



**Galloper Wind Farm Project**  
Environmental Statement – Chapter 3: Legislative and  
Planning Context  
October 2011  
Document Reference – 5.2.3

Galloper Wind Farm Limited



**ROYAL HASKONING**  
Enhancing Society

Document title	Galloper Wind Farm Project Environmental Statement – Chapter 3: Legislative and Planning Context
Document short title	Galloper Wind Farm ES
Document Reference	5.2.3
Regulation Reference	APFP Regulations, 5(2)(a)
Version	9
Status	Final Report
Date	October 2011
Project name	Galloper Wind Farm Project
Client	Galloper Wind Farm Limited
Royal Haskoning Reference	9V3083/R01/303424/Exet

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Date/initials approval	MB	18.10.2011
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Date/initials approval	KH	02.11.2011



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## 3 LEGISLATIVE AND PLANNING CONTEXT

### 3.1 Introduction

3.1.1 This Chapter summarises the legislative context for the consenting of the proposed Galloper Wind Farm (GWF) project, and gives a brief explanation of the consents which Galloper Wind Farm Ltd (GWFL) need to obtain for the construction and operation of the project.

### 3.2 The Planning Act 2008

3.2.1 The Planning Act 2008 has created a new consenting regime for certain categories of Nationally Significant Infrastructure Project (NSIP). For electricity generation projects, this regime replaces the regime under the Electricity Act 1989 above certain threshold levels. Offshore wind farms with a capacity above 100MW are classified as NSIPs, and therefore require a development consent under the Planning Act 2008.

3.2.2 The installation and keeping of new overhead electric lines at or above 132kV are another category of NSIP requiring development consent, subject to certain exemptions.

3.2.3 The proposed GWF project has a potential generating capacity of up to 504MW and thus falls within the IPC regime requiring a development consent under Part 5 of The Act. The project also includes a small section of new above ground wires, running from the two sealing end compounds at ground level next to the existing 400kV transmission towers (pylons) up to the extended arms of those pylons. These wires may, or will, be classed as an above ground electric line NSIP in their own right and despite being relatively minor, may also fall within the regime under 14(1)(b) of the Act. This Environmental Statement (ES) has been prepared on the basis that the overhead wires do qualify as an NSIP, although if an exemption were later shown to apply, this would not materially affect the outcomes of the ES or any assessment therein.

3.2.4 The Planning Act 2008 has created the Infrastructure Planning Commission (IPC) to consider development consent applications, and provides for the development and designation of National Policy Statements (NPS) applicable to each category of NSIP. The Act provides, in essence, that where the NPSs which are relevant to a particular category of NSIP are in force, then the IPC has the power to determine applications, and that it should grant development consent where an application is in accordance with the relevant NPSs, unless its adverse impacts outweigh its benefits.

3.2.5 In **Chapter 2 Project Need, Policy Framework and Guidance** it was noted that the suite of NPSs for energy projects were designated in July 2011. This means that the IPC has the powers and the obligation to determine applications for energy projects, including generating stations above the

relevant onshore and offshore thresholds, and overhead electric lines meeting the relevant criteria.

- 3.2.6 The Government intends to alter the regime under the Planning Act 2008, and has included proposals to do so in the Localism Bill, which is currently before Parliament. Assuming the Bill is passed and brought into force, the IPC will be abolished and its powers to determine applications removed. The IPC will be replaced by a Major Infrastructure Planning Unit (MIPU), which is to be part of the Planning Inspectorate, which will make recommendations to the relevant Secretary of State, not decisions.
- 3.2.7 The Planning Act 2008 introduced a very different process for the making and consideration of development consent applications for generating stations and overhead lines, compared to the previous regime under Sections 36 and 37 of the Electricity Act 1989. The new regime requires extensive pre-application consultation, introduces a very different form of consent (the development consent order) and a mandatory system of examining applications, principally by way of written representations following a statutory nine month timetable from the start of the examination. This application and examination process will remain unchanged as a result of the Localism Bill, though some minor refinements are proposed.
- 3.2.8 As noted, the central change under the Localism Bill is that the MIPU will examine each application under the normal Planning Act process but will make a recommendation to the relevant Secretary of State, rather than a decision.
- 3.2.9 Having received a MIPU recommendation, the Localism Bill amendments will require the Secretary of State to grant consent if the application is in accordance with the relevant NPS, unless there are adverse impacts which outweigh its benefits.
- 3.2.10 The MIPU will be required to complete its examination and make its recommendation within a nine month statutory period from the start of the examination. The Government has made a public commitment that the Secretary of State will take no more than a further three months to issue their decision.
- 3.2.11 The Government intends to abolish the IPC and bring these changes in from 1 April 2012. If that timetable is met, the application for the proposed GWF project will be directly affected by the transition to the revised regime.

### **Development Consent Orders**

- 3.2.12 The proposed GWF project exceeds 100MW and therefore requires a development consent order (DCO). The GWF project area is mostly outside UK territorial waters, in the Renewable Energy Zone designated under the Energy Act 2004, with the remainder of the site within territorial waters. The Planning Act regime extends across both territorial waters and the REZ.

- 3.2.13 Under the Planning Act, in England, it is possible to include development associated with the generating station within the scope of the DCO. GWFL has decided to take advantage of this and is including the offshore electricity substations, the cables exporting electricity to shore, the onshore substation, onshore cables and the connection to the existing 400kV overhead line serving Sizewell B power station within the DCO. All of these works are assessed within this ES.
- 3.2.14 The precise form of the legislation has meant that GWFL is treating the, very minor, new overhead wires connecting the onshore grid infrastructure to the existing 400kV overhead line as an overhead line NSIP in its own right. It is permissible to include two NSIPs within one DCO and it has been drafted in these terms. The DCO divides up the other onshore grid infrastructure between the two NSIPs. This has no bearing on the Environmental Impact Assessment which has been carried out, or the form of this ES.
- 3.2.15 The inclusion of the onshore works within the DCO means that no onshore planning permission is required, as this is, in effect, included within the DCO.
- 3.2.16 The Planning Act 2008 enables powers of compulsory purchase to be included within a DCO, and such powers have been included to acquire the necessary land and rights for the construction and operation of the onshore works if these matters cannot be resolved by agreement.
- 3.2.17 The Planning Act 2008 also enables a DCO to grant a deemed marine licence under the Marine and Coastal Access Act 2009. GWFL has decided to take advantage of this, and the draft DCO includes a deemed marine licence. The relevant marine legislation is considered in Section 3.3.

### 3.3 The Marine and Coastal Access Act 2009

- 3.3.1 The Marine and Coastal Access Act 2009 (MCAA) received Royal Assent in November 2009, putting in place a new framework for delivering sustainable development of the marine and coastal environment.
- 3.3.2 One of the aims of the Act is to establish a framework within which the UK will take measures to maintain or achieve “good environmental status” in the marine environment by 2020 in accordance with the Marine Strategy Framework Directive (2008/56/EC).
- 3.3.3 The Act also introduces, for the first time, a system of marine planning for the marine environment. The Marine Policy Statement, which is in force, and the ongoing development of regional marine plans, has been considered in **Chapter 2**. The Act also introduces a new system for designating and protecting marine conservation zones, which is also considered in **Chapter 2**.
- 3.3.4 In terms of consenting offshore wind farms, the most important aspect of the MCAA is the introduction of a new system of marine licensing of deposits and works below mean high water. This regime replaces the long standing requirement for a licence under Section 5 of the Food and Environment Act

1985 for the deposit of articles and substances in the sea, and the requirement for consent under Section 49 of the Coastal Protection Act 1989 for work which may interfere with navigation.

- 3.3.5 The need for a marine licence arises under Section 66 of the MCAA. As already noted, the DCO which GWFL is applying for includes a deemed marine licence. The licence covers all the proposed works and deposits below mean high water.

### **3.4 The Energy Act 2004**

- 3.4.1 The Energy Act 2004 introduced a new regime for the decommissioning of offshore wind farms. GWFL will be required to submit a decommissioning plan under these arrangements to the Department of Energy Climate Change (DECC) for approval.
- 3.4.2 The Energy Act 2004 also introduced new provisions into the Electricity Act 1989 to enable a developer to obtain a declaration extinguishing public rights of navigation through the water column occupied by the wind turbines and other offshore structures. This is not available outside territorial waters. GWFL has decided to seek such an extinguishment of rights for those structures which will be within territorial waters for the project.

#### *Safety Zones*

- 3.4.3 The Energy Act 2004 makes provision for the establishment of Safety Zones around offshore renewable energy installations. In the case of offshore wind farms, the 2004 Energy Act allows for the establishment of Safety Zones up to a maximum of 500m around each structure from its outer edge.
- 3.4.4 Safety Zones protect the safety of life at sea by reducing the potential risk of collision between vessels and offshore installations. This is achieved by establishing a zone within which it is a criminal offence to enter, although certain vessels, such as those required for construction and / or maintenance activities, are allowed to enter, as is any vessel in an emergency situation. Different Safety Zones will be established for the main stages in the life of the renewable energy installation including construction, operation and decommissioning.
- 3.4.5 As set out by the Safety Zone application guidance (Department for Business, Enterprise and Regulatory Reform (BERR), 2007), the applicant must make a case for the establishment of Safety Zones based on safety grounds and this is likely to be tailor-made to the particular installation. A Safety Zone application does not need to be made at the same time as the development consent application, although the guidance (BERR, 2007) does state that declaration of an intention to do so would be useful, as the Secretary of State must take into account the request for any Safety Zones when deciding to grant consent.

- 3.4.6 Currently GWFL, in line with the Greater Gabbard Offshore Wind Farm (GGOWF) project, expect to apply for a 500m Safety Zone around each offshore structure for the period of construction, maintenance and decommissioning of GWF. This is in order to ensure the safety of construction vessels and other vessels navigating in the area (see **Chapter 16 Shipping and Navigation**).
- 3.4.7 During the operational phase of the offshore wind farm GWFL anticipate that, again in accordance with the neighbouring GGOWF project, a 50m Safety Zone will be sought around each offshore structure. This is in order to ensure the safety of operation and maintenance vessels and other vessels navigating in the area (see **Chapter 16**).
- 3.4.8 Further detail on the reasons for these Safety Zones is provided in **Chapter 16**. The nature of any Safety Zones has been subject to consultation during the application process.
- 3.4.9 In addition to the safety and mitigation measures listed within Annex 3 of Marine Guidance Note ((MGN) 371(M+F)), information and warnings of restrictions, or Safety Zones will be made available by: Notices to Mariners, local navigation warnings (VHF radio broadcast by the coastguard), websites, e-mail and advertisements in the local press and fishing journals, as well as the distribution of information to local fishermen and sailing / yacht clubs.

### 3.5 Other Statutory Consents

- 3.5.1 It is possible that a European Protected Species licence may be required in relation to the works. This is considered further in Section 3.7 of this Chapter on the Habitats and Birds Directives.
- 3.5.2 The onshore grid works are close to a Site of Special Scientific Interest (SSSI), but no works will take place inside the SSSI and accordingly no specific licence for such works will be required.
- 3.5.3 The onshore works are adjacent to the Sandy Lane bridleway. However, the works have been designed to ensure that this bridleway can be used throughout construction and no temporary or permanent diversion of the bridleway is required. The intertidal works will require the crossing of the coastal path by machinery and equipment from time to time. Measures to protect the path will be implemented, but it will remain open for public use throughout the construction works. Accordingly no temporary or permanent diversion of this path is required.
- 3.5.4 The onshore works proposed will not impact on any sea defences so as to require any specific consent. None of the onshore works will affect any existing drainage arrangements so as to require consent under the Land Drainage Act 1991.

### 3.6 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

- 3.6.1 The Environmental Impact Assessment (EIA) Regulations relating to NSIP came into force in October 2009 and implement the European Council Directive 85/337/EEC of the 27<sup>th</sup> of June 1985 (as amended by Directive 97/11/EC (the EIA Directive)). NSIP that fall within the description of developments in Schedule 1 of the EIA Regulations automatically require an EIA to be undertaken. NSIP that fall within Schedule 2 of the Regulations may require an EIA.
- 3.6.2 Offshore wind farm developments fall under Schedule 2 of the EIA Regulations as 'Industrial (energy) installations for the production of electricity, steam and hot water (projects not included in Schedule I)' and Annex II of the EIA Directive, as 'installations for the harnessing of wind power for energy production (wind farms)'. Schedule 2 NSIP require an EIA where they are likely to have significant effects on the environment by virtue of factors such as their nature, size or location.
- 3.6.3 Overhead line developments also fall under Schedule 2 of the EIA Regulations under the same definition.
- 3.6.4 In submitting the information included in the request for a Scoping Opinion (GWFL, 2010), GWFL have notified the IPC under Regulation 6(1)(b) of the EIA Regulations that they propose to provide this ES in support of a DCO application for the proposed GWF project. Therefore, GWF is determined as 'EIA development' in accordance with Regulation 4 of EIA Regulations (IPC, 2010). Further detail on this process is provided in **Chapter 4 EIA Process**.

### 3.7 Habitats and Birds Directives

- 3.7.1 EC Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive) is intended to protect biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive at a favourable conservation status. It provides for robust protection for those habitats and species of European importance.
- 3.7.2 EC Directive 2009/147/EC on the conservation of wild birds (known as the Birds Directive) provides a framework for the conservation and management of, and human interactions with wild birds in Europe. It sets broad objectives for a wide range of activities.
- 3.7.3 In England and Wales, the Habitats Directive is implemented under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended). The provisions of the Birds Directive are implemented through the Wildlife and Countryside Act 1981 (as amended), the Habitats Regulations and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended), as well as other legislation related to the uses of land and sea.

- 3.7.4 Under this legislation a network of protected areas (the Natura 2000 network) has been established. These are Special Areas of Conservation (SAC), for habitats and species, and Special Protection Areas (SPA), for birds.
- 3.7.5 If there is potential for a plan or project to have a likely significant effect on a Natura 2000 site, there is a requirement for the competent authority (the IPC) to carry out an appropriate assessment (see **Chapter 4**). The Regulations state that it is the developer's responsibility to provide sufficient information to the competent authority to enable them to assess whether there are likely to be any significant effects and to enable them to carry out the appropriate assessment, where necessary. A stand alone Habitats Regulation Assessment (HRA) Report is submitted alongside this ES as part of the DCO application. The HRA report provides all of the necessary information for the competent authority to carry out the assessment.
- 3.7.6 European marine protected species (EPS) are those listed in Annexes II and IV of the Habitats Directive. The Habitat Regulations and the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended) make it an offence to kill, injure, capture or disturb marine EPS. In relation to GWF, marine EPS would include harbour porpoise (see **Chapter 14 Marine Mammals**).
- 3.7.7 Good practice guidelines and protocols are being produced for the marine industry by the Joint Nature Conservation Committee (JNCC), covering a range of development activity. Central to this guidance is an approach to the assessment of the likelihood of committing an offence to marine animals and birds, how to avoid it and whether or not a licence to carry out activity might be required (JNCC, 2010). This has resulted in the production of several sets of detailed guidelines covering seismic surveys, pile driving operations and the use of explosives. It is considered that adherence to these guidelines constitutes best practice and will minimise the risk of committing an offence to species listed in the Habitats Directive.
- 3.7.8 If it is determined that there is likely to be a requirement for an EPS licence, GWFL will liaise with the Marine Management Organisation (MMO) and the JNCC in order to obtain this. EPS are discussed further in **Chapter 14** and wild birds are discussed further in **Chapter 11 Offshore Ornithology**.

### **3.8 Wildlife and Countryside Act (1981) (as amended)**

- 3.8.1 The Wildlife and Countryside Act (1981) (as amended) is the principal mechanism for the legislative protection of wildlife in Great Britain. This legislation is the means by which the Convention on the Conservation of European Wildlife and Natural Habitats (the 'Bern Convention') and the Habitats Directive are implemented in Great Britain. Similar legislation is enacted to fulfil these obligations elsewhere in the United Kingdom. The Wildlife and Countryside Act is divided into four parts.

- Part I which relates to the protection of wildlife;

- Part II which deals with the protection of SSSIs and other designated sites;
- Part III which relates to public rights of way; and
- Part IV which relates to miscellaneous provisions of the Act.

3.8.2 Where development is likely to affect species which are protected under Part I of the Act, a protected species licence will be required from Natural England. A description of the potential effects of the development on flora and fauna is contained within **Chapter 23 Terrestrial Ecology**.

### 3.9 References

BERR (2007) Applications to the Secretary of State for Business, Enterprise and Regulatory Reform for the establishment of safety zones around offshore renewable energy installations under the Energy Act 2004. Guidance Notes. August 2007.

IPC (2010). IPC Scoping Opinion – Galloper Offshore Windfarm, received August 2010.

JNCC (2010) The protection of marine European Protected Species from injury and disturbance: Guidance for the marine area in England and Wales and the UK offshore marine area, draft (JNCC, CCW and Natural England, 2010)

GWFL (2010) Galloper Wind Farm Project Scoping Report.