
Proposed offshore wind farm consents process in the UK: some considerations

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Abstract: The objectives of the study were to define the full details of the consenting process for offshore wind farms in territorial waters (in England and Wales) and to develop guidance aimed primarily at developers outlining the consenting process in its entirety. Conclusions included the formalisation of available routes to consents for developers; the formalisation of the requirement for a DTI Offshore Renewables Consents Unit providing a single point of contact for developers and government departments, helping to streamline the consents process; identification of tasks for and interrelationships of all consenting authorities and information needs for developers; the publishing and circulation of draft guidance notes by the DTI to other government departments and industry members for consultation in November 2001.

Keywords: UK legislation; wind power; energy regulation.

Reference to this paper should be made as follows: Dower, E.J.K., Jenkins, A.P. and Smith, P.A.F. (2002) 'Proposed offshore wind farm consents process in the UK: some considerations', *Int. J. Environment and Sustainable Development*, Vol. 1, No. 4, pp.380-396.

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1 Introduction

The UK government recognises that offshore wind farms can play a valid and important role in meeting the UK government's target of 10% of electricity supplied from renewable resources by 2010. At the same time it recognises that an effective and expeditious scrutiny process is needed to determine their environmental impact as developers bring forward projects to fulfil that role.

In April 2001, following a pre-qualification process, 18 companies were successful in being awarded an agreement of lease by the Crown Estate for the first round of offshore wind farm sites on the UK seabed. Under the agreement of lease the companies have a three-year period in which to obtain all the necessary consents for a lease to be granted by the Crown Estate.

DTI is the lead UK government department for ensuring that an efficient consenting system for the development of offshore wind power sites is in place. Following DTI's consultation on a 'Proposed Consents Process for Offshore Wind or Water Generating Stations in England and Wales' in Spring 2001, there was a call for a guidance document to assist offshore wind farm developers in England and Wales in all aspects of licensing and consents together with specific guidance on the requirements of an Environmental Impact Assessment, including the scope and content of a Scoping Report and an Environmental Statement.

The guidance document is primarily intended for developers and planners of offshore wind farms. It aims to encourage developers to use DTI as the central focal point for applications and promotes good practice procedures throughout the development process.

This document *DOES NOT* lay down a mandatory application process. It does however provide the developer with a streamlined approach identifying best practice by which the processing of applications (except Transport and Works Order applications) will be coordinated by DTI. Decisions on whether or not to follow this approach is a matter for developers.

2 Consenting authorities and key contacts

DTI, along with the Department for the Environment, Food and Rural Affairs (DEFRA), the Department for Transport, Local Government and the Regions (DTLR), the National Assembly for Wales (NAW) and the Crown Estate (CE) are part of the Interdepartmental Offshore Consents Forum. DTI has agreed to act as a coordinating body to facilitate the processing of applications for offshore wind farms.

2.1 DTI: Offshore Renewables Consents Unit (ORCU)

DTI has established the Offshore Renewables Consents Unit (ORCU), to serve as a focal point for offshore wind farm consent applications and to promote a coordinated streamlined approach to obtaining the package of consents required.

The purpose of the ORCU is to provide developers with a single liaison point for questions regarding the administration of applications to clarify issues and provide status updates on the progress of all the required consent applications. The Unit will also be specifically responsible for handling applications received under the Electricity Act 1989.

Each application for an offshore wind farm is considered on its merits and the role of ORCU does not prejudice the outcome on a particular application. Nor does it override the statutory role of DEFRA and DTLR in determining the outcome of consents under the Food and Environment Protection Act 1985 (FEPA) (on behalf of the NAW in Wales) and the Coast Protection Act 1949 (CPA). Details of the single point approach for offshore wind farm developers are provided later.

2.2 DEFRA/DTLR: Marine Consents and Environment Unit (MCEU)

Within government there is also the Marine Consents and Environment Unit (MCEU), an alliance of DEFRA's Marine Environment Branch and DTLR's Ports Division. This 'joint consents unit' provides a central facility, responsible for receiving applications for consents and coordinating their administration for the full range of marine works for which each Department has responsibility. Though a number of MCEU's functions are devolved in Wales, it will receive and coordinate applications with respect to Wales as well as England.

The statutory controls for marine works are exercised under the following legislation:

- the Food and Environment Protection Act 1985 (Deposits in the Sea)
- the Coast Protection Act 1949
- the Telecommunications Act 1984
- other legislation – such as local Harbour Acts – where the respective Secretary of State's approval is required for marine works

3 Overview of requirements

3.1 Crown Estate agreement for lease

Offshore wind farm development on the Crown Estate's marine estate requires the granting of an Agreement for Lease by the Crown Estate as the main landowner of the territorial seabed. The Crown Estate's procedure for the first round of offshore wind farms followed three stages: pre-qualification, site allocation and the granting of an Agreement for Lease, which was entirely at the discretion of the Crown Estate Commissioners.

Developments for which the first round of sites have been allocated had to comply with a number of conditions:

- sites must be within the 12 nautical mile territorial limit around the UK
- sites must be at least 10 km apart
- sites will have a minimum generating capacity of 20 MW
- sites will have a maximum of 30 turbines

In identifying sites, applicants also had to take account of all relevant environmental factors including proximity to shipping lanes, dredging areas, fisheries, conservation areas, cables and pipelines. Applicants were also required to provide a statement and

project plan with reference to their first choice, showing the main stages of development. A financial deposit was required at prequalification, when applications were lodged.

For the first round of allocated sites the Agreement for Lease granted developers a development option for three years.

3.2 Consenting requirements

It is impossible to define all the consents required by a developer for each individual offshore wind farm project, as some consents are site-dependent in both the offshore and onshore environments. There are, however, certain consents that are likely to be required for any offshore wind-generating site. These are:

Electricity Act 1989 (EA) – Section 36: for offshore wind power generating station within the territorial waters of England and Wales

Food and Environment Protection Act 1985 (FEPA) – Section 5: for depositing articles or materials in the sea/tidal waters (below mean high water springs (MHWS)) around England and Wales including the placement of construction material or disposal of waste dredgings etc.

Coast Protection Act 1949 (CPA) – Section 34: construction under or over the seashore lying below MHWS.

3.2.1 Electricity Act 1989 – Section 36

Under the EA, Section 36 consent is required from the Secretary of State for Trade and Industry for the construction, extension or operation of a generating station, of over 50 mega watts (MW) in capacity, unless otherwise exempted. This covers offshore generating stations above 50 MW within territorial waters of England and Wales, except those on offshore installations used solely for supplying power for offshore installations.

DTI will shortly be tabling a statutory order, under Section 36 of the EA, specifying a 1 MW generating capacity threshold for offshore renewables power stations that will bring all developments above that capacity within the ambit of the EA and subject to the EU EIA Regulations.

In granting consent under Section 36 the Secretary of State will also impose consent conditions to control and mitigate the development. Onshore this would be done by means of a deemed planning permission under Section 90 of the Town and County Planning Act 1990 (TCPA) but that mechanism cannot be used for an offshore power station. It will fall to the Secretary of State to enforce those conditions.

In applying for Section 36 it is possible that the site specified in the application may include associated onshore works such as an electrical sub-station. In those circumstances the applicant can apply to the Secretary of State for Trade and Industry for deemed planning permission under the TCPA to cover those associated works.

3.2.2 Food and Environment Protection Act 1985 – Section 5

Under FEPA, a licence is required from the Secretary of State for the Environment and Rural Affairs (or in Welsh waters, the NAW) – for the following works:

- the placement of materials during construction and related activities
- the disposal of waste at sea (primarily dredged material including its use for beneficial purposes)
- the introduction of tracers and biocides and certain other activities in the marine environment

The primary objectives of the legislation are to protect both the marine ecosystem and human health and minimise nuisance and interference to other legitimate uses of the sea. The Licensing Authority will pay particular regard to the environmental implications and other effects of the work.

3.2.3 Coast Protection Act 1949 – Section 34

Marine works requiring consent from the Secretary of State for Transport Local Government and the Regions under Section 34 of the CPA are:

- 1 the construction, alteration or improvement of any works on, under or over any part of the seashore lying below the level of mean high water springs (MHWS)
- 2 the deposit of any object or materials below the level of MHWS
- 3 the removal of any object or materials from the seashore below the level of MHWS

Under Section 34 of the CPA, the Secretary of State must determine whether marine works will be detrimental to the safety of navigation.

Depending on the nature and location of the project, there are other consents that may also be required by the developer for any offshore wind farm; these include:

3.2.4 Electricity Act 1989 – Section 37

Where an offshore wind farm project includes the development of new onshore overhead electric power, a consent can be expected to be required under Section 37 of the EA. It is unlikely that such onshore work, involving connection to the system, will fall within the scope of the Section 36 application and deemed planning permission (Section 3.2.1).

In applying for Section 37 a developer generally also applies for deemed planning permission under Section 90 of the TCPA and this provides the vehicle for the Secretary of State to impose appropriate planning conditions to control and mitigate the impact of the overhead line.

3.2.5 Water Resource Act 1991 – Section 109

Under the Water Resources Act 1991 (c.57), a consent is required from the Environment Agency to erect a structure, e.g. cabling, in, over or under a watercourse that is part of a main river. If there is any uncertainty about whether a watercourse is part of a main river developers should contact the Environment Agency for advice. The Water Resources Act can be viewed at http://www.hmsso.gov.uk/acts/acts1991/Ukpga_19910057_en_1.htm

3.2.6 Town and Country Planning Act 1990 – Section 90

Planning consent may be required for onshore elements of the offshore wind farm development, such as the construction of electrical sub-stations. Two approaches are possible; either the developer includes those elements in the site of the Section 36 application or scope of the Transport and Works Act Order application and seeks deemed planning permission for them under Section 90 of the TCPA or the developer seeks planning permission for them from the relevant local planning authority (LPA).

In either approach the developer will need to establish whether an EIA is required for the onshore elements and can expect to have planning conditions imposed to control and mitigate the impact of the onshore elements.

3.2.7 Orders under the Transport and Works Act 1992

TWA orders can be made in respect of offshore generating stations, as these fall within the definition of ‘offshore installation’ in the Transport and Works (Description of Works Interfering with Navigation) Order 1992 (SI 1992/3230) for England and Wales. In general, the Secretary of State for Transport, Local Government and the Regions is responsible for determining orders under the Act. However, energy related projects in England involving interference with rights of navigation are determined by the Secretary of State for Trade and Industry.

Where an application for a TWA order is in Welsh territorial waters, the decision falls to be determined by the National Assembly for Wales. The TWA Processing Unit in DTLR will, however, deal with the processing of such an application on behalf of the Assembly up to the opening of an inquiry into the proposed order, or (in a case not subject to an inquiry) the time when it would be possible for a determination to be made. Developers are advised to contact the TWA Processing Unit to hold discussions on the detailed procedures before making an application. (Please note that the TWA unit will also process cases on DTI’s behalf in respect of all other TWA order applications).

It should be noted that the TWA does not apply in Scotland and projects such as offshore wind farms would require to be authorised under Private Legislation Procedures Scotland Act 1936.

The process of seeking and obtaining a TWA order is permissive rather than obligatory. The decision on whether to proceed with a TWA order must be weighed up by the developer, balancing the length and cost of the process against the project requirement for consents in a cost effective and timely manner.

A TWA order provides an alternative route for authorising offshore wind farm projects particularly those schemes that may involve construction or works, which may affect public rights such as a right of navigation in the sea. An order can provide the statutory means by which such public rights may be extinguished or changed temporarily to accommodate the scheme. A TWA order can also authorise ancillary works, such as onshore works that are genuinely ancillary to an offshore wind farm scheme.

3.2.8 Deemed Planning consent under the Town and Country Planning Act 1990 Section 90(2)

The making of a TWA order does not itself confer planning permission for any development provided for in the order. However, when applying for an order, the

developer can at the same time apply to the Secretary of State for planning permission to be deemed to be granted (for example, for any related onshore development) by means of a planning direction under Section 90(2) of the TCPA.

Alternatively any planning consent required can be sought separately with an application to the LPA. In that event the Secretary of State would wish to be satisfied that any required planning permission has been granted by the LPA before making an order.

3.2.9 Exemption from consent under Section 34 of the Coast Protection Act

Section 19 of the TWA disappplies the need for consent under Section 34 of the CPA if the works are authorised by a TWA order but this does not obviate the need for an FEPA licence.

For detailed information and guidance on Transport and Works Act 1992, see 'A Guide to TWA Procedures', published by DTLR.

3.3 European Directives

3.3.1 EIA Directive (97/11/EC)

The EIA Directive requires an Environmental Impact Assessment (EIA) to be carried out in support of an application for development consent for certain types of major projects listed in the Directive at Schedule 1 and at Schedule 2 for other projects where they are likely to give rise to significant environmental effects.

As offshore wind farm developments are listed as a Schedule 2 project as "installations for the harnessing of wind power for energy production (wind farms)" most developments are likely to require an EIA.

3.3.2 Habitats Directive and Birds Directive

The principal aim of the Habitats Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora is to sustain biodiversity through the conservation of natural habitats and wild fauna and flora in the territory of European Member States. These targets are principally being met through the establishment of Special Areas of Conservation (SACs).

The purpose of the Birds Directive 79/409/EEC is to protect birds, their eggs, nests and habitats in the EU. This is to be achieved by the protection of the birds' potential habitats, through the preservation, maintenance or restoration of a sufficient diversity and area of habitats essential to the conservation of all species of birds. These targets are principally being met through the establishment of Special Protection Areas (SPAs).

3.3.3 Requirements under the Habitat Directive

The Habitats Directive requires that any activities, plans, or projects whether inside or outside a 'Natura 2000' Site, that are likely to have a significant effect on the conservation status of the site's features shall be subject to assessment.

Therefore where a proposed offshore wind farm site is located within, or would be likely to significantly affect, a designated, proposed, or candidate 'Natura 2000' Site (SAC and/or SPA), 'consenting authorities' must ensure an 'Appropriate Assessment' is carried out under the Directive. Advice on whether an appropriate assessment may be

required for a development should be sought by the developer from English Nature/Countryside Council for Wales during the Scoping stage for the EIA.

3.3.4 Strategic Environmental Assessment Directive (2001/42/EU)

This directive came into force on 21 July 2001 and must be implemented in UK law by 21 July 2004. Its purpose is to ensure that the likely significant environmental effects of certain plans and programmes are identified and taken into account during their preparation and before their adoption. Under the Directive an environmental assessment, including public consultation, will be compulsory for plans and programs in specific sectors, including energy, which set frameworks for development consents for projects listed in the EIA Directive and for those requiring an appropriate assessment under the Habitats Directive.

3.4 Requirement for Environmental Impact Assessment

As all offshore power generating facilities fall within the scope of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (SI 2000/1927) most are likely to require an EIA.

Offshore wind farms will also require an FEPA licence and possibly a CPA consent. Although new regulations are under consideration to amend FEPA, the EIA Directive has not yet been applied to the Act. Nevertheless, there are existing provisions within FEPA to require licence applications to provide the licensing authority with such information as it deems necessary to enable it to consider the application properly: the licensing authority's policy being that this information shall include the equivalent of a formal Environmental Statement (ES) in support of all offshore wind farm proposals to inform the process of impact assessment. So far as the CPA is concerned, an EIA is also required to satisfy the Harbour Works (Environmental Impact Assessment) Regulations 1999 where a scheme is proposed which is to be sited in or partly within a port or harbour.

The EIA Directive (see Section 3.3.1) has been applied to applications for a TWA Order partly through the 2000 Rules (SI 2000/2190). It is considered that an EIA will be required for all offshore wind farm projects seeking a TWA Order. The EIA should include all the environmental information that may be required under any other consents required in the development of any individual project.

From a developer's point of view, the careful preparation of an ES will provide a number of benefits to a project:

- a useful framework within which environmental considerations and design development can interact
- environmental analysis may indicate ways in which the project can be modified to avoid or mitigate possible adverse effects
- thorough environmental analysis and provision of comprehensive information allows planning authorities to reach a decision more rapidly

4 Consents routes

4.1 The options

There are two consents routes currently available in England and Wales for developers to proceed with offshore wind farm applications.

- 1 Electricity Act/FEPA/CPA and other possible consents
- 2 Transport and Works Act/FEPA and other possible consents

4.2 Electricity Act/FEPA/CPA and other possible consents

The principal consents/licences required for offshore wind farms in UK territorial waters under this consents route are:

- Electricity Act 1989 – Section 36
- Food and Environment Protection Act 1985 – Section 5
- Coast Protection Act 1949 – Section 34

Other consents may also be required depending on the nature of the site and onshore development proposals:

- Town and Country Planning Act 1990 – Section 57 or 90 (e.g. for onshore substations)
- Electricity Act 1989 – Section 37 (for onshore overhead lines)
- Water Resources Act 1991 - Section 109 (if erecting structures in a water course)

An EIA is likely to be required for all applications under the EA as set out in Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (SI 2000/1927)(EIA Regulations).

Whether a consent under Section 34 of the CPA overrides the public right of navigation is a question of statutory interpretation and at present a consensus view has not been achieved. The position is however clear with the TWA order (see below) and if developers have concerns about the possibility of claim of public nuisance with respect to interference with the public right of navigation then it may be appropriate to consider the TWA order route.

4.3 Orders under the Transport and Works Act 1992

Offshore wind farm developers could choose to proceed by way of an order under the TWA. Under Section 3 (1)(b) of the TWA the Secretary of State for Trade and Industry and in Wales the National Assembly can make an order relating to, or to matters ancillary, the carrying out of works which interfere with rights of navigation in waters within or adjacent to England and Wales up to the seaward limits of the territorial sea.

An order provides a statutory means by which public rights (to navigation) may be extinguished or changed temporarily or permanently to accommodate the scheme. As well as authorising the offshore works, an order could also authorise any ancillary onshore works. It may also provide amongst other things, powers for the compulsory acquisition of land or rights in land. Where an order authorises the carrying out of works that would interfere with rights of navigation, this would provide a statutory defence against claims for such interference or public nuisance claims.

The making of an order does not confer planning permission for any development provided for in the order. However, when applying for an order, a developer can at the same time request that planning permission is deemed to be granted. Alternatively planning permission can be sought separately from the LPA. Similarly, an order does not obviate the need to obtain an FEPA licence.

Under Rule 7 of the Transport and Works (Application and Objections Procedure) (England and Wales) Rules 2000, there is a requirement for an EIA for the proposed project if it either falls within Annex I to the EC Directive on EIA or falls within Annex II and would have significant environmental effects.

There are provisions for a developer to apply to the Secretary of State, or National Assembly for a decision on whether an EIA is required (a 'Screening Decision') or to request an opinion on the scope of the EIA (a 'Scoping Opinion'). In either event, there are consultations with relevant environmental agencies before a decision or opinion is given. There are also provisions for obtaining required environmental information from the relevant agencies.

All applications concerning TWA orders are processed by TWA Processing Unit in DTLR. Developers considering this route are urged to make contact with the Unit at an early stage.

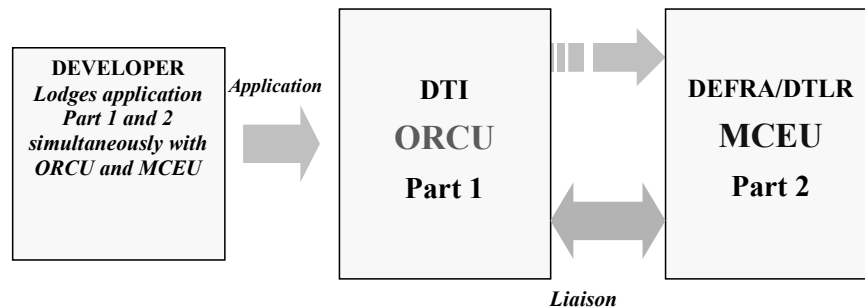
5 DTI 'one stop' application process

5.1 Single application procedure for all consents for offshore wind farms

ORCU will receive and coordinate all applications for the development of offshore wind farms. Applications can be lodged on a two-part application form:

- *Part 1* of the application form (ANNEX A) will trigger consideration for consents under the Electricity Act 1989
- *Part 2* of the application form (ANNEX B) will trigger consideration for consents under the Food and Environment Protection Act 1985 (FEPA) and the Coast Protection Act 1949

Both forms are available electronically and should be submitted direct to ORCU and MCEU.

Figure 1 Proposed single application procedure

5.2 Handling of applications

Applications will be processed simultaneously by ORCU and MCEU through database registering, correspondence acknowledgement and in starting the consultation.

ORCU will play a pivotal role in:

- the coordination of applications
- acting as a point of direct liaison with regard to consultation arrangements
- clarification of issues
- provision of status updates

This administrative arrangement does not affect the statutory role of government departments such as DEFRA and DTLR (and the NAW in respect of FEPA) in the consideration and granting of FEPA licences and CPA consents.

Application data under Part 1 will be retained on the ORCU consents database. Only ORCU project officers will have access to this database.

Application data under Part 2 will be retained on the MCEU consents database. Whilst this data may be made available to DEFRA and DTLR and the NAW, the data will only be used by MCEU in connection with the processing and administration of the consents to which it relates, including consultation with such parties as the Unit considers may have an interest.

However, access to information provided in support of an FEPA application is subject to the provisions of the Deposits in the Sea (Public Register) Order 1996 and may also be accessible under the Environmental Protection (Access to Environmental Information) Regulations 1992 and Freedom of Information Act 2000. Data is also open to inspection by the National Audit Office and the European Commission. (*Source: The Control of Marine Works, Dredging/Disposal at Sea and Approval of Oil Dispersants, Guidance Notes, Marine Consents and Environment Unit, June 2001*).

5.3 DTI streamlined consents process for offshore wind farm projects

This section provides a project management style guide to the key elements of the consents process i.e.: pre-application, application, consultation and the determination stage. The process is understandably front loaded and places the onus very much on the developer to ensure all the necessary field work/studies are undertaken at the pre-application stage (*Stage 1*) and to facilitate a smooth passage through the later stages (*Stages 2-4*: application, consultation and determination stages).

5.3.1 How quickly will cases be processed?

As most of the work at Stage 1 falls on the developer it is not possible to provide any firm information on timing. One estimate is that the pre-application stage will take between 12-18 months but much will depend on the site specific information requirements and availability of such information.

5.3.2 If applications are in good shape

Provided a developer follows best practice at the pre-application stage and prepares a good Environmental Statement that raises few issues requiring further examination it is anticipated that Stages 2-4 of the process will take between four to six months to complete.

DTI and other consenting authorities anticipate that Stages 2/3 will take around three months. This provides for a review meeting with the developer and a reasonable period of consultation both with internal and external consultees. (NB. Developers have to undertake a public consultation where the latter must be given 28 days to register objections to DTI).

It is anticipated that Stage 4 will take a further two to three months. This provides for a further review meeting between the consenting authorities; follow up/resolution of any outstanding points (possibly in month one); circulation of draft licence conditions to all interested parties (in month two); the issue of either FEPA licence and CPA consent (or a 'minded to grant indication') – assuming neither are to be refused – followed by determination of the consent application by the Secretary of State for Trade and Industry (in month three).

5.3.3 But there may be delays

The timescales given above only provide *guidance* and probably reflect the best possible outcome for a developer where the former has done all the groundwork and provided a comprehensive ES and where there are no substantive objections and consequently a reduced input is required from consultees and consenting authorities. Where incomplete information is provided and/or where further additional survey work is necessary the decision timetable may slip considerably.

Figure 2

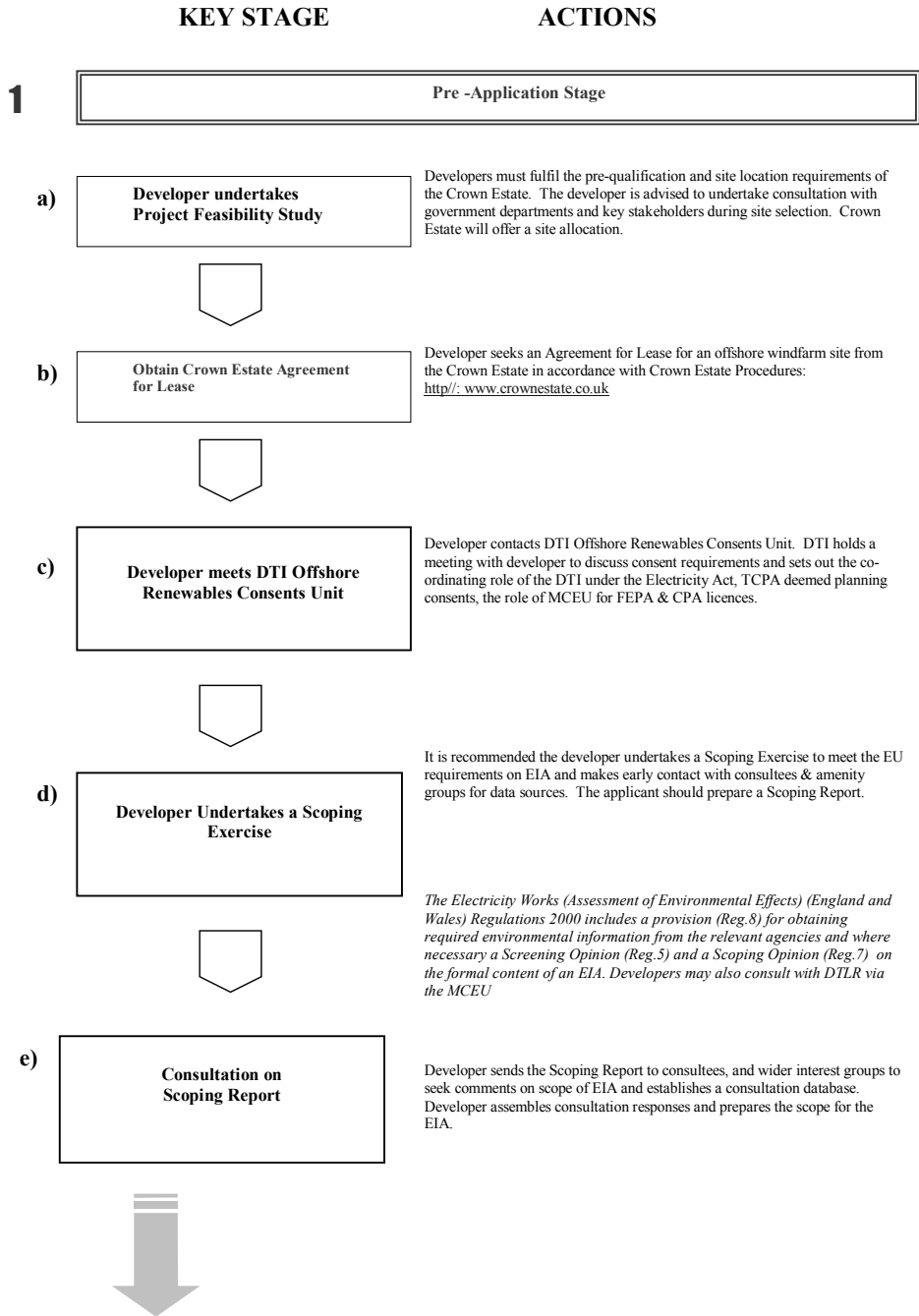


Figure 2 (continued)

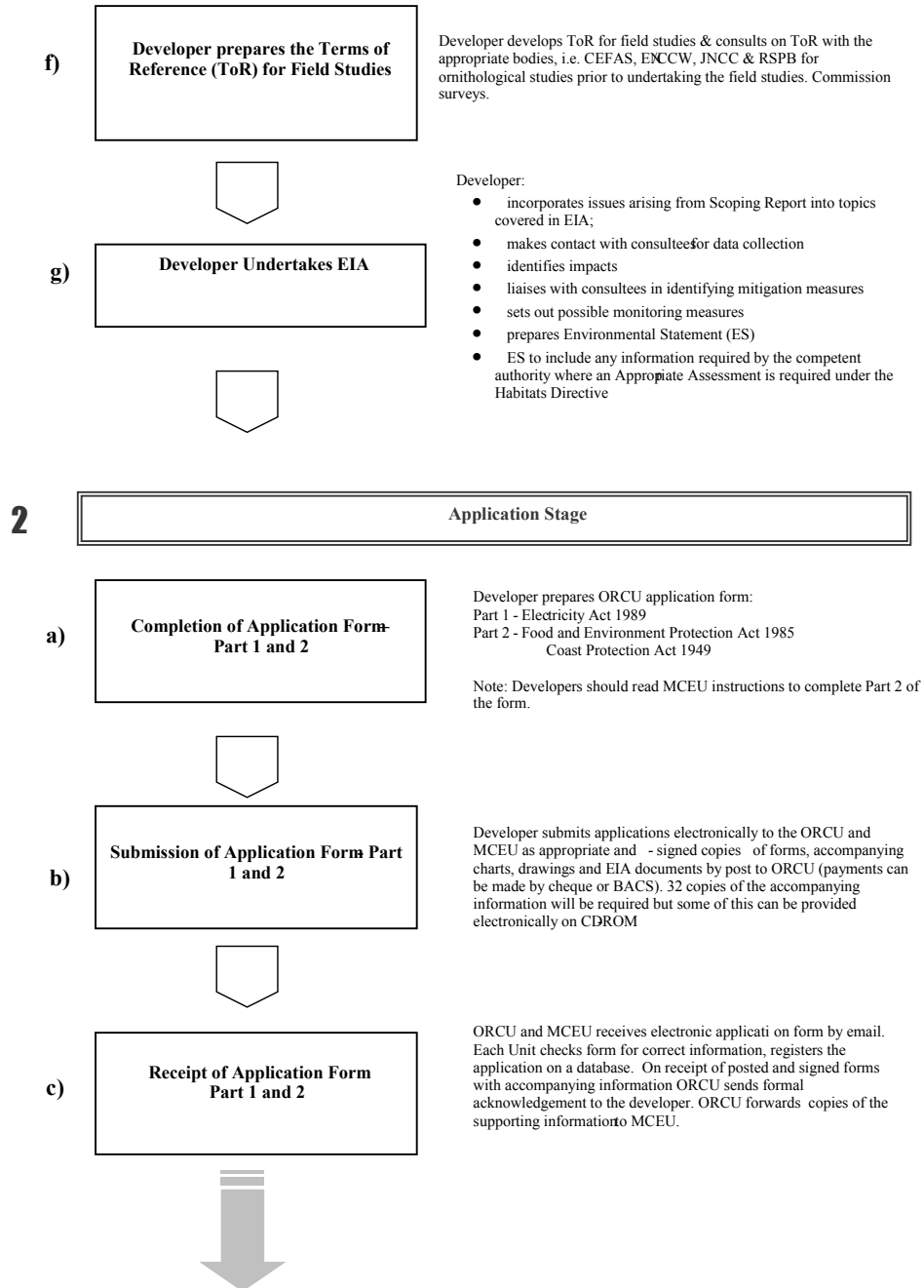
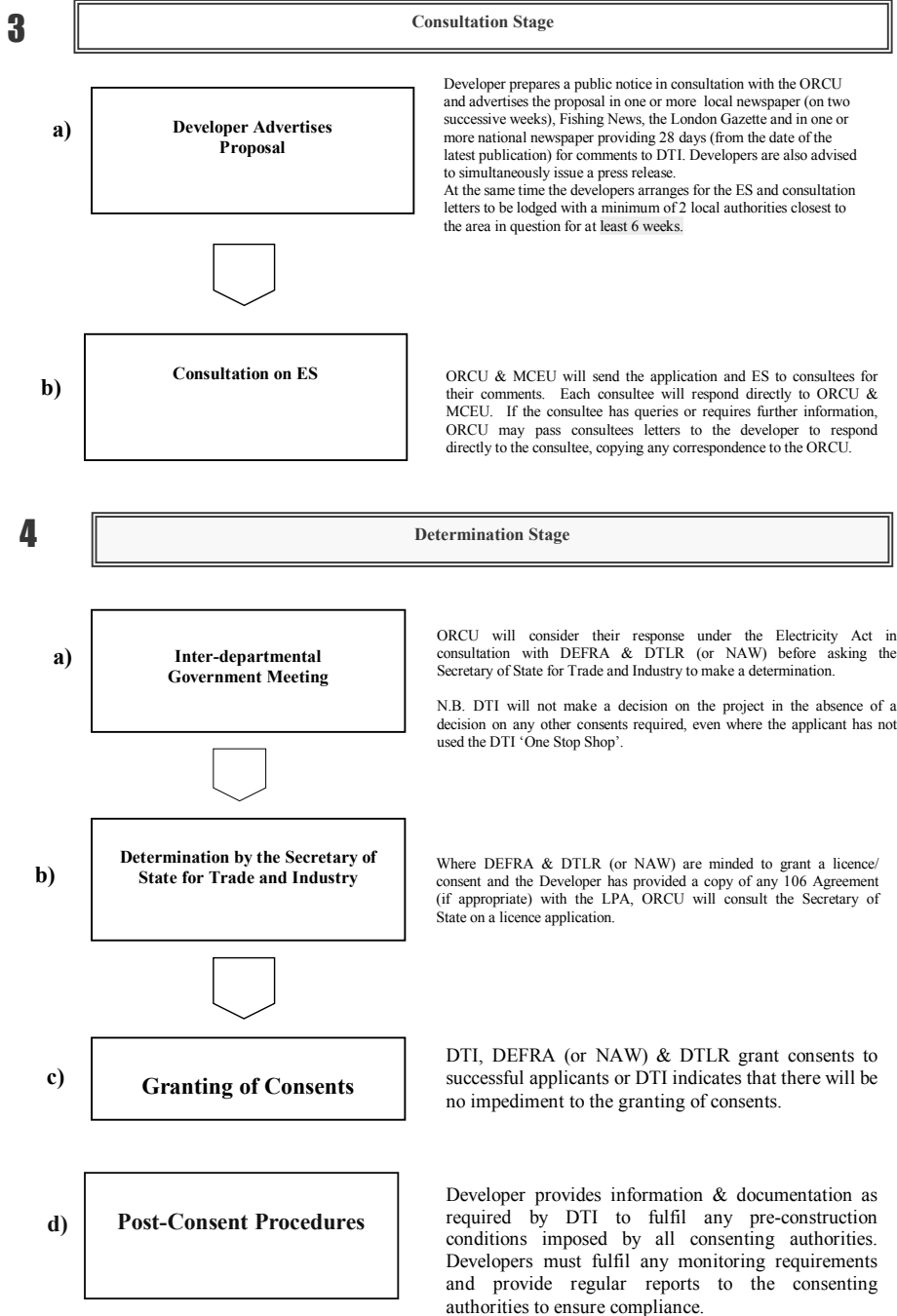


Figure 2 (continued)



Acknowledgements

We would like to thank all the developers, Crown Estate, DTLR, DEFRA, CEFAS, English Nature, Countryside Council for Wales and RSPB who expressed their views and suggestions of the process. We would also like to thank the Offshore Renewables Consents Unit of DTI for their comment and encouragement.

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