by the Licensing Committee. The proposed amendments to the Trading Standards elements reflect changes in the legislative provisions the Service operates under.

The proposed licensing and Trading Standards amendments are set out across pages 3 to 11 of Appendix 1.

2 Recommendations

- 2.1 The Council is invited to agree:
- i. the changes to the Scheme of Delegation and Administration as detailed in Appendix 1 to this report.

3 Implications

- 3.1 **Resource** - This report will have a direct impact on Committee resources. The proposed changes would remove the requirement to present an initial report to the Committee for Officers to raise an objection, followed by a subsequent report with full details of the scheme. This adjustment would streamline the process and reduce the double handling of schemes made under the Electricity Act 1989.
- 3.2 **Legal** - The revised Scheme will support the Council in meeting its legal duties and enhance the Council's governance arrangements. All amendments are consistent with the Local Government (Scotland) Act 1973 and the legislative and regulatory framework governing the delivery of Council services.
- 3.3 **Community (Equality, Poverty, Rural and Island)**: there are no direct community implications arising as a consequence of this report.
- Climate Change / Carbon Clever**: there are no direct implications arising as a consequence of this report
- 3.4 **Risk** - there are no direct risk implications arising as a consequence of this report.
- 3.5 **Health and Safety** (risks arising from changes to plant, equipment, process, or people): there are no direct health and safety implications arising from this report.
- 3.6 **Gaelic** - there are no direct Gaelic implications arising as a consequence of this report.

4 Impacts

- 4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children's Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and

Data Protection. Where identified as required, a full impact assessment will be undertaken.

- 4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.
- 4.3 This is an update report which does not impact upon any policy, strategy or service and therefore an impact assessment is not required.

5 Background: Amendments to the Scheme of Delegation for Planning

- 5.1 The proposed changes to the Scheme of Delegation align with broader discussions on electricity infrastructure consenting in Scotland. A report was brought to the Highland Council on 12 December 2024 setting out the UK Government's consultation on Electricity Consenting in Scotland and highlighting key aspects of the proposed reforms. The consultation includes proposals to refine application procedures but most notably it suggested removing the automatic right to a Public Local Inquiry (PLI) when a local authority objects, instead granting Scottish Ministers discretion on whether an inquiry is necessary. The Council's response to the consultation underscored concerns about resource constraints, the importance of early and meaningful community engagement, and the potential effects of limiting public inquiries.
- 5.2 Since consideration of this consultation by the Council, further correspondence (Appendix 2) has been received from Scottish Government urging full engagement in the new 52-week determination timeframe for priority net zero strategic infrastructure projects submitted under Section 37 of the Electricity Act 1989. This initiative, developed in consultation with the Transmission Steering Group, seeks to accelerate consenting for essential transmission infrastructure, ensuring timely delivery of Scotland's net zero commitments. The guidance (Appendix 3) outlines procedures and timescales for priority applications, emphasising the need for planning authorities and statutory consultees to provide comprehensive responses within an eight-week period, with no extensions permitted.
- 5.3 These broader policy discussions underpin the proposed revisions to the Council's Scheme of Delegation. The evolving policy landscape presents resource and governance challenges, particularly the growing pressure to meet statutory deadlines. The proposed changes seek to address these challenges by streamlining processes and ensuring timely, effective engagement in decision-making.

6 Scheme of Delegation-Statutory Deadlines

- 6.1 The determination of electricity-generating developments depends on their installed capacity, with different processes applying to proposed developments above and below the 50-megawatt (MW) threshold. For developments over 50MW, applications are made under Section 36 of the Electricity Act 1989 ("the 1989 Act") and are determined by Scottish Ministers. The local authority acts as a statutory consultee, providing its formal views on the proposal. If the local authority objects, Scottish Ministers must hold a public inquiry before making a final determination. For developments of 50MW or less, the application is determined by the local authority as the Planning Authority under the Town and Country Planning (Scotland) Act 1997.

- 6.2 Under the Electricity Act 1989 Section 36 applications (relating to onshore generating stations) require a consultation response from the planning authority within four months. Section 37 applications (relating to overhead lines) require a response from the planning authority within two months. Extensions may be granted in exceptional circumstances but require written agreement between the applicant, the planning authority, and the Scottish Ministers.
- 6.3 At the meeting of South Planning Applications Committee (SPAC) on 20 August 2024, concerns regarding the statutory timescales for responding to Section 36 and Section 37 applications were raised, particularly in relation to the lack of agreement by Applicants and Scottish Government for extensions of time to respond. The Committee agreed that Officers would write to the Scottish Ministers to highlight these concerns.
- 6.4 Under the existing Scheme of Delegation and Administration, section 36 and 37 applications made under the 1989 Act must be considered by the Committee within the 2 month or 4-month deadline, in accordance with paragraph 3.6 of the current Scheme of Delegation.
- 6.4 Currently, where the Planning Authority wishes to raise a holding objection to a proposed energy development, Officers must first present a brief report to the Committee for consideration before responding to the Scottish Ministers. This process not only ensures a timely response, but it also preserves the Council's position as an objection from the Planning Authority causes a Planning Local Inquiry (PLI) to be held. A fuller report is then prepared and brought back to the Committee for further consideration after the Committee's initial response is submitted to Scottish Ministers.
- 6.5 The proposed amendments to the Scheme of Delegation and Administration will mean that officers will have authority to submit an automatic response within statutory timeframes following consultation with the Chair and Vice Chair, ensuring that time-sensitive cases are addressed appropriately. After this response is submitted, a full report outlining the case officer's assessment of the proposal will be presented to the relevant Committee. The Committee will then decide whether to maintain the case officer's recommendation to either raise an objection or not to raise an objection.
- 6.6 Where the recommendation is to raise an objection, this change to the Scheme of Delegation would remove the need for double handling of reports, streamlining the process and ensuring efficient decision-making. The Council's final decision will then be submitted to the Energy Consents Unit (ECU) for consideration. If the Committee determined to maintain the objection an inquiry will be held. If the Committee determined not to maintain the objection, it would subsequently be withdrawn.
- 6.7 This change to the Scheme of Delegation would also ensure that a report is not presented to the Committee following the relevant statutory deadline, preventing a situation whereby the Committee wishes to object but are unable to do so due to the statutory timeframe having expired. This will ensure that the Council's position in respect of responding to an energy consent application (and where relevant to give rise to a Planning Local Inquiry (PLI)) is protected, thereby maintaining its ability to participate fully in the decision-making process.
- 6.8 If the Council decides not to adopt these proposed changes to the Scheme of Delegation, and the existing procedure is retained, the Council, as Planning Authority, may not be able to respond to energy consent applications timeously and any late consultations responses which raise an objection out with the relevant timescales may not give rise to an inquiry, as this would be at the discretion of Scottish Ministers.

6.9 If the Council decides to adopt these changes, the service will require a period of transition to implement them effectively. This is primarily because adjustments to the Council's internal processes for case officers will be necessary, ensuring that the new approach is properly integrated into existing workflows.

7 Scheme of Delegation-Further Environmental Information

7.1 In accordance with the current scheme of delegation, the Committee is required to provide responses to Scottish Ministers regarding any further environmental information (FEI) submitted by the applicant to the Scottish Ministers following the Committee's consideration of a Section 36 and/or Section 37 application. It is important to note that the applicant's submission of FEI is not always in direct response to matters raised by the Council as Planning Authority but can also be in response to issues raised by other consultees, such as SEPA or NatureScot, or third-party representations. In these circumstances, the Committee is still required to consider any FEI submitted. Where additional FEI is submitted, members of the public are provided an opportunity to respond to the additional information, ensuring transparency and community engagement in the process.

7.2 The proposed changes to the Scheme of Delegation seek to provide Officers with delegated authority to respond to FEI in instances where the scheme has already been considered by the Committee, provided that, in their professional opinion, the FEI does not result in an increase in the scale of the proposed energy development, lead to additional significant adverse environmental effects, or undermine any mitigation that the Council has proposed in its initial consultation response. Consultation will be undertaken with the Chair and Vice Chair of the appropriate Planning Applications Committee prior to any delegated response being issued on behalf of the Council to Scottish Ministers. This revised approach is intended to streamline exciting processes and maximise Committee time by ensuring that only relevant FEI is brought back for the Committee's further consideration, while allowing officers to manage routine responses to non-substantive or non-material submissions.

Designation: Chief Officer-Legal and Corporate Governance

Date: 13 March 2025

Author: Rhoda Banfro

Appendices:

Appendix 1-Proposed changes to the Scheme of Delegation

Appendix 2- Letter from Gillian Martin MSP Cabinet Secretary for Net Zero Energy

Appendix 3-Priority Applications for Transmission Infrastructure Guidance

The Highland Council

**Scheme of Delegation and Administration
to Committees and Sub-Committees and to Officers**

March 2025

**Planning Applications Committees
from the Economy and Infrastructure Committee and from Council**

1. To respond to consultations from Scottish Ministers on energy developments under the Electricity Act 1989 (including those relating to s36 and s37 applications), unless otherwise delegated to Officers as defined under Consultations on s36 and s37 applications on page 101. If, in the opinion of the Assistant Chief Executive – Place, following consultation with the Chairs of the relevant Planning Applications Committees, an application raises strategic and/or cross boundary issues then a joint meeting of the relevant Planning Application Committees will be held to respond to the consultation.
2. To exercise the responsibilities in respect of the repair of buildings under Section 87 of the Civic Government (Scotland) Act 1982 and in respect of planning and building certificates under the Licensing (Scotland) Act 2005/1976.

List of Statutory Powers and Duties of the Council which are Exercisable by Officers of the Authority

Statute	Description of Power or Duty	Title of Officer to whom/level of post to which delegated
Performance and Governance		
<p>Civic Government (Scotland) Act 1982</p> <p>Gambling Act 2005, Housing (Scotland) Act 2006 — Part 5</p>	<p>To temporarily <u>immediately</u> suspend licences granted, or registrations in the interests of <u>a serious threat to</u> public order or <u>public</u> safety, or the public interest, following consultation with the Head of Legal and Governance <u>Chief Officer - Legal and Corporate Governance</u> and; the Chief Constable, and (where appropriate) the Chief Fire Officer <u>or a medical professional (as appropriate).</u></p> <p><u>To recall an immediate suspension, prior to the request being heard by the Highland Licensing Committee, where either the Chief Constable, the Chief Fire Officer or a medical professional has confirmed the request can be withdrawn.</u></p>	<p>Head of Legal and Governance and Solicitor <u>Chief Officer - Legal and Corporate Governance</u> (Regulatory Services) and Principal Solicitor (Regulatory Services)</p>
Trading Standards		
<p>Agricultural Produce (Grading and Marking) Acts 1928 — 1931;</p> <p>Agriculture Act 1970;</p> <p>Antisocial Behavior etc (Scotland) Act 2004 [Part 10 Sale of Spray Paint to Children];</p> <p>The Biocidal Products Regulations 2001;</p> <p>Children and Young Persons (Protection from Tobacco) Act 1991;</p> <p>Civic Government (Scotland) Act 1982;</p> <p>Clean Air Act 1993;</p>	<p>Subject to any restriction set out below, to carry out the functions of the Council, as Local Weights and Measures Authority; Local (Consumer Safety) Authority; Enforcement Authority and otherwise, including (without prejudice to the foregoing generality) to exercise the enforcement powers referred to in the Regulations and Acts listed, and any other Regulations made thereunder.</p>	<p>Enforcement Officer (Trading Standards); Assistant Trading Standards Officer</p>

<p>Consumer Credit Act 1974; Consumer Credit Act 2006; Consumer Protection Act 1987; Consumer Protection (Distance Selling) Regulations 2000; Consumer Protection from Unfair Trading Regulations 2008; Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Consumer Rights Act 2015 Control of Pollution Act 1974; Copyright, Designs and Patents Act 1988; Development of Tourism Act 1969; Education Reform Act 1988; The Electromagnetic Compatibility Regulations 2006; Energy Act 1976; Energy Conservation Act 1981; Enterprise Act 2002; Estate Agents Act 1979; European Communities Act 1972; Explosives Acts 1875 & 1923; Fair Trading Act 1973;</p>		
<p>Fireworks Act 2003; Food & Environment Protection Act 1985; Hallmarking Act 1973; Health & Safety At Work Etc. Act 1974; Housing Scotland Act 2006; Medicines Act 1968; Motor Cycle Noise Act 1987; Pesticides (Fees and Enforcement) Act 1989; Petroleum (Regulation) Acts 1928-36; Poisons Act 1972; Prices Acts 1974 and 1975; Property Misdescriptions Act 1991; Road Traffic Act 1988; Road Traffic Offenders Act 1988; Telecommunications Act 1984; Timeshare Act 1992; Tobacco Advertising & Promotion Act 2002; Tobacco and Primary Medical Services (Scotland)</p>		

~~Act 2010; Trade Descriptions
Act 1968; Trade Marks Act
1994;
Video Recordings Acts
1984 and 1993;
Aerosol Dispenser
Regulations 2009
Agricultural Produce
(Grading and Marking) Acts
1928 –1931;
Agriculture Act 1970;
Antisocial Behaviour etc
(Scotland) Act 2004 [Part
10 Sale of Spray Paint
to Children];
Biocidal Products
Regulations 2001
Biocidal Products and
Chemicals (Appointment of
Authorities and
Enforcement) Regulations
2013
Children and Young
Persons (Protection from
Tobacco) Act 1991;
Civic Government
(Scotland) Act 1982;
Clean Air Act 1993;
Construction Products
Regulations 2013
Consumer Credit Act 1974;
Consumer Credit Act 2006;
Consumer Protection Act
1987;
Consumer Protection
(Distance Selling)
Regulations 2000;
Consumer Protection
from Unfair Trading
Regulations 2008;
Consumer Contracts
(Information, Cancellation
and Additional Charges)
Regulations 2013;
Consumer Rights Act 2015
Control of Asbestos
Regulations 2012
Control of Pollution Act
1974;
Copyright, Designs and
Patents Act 1988;
Cosmetic Products
Enforcement Regulations
2013
Classification, Labelling and
Packaging of Substances~~

and Mixtures (Amendment and Consequential Provision) Regulations 2023
Detergents Regulations 2010
Digital Markets, Competition and Consumers Act 2024
Education Reform Act 1988;
Electrical Equipment (Safety) Regulations 2016
Electromagnetic Compatibility Regulations 2016;
Energy Act 1976;
Energy Conservation Act 1981;
Enterprise Act 2002;
Environmental Protection Act 1990
Environmental Protection (Microbeads) (Scotland) Regulations 2018
Environmental Protection (Cotton Buds) (Scotland) Regulations 2019
Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021
Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024
Estate Agents Act 1979;
European Communities Act 1972;
European Union (Withdrawal) Act 2018
European Union (Withdrawal Agreement) Act 2020
Explosives Acts 1875 & 1923;
Fireworks Act 2003;
Fireworks and Pyrotechnic Articles (Scotland) Act 2022.
Fireworks (Scotland) Miscellaneous Amendments Regulations 2021.
Fireworks (Scotland) Regulations 2004.

Food & Environment Protection Act 1985;
Food Imitation (Safety) Regs 1989
Furniture and Furnishings (Fire)(Safety) Regulations 1988
Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018
GB Biocidal Products Regulation (BPR) 2020
Hallmarking Act 1973;
Health & Safety At Work Etc.Act 1974;
Housing Scotland Act 2006;
Knife Dealer (Licence Conditions) Scotland Order 2013.
Medical Devices Regulations 2002.
Medicines Act 1968;
Motor Cycle Noise Act 1987;
Motor Cycle (Eye Protectors) Regulations 1999.
Motor Cycle (Protective Helmets) Regulations 1989
Motor Vehicle Tyre (Safety) Regulations 1994
Oil Heater (Safety) Regulations 1977
Pedal Bicycle (Safety) Regulations 2010
Personal Protective Equipment (Enforcement) Regulations 2018
Pesticides (Fees and Enforcement) Act 1989;

Petroleum (Regulation) Acts1928-36;
Poisons Act 1972;
Pressure Equipment (Safety) Regulations 2016.
Prices Acts 1974 and 1975;
Property Misdemeanors Act1991;
Pyrotechnic Articles (Safety) Regulations 2015.
Radio Equipment Regulations 2017
Recreational Craft

Regulations 2017
Regulation (EU) 2017/625
(Official Controls
Regulation)
Retained CLP Regulation
(EU) No. 1272/2008 as
amended for Great Britain
Retained EU Law
(Revocation and Reform)
Act 2023
Road Traffic Act 1988;
Road Traffic Offenders
Act1988;
Road Vehicle (Brake
Linings Safety) Regulation
1999
Simple Pressure Vessel
(Safety) Regulations 2016
Standardised Packaging of
Tobacco Products
Regulations 2015
Supply of Machinery
(Safety) Regulations 2008
Telecommunications Act
1984;
Textile Products (Labelling
and Fibre Composition)
Regulations 2012
Timeshare Act 1992;
Tobacco Advertising &
Promotion Act 2002;
Tobacco and Primary
Medical Services (Scotland)
Act 2010;
Tobacco and Related
Products Regulations 2016
Toys Safety Regulations
2011
Trade Descriptions Act
1968;
Trade Marks Act 1994;
Video Recordings Acts
1984and 1993;

the European Communities Act 1972; and European Union (Withdrawal) Act 2018 Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021	With effect from the date of the UK withdrawal from the European Union that the delegated powers to Trading Standards are amended to: Remove any reference to the European Communities Act 1972; and substitute the European Union (Withdrawal) Act 2018 and regulations retained or brought into domestic legislation by that Act.	Enforcement Officer (Trading Standards) Assistant Trading Standards Officer
General Product Safety Regulations 2005	Regulations 21 to 23 - Test purchases; Powers of entry and search etc.	Enforcement Officer (Trading Standards)
General Product Safety Regulations 2005	Regulation 11- Issue of Suspension Notice	Trading Standards Officer
General Product Safety Regulations 2005	Regulation 12, 13 and 14 – Issue of Notice to Mark, to Warn and to Withdraw	Trading Standards Team Leader
General product Safety Regulations 2005	Regulation 15 - Issue of Recall Notice and all other enforcement duties and responsibilities assigned by the regulations to the council as the enforcement authority	Trading Standards Manager
Weights and Measures Act 1985 <u>Measuring Container Bottles (EEC Requirements) Regulations 1977</u> <u>Measuring Equipment (Capacity Measures and Testing Equipment) Regulations 1995</u> <u>Measuring Instruments Regulations 2016</u> <u>Measuring Instruments (EEC Requirements) Regulations 1988</u> <u>Non-automatic Weighing Instruments Regulations 2016</u> <u>Weights and Measures (Packaged Goods) Regulations 2006</u>	Those responsibilities, duties and powers assigned by the act to an Inspector	Trading Standards Officer

Weights and Measures Act 1985	Those responsibilities, duties and powers assigned by the act to the Chief Inspector	Trading Standards Manager
<u>Trade in Animals and Related Products (Scotland) Regulations 2012</u> <u>REACH Enforcement Regulations 2008</u> <u>REACH etc. (Amendment etc.) (EU Exit) Regulations 2019</u>	<u>Subject to any restriction set out below, to carry out the functions of the Council, as Local Weights and Measures Authority; Local (Consumer Safety) Authority; Enforcement Authority and otherwise, including (without prejudice to the foregoing generality) to exercise the enforcement powers referred to in the Regulations and Acts listed, and any other Regulations made thereunder</u>	<u>Trading Standards Officer</u>
Tobacco and Primary Medical Services (Scotland) Act 2010;	Schedule 1 Paragraph 8 – Authority to withdraw a Fixed Penalty Notice	Trading Standards Manager
Farm & Garden Chemicals Act 1967; Offensive Weapons Act 1996	Legislation which the Council has no statutory duty to enforce but which is associated with the Trading Standards function and which Committee (Council) has agreed should be included in list of legislation to be enforced. This legislation does not include any provisions for powers of officers enforcing the legislation	Enforcement Officer (Trading Standards)
Civic Government (Scotland) Act 1982	Section 94 and 99 – to serve notices on occupiers or owners of premises or land on which disused petrol tanks are situated.	Enforcement Officer (Trading Standards)
Civic Government (Scotland) Act 1982	In respect of taxi and private hire car licensing, to carry out the duties and exercise the powers of Civic Licensing Standards Officers under sections 45G and 45H of the	Trading Standards Team Leader Trading Standards

	Act	Officer Enforcement Officer (Trading Standards) Assistant Trading Standards Officer
Various Acts	To increase fees and charges as follows:- a) fees payable under the Health & Safety at Work Etc Act 1974 in relation to the storage of Explosives and keeping of Petrol to the statutory maximum, set out in the current version of the Health and Safety (Fees) Regulations b) fees and charges payable under the Poisons Act 1972 and Weights and Measures Act 1985, according to the Council's Charging Policy.	Trading Standards Manager
Manufacture and Storage of Explosives Regulations 2005; Explosives Regulations 2014; Petroleum (Regulation) Acts 1928 and 1936; Petroleum (Consolidation) Regulations 2014; Poisons Act 1972; Fireworks Regulations 2004	To grant, but not refuse, applications, renewals or transfers of licences, registrations, approvals and other permissions sought (including variation thereof).	Trading Standards Manager
The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020	Power to serve notice	Trading Standards Officer
The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, Regulation 7(12)(b)	Designate a person for the purposes of the regulations	Trading Standards Manager

Infrastructure, Environment and Economy_- Statutory Powers and Duties of the Council which are Exercisable by Officers of the Authority

Statute	Description of Power or Duty	Title of Officer to whom/level of post to which delegated
	Consultations on section 36 and 37 applications	
	To respond to consultations relating to applications made under section 36 or section 37 of the Electricity Act 1989, following consultation with the Chair and Vice Chair of the relevant Planning Applications Committee, where it is not possible to report the application to the relevant Committee before the expiry of the 4 month, or 2 month deadline (or any other agreed extension).	HPE / APM / DMTL / PP
	To respond to consultations, following consultation with the Chair and Vice Chair of the relevant Planning Applications Committee, where: <ul style="list-style-type: none"> i. The consultation relates to the submission of Further Environmental Information by the applicant; ii. and does not, in the opinion of the Area Planning Manager: <ul style="list-style-type: none"> a) Materially increase the scale of the proposed development; and b) Result in any additional significant adverse environmental effects; and c) Does not undermine or remove mitigation which was secured within the Council's previous consultation response on the application. 	HPE / APM / DMTL / PP
Abbreviations used for Appointed Officers		
Head of Planning & Environment		HPE
Area Planning Manager		APM
Development Management Team Leader		DMTL
Principal Planning Officer		PP
Principal Officer (Land)		POL
Planning Enforcement Officer		PEO

26 February 2025

Dear Chief Executives,

I am writing to seek your full support regarding the introduction of a 52-week determination timeframe for net zero critical strategic infrastructure projects submitted under section 37 of the Electricity Act 1989.

Determining applications for priority transmission infrastructure within a 52-week timeframe was a key recommendation of the Transmission Networks Short Life Working Group and is deemed essential to the Scottish Government's commitments and our shared responsibility to deliver net zero.

We have drafted guidance outlining the procedures and timescales for priority applications seeking consent to install overhead line transmission infrastructure, which you can find attached. This guidance was developed in consultation with the Transmission Steering Group, whose members include representatives from: the two principal applicants for consents to install overhead lines in Scotland, the Energy Consents Unit, the Planning and Environmental Appeals Division, and Heads of Planning Scotland.

'Priority applications' will be projects that facilitate large-scale power transfer at a strategic scale, including connecting multiple generation sites or single generation sites where section 36 consent under the Electricity Act or planning permission for the generating station has been granted.

Scottish Ministers consider it crucial that planning authorities and statutory consultees fully engage in the process, making it a priority to provide comprehensive responses within the timescales, as set out in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, and as referenced in the attached guidance.

This engagement is vital to ensure priority applications are supported by appropriate environmental information.

You can also find the published guidance document at the following address: [Priority Applications for Transmission Infrastructure guidance: Section 37 of the Electricity Act 1989 - gov.scot](https://www.gov.scot/Information/Policy/NetZero/TransmissionNetworksShortLifeWorkingGroup/PriorityApplicationsforTransmissionInfrastructureguidance%3ASection37oftheElectricityAct1989)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

I trust that the guidance we have developed will facilitate your support in implementing a 52-week determination timeframe for these priority applications and I thank you for your assistance.

Yours faithfully,



GILLIAN MARTIN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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Priority Applications for Transmission Infrastructure

Guidance

Section 37 of the Electricity Act 1989

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1. Introduction

Purpose and Background

This guidance sets out the procedure for priority applications for consent to install overhead line transmission infrastructure under section 37 of the Electricity Act 1989 (“Electricity Act”).

Priority applications – definition and rationale

This guidance has been written in consultation with the two principal Applicants for consent to install overhead lines in Scotland at a voltage of 132kV or more. The definition of priority applications has been agreed between those Applicants and the Scottish Government. ‘Priority Applications’ refer only to applications which are a priority within the group of applications made by the transmission companies SPT and SSEN Transmission under section 37 of the Electricity Act 1989. A definition of these and the rationale for according these applications priority status is set out under each definition:

1. “Strategic Transmission Infrastructure - Strategic Transmission infrastructure projects increasing system capacity or security of supply”

Rationale: these projects facilitate large scale power transfer at a strategic scale supporting the delivery of net zero ambitions and ensuring energy security.

2. “Generation connections - Projects connecting generation where the connection would be for multiple generation sites; or for single generation sites where section 36 consent or planning permission for the generating station has been granted”

Rationale: these projects will help to secure connections for low carbon generation to meet net zero ambitions (focusing on maximising generation connections with greater certainty on delivery)

Using this Guidance

The guidance provides direction on all steps of the process for priority applications, but not all steps will be applicable to each scheme depending on the scale, location, anticipated impact etc. Figure 1 sets out the pre-application stage from Submission of a Pre-Application Notification to Application Submission. Figure 2 sets out the application stage from the point of application submission to the decision being issued. A more detailed process maps is included in Appendix 1 of this document:

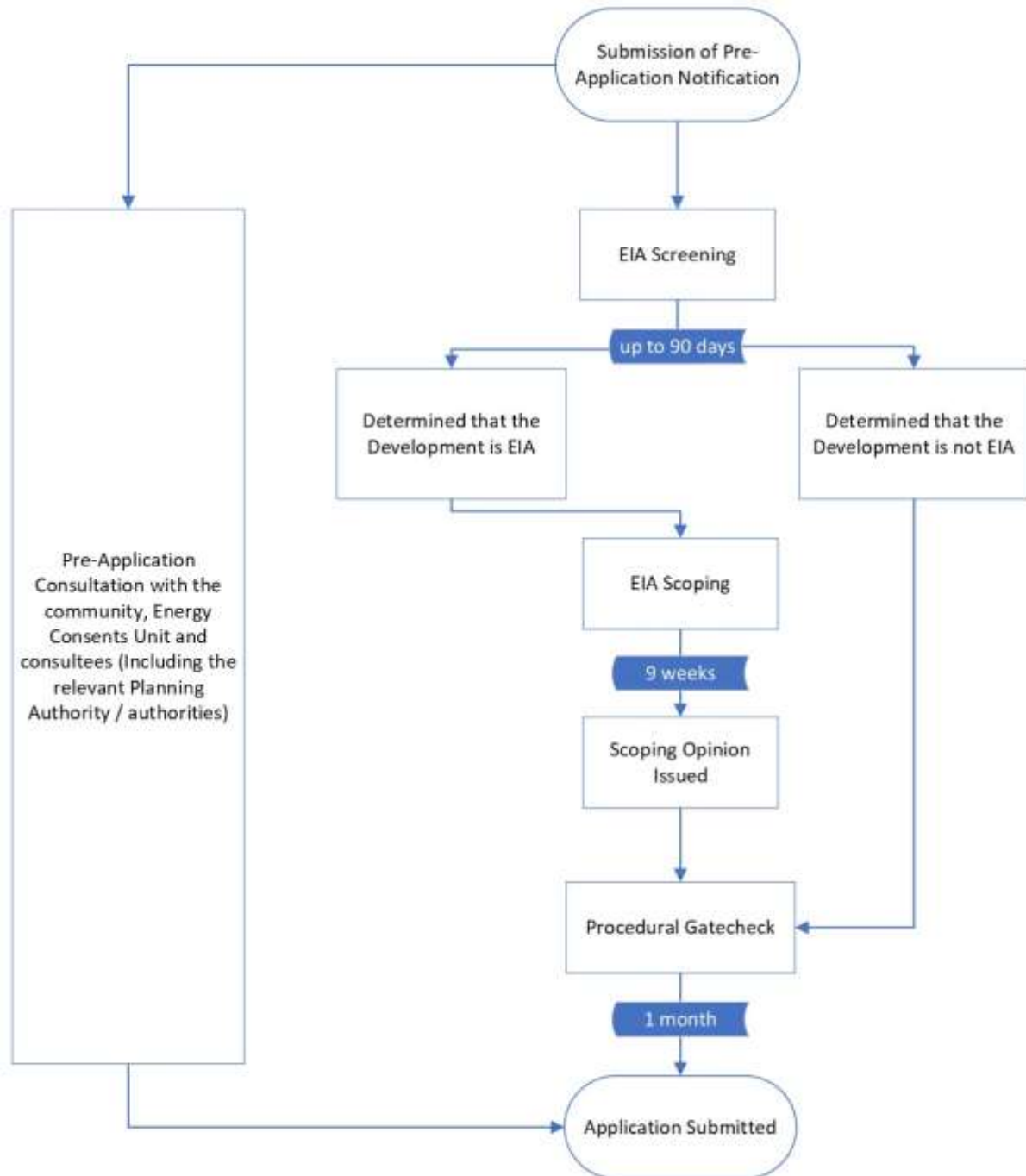


Figure 1 – Priority Application pre-application processes

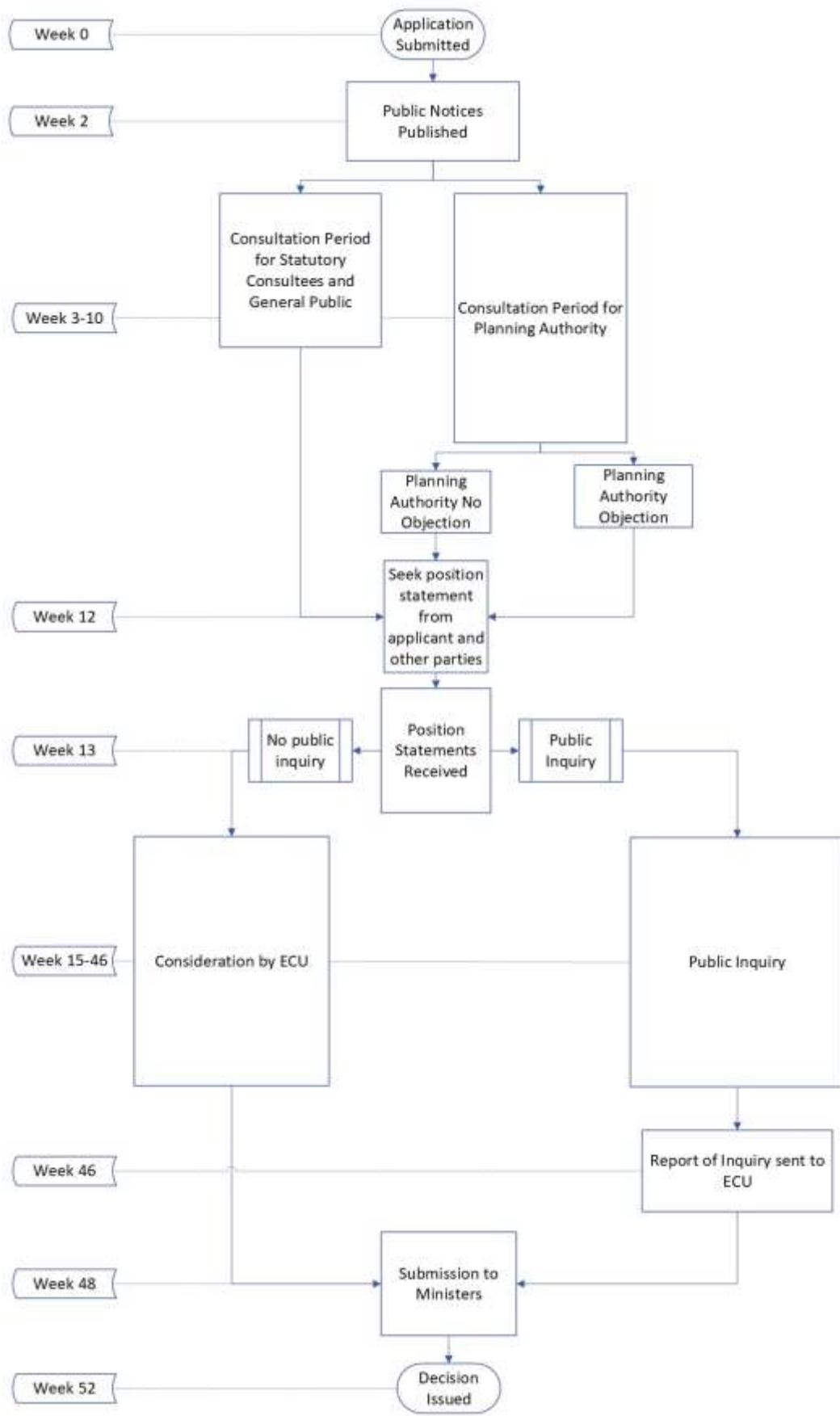


Figure 2 – Priority Application and determination process (including anticipated 52 week timescale for determination)

2. Background

In Scotland, most proposals to install and keep installed an overhead electric line require the consent of the Scottish Ministers under section 37 of the Electricity Act. Such applications are processed on behalf of the Scottish Ministers by the [Energy Consents Unit](#) (“ECU”). Section 57(2) of the Town and Country Planning (Scotland) Act 1997 (“TCP(S)A”) also allows the Scottish Ministers, on granting consent under 37, to direct that planning permission for the overhead line and any ancillary development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

The Scottish Ministers have an ambition to determine priority applications under section 37 (with or without a public inquiry) within 52 weeks of the date of application. This is to facilitate the delivery of net zero and ensure energy security. Achieving this 52 week ambition will present significant challenges, and will require substantial changes to the way applications are made and processed:

- In accordance with the pre-application guidance for Section 37 EIA applications, before applications are made Applicants should engage with statutory consultees, the community and the relevant Planning Authority¹ before and throughout the EIA scoping process, and will need to keep ECU advised of the programming of their future applications.
- Applications will need to be complete, supported by all necessary environmental information, and are not expected to be altered after they are made.
- ECU will process representations and consultation responses within statutory timescales, swiftly pass cases to Planning and Environmental Appeals Division (“DPEA”) if a public inquiry is to be held, and issue decisions soon after the report of that inquiry is received.
- The relevant Planning Authority, other statutory consultees and those making submissions on applications will be required to respond within the relevant statutory periods both at EIA scoping stage and at application stage.
- DPEA will need to undertake an efficient and inclusive public inquiry process in accordance with a timetable which will be fixed at the time an application is made, in cases where a public inquiry may be required. All inquiry parties will need to work to this fixed timetable.

This guidance updates and incorporates relevant elements of the Scottish Government Code of Practice for Handling Inquiries under Section 62 and Schedule 8 to the Electricity Act 1989, and elements of DPEA Guidance Notes [GN23](#) and [GN8](#).

Separate guidance covers applications made under Section 36 and non-priority applications made under Section 37. The relevant guidance is available online and has been updated as appropriate to reflect the content of this guidance.

¹ For transmission lines there may be more than one relevant Planning Authority, but for simplicity the singular is used in this guidance.

[Energy consents - Energy infrastructure - gov.scot \(www.gov.scot\)](http://www.gov.scot)

The main legislation applicable for applications made under section 37 of the Electricity Act and relevant to this guidance is as follows:

- The Electricity Act 1989 (“the Act”);
- The Town and Country Planning (Scotland) Act 1997 in relation to the ability for the Scottish Ministers to direct that planning permission shall be deemed to be granted for the development under section 57(2) (the “TCPA”);
- The Electricity (Applications for Consent) Regulations 1990 (the “Consent Regulations”);
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (the “EIA Regulations”);
- The Conservation of Habitats and Species Regulations 2017. (the “Habitat Regulations”)

3. Application and Determination Process

Key Stages

To ensure an efficient process, the Scottish Ministers require all parties to actively participate and respond timeously at all times throughout the application and determination process.

Figure 1 of this guidance sets out the key stages of the application process prior to submission. Further information and detail on each stage is provided in the following sections.

4. Pre-Application

Pre-Application Community Engagement

Although there is presently no statutory requirement for pre-application community engagement under the Electricity Act, the Scottish Ministers consider such engagement to be essential for major transmission infrastructure projects. Applicants are expected to have meaningful engagement, at each stage where stakeholders can influence proposals, with any stakeholders who would be affected by, or have an interest in, development proposals.

Separate guidance sets out the Scottish Government's expectations covering pre-application engagement with communities.

Pre-Application Discussions with ECU

Early engagement is encouraged to assist ECU and relevant statutory consultees in managing their resources and casework. Prospective Applicants should complete a [Pre-application Form](#) as soon as it is known that an application for section 37 consent for installation of an overhead transmission line will be made.

This will assist ECU in forward planning and ensure the Scottish Ministers have information on proposals that are likely to come forward to them for consideration.

The ECU will undertake regular portfolio meetings with the transmission companies to understand pre application milestones and projected submissions of scoping requests and applications. More in depth meetings on specific proposals will be held where necessary at appropriate times in the pre-application process.

The ECU will share with the DPEA anticipated submission timetables to allow for the planning of resources.

5. Environmental Impact Assessment

EIA is a means of drawing together, in a systematic way, an assessment of the likely significant environmental effects arising from a proposed development. The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA Regulations”) apply to applications under section 37 of the Electricity Act and set out the legislative requirements of the EIA process.

EIA is a process that consists of:

- the preparation of an EIA report by the Applicant;
- the carrying out of consultation, publication and notification at certain stages of the process;
- the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information; and
- the reasoned conclusion by the Scottish Ministers on the significant effects of the development on the environment, and the integration of that reasoned conclusion into the decision notice issued in respect of the application.

Developments falling within a description in Schedule 1 to the EIA Regulations always require EIA. Schedule 1 includes construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

Any change to or extension (including a change in the manner or period of operation) of such development, where the change or extension in itself meets the thresholds, will require EIA.

Development of a type listed in Schedule 2 to the EIA Regulations will require EIA where the development is likely to have significant effects on the environment by virtue of facts such as its nature, size or location. Schedule 2 includes installing an electric line above ground with a voltage of 132 kilovolts or more; in a sensitive area; or with the purpose of connecting to a generating station requiring consent under section 36.

In addition, EIA is required for any change to or extension (including a change in the manner or period of operation) of these types of development (or of development of a description listed in schedule 1) where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment.

Planning authorities and statutory consultees have a formal role in the EIA process, as set out in the EIA Regulations. For priority applications, the Scottish Ministers expect Applicants to involve those bodies in early discussions about the proposed project, the issues it is likely to raise, and the nature of environmental information that is likely to be required. It is recommended that a liaison group of the consultees is set up early on in the life of the project, and that this group is kept informed and involved throughout the process. This group could be led by the Applicant, or under the auspices of the pre-application advisory service (if available) provided by the relevant Planning Authority.

EIA Screening

It is anticipated that the great majority of Priority Applications will be EIA development, and that screening would therefore not be necessary.

Nevertheless, Applicants have the option of asking for the Scottish Ministers' opinion as to whether an EIA will be required in support of their proposed development. The Scottish Ministers' formal opinion on whether a development is EIA development or not is termed a "screening opinion". Scottish Ministers may also adopt a screening opinion at their own volition.

Part 2 of the EIA Regulations sets out the steps both the Applicant and Scottish Ministers must take in relation to screening opinions. Where an EIA screening opinion is requested by the Applicant, the Applicant must submit the request for a screening opinion and accompanying information in accordance with Regulation 8 of the EIA Regulations. The supporting information required is set out in Regulation 8(2) and should be compiled taking into account the selection criteria set out in Schedule 3 of the EIA Regulations. Applicants can submit screening requests via the [Energy Consents Portal](#).

The Scottish Ministers must consult the relevant Planning Authority for its views on whether the proposed development is EIA development (unless the Planning Authority has already conveyed its views to the Scottish Ministers). The Planning Authority has three weeks to provide its views to the Scottish Ministers, or, only in exceptional circumstances, where the Scottish Ministers determine that a longer period applies.

Where an EIA screening opinion is requested, Regulation 9 sets out that screening opinions should be adopted by the Scottish Ministers on or before the "relevant date", meaning the earlier of:

- three weeks, or such longer period as may be agreed in writing between the Scottish Ministers and the developer, beginning with the date by which the Planning Authority are required to give their views (or the date on which the Scottish Ministers received their views, if earlier); or
- 90 days beginning with the date the screening request is received.

Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development that it is not practicable for them to adopt a screening opinion within 90 days of receipt of the request, they may extend that period by notice in writing given to the developer. However, for priority applications, ECU will respond to screening opinions by the relevant date provided for in Regulation 9, except in very exceptional circumstances.

EIA Scoping

A scoping opinion is an opinion adopted by the Scottish Ministers outlining the scope and level of detail of information to be provided in an EIA report that will accompany an application. Part 4 of the EIA Regulations outlines the steps both the Applicant and Scottish Ministers must take in relation to scoping requests and scoping opinions.

All Priority Applications which are to be accompanied by an EIA Report must submit a scoping request for priority projects.

A request by an Applicant for a scoping opinion must be accompanied by the information set out in Regulation 12(2) of the EIA Regulations, and include key details of the site and the proposed development.

All scoping requests are submitted by the Applicant via the [Energy Consents Portal](#). Where Applicants have undertaken initial site survey work to inform the scoping process (such as ecological surveys or peat probing), this information should be provided within or alongside the scoping report.

The Scottish Ministers must consult the following consultation bodies before adopting a scoping opinion:

- the relevant Planning Authority;
- NatureScot;
- the Scottish Environment Protection Agency (SEPA);
- Historic Environment Scotland (HES); and
- any other relevant public bodies with specific environmental responsibilities or local and regional competencies who the Scottish Ministers consider are likely to have an interest.

The Applicant should submit a consultee list for review by the ECU that will include the names and contact details (including up to date email addresses) of the relevant consultees as set out in the paragraph above.

Following the receipt of the scoping request, ECU will consult consultees (directing parties to the ECU portal to view relevant information) on the proposed scope of the EIA report.

The Scottish Ministers consider it essential, to ensure that priority applications for transmission infrastructure are fully informed by the appropriate environmental information, that planning authorities and statutory consultees make it a priority to provide a comprehensive response to scoping consultations within the timescale set out. This will assist all parties in the efficient processing of the subsequent application for section 37 consent. Early liaison with the statutory consultees, as advised above, should help facilitate their timely and comprehensive responses at scoping stage.

Once the consultation responses are received, they are taken into account in the preparation of the scoping opinion. Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion and include the information that may reasonably be required for reaching a reasoned conclusion on the likely significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

The Scottish Ministers must adopt the scoping opinion within nine weeks of the request, or, in exceptional circumstances, such longer period as they may reasonably require. As a guide, Table 1 below sets out the timescales for the scoping stage. For priority applications, ECU will provide a scoping opinion no later than 9 weeks after the request, which shall be submitted to ECU with the case officer in copy, unless there are very exceptional circumstances.

Table 1: Scoping Consultation Timeframes

Scoping stage	Indicative timeframe
From receipt of scoping request to issuing of consultation to consultees	1 week
Consultation period	3 weeks
From close of consultation period to scoping opinion issued by ECU	5 weeks
Issue scoping opinion	9 weeks

Consultees will be required to submit project specific scoping responses which set out where they disagree with the proposed scope (as set out within the Applicants scoping request) and clear rationale in relation to EIA guidance and regulations. This will ensure efficient coordination of responses and justification as to requirements where conflicting requirements are identified by different parties.

The Scottish Ministers will consider the consultation responses and prepare a single scoping opinion issued by the Scottish Ministers. If there is conflicting advice in the consultation responses, the Scottish Ministers will consider this advice carefully before setting out, in their scoping opinion, the approach which should be taken by the Applicant in preparing the information for the EIA Report.

6. Procedural Gatecheck

No later than one month before submission, the Applicant will confirm to the ECU the week during which the application will be made. On receipt of this notice, the ECU will arrange a Procedural Gatecheck meeting with the Applicant, to be held two weeks prior to the application being submitted.

At this Gatecheck meeting, the ECU will provide (having consulted with DPEA) the fixed 52 week timeline for the application, which is to be applied should a public inquiry be required.

The Applicant and ECU will confirm at the meeting that all the necessary documentation and supporting information will be in place and will be provided with the application. Two weeks in advance of this meeting, the Applicant shall provide:

- the format and content of public notices to comply with the Consent Regulations and the EIA Regulations (as required), and include the names of the locations where the documents will be available for public viewing (and their respective opening hours), and the proposed dates of publication of those notices in the appropriate newspapers ²;
- the public bodies (both statutory and non-statutory) the Applicant proposes to be consulted, including any community councils in the vicinity, with up-to-date email contact details;
- the payment of the [relevant application fee](#)

Immediately following the Gatecheck meeting, the Applicant will inform the statutory consultees, relevant Planning Authority, affected landowners and local stakeholders of the date the application is to be made.

The application documents shall be provided to the relevant Planning Authority and statutory consultees and placed in the public viewing locations which have been agreed with the ECU on the date of submission of the application to the ECU.

² For the avoidance of doubt there should not be advert periods which run over 24 December to 05 January.

7. Submission of the Application

By the date the application is made, all necessary documentation shall be uploaded to the [Energy Consents portal](#). A complete application will consist of, at a minimum:

- location plan and site plan, showing clearly and at appropriate scale the location of all infrastructure for which section 37 consent and deemed planning permission (where relevant) is sought, including towers or poles, and any ancillary development;
- the entirety of the environmental information required in an EIA report, where the proposal is deemed to be EIA development;
- an explanation of how all the scoping responses from statutory consultees have been addressed (for EIA developments);
- details of the established need for and of the anticipated benefits of the project;
- a detailed explanation of all alternative options considered and why discounted;
- a pre-application consultation report setting out the information provided to the public and procedures carried out, and how comments received from the public have been considered in formulating the final design of the proposal;
- a planning statement;
- a schedule of mitigation measures;
- a suggested set of conditions based on ECU 'model' section 37 conditions;
- a statement confirming the Applicant's view that that all necessary environmental information has been submitted with the application, and that it does not anticipate the need to propose any substantive changes to the development;
- a statement confirming whether all the required wayleaves have been agreed with the owners and occupiers of the land proposed to be crossed by the line and whether it is proposed that any applications may be made to the Scottish Ministers under paragraph 6 of schedule 4 to the Electricity Act 1989, or that an order is proposed to be made under schedule 3 to the Act ; and
- all other supporting application documents including a cover letter which includes a description of all of the components of the development requiring consent and deemed planning permission (including the length of the proposed line and its nominal voltage), designed for inclusion in any consent decision.

The EIA report must be based on the Scoping Opinion issued by the Scottish Ministers, and any information or assessment that has been identified to the Applicant as being required by statutory consultees following the issue of the scoping opinion, unless otherwise agreed by the Scottish Ministers.

Notwithstanding the receipt as part of the application of the Applicant's stated view that all the necessary environmental information has been provided and that no substantive changes to the project will be proposed, the Scottish Ministers understand circumstances arise whereby there may be changes to an application at this stage. Should a substantive change be made or should ECU or DPEA determine

(having considered the evidence before them) that additional environmental information is required, then the application may not be able to be decided within 52 weeks, and a new timescale for determination will require to be agreed. The application would still be treated as a priority over other section 37 applications and processed as quickly as possible once the additional information has been submitted, but this would be subject to the availability of Reporters/ECU case officers. If additional environmental information is submitted, section 6.4 of the ECU Good Practice Guidance for Applications under Section 36 and 37 of the Electricity Act 1989 will be relevant.

Applications that need the consent of Scottish Ministers incur a fee under The Electricity (Applications for Consent and Variation of Consent) (Fees) (Scotland) Regulations 2019. In order to determine the correct fee to be paid on making an application, an online fee calculator is available. Further details on application fees can be found at “Application and fee requirements” on the relevant [ECU webpage](#).

8. Processing the Application

Consultation

The details of the consultation requirements in relation to applications, including the consultation processes, when and where public notifications should be published, and timeframes are set out in Part 5 of the EIA Regulations (where relevant) and in the Electricity (Applications for Consent) Regulations 1990.

Public notifications are the responsibility of the Applicant, and these take the form of advertisements placed in certain prescribed newspapers, and on the Applicant's website, to inform local communities and the general public of an application being made to the Scottish Ministers. This gives the public an opportunity to make representations to the ECU, where they can provide comments, support or object to an application. The public notice of the application can be combined with the notification that an application has been accompanied by an EIA report. ECU case officers can provide draft notice templates for use on request and agree dates regarding placing notices prior to the submission of the application.

The public notices issued shall state that members of the public shall have until the end of the statutory period (30 days after the last date of publication of the notices if EIA development, 28 days if not) to submit representations on the application.

As noted above, applications should provide a draft notice to ECU prior to the gate-check stage. Notice dates require to be discussed and agreed with the ECU case officer to ensure the application is available on the website when the notice is published.

Similar to the scoping stage, a consultee list is prepared and includes the names and contact details (including up to date email addresses) of all consultees. The consultation bodies consulted by the Scottish Ministers at application stage are the relevant Planning Authority, NatureScot, SEPA and HES and any other relevant public bodies with specific environmental responsibilities or local and regional competencies who the Scottish Ministers consider are likely to have an interest.

There are additional requirements in Part 5 of the EIA Regulations including a requirement for the Applicant to send a copy of the EIA report to the Planning Authority and inform the Scottish Ministers of the date this occurred. If the Applicant sends a copy of the EIA report to any consultation body (including the Planning Authority), it must also send with the EIA report a copy of the application and plan, inform the consultation body that representations may be made to the Scottish Ministers, and inform the Scottish Ministers of the name of every consultation body to which the Applicant has sent a copy of the EIA report and the date on which the Applicant did so.

No later than two weeks after the date of the application, ECU will issue its consultation letters to the relevant Planning Authority and to the statutory consultees. These will be copied to the Applicant. The fixed 52 week timeline for the application

(containing indicative dated for any PLI that may be required) shall be appended to the consultation letters.

Consultation Responses

Consultation responses to the application are published within the application pages at www.energyconsents.scot as soon as reasonably practicable after they are received.

For section 37 applications, the relevant Planning Authority has two months from the date of the application within which to respond to the application in line with regulation 8(1) of the Consent Regulations.

If a relevant Planning Authority objects to the application within this period and the Scottish Ministers cannot accede to the application subject to such modifications or conditions as will give effect to the objection, or the objection is not withdrawn, that objection shall have the effect of requiring³ the Scottish Ministers to cause a public inquiry, as provided for in Schedule 8 of the Act.

The Scottish Ministers expect planning authorities to respond within this statutory period. This period will not be extended by Ministers for priority applications. Any objection not notified within this period may be disregarded by the Scottish Ministers under the provisions of Schedule 8 of the Electricity Act.

Statutory consultees will be afforded the relevant statutory period in which to respond to the application (30 days after the last date of publication of notices if EIA development, 28 days if not (or any later period stated in the notices)).

Where issues or points of clarification require to be resolved, Applicants should engage with the relevant party or parties to address or clarify matters during the consultation period. It is important that ECU are kept fully informed of this type of engagement and are involved where required.

The Scottish Ministers consider it is important that planning authorities and statutory consultees prioritise their responses to these applications so that their full consultation responses are made within the statutory periods allowed for.

Public representations

Members of the general public or groups may make representations and comments to the Scottish Ministers in writing on section 37 applications within the timescale set out in public notices. Representations can also be emailed to representations@gov.scot.

³ Unless Ministers propose to grant the application subject to such modifications or conditions as will give effect to the objection

Representations will be published within the application pages at www.energyconsents.scot as soon as reasonably practicable after they are received.

Ministers are entitled to disregard any public representations made after the period stipulated in the public notice. The decision to accept any representations on an application after this date will be at Ministers' discretion. Acceptance of late representations shall not affect the processing of an application in accordance with the fixed 52 week timeline. After the report of any public inquiry has been received by Ministers, further representations will not normally be accepted unless they raise relevant new matters which have not been considered by the Reporter.

Cases where no public inquiry is held

If a Planning Authority objects to a section 37 application within the statutory time period, and its objection is not withdrawn, and the Scottish Ministers cannot accede to the application subject to such modifications or conditions as will give effect to the objection, Scottish Ministers must cause a public inquiry to be held and the application will be passed from the ECU to DPEA.

However, a public inquiry is not required where the Scottish Ministers propose to grant the application subject to modifications or conditions that will give effect to the Planning Authority's objection.

Where the Planning Authority has not objected but other parties have, Scottish Ministers will consider those objections together with all other material considerations and determine, at their own discretion, whether a public inquiry should be held. This determination will be made soon after the end of the two month period allowed for the Planning Authority response, and no later than 13 weeks after an application has been made.

The time taken to determine the application will depend on the nature of the evidence and the issues raised in each case. Ministers' ambition is that decisions will be made no later than 52 weeks after the date of the application being submitted to the ECU.

Process for passing cases to DPEA for a public inquiry

An independent Reporter will be appointed by Scottish Ministers to conduct the public inquiry. Once passed to the DPEA, the Scottish Ministers cease to have a role in the application until the inquiry has concluded and the report of the inquiry is received.

For cases which appear to ECU to be likely to proceed to public inquiry, DPEA will aim to identify the Reporter during the initial consultation period. This is so that the Reporter can begin to read the application documentation and supporting material and, as they come in, statutory consultation responses, public representations and the Planning Authority response.

This will assist with early identification of the key issues to be considered in each case, facilitating a prompt progression on to the formal public inquiry process in accordance with the fixed timescale which ECU has already established (in consultation with DPEA).

At the end of the statutory consultation period, in cases where a public inquiry is to be held, ECU will write to the Applicant and the Planning Authority seeking position statements on what further procedures are required. Depending on the nature of the consultation responses, statutory consultees may also be asked for their position on what procedures are required. The case will be passed to DPEA once the position statements have been requested.

9. Public Inquiry

This guidance applies where an inquiry is held under section 62 and/or Schedule 8 to the Electricity Act 1989. Section 62 provides that Scottish Ministers may hold an inquiry where they consider it advisable to do so. Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to giving evidence at, and defraying the costs of, local inquiries) apply to inquiries held under the Electricity Act.

Opt-in

Immediately after receipt of a case, DPEA will write to all of those who have made representations or consultation responses. These letters will inform those 'interested parties' that a public inquiry is to be held. Parties will be asked to confirm whether or not they wish to participate in the public inquiry. If they wish to participate, they will also be asked whether they wish to attend the pre-inquiry meeting which will normally be organised to discuss the procedures to be followed at the public inquiry. All such parties will be treated as having 'opted-in' to the public inquiry. Those parties not wishing to take part in the public inquiry will have their representations fully considered by the Reporter in their report to Ministers.

The fixed timeline for the application (including for the public inquiry procedures) will be appended to the opt-in letter. All opted-in parties will be expected to participate in the various stages of the public inquiry in accordance with that fixed timeline.

Parties who confirm that they do not wish to participate (or who do not respond to this letter within 14 days) will not be sent any further correspondence in relation to the public inquiry. These parties will be treated as 'opted-out'.

Pre-inquiry Meeting

The Reporter will normally hold a pre-inquiry meeting to discuss the procedures to be adopted at the inquiry. The purpose of the pre-inquiry meeting is to discuss how the case can be conducted in an efficient, yet inclusive, manner. The DPEA will identify an appropriate location and method of holding the pre-inquiry meeting.

The discussions at the pre-inquiry meeting as to which procedures are to be adopted (and who wishes to be involved in each) will be informed by the position statements already submitted, and by the views expressed by all parties at the meeting. Other matters to be discussed may include the extent to which the public inquiry procedures should be virtual or in-person, the venue (or venues) for in-person procedures, the need for accompanied and unaccompanied site inspections, and the detailed programme of hearing and inquiry sessions (in accordance with the fixed timeline). The Reporter will issue an agenda for the pre-inquiry meeting containing their provisional views on these matters.

Regardless of the procedures to be adopted, these will be conducted in accordance with the fixed timeline which ECU will already have issued for the case. Parties will need to be prepared to submit documentation and participate in the procedures all in accordance with that timeline.

Business of the Pre-Inquiry Meeting

The Reporter will set the agenda for the pre-inquiry meeting. Amongst other things the agenda will identify the Reporter's provisional views on:

- the issues requiring no further procedure;
- the issues requiring further written submissions;
- the issues requiring a roundtable hearing discussion;
- the options for a hearing where parties can state their views, but where discussion is limited;
- the issues requiring formal cross-examination; and
- whether any unaccompanied site inspections are required.

Parties will be given the opportunity at the meeting to make representations to the Reporter on the identification of the issues, the proposed method of procedure and the arrangements for site inspections. The Reporter will make the final decision on what procedures are to be adopted, choosing an appropriate procedure so that, for each issue, the evidence of the parties can be properly considered, and an adequately informed report can be submitted to Ministers. The choice of any given procedure for an issue does not indicate that that issue is necessarily considered by the report to be more or less important than the other issues.

The Reporter will issue a note of the pre-inquiry meeting that records the matters discussed and the Reporter's decision on the procedure to be adopted. The note will set out which topics are to be dealt with by which form of procedures.

The note will specify the dates by which further evidence and documentation must be lodged, all in accordance with the fixed timeline for the case. Where accompanied site inspections are to be undertaken, the note will also record this.

Parties will be asked to notify DPEA within 14 days of receiving the note of the pre-inquiry meeting whether or not they intend to participate in the further procedures to be followed and, if so, in which they intend to participate.

The public inquiry will then be conducted in accordance with the fixed timescale for the case. Only in very exceptional circumstances will this be departed from. The availability of parties' witnesses or their legal or expert advisers will not be accepted as a basis for departing from the fixed timeline for the inquiry procedures.

Choice of Public Inquiry Procedures

There are no prescribed rules for the conduct of inquiries held under schedule 8 to the Act. The procedure to be followed at inquiry is a matter for the discretion of the Reporter. The objective is to conduct proceedings in a fair, transparent and efficient manner.

Ministers expect all parties to assist Reporters and case officers in preparing for and conducting inquiries. They should make early and full disclosure of their case in a structured, consistent and comprehensive manner; observe timescales fixed by the Reporter; co-operate with one another and adopt a constructive approach to narrowing the range of issues to be considered at inquiry; conduct their case in a manner aimed to promote efficiency and best use of resources; and focus their evidence on the critical issues.

The Reporter may adopt a choice of different procedures depending on the issues raised. The procedural options open to the Reporter as follows:

No further procedure

The Reporter may consider that some issues require no further procedure, for example where it is agreed that no significant effects would arise or where the Reporter is satisfied that they sufficiently understand the evidence already before them.

Further written submissions

In some issues where further procedures are required, the Reporter may reach the view that further written submissions will suffice. Although this would be decided on a case-by-case basis, examples of where further written submissions might be required may include where:

- an important issue has been only partially or incompletely addressed and clarification is required;
- parties' cases have not been sufficiently well expressed, and a clearer explanation is needed;
- the Planning Authority or a key agency has not submitted a response and the Reporter considers that it is essential to obtain it.

Hearing sessions

A hearing session normally takes the form of a structured discussion between the parties on the topics identified by the Reporter. The Reporter leads the discussion, and no formal examination or cross examination is permitted. Hearing statements may be required in advance. An agenda for the session is prepared by the Reporter and circulated in advance. Parties are given an opportunity to explain their position, elaborate areas of concern, put their point of view, and ask relevant

questions informally through the Reporter, subject only to discussion being conducted in an orderly manner. The Reporter will seek contributions from parties at the relevant time and will indicate when they consider that they have sufficient information on each topic. Legal representation is not essential, although Applicants, planning authorities and consultees are usually legally represented.

Examples of where a hearing may be required may include where:

- the Reporter needs to enhance their understanding of an important matter by asking questions, seeking explanations of evidence or opinions;
- where there is some dispute but where cross examination of professional or other witnesses is not considered by the Reporter to be necessary;
- where the evidence to be examined is largely a matter of opinion rather than settled fact, such as design or policy issues or impact on the surroundings, and which could benefit from being explored through discussion led by the Reporter.

Another approach to hearing session has sometimes proven to be useful when there are a number of local community members who wish to express their views on a proposal, but in a less formal setting than the normally structured discussion of a hearing session. In such 'community hearings', local community members would be given the chance to speak in turn, with the Applicant usually given a more limited opportunity to ask questions or to make points of clarification.

Inquiry session with formal cross-examination

Witnesses giving evidence at an inquiry session submit a written statement of their evidence followed by a precognition in advance. Witnesses can be legally represented, but this is not essential. Witnesses give their evidence in chief, and then will be cross-examined by the opposing party. They can then be re-examined by their own representative. Inquiry sessions are the most formal of the range of procedures to be adopted.

An inquiry session may be necessary where:

- there is a dispute on complex or technical matters and the evidence needs to be thoroughly tested by cross-examination to enable the Reporter to reach clear conclusions on a matter which will be important to Ministers' decision;
- essential facts are in dispute and cross-examination is considered by the Reporter to be necessary to clarify matters;
- where there is a conflict of professional opinion or evidence on an important matter and the Reporter would find it helpful for that evidence to be tested by cross examination.

Site inspections

The purpose of a site inspection is to give the Reporter an opportunity to observe the application site and surrounding area and how it relates to the issues raised by the

application. Site inspections may be accompanied or unaccompanied, depending on the requirements of each case. Those attending any accompanied site inspections are not allowed to discuss the merits of the case with the Reporter, although they may point out particular physical features or be asked to respond to factual questions about the site.

Document exchange

The DPEA case officer will assist with the co-ordination and early assembly of all Relevant documents to each party's case be referenced in evidence.

The Reporter will raise this matter at the pre-inquiry meeting and promote use of the DPEA core documents library to enable efficient electronic document exchange. Parties should only submit documents which are essential to their case. This helps to facilitate a more efficient and proportionate inquiry process.

The fixed 52 week timeline for the application will confirm the date by which documents must be lodged. The Applicant, the Planning Authority and other parties participating in hearing or inquiry sessions should endeavour to agree a list of core documents and should agree who will lodge what, in order to avoid unnecessary duplication.

If a party attempts to lodge additional material outwith the exchanges allowed for by the Reporter, the Reporter will require the party to justify why it was not submitted on time, and why it is essential to admit it at a later stage, and seek the views of other parties before deciding whether to admit it. The default position will be that late documents will not be accepted, unless exceptional circumstances apply.

All relevant papers associated with the case (including the EIA Report where relevant) will be placed on deposit by the Planning Authority, for inspection by members of the public, at a local public building. The Applicant and Planning Authority should co-operate in supplying this information.

Material provided for the purpose of hearing or inquiry sessions, or in response to requests for information by the Reporter, should also be placed on deposit so an additional copy of this should be sent to the Planning Authority. The Planning Authority should bring the deposit set of documents to the hearing and inquiry sessions before they begin so that members of the public have access to them. Alternatively, and where agreed with the Reporter, an electronic device can be used to store and provide access to the deposit set of documents.

Each party taking part in an inquiry or hearing session will be encouraged to use the DPEA file sharing facility. DPEA will provide detailed guidance for parties on the arrangements for document exchange following the pre-examination meeting.

In order to comply with data protection principles DPEA will remove all personal telephone numbers, email addresses and signatures before publishing documents to the website. If parties do not want a document they submit to be published on the website (for example if it is commercially sensitive), they must explain the reason for

this when submitting the document. Anonymous or confidential representations are unlikely to be given the same weight as other representations.

DPEA's aim is to ensure that anything that is liable to cause offence is not displayed. However, individuals must take personal responsibility for the comments that they make and submit.

Summaries of case and closing submissions

In reporting to the Scottish Ministers, Reporters take care to provide a balanced view of the case. This involves rehearsing the views of the respective parties and recognising that Ministers may arrive at a different conclusion than that recommended by the appointed Reporter. However, the parties' cases can prove difficult and confusing to summarise drawing on material from a range of documents, statements, precognitions and closing submissions. It is our view that parties' cases can most efficiently be summarised by parties themselves.

Consequently, it is intended that the Reporter, through the pre-inquiry meeting, will agree an approach to submission of a summary of case by each party to the inquiry. This would essentially be the parties' voice to Ministers.

Closing submissions must not introduce any new evidence. Parties to the inquiry will be invited to submit their summary of case and closing submissions in writing after the close of the final hearing or inquiry session.

Report of the public inquiry

After the submission of the final closing submissions the Reporter will proceed to draft their report of the public inquiry for submission to Ministers. This report will be submitted to the Energy Consents Unit no later than week 46 after the date of the application alongside a completed draft determination framework letter.

Expenses

The Local Government (Scotland) Act 1973 (section 210) enables Scottish Ministers to make awards to any party in relation to expenses they have incurred, to be paid by another party. Parties will normally be expected to pay their own expenses. An Applicant will not be awarded expenses simply because consent is granted, nor will a Planning Authority or objector be awarded expenses simply on the grounds that the application is refused. Awards of expenses will only be made in cases where a party has, in the opinion of the Reporter, acted unreasonably and, as a result, has caused unnecessary expense for the party making the claim.

In cases where a hearing session or inquiry session is held, an application for an award of expenses should be made before the end of the hearing session or inquiry session.

An award of expenses can be made only in relation to the costs incurred in participating in the proceedings. It cannot take the form of a compensation payment for matters such as loss of business during the proceedings, reputational damage or any other impacts not directly linked to the proceedings themselves.

An award of expenses will not necessarily mean that a claimant will receive the full cost of the proceedings. Any award made will relate to the amount of the expenses that have been incurred as a result of the unreasonable behaviour. While this might sometimes mean the full cost of the inquiry is awarded, in most cases it will lead to a partial award. Where a partial award is made, the extent of the award will be clearly explained. The Reporter will make a separate report to the Scottish Ministers in relation to any claims for expenses.

10. Decision Stage

Determination

For all priority applications (including those which have been subject to a public inquiry), Energy Consents Unit will make a submission to Ministers with a draft decision letter for the application no later than 48 weeks after the date of the application.

When the application is ready to be determined (either with or without a public inquiry taking place), the Scottish Ministers will consider all relevant material available to them before making any decision on an application. The Scottish Ministers shall take into account the application documentation, EIA report, additional information if applicable, consultation responses, representations from the general public, the reporter's report if applicable, and any other material information, in making the decision.

The merits of each proposal are considered on a case-by-case basis, and a careful balance must be struck between the potential impacts of the proposed development and the associated environmental, economic, renewable energy and climate change benefits. In reaching their decision, the Scottish Ministers will determine applications in accordance with legislative requirements, taking into account relevant policy.

The Scottish Ministers ambition is that they will aim to issue their final decision on the application no later than 52 weeks after the date of the application.

When a decision is made, the Scottish Ministers will send the decision notice to the Applicant, and will send a copy to the Planning Authority, the other consultation bodies, and any other public bodies consulted on the EIA report.

The Scottish Ministers will also publish a notice containing the terms of the decision on the ECU website.

Post Determination Procedures

The Planning Authority must make a copy of the decision notice available for public inspection. This is usually via the Council's website.

The Applicant must also publish a notice on the application website, in the Edinburgh Gazette, and in a newspaper circulating in the locality of the proposed development. Details of the requirements relating to decision notices, monitoring measures and notification of decisions are set out in Part 7 of the EIA Regulations.

Although the decision of the Scottish Ministers is final, it is subject to the right of any aggrieved person to apply to the Court of Session for a judicial review of the decision.

Any petition for a judicial review requires to be submitted within three months of the date of the decision letter being issued by the Scottish Ministers.

11. Information

ECU Contact

A range of publicly available documents for the ECU including information on using the ECU portal as well as useful links to other information are available at the following link: [Scottish Government - Energy Consents Unit - Help](#).

For any specific queries not addressed on the ECU portal or in this guidance, please contact Econsents_Admin@gov.scot for advice.

DPEA Contact

A range of publicly available documents for the DPEA including information on using the appeals process as well as useful links to other information are available at the following link: [Scottish Government - Planning and Environmental Appeals Division \(DPEA\) \(scotland.gov.uk\)](#)

For any specific queries not addressed on the DPEA website or in this guidance, please contact DPEA@gov.scot for advice.

Other Legislative Requirements

Other legislative regimes may apply to applications under section 37 of the Electricity Act, including the Conservation of Habitats and Species Regulations 2017. Further information on habitats regulations appraisal in Scotland is available at:

[The Habitats Directive and Habitats Regulations | NatureScot](#)

Proposed developments may also require licences, such as those under the Controlled Activities Regulations and wildlife legislation. The Applicant should familiarise itself with any other consenting regimes that may apply to the proposed development.

Glossary

Applicant: Any person, company or organisation submitting a section 37 application to Scottish Ministers.

Deemed Planning Permission: The decision of Scottish Ministers, on granting consent under section 37 of the Electricity Act, to direct that planning permission for a proposed development shall be deemed to have been granted under section 57(2) of the TCP(S)A.

Environmental Impact Assessment (EIA): a process consisting of, amongst other things, the preparation of an EIA report, the carrying out of consultation, the examination of the EIA report and any other environmental information, and the reaching of a reasoned conclusion by the Scottish Ministers on the significant effects of a proposed development on the environment.

Environmental Impact Assessment (EIA) report: Document submitted by the Applicant alongside their application (where it is EIA development) which describes amongst other things, the proposed development, the likely significant effects of the proposed development on the environment, any mitigation measures, and any alternatives to the proposed development which were considered by the Applicant and discounted.

Hearing Statement: Written statement of summary of key matters to be subject of Hearing session and submitted in advance of hearing session.

Inquiry Report: Written evidence to be presented by Expert Witness at Inquiry and submitted in advance of inquiry session.

Position Statement: Written confirmation of Applicant's and other parties' position following consultation period to inform process.

Planning statement: Document submitted by the Applicant describing how the Proposed development accords with local and national planning and other policies. This can be used to present the case in favour of a proposal, and as such must be kept separate from any EIA report.

Pre-application consultation report: Report on the nature, timing and detail of all pre-application engagement undertaken for the development, including the feedback to the community following such engagement, and how any feedback has been taken into account in formulating the proposed development.

Precognition: a written statement of evidence that will be read out at the inquiry. This should be no more than 2000 words unless the Reporter agrees that a longer precognition may be submitted. Where it is proposed to rely on expert reports/topic papers these should be treated as documents and must be lodged at the same time as other documents. Precognitions should not include appendices or other technical information or other evidence such as photographs. These should be lodged as documents. Precognitions may refer to such documents.

Representation: Views (positive or negative) on a proposed development communicated to the ECU or to Scottish Ministers by any third party.

Scoping opinion: The opinion of Scottish Ministers as to the content which should be included in a forthcoming EIA report. This document does not provide comment on the merits, or otherwise, of the proposal, but details the minimum information that Scottish Ministers must be provided with in order to adequately consider any application.

Scoping report: Report provided by the Applicant detailing their initial proposals, the work to be undertaken and the possible effects of those proposals on the environment. This document should include a plan sufficient to identify the site which is the subject of the proposed development. This document is consulted upon and the results of this consultation provide the basis of the scoping opinion.

Scoping request: Request made under the EIA Regulations to the Scottish Ministers for a scoping opinion. It will be accompanied by a scoping report which will be duly consulted upon.

Section 37 application: An application made for the installation and the keeping installed of an overhead electric line under the Electricity Act.

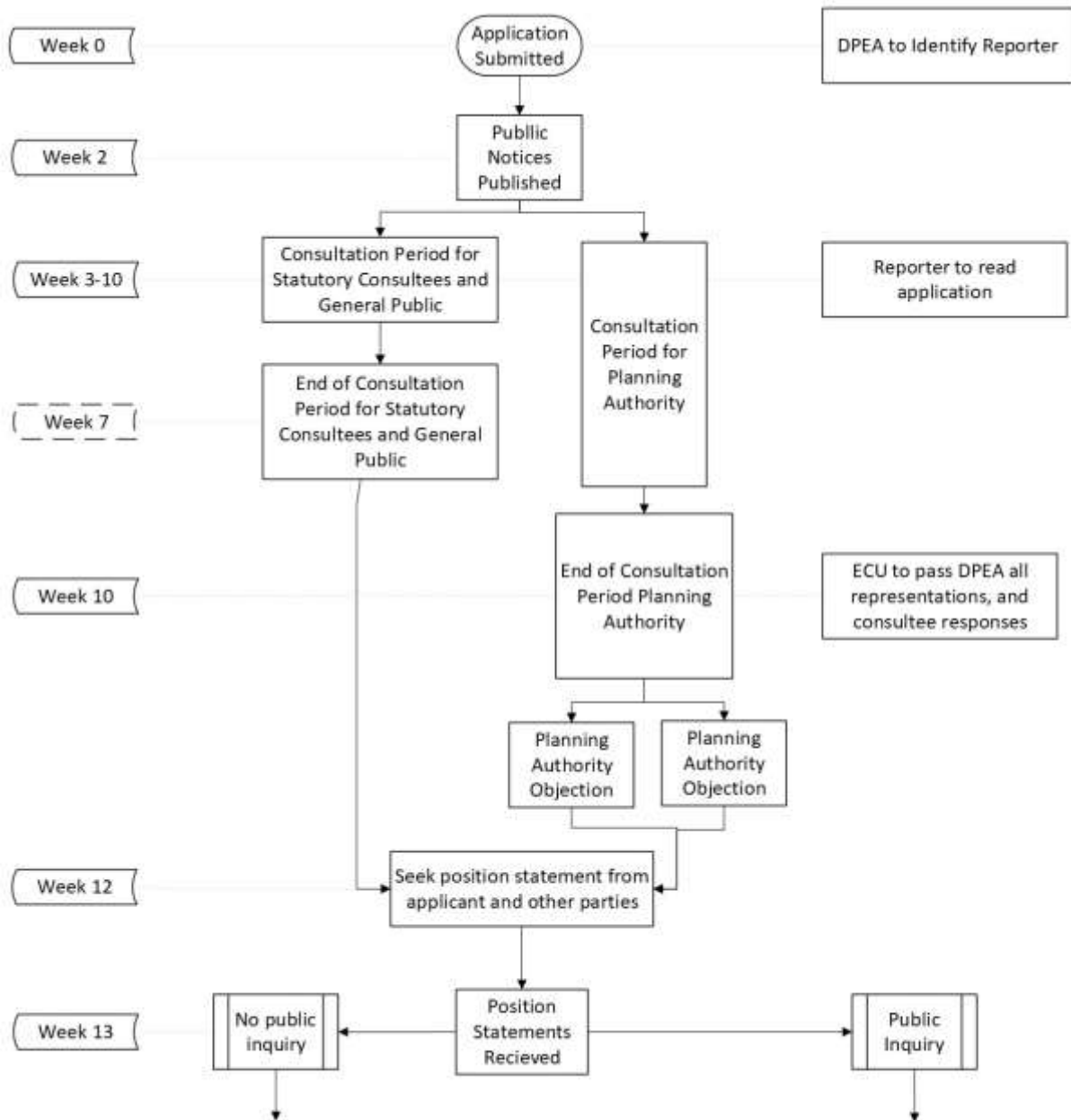
Statement of Agreed Matters: These can be an important tool in clarifying the matters that need not be rehearsed further. They can enable the appointed Reporter to focus on the disputed evidence. These should include one covering the relevant policies applicable to the case and another covering suggested conditions (and reasons) and the heads of terms of any legal agreements. The statement need not be agreed by all participants but should reflect areas of common ground between the Applicant and any of those opposing the application.

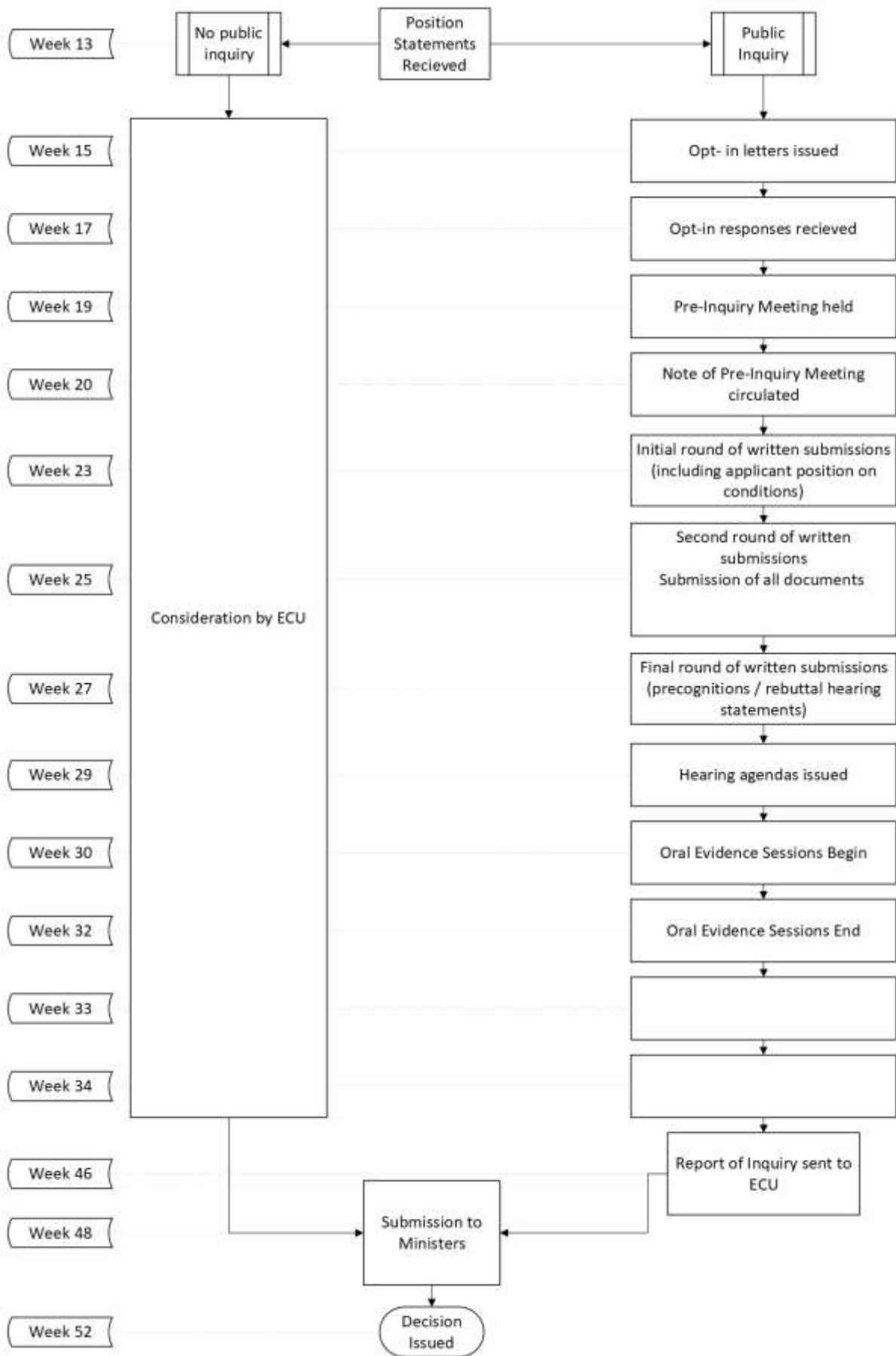
The Electricity Act: The Electricity Act 1989.

TCP(S)A: The Town and Country Planning (Scotland) Act 1997

The EIA Regulations: The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

Appendix 1 – Indicative 52 week application timeline







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