

Determining Electricity Act Cases

Directorate for Planning and Environmental Appeals & Energy Consents Unit

07 May 2025

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Agenda

1. Context
2. How Section 36 & 37 applications are handled by ECU
3. The ECU S36 & S37 application process
4. Planning Authority consultation responses
5. Other types of applications handled by the ECU
6. The public inquiry process
7. The decision of the Scottish Ministers
8. Post determination

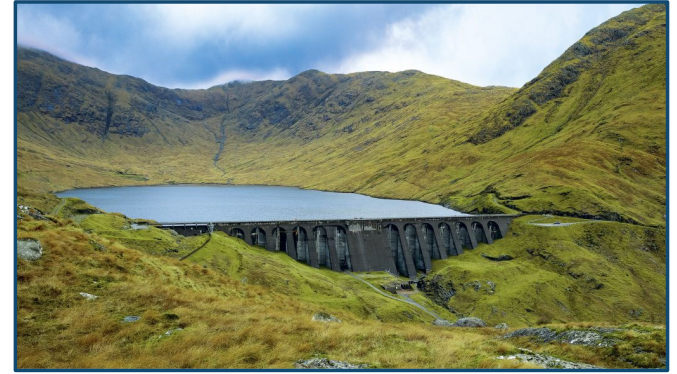
Context

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Targets and benefits of swift decision making

- The importance of swift and efficient decision-making, in the context of Scottish Government renewable energy/GGH targets.
- Clarity & transparency for communities/public
- Greater certainty for developers and investment decisions on projects to allow delivery.
- **Onshore Wind Sector Deal Scottish Government Commitment:** Section 36 onshore wind applications to be processed with 12 months if no Public Inquiry, or 24 months with Inquiry; Section 36C applications within 9 months.
- **Transmission Priority Projects:** Section 37 applications for the ASTI and those connecting renewable generation shall be processed with 52 weeks, including if a Public Inquiry is required: [Priority Applications for Transmission Infrastructure guidance: Section 37 of the Electricity Act 1989 - gov.scot](#)

What type of applications do ECU deal with?



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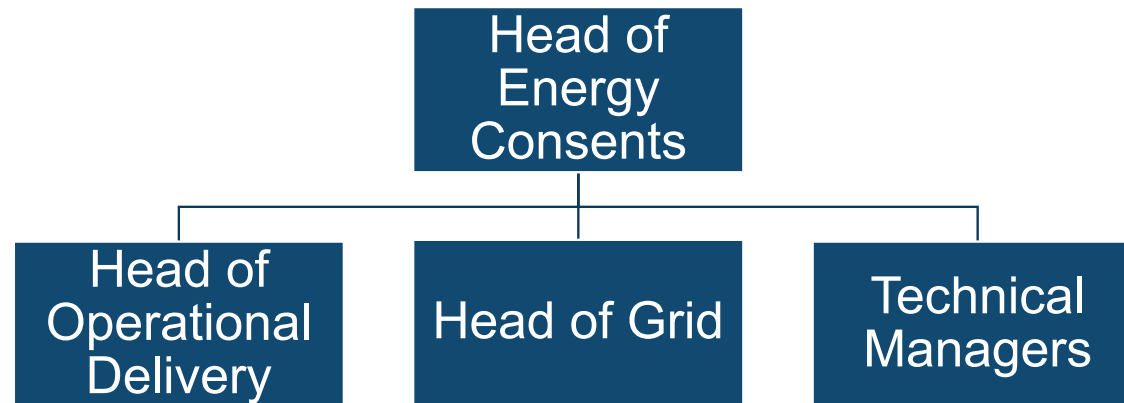
Legislation

- **The Electricity Act – Sections 36 and 37**
- **Section 36 – "Consent required for construction etc of generating stations"** (*greater than 50MW generating capacity*)
- **Section 36C- "Variation of consents under section 36"**
- **Section 37 – "Consent required for overhead lines"** (*some limited exemptions- 2013 exemption regulations*)
- **Schedule 8 –** Procedural requirements for Sections 36 & 37, supported by the **Electricity Applications for Consent Regulations 1990**)
- **Schedule 9 –** Preservation of Amenity & Fisheries (licence holder & decision maker requirements)

- **Electricity Works Environmental Impact Assessment (Scotland) Regulations 2017**
- **The Conservation of Habitats and Species Regulations 2017**
- **Section 57 of the Town & Country Planning (Scotland) Act 1997** - (Deemed Planning Permission)

How Section 36 & 37 Applications are handled by ECU

How the ECU is organised



Wind Team

Wind Team

Wind Team

BESS Team

New Technologies
and Other
Generation Team

Grid

Policy &
Administration

Statistics

- Number of section 36 applications increasing year on year, whilst number of variation application remains similar;
- Number of section 37 applications similar year on year, but huge rise anticipated from this year in number of the applications many requiring EIA – i.e. ASTI;
- Huge increase in wayleave applications anticipated from this year to align with increase in section 37 applications;
- New staff within ECU to help with increasing workload, increase in determinations in 2025.



Applications Received – Last 5 Years						
	2020	2021	2022	2023	2024	2025
s36	12	30	61	68	84	21
s36c	6	6	7	9	5	0
s37	88	55	91	76	66	16
Wayleaves	17	32	74	56	15	0

Determinations/Outcomes – Last 5 Years						
	2020	2021	2022	2023	2024	2025
s36	11	16	16	27	27	13
s36c	1	6	4	5	5	0
s37	13	39	61	74	61	13
Wayleaves	21	11	32	72	53	8

		Caseholding												Decisions Made To Date (2025)					
		Application		Validation		Consultation		Consideration		Referred to DPEA		Determination		Refused		Consented		Withdrawn	
		Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)	Live	(vs. LM)
s36	Onshore Wind	14	+3	0	-	31	-2	12	-	10	-	6	-	1	+1	4	+1	4	-
	Battery Energy Storage System	7	-	0	-	23	+3	11	+1	0	-	3	-2	0	-	5	+2	2	-
	Hybrid/Solar	5	-	0	-	5	-	0	-	0	-	1	-1	0	-	2	+1	0	-
	Pumped Storage Hydro	2	+2	0	-	2	-1	0	-	0	-	0	-	0	-	0	-	0	-
	Gas	0	-	0	-	0	-	0	-1	0	-	0	-	0	-	0	-	0	-
s36c	Onshore Wind	2	-	0	-	1	-	0	-	0	-	1	-	0	-	0	-	0	-
s37	Overhead Power Line	30	-1	0	-	13	-4	7	+3	0	-	5	+3	0	-	13	+3	1	+1
	Wayleaves	2	-	0	-	N/A	N/A	3	+1	14	-3	1	-3	0	-	3	+3	5	+2

- Data pull was taken from ECU portal on 1 April 2025.
- Analysis (vs last month) represents movement from the March 2025 position and illustrates work done to progress cases to determination.

Key:	Application	Full development application has been received and is awaiting a case officer to be appointed.
	Validation	Case officer is assessing the information within application to ensure it contains all necessary information.
	Consultation	Application is out to consultation to seek the views of statutory consultees, such as NatureScot and LPAs.
	Consideration	Case officer is assessing the consultation returns to ascertain the next steps (additional information, PLI or determination).
	Referred to DPEA	Application has been assigned to the DPEA to conduct a PLI
	Determination	Case officer has been assigned and all information required to make a determination is available.
	(vs. LM)	Movement versus last month

		Pre-Application			
		Initial Form	Screening	Scoping	
		Live	Live	Live	
s36	Onshore Wind	0	0	20	
	Battery Energy Storage System	0	27	6	
	Hybrid/Solar	0	0	0	
	Pumped Storage Hydro	0	0	0	
	Gas	0	0	0	
s37	Overhead Power Line	0	10	4	
	Gas Pipeline	0	0	0	

		Forecast					
		2024/25 Q3	2024/25 Q4	2025/26 Q1	2025/26 Q2	2025/26 Q3	2025/26 Q4
New Applications		22	30	13	18	17	24
Total Applications		189	190	185	173	159	151
Total Determinations		29	29	18	30	31	32

Questions

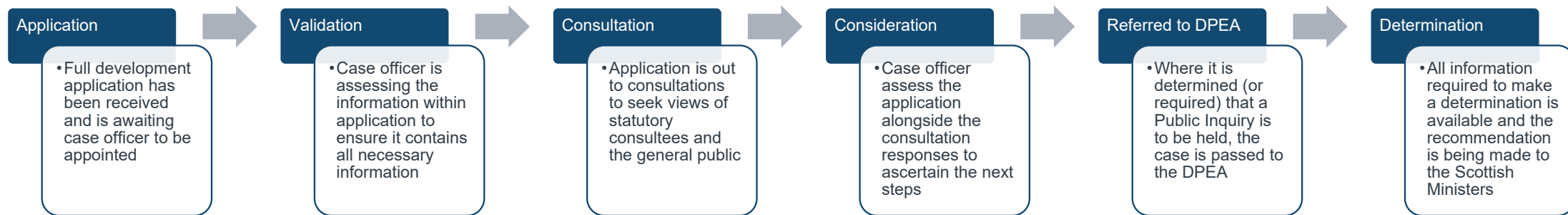
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The ECU S36 and S37 application process

The application process



Onshore Wind Sector Deal Scottish Government Commitment: Section 36 onshore wind applications to be processed with 12 months if no Public Inquiry, or 24 months with Inquiry; Section 36C applications within 9 months.

Transmission Priority Projects: Section 37 applications for the ASTI and those connecting renewable generation shall be processed with 52 weeks, including if a Public Inquiry is required: [Priority Applications for Transmission Infrastructure guidance: Section 37 of the Electricity Act 1989 - gov.scot](#)

ECU Approach

- ECU practice in terms of negotiating improvements based on consultation responses.
- Different approaches for different technologies/type of application.
- Standard conditions. Section 36: [Standard onshore wind conditions – section 36 consent and deemed planning permission: form and guidance - gov.scot](#); Section 37: To be published in near future.
- Section 37 applications- No consultation extensions for "priority application" transmission infrastructure.
- Section 36 applications- Limited 4-month consultation extension for planning authorities, if required, unless exceptional circumstances.

Guidance on Generation & Overhead Line application process:

- [Energy consents - Energy infrastructure - gov.scot](#)
- [Electricity grid - Energy infrastructure - gov.scot](#)

Planning Authority consultation responses

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Planning Authority Consultation Response

- EIA Task & Finish Group – Streamlined EIA
- Planning authority response - what would be most helpful to ECU.
- Guidance – Response Template
- No need to speak for issues covered by SEPA, NatureScot and HES ?
- Standard conditions process should make process more efficient.

Other types of applications handled by the ECU

Necessary Wayleave & CPO

- A **Necessary Wayleave** is a legal mechanism used by electricity network operators as licence holders, to secure rights to install, retain, or access overhead or underground power lines on land where agreement with the landowner cannot be reached. The Energy Consents Unit (ECU) in conjunction with the Planning & Environmental Appeals Division (DPEA) facilitates the decision-making process for granting necessary wayleaves under the Electricity Act 1989.
- Applications relating to Transmission “Priority Projects” are submitted directly to the DPEA.
- When making a necessary wayleave application to the ECU electricity network operators must comply with statutory requirements outlined under **Schedule 4 of the Electricity Act 1989**.
- A **Compulsory Purchase Order (CPO)** is possible under **Section 10 and Schedule 3 of The Electricity Act 1989** to licence holders as a legal mechanism allowing them to acquire property, land or land rights connected with the carrying on of the activities which the licence holder is authorised by the licence to carry on. The licence holder progressing a CPO is known as the “Acquiring Authority”.
- A CPO can only be supported where the land or land rights required are deemed necessary for public benefit.

Questions

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The Public Inquiry Process

What triggers a PLI?

- An objection from the planning authority**
- Other objections; Scottish Ministers may decide that a public inquiry is necessary**

DPEA targets for processing inquiries

Our target is 50 weeks from receipt of the S36 application from ECU until submission of a report to Ministers....and 52 weeks in total for ASTI and priority transmission projects

Some statistics for 2024 / 2025 –

Section 36 wind farm cases –

10 received, 8 reports issued, 5 by inquiry

**Section 37 transmission cases –
0 received, 6 decisions issued, all by oral inquiry process**

Purpose of a PLI

to provide Scottish Ministers with a report containing reasoned conclusions and conditions on each topic, and areas in dispute. The report will also contain a recommendation on whether or not to grant a consent under the Act and deemed planning permission

Position statements

The applicant will have already submitted a position statement to ECU

DPEA ask for a more detailed statement from all main parties, template provided

It should include:

**Description of the site;
Location plan and drawings;
EIA report and any Additional Information;
Any modifications;**

**Summary of mitigation;
Summary of monitoring measures;
Summary of significant environmental effects;
Summary of any supporting information;
Summary of consultation responses;
Other representations;
Summary of main issues and responses;
Initial views on topics and procedures;
Availability of dates for pre-examination
meeting and potential inquiry and hearing
sessions**



We then have an abbreviated version of the template for other parties, including planning authorities, which seeks their response to the applicant's position, and also availability

Process different for ASTIs and transmission priority projects and we have separate guidance

Pre-examination meeting

Code of practice

- see link in chat and as circulated**
- DPEA own code**
- key difference is that where a dispute occurs, procedural matters must be resolved by agreement and negotiation**
- requires reporter's ruling quite often**

Inquiry format

In practice, a hybrid approach is almost always used, subject to agreement with the parties

PEMs are now virtual, depending on numbers, but inquiry sessions and hearing sessions can also, and have been, virtual

A virtual process can have its challenges :

**broadband reliability
ability to webcast
numbers
comfort of those taking part
access to documents**

**But, a virtual process can also be
efficient, fast, non-confrontational**

Agreeing dates

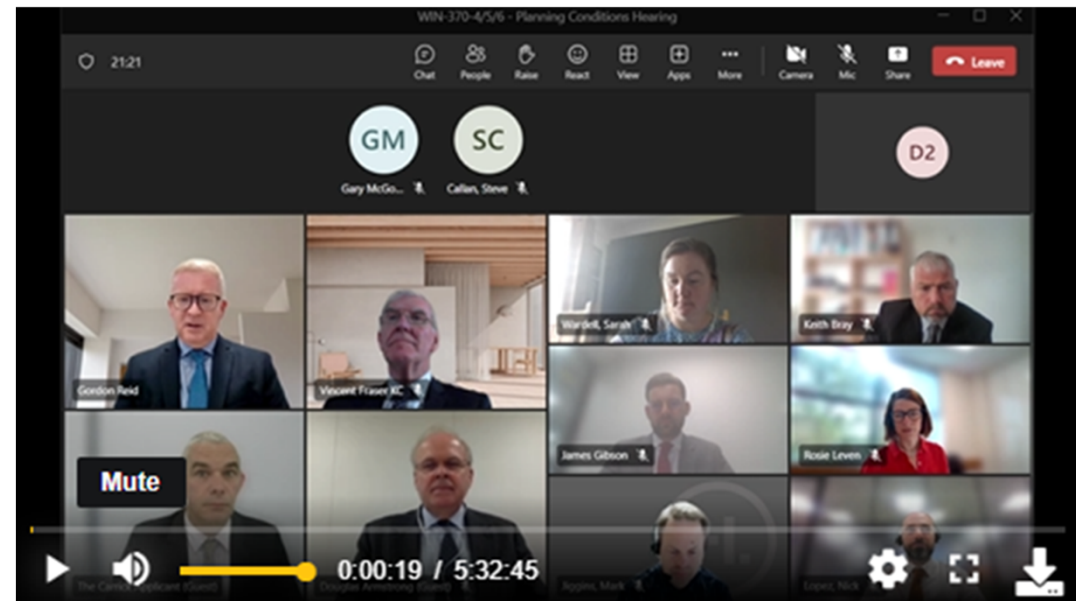
**Given the small pool of professionals,
often difficult**

**DPEA begin working on dates as soon as
we get the case**

**Our IT team is helpful for all involved, so
their availability is one factor we take
into account**

Virtual procedure

- Virtual default for PEMs
- Based on efficiency and accessibility for hearing/inquiry
- Hybrid is difficult and should be avoided
- Live public webcasting



Methods to gather further evidence

- Further written submissions
- Statements of agreement
- Hearings
- Inquiry sessions
- Site inspections
- Additional Information (EIA)
- Draft conditions



PLI documents

- DPEA Guidance Note 23a (to be published soon)
- Document list
 - Foundation documents
 - Supporting documents
 - Hearing and Inquiry statements
 - Precognitions
- Submitting documents
- Late documents

Closing submissions and case summaries

- Approach agreed at PEM
- Case summaries
- Closing submissions

WIN-27--20

GARVARY WIND FARM

CLOSING SUBMISSIONS ON BEHALF OF THE HIGHLAND COUNCIL

SECTION 36 ELECTRICITY ACT 1989

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

PROPOSED Garvary WIND FARM

WIN-270-20

Introduction

1. The Highland Council ("THC") objects to the application on one ground only – adverse impact on the Dornoch Firth National Scenic Area ("the NSA"). There are other adverse impacts, but none such as to make the development unacceptable absent the impact on the NSA.

Policy

2. The policy framework is substantially agreed between the parties, see the policy SOAM CD16.1(ii), with only quite limited areas of disagreement which were explored in the Policy Hearing session.
3. The single ground of objection engages NPF4 Policy 4(a) and (c).

CLOSING SUBMISSIONS ON BEHALF OF THE APPLICANT

The Inquiry Report

- Report 3 months from Inquiry close
- Standard format but topics specific to case
- Succinct and uses hyperlinks to evidence
- Links to case summaries and closing submissions
- Sets out reporter conclusions and recommendations
- Contains proposed conditions
- Submitted to ECU

Planning and Environmental Appeals Division
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR



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Report of Inquiry into application under section 36 of the Electricity Act 1989
and deemed application for planning permission under section 57 of the
Town and Country Planning (Scotland) Act 1997 (as amended)

Report by Nick Smith, a Reporter appointed by the Scottish Ministers

- Case reference: WIN-270-20
- Site address: Garvary wind farm, approximately 4.5km south of Lairg and 5.5km north of Bonar Bridge, Sutherland, IV27
- Application by Garvary Wind Farm Ltd dated 12 April 2021 and modified 6 December 2022
- The development proposed (as modified): a wind farm under section 36 of the Electricity Act 1989 comprising 25 wind turbines, access tracks, up to five borrow pits, substation, battery storage compound, control building, two meteorological masts, and ancillary infrastructure
- Application drawings: AIR Figure 2.1a: Revised site layout dated February 2024
- Reason for inquiry: objection by The Highland Council
- Dates of procedures:
 - pre-examination meeting (PEM) 31 October 2023
 - further written submissions November and December 2023, and January 2024
 - landscape and visual (including cumulative) inquiry 25 and 26 March 2023
 - policy and conditions hearings 27 March 2024
 - unaccompanied site inspections 25 and 28 March and 8 to 12 April 2024

Date of report: 28 May 2024

Recommendation

Grant Section 36 consent and deemed planning permission.

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Decision by the Scottish Ministers

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Decision by the Scottish Ministers

- Schedule 9 of Electricity Act – Primacy in decision making
- Other material considerations
- Decision Framework Letters:
 - Section 36 Onshore Wind
 - Section 36 BESS
 - Section 37 Priority Applications

Post-Determination

Judicial Review

- The Judicial Review process ensures transparency, accountability, and fair review for any contested decisions on energy infrastructure projects.
- The only route for applicants and third parties if they are dissatisfied with a decision of the Scottish Ministers
- Can only be sought by interested parties. This is usually limited to the applicant and any organisation, community group or member of the public who has engaged in the application process.
- Judicial Reviews should be raised in the Court of Session within 12 weeks of the decision being issued.
- A judicial review assesses the legal validity of the decision-making process focusing on whether the decision followed legal and procedural standards rather than re-evaluating the merits of the decision itself.

Satisfaction and Discharge of Conditions

- **Consent Conditions-** Annex 2 (Part 1): Submission to ECU for discharge
- **Deemed planning permission conditions** – Annex 2 (Part 2): Submission to relevant planning authority for discharge
- **ECU Standard Conditions Templates & Process.**
- **Section 36:** <https://www.gov.scot/publications/standard-onshore-wind-conditions-section-36-consent-and-deemed-planning-permission-form-and-guidance/>
- **Section 37:** to follow.

Variations & Amendments

- S36C- Variation to generating station only but can incorporate ancillary infrastructure amendments and changes to S36 conditions
- No current variation of Sec.37 consents
- TCPA S42 applications – directions to ECU- ancillary infrastructure only
- Ancillary developments... TPCA: *planning applications, non-material variations, EIA considerations.*

Questions

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