Sycamore House, Millennium Park
Osberstown, Naas, Co. Kildare
Phone: 045 899 341
Email: office@iwea.com

MPDM Bill Position Paper

14 October 2020

Contact: ross@iwea.com

Executive Summary

IWEA would like to thank both the Department of Housing, Local Government & Heritage (DHLGH) and Department of Environment, Climate and Communications(DECC) for the opportunity to submit this position paper featuring recommendations to finalise the General Scheme of the Marine Planning and Development Management (MPDM) Bill.

The implementation of a legislative framework which is consistent, transparent and practical will provide a firm foundation for the offshore renewable energy industry for years to come. Therefore, it essential that the MPDM Bill and all associated secondary legislation is enacted in line with the commitment in the Programme for Government to *'Give cross-government priority to the drafting of the Marine Planning and Development Management Bill'* and ensure it is enacted by the end of March 2021.

We would like to take the opportunity to stress the urgency of prioritising the MPDM Bill. The possibility of legislative delay is the single biggest risk to achieving Ireland's target of at least 3.5 GW of offshore wind by 2030 let alone the new target of 5 GW outlined in the Programme for Government.

In developing this position paper, IWEA has considered the practicalities of new MPDM legislation thorough a developers perspective, through a detailed legal review process and through researching what has worked well in other, more mature, offshore wind markets such as the UK. We believe our recommendations will enable offshore wind energy development and ensure its contribution to Ireland's 2030 targets alongside as we transition to a carbon neutral society.

The headline items identified in the paper are summarised in the key points below and are further detailed as part of a suite of 13 clarifications and 28 recommendations in the main body of the paper.

IWEA believes that:

1. Planning Interest and Marine Area Consent should be amalgamated and front-ended similar to an agreement for lease used by the Crown Estate in the UK. This would allow for a more streamlined consenting process.
2. An agreement for lease should be bound by specific milestones such as commencement of development work and the application for planning permission. These will be timebound, will require specific evidence and will be subject to extensions in certain instances.
3. A seabed lease should be awarded for a minimum term of 60 years for offshore wind energy projects.

4. Developers should be entitled to submit a further planning application if refused permission and to participate in a subsequent RESS auction (or equivalent route to market) if unsuccessful in an earlier application.
5. For survey works, clarification is required on who will make determinations and, so that the new system is more streamlined, certain survey activity should be permitted under a combined state consent (PI and MAC) / agreement for lease.
6. A form of design envelope flexibility is required within the consenting process for offshore wind in Ireland to keep pace with a rapidly evolving technology.
7. A 'one-stop-shop' for project consenting, similar to that available through Marine Scotland with the Marine Scotland Act (2010), should, in time, be considered for Ireland. This should not be at the expense of the delivery of earlier projects and would require adequate funding a transitionary period.
8. A planning application for all elements of an offshore wind farm project, whether located in the Maritime Area, Nearshore and/or on land, should be made to An Bord Pleanála in order to avoid duplication and multiple environmental assessments by different development consenting bodies. These should be dealt with in a timely fashion and be subject to defined statutory obligations, inclusive of pre-application scoping consultations.
9. Engaging with communities regarding proposed wind energy developments should start as early as possible and the most efficient way to support the public participation process is to focus public participation on the planning consent phase of the process, subject to compliance with the Aarhus Convention.

1 Introduction

The Irish Wind Energy Association (**IWEA**) is the representative body for the Irish wind industry, working to promote wind energy as an essential, economical, and environmentally friendly part of the country's low-carbon energy future. IWEA is Ireland's largest renewable energy organisation with more than 150 members who have come together to plan, build, operate and support the development of the country's chief renewable energy resource.

The General Scheme of the Marine Planning and Development Management Bill (**MPDM**) Bill 2020 has introduced the concept of a new streamlined consenting process for Ireland and will be the legislative underpinning for the National Marine Planning Framework (**NMPF**). IWEA believe that more can be done to streamline the consent process as outlined in the General Scheme of the Bill and have made recommendations to help achieve this. The Bill will look to designate the maritime area in which the regime will operate, create a new, single, State consent regime for the entire maritime area and provide for a single development consent for all projects, including a single Environmental Impact Assessment (**EIA**) and single Appropriate Assessment (**AA**).

While not a matter that must be addressed within the legislation or detailed in this position paper, IWEA would like to draw attention to the need to consider a process for the timing of release of seabed and IWEA would be happy to discuss this further with the Department and other policymakers at a later date.

The General Scheme of the MPDM Bill proposes a forward planning model, with decisions to be taken in a manner that secures the objectives of the National Marine Planning Framework. It will introduce two new forms of State consent, the awarding of Planning Interest (**PI**), which provides a gateway into the planning system, and Maritime Area Consent (**MAC**), which covers the leasing of the seabed from the State.

Before focusing on the content of the General Scheme we would like to take the opportunity to stress the urgency of prioritising the MPDM Bill.

Under the Climate Action Plan, the MPDM Bill was to be enacted by the end of September 2020 and at the time this was considered by industry experts to be a tight timeline to deliver the 3.5 GW of offshore wind for 2030 set out in the plan.

We appreciate that significant programme delays were created due to the interregnum and the onset of the Covid-19 pandemic, but there is now a very significant risk to projects progressing in time to

achieve the Climate Action Plan target, let alone the enhanced ambition of 5 GW set out in the Programme for Government.

It is extremely unlikely that any offshore wind project which has not received planning permission before the end of 2025 and/or does not have a supporting Renewable Energy Support Scheme (RESS) auction to compete in will be built in time to meet the 2030 targets. This makes it essential that the MPDM Bill and all secondary legislation is enacted in line with the commitment in the Programme for Government[1] to *'Give cross-government priority to the drafting of the Marine Planning and Development Management Bill'* and to ensure it is enacted by end the of March 2021.

The possibility of legislative delay is the single biggest risk to achieving Ireland's target of at least 3.5 GW of offshore wind by 2030 let alone the new target of 5 GW outlined in the Programme for Government.

In May IWEA brought together a team of experts in offshore renewable energy development and in Irish planning law to develop this position paper in respect of the second iteration of the General Scheme of the MPDM as published in January.

The review of the General Scheme of the Bill is outlined in this paper and has been structured to address the following sections:

Developer perspective: What are the issues to be addressed in the General Scheme to enable offshore wind energy development in line with the 2030 and the longer term 2050 targets? Are there aspects of the General Scheme that would prevent, or are impractical for, offshore wind energy development?

International perspective: What can be learned from experiences in more mature offshore wind markets like the UK? A number of useful aspects of those markets is provided and highlighted for consideration within the MPDM Bill.

Legal review of the General Scheme: Gaps, inconsistencies and potential areas for challenge are highlighted and detailed in the Appendix B of this paper.

Note: All clarifications within this paper are presented in bold black font and all recommendations are presented in bold blue font.

[1] https://static.rasset.ie/documents/news/2020/06/programmeforgovernment-june2020-final.pdf

2 Developer Perspective

IWEA has detailed a number of issues arising from the General Scheme that require consideration by the Department and clarification for developers.

2.1 State Consenting

2.1.1 Head 47 and 47a – Transitional Provisions

It would be beneficial for the language to be clear on the transitional arrangements in this section of the Bill for live Foreshore licence applications. The text, that the Department will draft further provisions for transitional arrangements, presents a risk of delay to applications within the current process.

Clarity is therefore required within Head 47 and 47a on what Transitional Provisions will cover.

2.1.2 Planning Interest

The implementation of a legislative framework which is consistent, transparent and practical will provide a firm foundation for the offshore renewable energy industry for years to come. The MPDM will empower the Minister to grant a PI for a specified development in a specified part of the maritime area, including the nearshore area. The purpose of the PI approach is to ensure that prospective developers have the financial and technical capabilities to complete proposed projects. This acts as the gateway into the planning system but does not constitute any form of planning decision. IWEA supports the concept and broad intent of the PI approach but would like to raise a number of issues, outlined below, for further consideration.

2.1.3 Term of the Planning Interest

The General Scheme states that the PI will be "*time limited to prevent long term sterilisation of a part of the Maritime Area by developers unable to complete projects*". **IWEA strongly recommend the application of a time limit to PI to prevent sterilisation of parts of Ireland's marine space.** It is not in the interests of our industry to see large areas of our waters blocked off from development, undermining the delivery of new projects and achieving our 2030 targets.

However, a careful balance needs to be struck to ensure that a developer is afforded sufficient time to secure planning consent, complete front-end engineering and design work, secure route-to-market support, execute a grid connection agreement and reach a final investment decision. All of these milestones must be reached before a developer can enter into a MAC. While it is difficult to place an exact timeframe, we estimate that it will likely take approximately 8-10 years as an absolute minimum for the completion of all of these activities. **Therefore, we recommend front-ending the PI and the**

MAC as an agreement for lease. This would enable the developer to maintain exclusivity for the seabed area pending delivering upon key milestones such as the application for planning permission. In addition, this process requires very significant investment and substantial risk is carried by the developer at every step of this process.

Head 29(3)(v) states that the term of the PI will be set out in Regulations. IWEA would be supportive of this but would also like to highlight that a milestone approach for the retention of a PI would be useful here, similar to that used by the Crown Estate in the UK, and which is detailed later in this paper. It should be noted that the term of the agreement for lease with the Crown Estate is a maximum of 10 years. Subject to satisfying the outlined milestones, this would enable a developer to reach the milestones set out above whilst limiting the opportunity for the holding party to simply hoard this exclusive interest in the seabed. We have outlined the milestones in the table below that could be considered for Ireland. If these milestones are not hit, then the Department would be able to revoke the PI.

Milestone	**Evidence**	**Duration**	**Max extension**
Evidence of site development commencement. Geotechnical*, geophysical, bird and marine mammal surveys	Signed contract and contractor reports showing evidence of activity on site.	18 months**	6 months
Planning permission application submitted to ABP	Confirmation of planning number from ABP	5 years	12 months

Table 1: Table of milestones for consideration

** caveat that if intrusive surveys remain within the current foreshore process (or a similarly protracted process) it is unlikely 18 months would be achievable.*

***as identified in developer programme (within award of the PI).*

There are some specific scenarios where additional time will be required to bring outstanding issues to a resolution and which may require an extension. These are as follows (though we would emphasise this list is not exhaustive):

1) The PI is set to expire while the planning application is under consideration by An Bord Pleanála;
2) The planning permission is the subject of a live Judicial Review;
3) The extent of deep reinforcement works to the grid required for full project energisation necessitates a delay in entering into the MAC;
4) Any material delay by Government for a timely RESS auction/similar mechanism;
5) Delay caused by strategic environmental assessment (where required); and
6) Delay in the consideration of the Maritime Consent Area.

Each of the foregoing instances are outside the control of the developer and it should be reasonable to expect that an appropriate extension of time should be provided for in circumstances such as this as may be negotiated between the developer and the Department.

In addition, clarification is required on whether a Planning Interest will automatically terminate on a refusal of planning permission or in a circumstance where a developer has been unsuccessful in a RESS auction process? IWEA recommend that the developer will be entitled to submit a further planning application if refused permission and to participate in a subsequent RESS auction (or equivalent route to market) if unsuccessful in the first or an earlier application, provided it is still within the overall 10 year term of the PI.

2.1.4 Timeframe for Determination of Planning Interest Application

Sub-Head 28(6) states that the relevant Minister shall make a determination on an application for a Planning Interest within 90 days. **IWEA would recommend that in default of the relevant Minister making a determination within 90 days, that the Planning Interest is deemed to be granted, similar to default permissions in the Planning Acts.**

2.1.5 Public Involvement in the Application Process

It is not entirely clear at the outset whether or not there will be any requirement for public notices or consideration of objections as part of the PI application process. In this regard we note that Head 43(e) refers to public notice and objections in relation to an application for an extension of the term of a PI. However, there does not appear to be similar public participation requirements on the initial application for a Planning Interest.

We also note that the FAQ document states that *"submissions from stakeholders and the public in relation to any proposed development in the Maritime Area can be made during the development consent phase of the consenting sequence. Submissions can be made during the standard planning permission public consultation procedures".*

This would appear to suggest that there will be no right for the public (or other stakeholders) to participate in the PI application process but nonetheless clarity would be appreciated on this point. **IWEA would recommend that the most efficient way to support the process is to focus public participation to the planning consent phase of the process, subject to compliance with the Aarhus Convention.**

2.1.6 Process of Appeal

Head 28(14) provides the refused applicant with an opportunity to appeal the refusal of the application for PI within a period of 30 days. It would appear from Head 28(16) that an appeal against a refusal is made to the same Minister who issued the refusal. This would seem to be at odds with fair procedure and natural justice. **IWEA would recommend instead that an independent appeals panel be set up by the Minister along the lines of the procedure set out in Part IV of the Electricity Regulation Act 1999. Alternatively, provision should be made for an appeal to the High Court as per Head 44.**

2.1.7 Fit and Proper Person

In assessing whether an applicant is a fit and proper person to hold or to continue to hold a planning interest, the relevant Minister may have regard to *"previous performance of the applicant under other consents they have been a party to".* For the avoidance of doubt, **IWEA seeks clarification that the term 'other consents' relates simply to any consents granted under the terms of the MPDM.**

2.1.8 Fees

Sub-Head 26(10) refers to fees to apply for a PI and there are associated classes of activity which will determine the amount to be paid. **It would be particularly helpful for the Department to clarify what level these fees will be set at alongside of how these fees will be set. Furthermore, it is recommended that industry will have an opportunity to be meaningfully consulted on this at a later date.** This is particularly important for the Relevant Projects under the Transitional Protocol as these projects are required to sign a letter now confirming that their entitlement to a Planning Interest will be dependent upon compliance with these, as yet unknown, payment terms. Furthermore, an

applicant will require visibility of the ultimate commercial terms that will be prescribed under the MAC in advance of executing the PI. These terms will be a key input into the financial modelling process that will underpin a bid into a RESS auction process. Any form of uncertainty around this will directly undermine that process.

2.1.9 Associated Infrastructure

A fundamental part of a proposed offshore wind project will be the associated electrical cable which will ultimately make landfall and connect to the grid onshore. This cable will be either laid on the sea floor with protection or buried beneath the seabed. It is not clear within the terms of the drafting whether a PI is required for the route of this subsea cable as well as the offshore wind farm site itself. It should be borne in mind that at the time of seeking a PI for a particular area a developer will likely have more than one potential offshore grid connection route option. This is not currently covered within the PI. **Clarification is required on whether you will you need a consent separately for an undersea cable route**. Within the Crown Estate approach for an Agreement for Lease or Lease, the cable corridor is addressed in a sub-section or subordinate lease called the T*ransmission Agreement for Lease.* **Given this uncertainty we recommend that the best approach here would allow for the execution of a separate nonbinding, agreement, in some form of PI**. Within the Crown Estate approach, as a project moves from the initial development phase through to construction, the corridor narrows from a number of kilometres in width down to approximately 1 kilometre in width and will be dependent upon project specifics for a final lease agreement. Furthermore, there is some exclusivity associated with this corridor (particularly for surveys during cable inspection and maintenance) but it does not protect from specific activities such as oil and gas exploration alongside of pre-existing infrastructure and a range of other carve outs. It is also the norm in the UK for the holder of the Transmission Agreement for Lease to have other surface access agreements with other marine space users. This would be sought by the developer or by EirGrid (depending on future regime change) once they have confirmed the preferred route for the cable corridor. Consideration should also be given to the potential handover of assets should change in ownership be required. Within the Crown Estate approach, there is a change of control mechanism within the Transmission Agreement for Lease (and the entire lease) to facilitate transfer. It should be noted that such an approach would not be subject to additional fees but would allow visibility of proposed cable route corridors for stakeholders of initial corridors of interest. This type of PI would be approved within 30 days of submission and signed by the Department in advance of the planning application being made. Once confirmed, the final route will be subject to further refinement for the MAC, it would provide the exclusive right to install, use, operate, inspect, maintain, repair, renew and remove within the cable

corridor, noting that other cables may cross, in the seabed, for the duration of operation, in a manner equivalent to a cable wayleave for a terrestrial project. This would also apply to a plan led model.

2.1.10 Material Amendment of Planning Interest

The FAQ document provides that *"the planning interest considers the person"*, whereas *"the planning permission considers the project"*. The PI is simply a "gateway" to allow the developer to apply for a planning permission. It should not require development specifics, other than an overall area and the intended use e.g. an offshore wind farm. Given the rapid advances in offshore wind technology it would be the incorrect approach if the developer was required to provide specific project layout detail as part of the application process for PI. Such an approach would result in potentially multiple applications for material change being dealt with by the Department and unnecessary delays being incurred by developers. Fixing a design before undertaking site characterisation and ecological studies would not be in line with proper planning practices.

2.1.11 Conditional MAC Offer

Consideration should be given to granting a conditional MAC (similar to an Agreement for Lease in the UK and explained later in this paper) at the PI stage. This would give developers clarity on the financial terms and conditions which will apply in the MAC, subject to planning permission being obtained. It would also reduce the State consent stages from two to one, thereby supporting the "single consent" principle, as well as minimising the opportunity for potential third-party challenges. **IWEA recommend the MAC terms form part of your Planning Interest and developers will serve an exercise notice on the Department once they fulfil the planning permission and route to market criteria.**

2.2 The Maritime Area Consent

The Maritime Area Consent (MAC) will regulate the occupation of the maritime area. The Maritime Area Consent's primary function is to enable and control occupation of the maritime space much like a property lease would regulate the use of an area of land for an onshore windfarm.

2.2.1 Term of the Maritime Area Consent

The term of the MAC is not prescribed within the General Scheme. **IWEA would recommend a minimum term of 60 years for offshore wind projects.** This would be consistent with the approach taken by the Crown Estate Round 4 process in the UK. This is potentially sufficient time for two full project lifecycles, reflecting maturing offshore wind technology and operations. Such an approach allows the capital cost of a project to be spread over a much longer timeframe meaning that a

developer can submit a more competitive auction price, something which will ultimately benefit the consumer.

2.2.2 Timeframe and Process for Execution

The timeframe for the determination of a MAC application should be set out in the legislation so that a developer has certainty in completing the required programme of work. Assuming the negotiation of the commercial terms in the MAC is front-ended to the Planning Interest stage (see para [2.1.10] above, it should be possible for the Department to grant the MAC very quickly following a final grant of planning permission. **IWEA recommend that a MAC be granted within 4 weeks of an application by the developer, subject to a prior grant of planning permission for the offshore wind project.**

2.2.3 Fees

Sub-Head 34(10) refers to such fees, rents or royalties as may be prescribed by the relevant Minister. These terms must be clear and unambiguous. There should be a mechanism to appeal the level of fees and/or any review of same, to an independent expert in default of agreement. Given the interdependent relationship between the PI and the MAC these financial terms must be known in advance of a developer executing a PI. IWEA would suggest that industry should be consulted prior to setting fees.

IWEA recommend that terms are defined and made available in advance of executing a planning interest.

2.2.4 RESS Contract Requirement

Our understanding is that both planning consent and a Renewable Energy Support Scheme (RESS) contract will be required before a developer can enter into a MAC. Sub-Head 31(5) states that the Minister for Communications, Climate Action and Environment may only grant a MAC for offshore renewable energy development where the promoter of an offshore renewable energy development has been successful in a competition established by the Minister under Section 39 of the Electricity Regulation Act (i.e. RESS).

If a MAC can only be granted to an applicant who has received a RESS contract, this would preclude ORE projects choosing a Corporate PPA or similar alternative route to market. This proposed approach is unduly restrictive. It is also contrary to Government policy as set out in the Climate Action Plan, and reaffirmed by the new Government, which sets a target for 15 per cent of electricity demand in 2030 to be met by renewable sources contracted under Corporate PPAs.

IWEA recommends this sub-head should be deleted or modified to enable a developer to put in place the optimum commercial arrangement in advance of entering into a MAC and to bring it into line with Government policy.

2.2.5 Project Phasing

Given the nature and size of offshore wind farms, **IWEA recommends a specific provision in the MAC for an ability to complete in phases.**

2.2.6 Assignment

Sub-Head 34(10)(i) states that a MAC cannot be assigned without the consent of the Minister. Given that a MAC will be equivalent to a property lease, there should be provisions whereby the Minister's consent cannot be unreasonably withheld. **IWEA recommends that the MAC can be assigned intra group as part of a bona fide reorganisation.** In addition, **IWEA recommends a specific carve out for security assignments to the project funders.**

2.2.7 Public Involvement

Engaging with communities which might be affected by offshore renewable energy development should be started as early as possible and will always be a priority for developers. It is not entirely clear at the outset whether or not there will be any requirement for public notices or indeed consideration of objections as part of the application process. In this regard we note that Head 44 refers to public notice and objections in relation to an application for a modification of a MAC. However, there does not appear to be similar public participation requirements on the initial application for a MAC. We also note that the FAQ document states that "*submissions from stakeholders and the public in relation to any proposed development in the Maritime Area can be made during the development consent phase of the consenting sequence. Submissions can be made during the standard planning permission public consultation procedures*." This would appear to suggest that there will be no right for the public (or other stakeholders) to participate in the MAC application process. **IWEA would recommend that the most efficient way to support the process is to focus public participation to the planning consent phase of the process, subject to compliance with the Aarhus Convention.**

2.2.8 Refusal of Application and Process of Appeal

Head 35 provides the Minister with powers to refuse a Marine Area Consent for reasons including *"circumstances have changed since the submission of an application rendering it, in the opinion of the relevant Minister, not appropriate to grant the Maritime Area Consent".* Whilst we understand the requirement to include some control measures here to ensure that the developer is still a fit and

proper person and has met all outstanding obligations this clause, as drafted, is somewhat arbitrary and open to interpretation. There is a risk that a developer may have invested years of effort and expenditure only be refused at this final hurdle on the grounds of changed circumstances. Furthermore, it should also be stated here that if PI and MAC are to be amalgamated then this would eliminate this perceived risk. **IWEA recommends this section be modified so that only clear variations to the applicant's standing as a Fit and Proper Person are deemed to be grounds for refusal of the MAC.**

It would appear from Sub-Head 35(1) that an appeal against a refusal of a MAC is made to the same Minister who issued the refusal. This would seem to be at odds with fair procedure / natural justice and **IWEA would recommend instead that an independent appeals panel be set up by the Minister along the lines of the procedure set out in Part IV of the Electricity Regulation Act 1999. Alternatively, provision should be made for an appeal to the High Court as per Head 44.** The same issues apply when it comes to a suspension or termination of a MAC under Sub-Head 36(9).

2.2.9 Survey Works

Head 40 of the Bill makes explicit provision for the award of a MAC in respect of exempted development, marine environmental surveys and certain specified activities. This is also recognised with the FAQ document which outlines the intention *"to put in place proportional truncated state consent procedures for marine environmental surveys".* This inclusion is strongly supported. Marine environmental surveys and associated site investigations are a key requirement for both the planning application preparation and the front-end engineering and design process. There is a wide variety of activities included within this process including geophysical and geotechnical works, metocean surveys and ecological surveys which are fundamental to detailed project investigation and design. This application process should be subject to a statutory determination period of 18 weeks. **Clarification is required on which body will hold responsibility for determination of applications made under this section**. The Marine Scotland approach detailed in Appendix A has been particularly successful in this regard. A similar licensing process would be of benefit to Irish projects to allow low-level site survey activity under a combined state consent (PI and MAC) where the survey work meets the requirement for no adverse effect from an Appropriate Assessment screening. More significant works would then proceed through a Marine Licensing process through an appropriate regulatory authority such as Marine Scotland. **So that the new system is more streamlined, IWEA recommend certain survey activity to be permitted under a combined state consent (PI and MAC).**

In addition, **clarification is required on whether or not a Planning Interest is required in advance of making an application for a truncated MAC.** Consideration should be given to renaming the MAC

granted under this Head 40 so that it is not confused with, and subject to the same requirements of, the normal MAC granted post-planning. For example, the Head 40 consent could be called a "Special Maritime Area Consent". For the avoidance of doubt, it should be specified that all non-intrusive survey works like aerial bird and marine mammal surveys can be undertaken without the requirement for a foreshore licence or truncated MAC.

2.3 Development Management

2.3.1 Nearshore Area

The boundary and extent of the "*nearshore areas*" over which the relevant coastal local authorities and An Bord Pleanála will exercise certain statutory functions has not been clearly defined. **Clarification is required here.**

The planning permission functions of both the local authorities and An Bord Pleanála are extended to the outer limits of the "nearshore area" (Head 49(1) and (3)). Head 49(5) states that developments located wholly or partially within the nearshore area will be the responsibility of An Bord Pleanála. It is therefore assumed that any applications for developments within or partially located within the nearshore area will be submitted to the Board.

However, Head 54(1) states *"where an application for development or activity in the Maritime Area is made to a planning authority…".* **The "*Maritime Area*" is considered to extend further than the "*nearshore area*" which is where the local authorities exercise planning permission functions. Clarification is required here.** Also, **Head 54(1) includes the assumption that planning applications are made to the local authority and not the Board. Again, clarification is required here.**

2.3.2 Coastal Local Authorities and Maritime Development

Head 51(1)(d) and (e) says that local authorities or the Board should have the power to attach conditions to a planning permission. Any condition requiring a developer to regulate land that is under the control of the State or another party would be open to challenge as it imposes an obligation on the developer to comply with a condition.

Head 57 refers to compulsory acquisition in the maritime area. **Is it the intention that a local authority be allowed apply for a compulsory purchase order (CPO) once a developer has been awarded a Planning Interest and/or a Maritime Area Consent for the same area? Clarification is required here.**

Head 57a provides for the facilitation of local authorities to carry out Marine Environmental Surveys in the Marine Area. It is stated that Part XI of the Planning and Development Act (**PDA**) shall apply where an Appropriate Assessment Screening determines that the preparation of a Natura Impact

Statement (**NIS**) is required. However, S. 179(6)(e) of the PDA effectively disapplies Part XI for local authority development which requires an appropriate assessment. Instead, the local authority must apply to the Board for approval under section 177AE of the PDA.

Can Local authorities carry out surveys within an area that has been awarded a PI/MAC? Local authorities/others should first seek permission from the holder of a MAC. **IWEA recommends that this is clarified within the legislation and that Head 57, sub-head 7 is updated to reflect this.** A duty to consult at the PI stage is necessary to ensure co-ordination of survey works between two parties. If this is the case, then local authorities should directly notify a holder of a PI/MAC if surveys are to be carried out adjacent to their site.

2.3.3 Offshore Development

Some projects will include offshore and land-based components. For offshore wind projects, some ancillary development may be fully/partially within the Maritime Area and/or the nearshore and/or on land, e.g. the full extent of the offshore wind farm, the offshore cables, landing cables, onshore cables, substation, etc.

Clarification is required as to whether certain aspects of an offshore wind project would require an application to be submitted to the relevant local authority (i.e. the land-based works) as well as An Bord Pleanála? Head 61(2) needs to clarify whether planning permission for all aspects of developments within a class described in Schedule X are to be applied for to the Board.

It is recommended that the planning application for all elements of an offshore wind farm project, whether located in the Maritime Area, Nearshore and/or on land, should be made to An Bord Pleanála in order to avoid duplication and multiple environmental assessments by different development consenting bodies.

It is recommended that Head 63 include a timeframe for when the Board should have a decision made for a development within the Maritime Area. A timeframe should be identified and outlined as a statutory obligation to provide consistency with decision timelines. Head 74(1)(a) states that it is an "objective" for the Board to reach a decision within 18 weeks beginning on the last day to make submissions – however, the Note after this Head considers that 26 weeks may be a more realistic timeframe. Whether 18 weeks or 26 weeks, it should be a statutory obligation for the Board to reach a decision within a specific timeframe. Head 68(12) suggests that there is no time limit or statutory obligation for the board to issue a decision on an application. The Strategic Housing Development legislation process requires a determination to be made within a specific time period. We request that a defined decision period is also adopted.

It is recommended that Head 64 include a timeframe for when the Board must enter into (and conclude) the pre-application consultations, having received a request from a prospective applicant. A first pre-app meeting should take place within 4 weeks of submitting request as a statutory obligation to provide consistency with decision timelines.

It is recommended that Head 66 include a timeframe for when the Board must respond with a recommendation to a developer who has requested an EIA scoping opinion from the Board on what information should be included in an EIAR. IWEA would suggest a period of 4 weeks from receipt of a request as being reasonable.

Head 68(1)(c) states that the Board can request further submissions from a person who made a submission or observation, or any other person who may, in the opinion of the board, have information which is relevant to the determination of the application. This has the potential to significantly delay the planning permission process as a response to the request made by the Board is at the discretion of the third party. **It is recommended that a response deadline be included, and provisions should be made if a response is not received in time.**

a) **It should be made clear that a preliminary / outline decommissioning plan be considered as part of the application.**

b) **It should not be required that a developer must request a new Planning Interest and/or MAC at decommissioning/reinstatement stage. This should be formally outlined within the Bill.**

2.3.4 Onshore grid route

It is important to consider current difficulties relating to the routing of onshore wind grid cable routes This is of particular importance as part of future offshore wind farms grid cable routes onshore may be impacted by similar difficulties. There are three specific issues summarised below.

The first issue relates to very serious challenges to applying for planning permission for linear elements of larger development projects along public roads and the requirement of multiple and individual landowner consents as part of this.

The second issue relates to who owns the land under a public road in which utility services are typically installed and the challenges created for developers by the new requirement to obtain landowner consent to install new utility services along public road corridors. The adjoining landowners on either side of a road generally own the land to the middle of the road. This presents a difficulty when private or semi-state entities need to install new utility services along a public road corridor the owners of

adjacent lands would, in effect, be able to veto the installation of new utility services along public road corridors.

The third issue relates to powers available under the Electricity Regulation Act, as administered by the Commission for the Regulation of Utilities (CRU), that allow the holder of an authorisation to construct an electricity generating station (e.g. a wind farm) to avail of and to exercise ESB's power to lay electricity lines along, across, or under any street or public road. There is no statutory procedure set out under the Electricity Regulation Act 1999 for an application for the consent of the Commission under Section 48 or 49. Furthermore, there are no statutory criteria for the consideration of such an application. Given the fact that the powers under both the 1999 Act and the 1927 Act are akin to CPO powers, it is counter-intuitive that the developer must get the consent of all affected landowners before exercising the powers in question.

IWEA have proposed solutions to the three issues above within an IWEA briefing note[2] and extracted this briefing note into Appendix D of this paper and should be considered within the MPDM process.

It is critical that the planning, legal and regulatory barriers to the provision of critical utility services to these types of development are removed by the relevant Government department and regulators as a matter of urgency.

[2] https://iwea.com/images/files/20191007-grid-consent-briefing-note-final.pdf

3 Learnings from other jurisdictions

This section of the paper summarises learnings that could be applied to Ireland from the offshore wind development planning process in the United Kingdom. There is a more detailed review of learnings from the UK (England and Wales) and Scotland in Appendix A of this paper.

In general, the 2008 Act in England and Wales and the 2010 Marine (Scotland) Act have been effective. The pre-application consultation process has worked well with guidance provided being meaningful and specific.

3.1 Learnings from the UK (England & Wales)

The planning system in the UK (England and Wales) for offshore wind has generally worked very well, with 10.7 GW consented in 8 years since 2012[3] and has aided in the UK becoming a leader in offshore wind energy.

The Planning Act 2008 introduced a new consenting regime for offshore wind farms over 100 MW, whereby the entire planning process for a project is overseen by one body[4], with the intention of streamlining the consenting process to enable Nationally Significant Infrastructure Projects (NSIP) liked these to progress more efficiently. This process is summarised in the Figure below.

[3] https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/

[4] Originally the Infrastructure Planning Commission (IPC) but replaced by the Planning Inspectorate (PINS) under the Localism Act 2011.

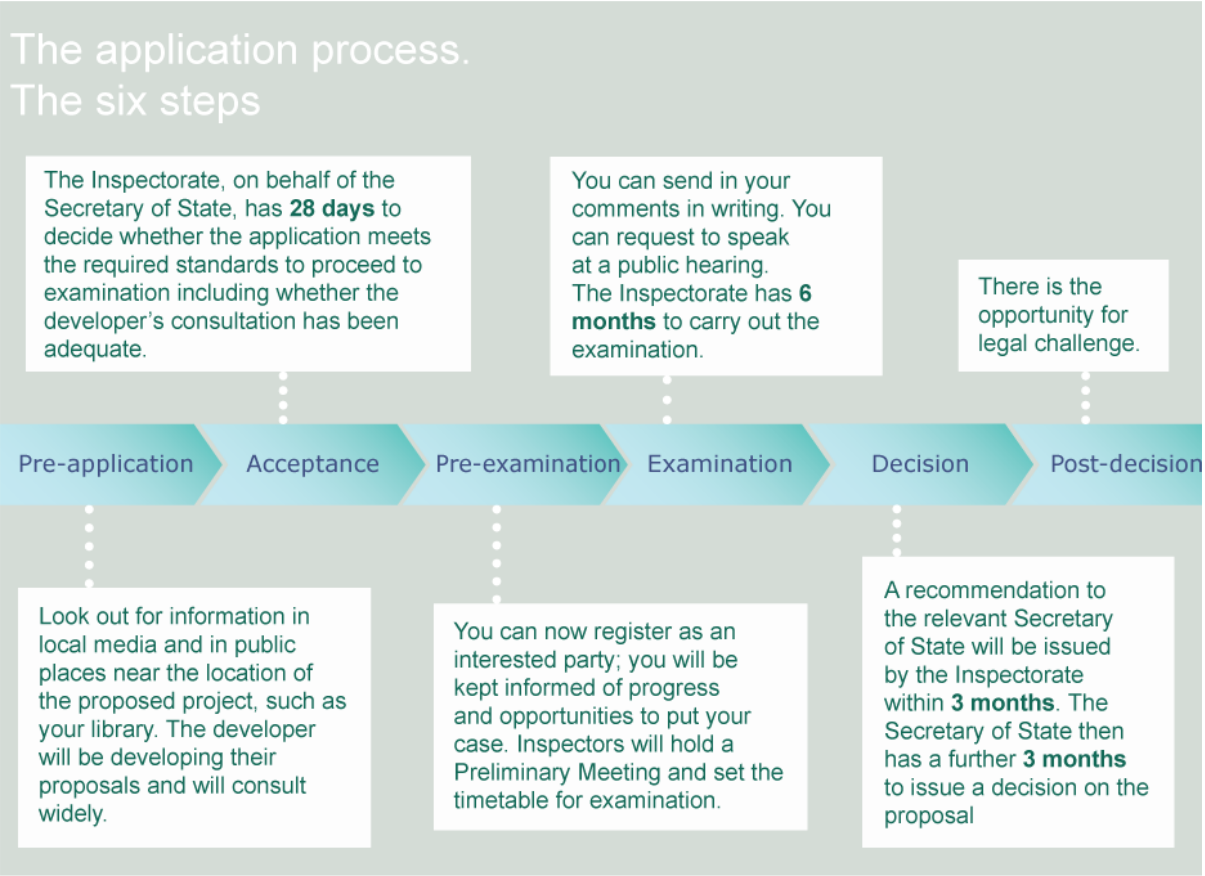

Figure 1: Six step application process from the UK

3.1.1 Non-material changes

A key issue that has led to the level of success for offshore wind consenting in the UK, is the facilitation of non-material changes to applications under Section 153 of the UK Planning Act 2008, Regulation 6 of the Infrastructure Planning (Changes to, and revocation of, Development Consent Orders) Regulations 2011. This allows developers to submit non-material change applications for project applications. This could include changes to anything from foundation installation methodologies, changes to cabling routes within the wind farm array, number of offshore sub stations, number of turbines within a wind farm array, changes in tip-height etc.

3.1.2 Design Envelope

The Design Envelope approach allows a developer to describe its project within a number of agreed parameters for the purposes of an EIA (the eponymous 'envelope') and provide its environmental reports (EIAR and NIS) based on the maximum extents of the parameters, i.e. a 'worst-case' scenario. This provides the developer with a level of flexibility and allows for the evolution of the technology and the project in the years between consenting and deployment. The Design Envelope approach has been adopted very successfully over a number of years in the UK offshore wind consenting process.

The Planning Inspectorate has issued an advice note[5] in relation to the degree of flexibility that would be considered appropriate in order to address uncertainties associated with applications for development consent through the PA2008 process. This concept is grounded in English and Welsh judicial caselaw. While the Irish courts have not expressly adopted the concept of providing flexibility for the design to "evolve" there is a clear emphasis in decided cases on taking a pragmatic approach to the interpretation of the EIA and Habitats Directives[6]. **However, it is recommended that some form of design envelope flexibility is required within the consenting process for offshore wind in Ireland to keep pace with a rapidly evolving technology.**

3.1.3 Agreement for lease

With regard an agreement for the seabed lease, the Crown Estate process provides for project developers that are successful in an auction system for seabed rights to enter into an Agreement for Lease (AFL). This is an Option style agreement that grants a developer exclusive rights over an area of the seabed. During the option period the developer is permitted to carry out surveys and install measurement instrumentation within the option area in order to progress the development of the project.

The overall term of the Agreement for Lease was 5 years is and is now 10 years (since Round 4), however Key Milestones within this period may require the earlier exercise of the option. Milestones are set to ensure that delivery of the Project is progressing as expected and extensions to the milestone due dates may be granted for payment of a fee. Failure to meet a milestone by the deadline (as extended) will give The Crown Estate the right to terminate the agreement. The table below outlines these milestones and associated criteria and we have detailed an Irish version of this approach in Section 2.1.2 of this paper.

Table 2: Criteria regarding lease agreement for Crown Estate

Milestone	Evidence	Duration	Max extension
Evidence of site development commencement. Geotech/geophysical/Bird and mammal surveys	Signed contract and contractor reports showing evidence of activity on site	18 months	6 months
Consent application submitted	Letter of confirmation from authority	5 years	12 months

[5] ibid

[6] O'Grianna v An Bord Pleanála [2017] IEHC 7 (O'Grianna (No.2)).

IWEA would recommend that a milestone approach similar to this be considered for use in Ireland.

3.1.4 Lease Agreement

Lease agreement terms have increased to 60 years for round 4. This period also takes account of installation and decommissioning periods.

IWEA would recommend a lease agreement period of at least 60 years for Ireland and also that perpetual planning permission be considered as part of the lease and not time bound to 25-30 years

3.2 Learnings from Scotland

The Scottish Government created a 'one-stop-shop' for project consenting through Marine Scotland with the Marine Scotland Act (2010). Scottish Marine licensing is carried out through a dedicated Marine Licensing and Operations Division (MS-LOT) under Marine Scotland. The integrated structure of Marine Scotland is considered beneficial to the development of ORE through the wide range of expertise within the organisation. However, these organisations take significant time and resources to develop.

IWEA would recommend a similar approach be considered for Ireland in time. This should not be at the expense of the delivery of earlier projects and would require adequate funding a transitionary period.

3.3 Resourcing

Learnings from the UK are that resource limitations can cause considerable delays. Consideration should be given to allowing for funding models to resolve short term resource constraints until Departments are adequately resourced. This would include for service level agreements and planning performance agreements.

4 Summary of Clarifications and Recommendations

This section has compiled clarifications required within the General Scheme and the key recommendations from the body of the paper and we would ask the Department to consider these as part of the General Scheme of the Bill undergoing pre-legislative scrutiny:

4.1 Clarifications

1. Clarifications Head 47 and 47a - Transitional arrangements. **Clarity is required within Head 47 and 47a on what Transitional Provisions will cover.**
2. Associated Infrastructure - **Clarification is required on whether you will you need a consent separately for undersea cable route**.
3. Head 29(3)(v) - **Clarification is required on whether a Planning Interest will automatically terminate on a refusal of permission or in a circumstance where a developer has been unsuccessful in a RESS auction process?**
4. Fit and Proper Person **- IWEA seeks clarification that the term 'other consents' relates simply to any consents granted under the terms of the MPDM?**
5. Sub-Head 26(10) - **It would be particularly helpful for the Department to clarify what level PI application fees will be set at alongside of how they will be set?**Public Participation - **Clarification is required on whether public participation is required for the MAC application process?**
6. Head 40 - **Clarification is required on which body will hold responsibility for determination of applications made under Head 40?**
7. Head 40 - **Clarification is required on whether or not a Planning Interest is required in advance of making an application for a truncated MAC?**
8. Nearshore - **Clarification is required as to what statutory functions ABP and LA's will have in the nearshore areas?**
9. Head 54(1) - **The "*Maritime Area*" is considered to extend further than the "*nearshore area*" which is where the local authorities exercise planning permission functions. Clarification is required here?**
10. Head 54(1) **- includes the assumption that planning applications are made to the local authority and not the Board. Clarification is required here?**
11. Head 57 - **Is it the intention that a local authority be allowed apply for a compulsory purchase order (CPO) once a developer has been awarded a Planning Interest and/or a Maritime Area Consent for the same area? Clarification is required here?**

12. Head 61(2) **- Clarification is required as to whether certain aspects of an offshore wind project would require an application to be submitted to the relevant local authority (i.e. the land based works) as well as An Bord Pleanála?**
13. Head 61(2) **- needs to clarify whether planning permission for all aspects of developments within a class described in Schedule X are to be applied for to the Board?**

4.2 Recommendations

1. **IWEA strongly recommend the application of a time limit to PI to prevent sterilisation of parts of Ireland's marine space.**
2. Term of Planning Interest - **IWEA recommend front ending the PI and the MAC as an agreement for lease.**
3. Associated Infrastructure - **Given this uncertainty we recommend that the best approach here would allow for the execution of a separate nonbinding agreement as some form of PI**.
4. Head 29(3)(v) - **IWEA recommend that the developer will be entitled to submit a further planning application and to participate in a subsequent RESS auction if refused planning permission in a previous application at the site.**
5. Sub-Head 28(6) - **IWEA would recommend that in default of the relevant Minister making a determination within 90 days, that the PI is deemed to be granted, similar to default permissions in the Planning Acts.**
6. Head 43(e) - **IWEA would recommend that the most efficient way to support the public participation process is to focus public participation on the planning consent phase of the process subject to compliance with the Aarhus Convention.**
7. Head 28(16) - **IWEA would recommend instead that an independent appeals panel be set up by the Minister along the lines of the procedure set out in Part IV of the Electricity Regulation Act 1999. Alternatively, provision should be made for an appeal to the High Court as per Head 44.**
8. Suvey works - **So that the new system is more streamlined, IWEA recommend certain survey activity to be permitted under a combined state consent (PI and MAC).**
9. Sub-Head 57(7) - **IWEA recommends clarification within the legislation on whether Local Authorities can carry out surveys within an area that has been awarded a PI/ MAC**
10. Sub-Head 26(10) - **IWEA would recommend that industry will have an opportunity to consult meaningfully on the level of fees for PI and alongside of how these fees will be set at a later date.**

11. Conditional MAC Offer / Agreement for Lease - **IWEA recommends the MAC terms form part of your Planning Interest and developers will serve an exercise notice on the Department once you fulfil the planning permission and route to market criteria**
12. **IWEA would recommend a minimum term of a [60] year MAC for offshore wind projects.**
13. **IWEA recommends that a MAC be granted within 4 weeks of an application by the developer, subject to a prior grant of planning permission for the offshore wind project.**
14. Sub-Head 34(10) - **IWEA recommends that MAC terms are defined and made available in advance of executing a planning interest.**
15. Sub-Head 31(5) - **IWEA recommends that this sub-head should be deleted or modified to enable a developer to put in place the optimum commercial arrangement in advance of entering into a MAC and to bring it into line with Government policy.**
16. Project Phasing - **Given the nature and size of offshore wind farms, IWEA recommends a specific provision in the MAC for an ability to complete in phases.**
17. Sub-Head 34(10)(i) - **IWEA recommends that the MAC can be assigned for example intra group as part of a bona fide reorganisation in the absence of a Minister**
18. Sub-Head 34(10)(i) - **IWEA recommends a specific carve out for security assignments to the project funders.**
19. Head 35 - **IWEA recommends this Head be modified so that only clear variations to the applicant's standing as a Fit and Proper Person are deemed to be grounds for refusal of the MAC.**
20. Head 61(2) **- It is recommended that the planning application for all elements of an offshore wind farm project, whether located in the Maritime Area, Nearshore and/or on land, should be made to An Bord Pleanála in order to avoid duplication and multiple environmental assessments by different development consenting bodies.**
21. Head 63 - **It is recommended that Head 63 include a timeframe for when the Board should have a decision made for a development within the Maritime Area. A timeframe should be identified and outlined as a statutory obligation to provide consistency with decision timelines.**
22. Head 64 - **It is recommended that Head 64 include a timeframe for when the Board must enter into (and conclude) the pre-application consultations, having received a request from a prospective applicant. A timeframe should be identified and outlined as a statutory obligation to provide consistency with decision timelines.**

23. Head 66 - **It is recommended that Head 66 include a timeframe for when the Board must respond with a recommendation to a developer who has requested an opinion from the Board on what information should be included in an EIAR. A timeframe should be identified and outlined as a statutory obligation to provide consistency with decision timelines.**
24. Head 68(1)(c) - **It is recommended, a response deadline be included, and provisions should be made if a response is not received in time.**
    a. **It should be made clear that a preliminary / outline decommissioning plan be considered as part of the application.**
    b. **It should not be required that a developer must request a new Planning Interest and/or MAC at decommissioning/reinstatement stage. This should be formally outlined within the Bill.**
25. Design Envelope Flexibility - **It is recommended that some form of design envelope flexibility is required within the consenting process for offshore wind in Ireland to keep pace with a rapidly evolving technology.**
26. Milestone Approach - **IWEA would recommend that a milestone approach, similar to that used in the UK for an agreement for lease, be considered for use in Ireland.**
27. 'One-stop-shop' - **IWEA would recommend a similar 'one-stop-shop', for project consenting through Marine Scotland with the Marine Scotland Act (2010), be considered for Ireland in time. This should not be at the expense of the delivery of earlier projects and would require adequate funding a transitionary period.**
28. **IWEA would recommend a lease agreement period of at least 60 years for Ireland.**

5 Conclusion

IWEA believes that providing further clarity in certain areas of the General Scheme and implementing the recommendations discussed in this paper will help to put in place a robust MPDM Bill and associated streamlined consenting regime for Ireland's maritime area.

This will be a key element to establishing a strong offshore wind industry in Ireland and efficiently delivering upon the 5 GW target of offshore wind generation outlined in the Programme for Government and contributing to Ireland's road to carbon neutrality.

IWEA has not considered all aspects of the consenting process and associated guidance within this position paper and would welcome further engagement from both DHPLG and DECC on the paper and any aspects relating to consenting for offshore wind energy projects.

The headline areas addressed in this paper are again laid out below.

1. Planning Interest and Marine Area Consent be amalgamated, and front ended similar to an agreement for lease used by the Crown Estate in the UK. This would allow for a more streamlined consenting process.
2. An agreement for lease should be bound by specific milestones such as commencement of development work and the application for planning permission. These will be timebound, will require specific evidence and subject to extensions in certain instances.
3. A seabed lease should be awarded for a minimum term of 60 years for offshore wind energy projects.
4. Developers should be entitled to submit a further planning application if refused permission and to participate in a subsequent RESS auction (or equivalent route to market) if unsuccessful in an earlier application.
5. For survey works, clarification is required on who make determinations and so that the new system is more streamlined, that certain survey activity to be permitted under a combined state consent (PI and MAC) / agreement for lease.
6. A form of design envelope flexibility is required within the consenting process for offshore wind in Ireland to keep pace with a rapidly evolving technology.
7. A similar 'one-stop-shop', for project consenting through Marine Scotland with the Marine Scotland Act (2010), be considered for Ireland in time. This should not be at the expense of the delivery of earlier projects and would require adequate funding a transitionary period.
8. A planning application for all elements of an offshore wind farm project, whether located in the Maritime Area, Nearshore and/or on land, should be made to An Bord Pleanála in order

to avoid duplication and multiple environmental assessments by different development consenting bodies. These should be dealt with in a timely fashion and be subject to defined statutory obligations, inclusive of pre-application scoping consultations.

9. Engaging with communities regarding proposed wind energy developments should start as early as possible and the most efficient way to support the public participation process is to focus public participation on the planning consent phase of the process, subject to compliance with the Aarhus Convention.

Appendix A: Lessons learned from other jurisdictions

Lessons learned from the United Kingdom (England & Wales)

Overview

The planning system in the UK (England and Wales) for offshore wind has generally worked very well, with 10.7 GW consented in 8 years since 2012[7] and made the UK a leader in offshore wind energy

The Planning Act 2008 introduced a new consenting regime for offshore wind farms over 100 MW, whereby the entire planning process for a project is overseen by one body[8] , with the intention of streamlining the consenting process to enable Nationally Significant Infrastructure Projects (NSIP) liked these to progress more efficiently.

In addition to a changing consenting process, the responsibility for the provision of advice and guidance for offshore renewables was transferred to the newly formed Marine Management Organisation. Its powers enable it to set up a marine planning system and a marine licensing regime, to develop a series of regional marine plans and an internationally recognised centre of excellence for marine information that supports its decision-making process. During the Development Consent Order (DCO) application examination[9] the MMO act as a statutory consultee during the pre-application stage and as an interested party during the examination stage. If a DCO is granted, this may include provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009. The MMO is responsible for enforcing, post-consent monitoring, varying, suspending and revoking any deemed marine licence(s) as part of the DCO.

[7] https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/

[8] Originally the Infrastructure Planning Commission (IPC) but replaced by the Planning Inspectorate (PINS) under the Localism Act 2011.

[9] https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8.0.pdf

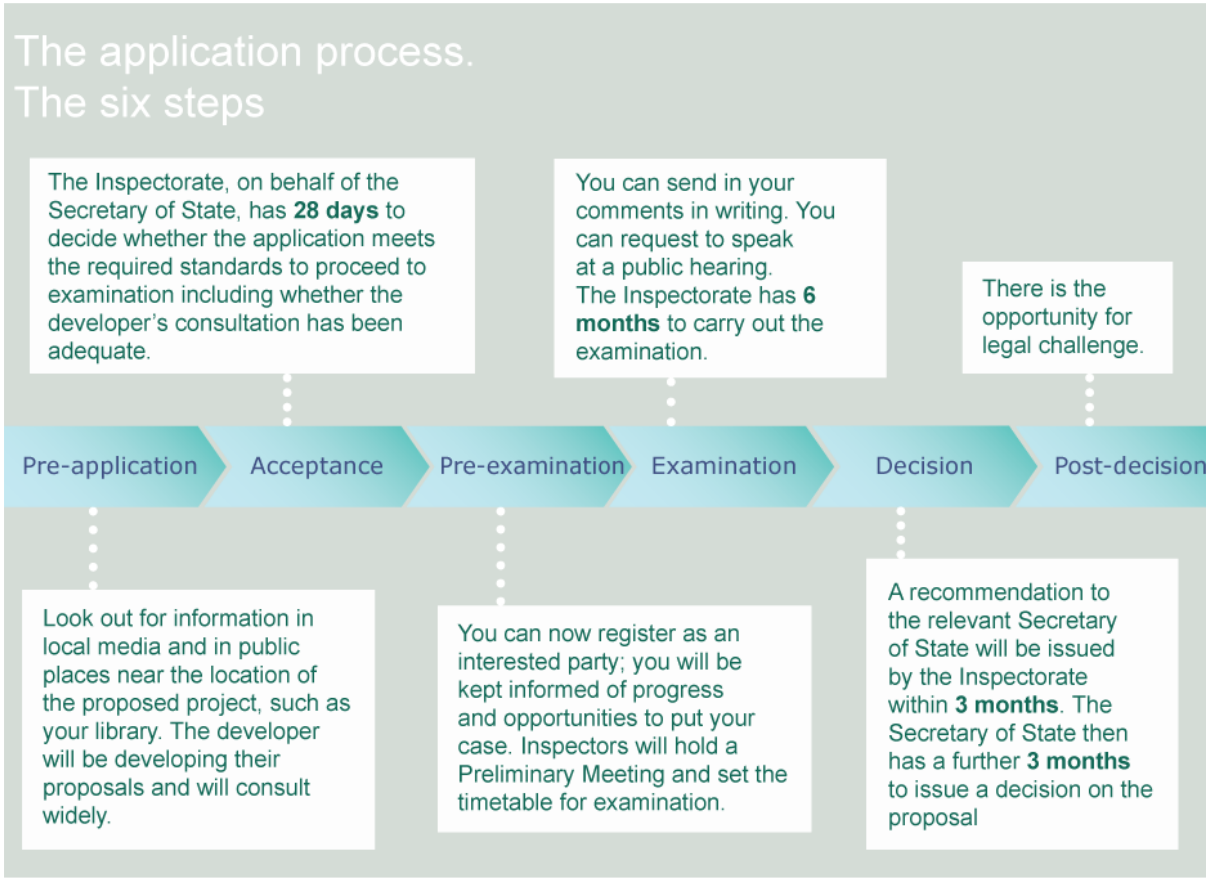

Figure: Outline of the six step DCO consenting process and associated timescales[10]

The DCO process (and associated timetable) was introduced to streamline decision making for major infrastructure projects. It should be noted that in most cases, it takes 18 months from acceptance to decision. Prior to this some projects in the UK took between 3-5 years to consent. Under this process an applicant will generally look to submit the application when they are confident that all the necessary supporting information to enable a swift determination has been compiled. The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State. The Planning Act 2008 is intended to be a 'front-loaded' process.

Specific parts of the process that could improve Irish experience

Scoping Opinion

Regulation 10(1) of the EIA Regulations allows a person who proposes to make an application for an order granting development consent to ask the Secretary of State to state in writing its opinion as to the scope and level of detail of the information to be provided in the ES.

[10] https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/

The Planning Inspectorate must adopt a scoping opinion within 42 days of receiving a scoping request. Before adopting a scoping opinion, the Planning Inspectorate must consult the consultation bodies, who have 28 days to respond. The Planning Inspectorate may also consult the relevant non-prescribed consultation bodies.

If done well, this allows for an early identification of the likely significant effects applicable to the EIA Regulations and also provides an opportunity to agree where aspects and matters can be scoped out from further assessment.

EIA scoping is provided for under Irish planning legislation, but the process does not function as well as it does in the UK. In the UK, the prescribed bodies will work actively with the developer through a series of workshops to ensure that the prepared EIA fully incorporates the knowledge, data and opinion of the relevant statutory authority. Responses on scoping opinion from prescribed bodies in Ireland can be non-project specific.

DCO Modifications

Non-material change applications to DCOs are facilitated and this flexibility works well. Material changes to DCOs have not yet been applied for even though it is provided for in the 2008 Act. The Rochdale Envelope[11] approach allows for the DCO to be broad in nature so material changes are not generally required, i.e.. the developer operates within the permitted envelope.

Rochdale Envelope

The 'Rochdale Envelope' approach is employed where the nature of the Proposed Development means that some details of the whole project have not been confirmed (for instance the precise dimensions of structures) when the application is submitted, and flexibility is sought to address uncertainty. The Planning Inspectorate has issued an advice note[12] in relation to the degree of flexibility that would be considered appropriate in order to address uncertainties associated with applications for development consent through the PA2008 process.

Statement of Common Ground (SoCG)

The Statement of Common Ground sets out the areas of agreement and ongoing discussion between Interested Parties and the Applicant in relation to the Development Consent Order (DCO) application. This provides for an agreement, and areas which are still a matter of contention, to be logged. This log

[11] https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/05/Advice-note-9.-Rochdale-envelope-web.pdf
[12] ibid

records, for example, all offshore ornithology specific matters which are either agreed or not agreed and actions to resolve between the statutory consultees and the Applicant.

The SoCG is a developer-led process, with the Applicant providing the drafting and the statutory consultee agreeing the wording. It is designed to cover main conclusions drawn and proposed mitigation measures etc.

In relation to the foregoing it may be that we do not want to be very prescriptive about some of these matters in the MPDM but nonetheless they may function as good practice tools.

Lessons learned from Scotland

Marine Scotland Consenting Regime

The Scottish Government created a 'one-stop-shop' for project consenting through Marine Scotland with the Marine Scotland Act (2010). Scottish Marine licensing is carried out through a dedicated Marine Licensing and Operations Division (MS-LOT) under Marine Scotland. The integrated structure of Marine Scotland is considered beneficial to the development of ORE through the wide range of expertise within the organisation. However, these organisations take significant time and resources to develop.

Consenting Timelines

Marine Scotland aims for a nine-month time period for a Development Consent Determination. However, this is non-statutory and resource constraints can result in significantly longer periods for a determination. An Bord Pleanála are likely to face a similar challenge and a statutory time period for determination of MPDM would enable the industry to plan for delivery of projects to meet Irish government targets.

Marine Scotland – Marine Licence requirements

Additional consents are needed to install monitoring equipment or to undertake sediment sampling. An application for a derogation can be made where there is no need for a HRA and if sediment removal is less than 1 cubic meter per sample location.

The Scottish Ministers are the licensing authority for most matters in Scottish inshore and offshore waters and MS-LOT issue licences on their behalf. The Secretary of State is the licensing authority in English inshore and offshore waters.

Where a marine project, such as an offshore wind farm, tidal array or other offshore generating station, requires consent under the Electricity Act 1989, a marine licence will also be required.

A similar licensing process would be of benefit to Irish projects to allow low-level site survey activity under a Planning Interest where the survey work meets the requirement for no adverse effect from an Appropriate Assessment screening. More significant works would then proceed through a Marine Licensing process through an appropriate regulatory authority. The figure below summarises the offshore consents required in Scotland.

Nature of Consent	Legislation	Licensing Authority	Description
Section 36 Consent	Electricity Act 1989	Scottish Ministers (administered by Marine Scotland)	Required for both stages of the Project, the installation of inter-array cables and subsea cables to landfall area.
Marine Licence	Marine (Scotland) Act 2010	Marine Scotland	Required for marine project components up to Mean High Water Spring tide zone (MHWS), under Part 4 of the Marine (Scotland) Act 2010. Licence required for all deposits on the seabed such as the placement of an array, export cable, or substation and includes the removal of materials such as for seabed preparation.
Seabed Lease	Crown Estate Act 1961	The Crown Estate Commissioners	Seabed rights may be granted for development following receipt of other statutory consents and fulfilment of conditions specified in the AfL area.
Harbour Works Licences	Orkney County Council Act 1974	OIC Marine Services	May be required for works within or in approaches to the statutory Harbour Authority Area, and where the authority has Works Licensing Powers (ability to regulate right of navigation and fishing within area).
Safety zones	Section 95 of the Energy Act 2004	DECC	Application for Safety Zones during construction and operational activities.
Habitats Regulations Appraisal (HRA) for Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)	The Conservation of Habitats and Species Regulations 2010 (as amended) and The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007/1842 (as amended)	Marine Scotland and SNH	Required where there is potential connectivity with a Natura site and its qualifying features and the proposed development i.e. whether the proposal is likely to have a significant effect (Likely Significant Effect) on the site either individually or in-combination with other plans or projects; and whether an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives is required.

Figure 2: Summary of offshore consents required in Scotland

Key terms in the Crown Estate Process for site allocation

Agreement for lease

The Crown Estate process provides for project developers that are successful in an auction system for seabed rights to enter into an Agreement for Lease (AFL).

This is an Option style agreement that grants a developer exclusive rights over an area of the seabed.

During the option period the developer is permitted to carry out surveys and install measurement instrumentation within the option area in order to progress the development of the project.

The overall term of the Agreement for Lease will be a maximum of 5 years, however Key Milestones within this period may require the earlier exercise of the option.

Milestones are set to ensure that delivery of the Project is progressing as expected, extensions to the milestone due dates may be granted for payment of a fee. Failure to meet a milestone by the deadline (as extended) will give The Crown Estate the right to terminate the AFL.

Table 3: Criteria regarding lease agreement from Crown Estate

Milestone	Evidence	Duration	Max extension
Evidence of site development commencement. Geotech/geophysical/Bird and mammal surveys	Signed contract and contractor reports showing evidence of activity on site	18 months	6 months
Consent application submitted	Letter of confirmation from authority	5 years	12 months

Exercise of the option

An Option Notice, calling for the granting of a Lease can be served by developer within 12 months of the Key Project Consents Date. Failure to serve an Option Notice by the Option Period Date is an Event of Default.

A Lease will normally be granted within 20 working days after an Option Notice is served on The Crown Estate. A further Option Fee is (£200,000) payable on execution of the Agreement for Lease.

Assignment

The Agreement for Lease may not be assigned prior to the Key Projects Consent Date. Thereafter, the Agreement for Lease may be assigned subject to certain conditions.

Lease Agreement

Term increased to 60yrs for round 4, (to include the periods required for installation and decommissioning).

Title to the site/lease area is without any covenant for title and subject, amongst others, to the public rights of navigation and fishing, and to all other rights, easements etc.

Key Milestones

The Lease will contain longstop dates for achieving commencement of operations and completion of the Project. If the Project Company fails to achieve commencement of operations or completion by these dates, the Lease may be terminated.

Prior to the determination of the term of a Lease, the Project Company must decommission the Project in accordance with an agreed decommissioning programme.

Rent

a) From the Commencement Date until the Generation Date (the date on which electricity is first generated by any part of the Specified Works, subject to a backstop date), a yearly rent of £1,000 will be payable; and

b) From the Generation Date the rent shall be paid in accordance with a scheme proposed by the Applicant and agreed by The Crown Estate as part of the bid process (minimum 2% of gross revenue).

Conclusions

The 2008 Act in England and Wales and the 2010 Marine (Scotland) Act have been extremely effective. The pre-application consultation process has worked very well. Guidance has been meaningful and specific.

Appendix B: Legal Review of the General Scheme

Principle Issues & Corresponding Recommendations Arising[13]

Marine Planning Scheme for Strategic Marine Activity Zones

1. Sub-Head 22(3)(b) states that a draft marine planning scheme should include proposals in relation to the overall design of the proposed development, including the maximum heights, the external finishes of structures and the general appearance and design. This is potentially problematic when it comes to offshore wind projects. It will be important to ensure that any Marine Planning Scheme is not prescriptive in terms of the overall design of proposed offshore wind farms, particularly maximum tip heights, which are regularly changing with advances in turbine technology.

Head 22 Marine planning scheme for strategic marine activity zones

This section would benefit from a broader description and objectives similar to those in the UK Marine Policy statement which takes into account different activities and users. This would include commercial fishermen, aquaculture, O&G, aggregates and many other activities which could be included within the zone. The zones could additionally be extended potentially through policy, to support land based infrastructure which supports marine activities such as offshore wind, allowing for regeneration of particular industries and activities.

If the Marine Planning Scheme is the enabling mechanism in the MPDM Bill, then providing greater certainty about where activities could best take place and assisting users in determining preferred locations, then points a - d under clause (3) within Head 22, could be replaced with language borrowed from the English marine plans[14], e.g. *"The intent of the Scheme will be to provide a clear, evidence based approach to inform decision-making by marine users and regulators on where activities might take place within future marine plan/strategic zone areas"*:

Followed by points take as an example from the English NW plan (page 5):

- *The intent of the scheme is to enable efficient use of space, highlighting the need and opportunities for co-existence in areas with high concentrations of activity*
- *clarify where co-existence is not appropriate, and where activities should be avoided*
- *enable communication and negotiation where co-existence is an option, so impacts can be mitigated or minimised. In some cases where impacts cannot be minimised but where*

[13] For a review of all of the issues identified, please refer to the mark-up of the General Scheme in Appendix C

[14] A suite of documents had been produced for consultation in the UK and an example is the North West marine plan available at: https://www.gov.uk/government/publications/draft-north-west-marine-plan-documents, Page 22 on the following link has broad objectives which could be considered:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69322/pb3654-marine-policy-statement-110316.pdf

proposals will bring other benefits, the plan enables these to be taken into account in the decision-making process

- *allow flexibility where evidence is limited so developers and decisionmakers are able to apply their knowledge and experience*
- *provide context for when 'imperative reasons of overriding public interest' are being considered, such as the need for nationally significant infrastructure*

Making of a Marine Planning Scheme

1. It appears from a review of Sub-Head 23(5) that there is no appeal from the decision of the relevant Minister to make a Marine Planning Scheme. The equivalent provision in the Planning Acts provides for an appeal of the decision to make a scheme. This provides a greater degree of fairness to the public when a decision is made to grant permission in a SDZ as they would have had a chance to participate in the making of the scheme and a chance to appeal any decision.
2. If there is no appeal from the Board's decision to grant permission in a strategic marine activity zone and no appeal of the relevant Minister's decision on whether or not to make a marine planning scheme, in the event that a challenge to a decision (i.e. of the Board to grant permission in a SMAZ) is taken, the High Court may apply a higher level of scrutiny than it would ordinarily.

Planning Interest

1. **Head 25 – Definitions**
2. Is clause **(2)** broad enough to capture green hydrogen generation activities associated with wind power? (Same query to Schedule X)
3. Consideration could be given to include **Repowering** or **Life extension** to the definition section as there is another option to decommissioning.
4. It would be useful to consider broadening the references to pipelines to allow for new technologies coming forward, for example, in the context of green hydrogen generated from offshore renewable activities

1. Sub-Head 26(7) states that the developer shall be required to apply to the relevant Minister to amend the planning interest if material alterations are proposed. If, as the Dept states in

its FAQ, that "*the planning interest considers the person*", whereas "*the planning permission considers the project*", it is difficult to see why a developer must apply to amend its planning interest simply because there are differences between the planning interest and the planning application. The Planning Interest is simply a "gateway" to allow the developer to apply for a planning permission. It should not require development specifics, other than an overall area and the intended use e.g. an offshore wind farm.

2. It is not clear how long a Planning Interest will last? It is most important that the maximum and minimum term of a Planning Interest are specified. Head 29(3)(v) states that the term of the Planning Interest will be set out in Regulations. However, we would recommend that it is set out in the MPDM Act itself, in the same manner that the appropriate period of a planning permission is set out in S.41(1) of the P&D Act. We would also recommend a minimum period of [10] years for Planning Interests for offshore wind farms.
3. In addition, what happens if the Planning Interest expires while the planning application is still being considered by ABP or the planning permission is being Judicially Reviewed? We would recommend that the term of the Planning Interest will be automatically extended in these cases.
4. Clarity is required on whether a Planning Interest will automatically terminate on a refusal of permission? We would recommend that the developer will be entitled to submit a further planning application, provided it's still within the term on the Planning Interest.
5. Sub-Head 26(10) refers to fees to apply to a planning interest. It would be helpful for the Dept to give an indication as what level these fees will be set at? This is particularly important for the Relevant Projects under the Transitional Protocol as these projects are required to sign a letter now confirming that their entitlement to a Planning Interest will be dependent upon compliance with these, as yet unknown, payment terms.
6. Will there be any requirement for public notice and consideration of objections as part of the Planning Interest application process? In this regard we note that Head 43(e) refers to public notice and objections in relation to an application for an extension of the term of a Planning Interest. However, there does not appear to be similar public participation requirements on the initial application for a Planning Interest. We also note that the FAQ document states that "*submissions from stakeholders and the public in relation to any proposed development in the Maritime Area can be made during the development consent phase of the consenting sequence. Submissions can be made during the standard planning permission public consultation procedures*." This would appear to suggest that there will be no right for the public (or other stakeholders) to participate in the Planning Interest application process.

7. Sub-Head 28(6) states that the relevant Minister shall make a determination on an application for a planning interest within 90 days. We would recommend that in default of the relevant Minister making a determination within 90 days, that the Planning Interest is deemed to be granted, similar to default permissions in the Planning Acts.
8. It would appear from Head 28(16) that an appeal against a refusal of a Planning Interest is made to the same Minister who issued the refusal. This would seem to be at odds with fair procedure and we would recommend instead that an independent appeals panel be set up by the Minister along the lines of the procedure set out in Part IV of the Electricity Regulation Act 1999. Alternatively, provision should be made for an appeal to the High Court as per Head 44.
9. In assessing whether an applicant is a fit and proper person to hold or to continue to hold a planning interest, the relevant Minister may have regard to "previous performance of the applicant under other consents they have been a party to." This is exceptionally broad. The type of "consents" should be clearly set out e.g. planning permissions.
10. Sub-Head 32(1) states that the Minister for Communications, Climate Action and Environment may determine that no grant of a planning interest will be granted for individual applications where the Government decides to adopt a centralised approach for the development of offshore renewable energy. This would clearly have an impact on the seven Relevant Projects which have already been guaranteed a Planning Interest under the Transition Protocol. We would recommend that there be a specific carve-out for the Relevant Projects in Sub-Head 32(1).

Designation of Oversight Body for Offshore Renewable Energy Projects

1. Head 30(A) provides for the establishment of an Oversight Body to facilitate and co-ordinate the permit granting process for Offshore Renewable Energy projects. **Clarity is required on the nature of this Oversight Body. Will it be an existing body vested with new powers or is it intended to establish an entirely new statutory body? How will it be resourced? What enforcement powers will this body have in the event, for example, a relevant authority does not comply with time limits?**

Maritime Area Consent ("MAC")

1. Sub-Head 31(5) states that the Minister for Communications, Climate Action and Environment may only grant a MAC for offshore renewable energy development where the promoter of an offshore renewable energy development has been successful in a competition established by the Minister under Section 39 of the Electricity Regulation Act (i.e. RESS). If a MAC can only be granted to an applicant who has received a RESS contract, this would preclude ORE projects

choosing a corporate PPA or similar alternative route to market. Therefore, we would suggest that this sub-head is either deleted or modified. See also Sub-Head 32 (9).

2. It is not clear whether a MAC will be **required for the route of the subsea cable as well as the offshore wind farm site itself? If so, consideration to be given whether multiple parties will be able to cross the same area with their cables**?
3. It is not clear how long a MAC will be granted for? We would also recommend a minimum term of [60] years for offshore wind projects, similar to the UK.
4. Sub-Head 34(10) refers to such fees, rents or royalties as may be prescribed by the relevant Minister. How will these fees, rents and/or royalties be set and reviewed? There should be a mechanism to appeal the level of fees and/or any review of same, to an independent expert in default of agreement.
5. Given the nature and size of offshore wind farms, there should be specific provision in the MAC for an ability to complete in phases. Consideration should also be given to the interaction between the MAC development milestones and the RESS development milestones.
6. Sub-Head 34(10)(i) states that a MAC cannot be assigned without the consent of the Minister. Given that a MAC will be equivalent to a property lease, there should be provisions whereby the Minister's consent cannot be unreasonably withheld and that the MAC can be assigned intra group as part of a bona fide reorg. In addition, there should be a specific carve out for security assignments to the project funders.
7. Will there be any requirement for public notice and consideration of objections as part of the MAC application process? In this regard we note that Head 44 refers to public notice and objections in relation to an application for a modification of a MAC. However, there does not appear to be similar public participation requirements on the initial application for a MAC. We also note that the FAQ document states that "*submissions from stakeholders and the public in relation to any proposed development in the Maritime Area can be made during the development consent phase of the consenting sequence. Submissions can be made during the standard planning permission public consultation procedures*." This would appear to suggest that there will be no right for the public (or other stakeholders) to participate in the MAC application process.
8. It would appear from Sub-Head 35(1) that an appeal against a refusal of a MAC is made to the same Minister who issued the refusal. This would seem to be at odds with fair procedure and we would recommend instead that an independent appeals panel be set up by the Minister along the lines of the procedure set out in Part IV of the Electricity Regulation Act 1999.

Alternatively, provision should be made for an appeal to the High Court as per Head 44. The same issues apply when it comes to a suspension or termination of a MAC under Sub-Head 36(9).

9. Consideration to be given to the interaction between Sub-Head 36(14) and Sub-Head 34(12). What appears to be suggested is that a developer cannot ask for a renewal of the existing MAC at the end of the term, but instead must apply for a new MAC. This process exposes the developer to a risk that the new MAC will be refused. Also, the developer potentially loses its continuity of tenure and rights under the initial MAC.
10. We would recommend that some flexibility is incorporated into the MAC provisions to allow for blade over-sail for offshore wind turbines located on or close to the MAC boundary. This could be done by allowing the lessee a right or licence to oversail, provided the adjoining marine area is not already the subject of a Planning Interest or MAC.

Transitional Measures for Offshore Renewable Energy Projects

1. Certain amendments are required to Head 47a so that it is consistent with the Transition Protocol – see mark-up of MPDM General Scheme in Appendix.

Variation of proposed or existing development where Planning and MAC have been granted

1. It is critical that any project targeting pre-2030 delivery, currently live within the Foreshore process, should gain immediate access to the PI process upon MPDM enactment.

2. Consideration should be given to incorporating a design envelope approach into the MPDM for offshore wind projects whereby different options are permissible within the overall 'envelope' of the MAC area. This would be subject to compliance with EU and national legislative requirements, specifically with respect to the EIA Directive, the Habitats Directive and Birds Directive. This design envelope approach has been successfully applied to offshore wind farm consenting in the UK for a number of years using the Rochdale envelope and non-material changes and is detailed within Appendix A, lessons learned from the UK.

Substitute Consent

1. Subsequent to obtaining planning permission and a MAC, an issue might arise in respect of the EIA and/or AA that was carried for maritime development. To address this, provision

should be made to allow such a maritime development apply for substitute consent. This could be done through the exiting Part XA mechanism in the PDA.

Application to the Board Head 67 – (Clause (2), Page 157)

1. The reference to “inadequate” or “incomplete” is of concern as this could be quite subjective and it will be important to be tied to an evidence base in decision making. It would be useful to understand what constitutes the process and timelines to discuss any finding of either inadequate or incomplete with the Developer. It would be helpful to understand if there is general agreement that there is a clear process in the legislation to resolve this type of dispute.

Repowering

Head 69 (8 (h), page 169)

1. Consideration to be given to repowering/life extension in this section?
2. Suggest that8(l)(ii) on community gains provisions is not necessary for inclusion in this Bill.

Enforcement

1. There is a question as to whether the Minister's enforcement powers under Head 102 are in addition to, or in substitution for, his contractual rights under the Planning Interest and MAC? In other words, where there is an alleged breach of the conditions in the MAC, does the Minister enforce under Part 6 of the MPDM, or under contract, or both? Clarification is required here alongside of the identity and powers of the relevant enforcement body in respect of those developments for which An Bord Pleanála has responsibility from a development management perspective e.g. offshore wind farms.

Regulations

1. Head 100 deals with the Minister's powers to make Regulations under the MPDM Act. It would be useful if the Departments could clarify:
    a. How many Statutory Instruments ("SI's) are expected to be required?
    b. Whether these SI's will be drafted and ready for signing immediately following the enactment of the MPDM Bill?
2. Head 100 (page 237, (3)(c)(i) – “financial contributions, or bonds required in relation to compensatory measures”. It would be useful to know how these are going to be determined;

offered by the Developer or an amount determined by the Minister? Will this be a percentage of the overall cost of the compensation offered?

Appendix D: IWEA Briefing Note - Current barriers to the provision of critical utility services

Introduction

Recent High Court judgements have changed long-standing custom and practice in relation to the provision of wind farm grid connections and their requirement for planning permission and/or EIA[15]/AA[16]. Although the relevant court judgements related to wind farm grid connections, they have far-reaching implications for utility services and linear developments across multiple industry sectors. This is not just an issue for the wind energy sector; it is an issue for many industries and sectors that rely on electricity and other utility services for their everyday operation.

The issue relates to who owns the land under a public road in which utility services are typically installed and the challenges created for developers by the new requirement to obtain landowner consent to install new utility services along public road corridors. This creates a situation where projects could be subject to lengthy delays, or frustrated entirely, if a small number of landowners refuse to give permission.

The suggested solution to this issue will require the Department of Transport, Tourism and Sport to amend the Roads Act to provide for the installation of utility services in road corridors, mirroring what was previously done via the Water Services Act to allow for the installation of water services in public road corridors.

[15] EIA – Environmental Impact Assessment as required by EIA Directive (85/337/EEC as amended) and Planning and Development Act 2000 (as amended).

[16] AA – Appropriate Assessment as required by EU Habitats Directive (92/43/EEC as amended) and Planning and Development Act 2000 (as amended).

Background

The O'Grianna judgement[17] established that a wind farm's grid connection is an integral part of the wind farm development, without which the wind farm would be inoperable. Wind farms generally require an EIA, and as an integral part of a wind farm project, a wind farm grid connection also would be subject to an EIA.

The Daly judgement[18] established that the planning exemptions that ordinarily apply to the laying of underground electricity cables cannot apply in the case of projects that are the subject of EIA. Anything deemed to be integral to a project requiring EIA cannot avail of planning exemptions and requires planning permission. The section of the Planning and Development Act that causes planning exemptions for EIA projects to not apply also makes planning exemptions non-applicable to projects requiring Appropriate Assessment.

Without ruling on the subject, the Daly judgement also provided insight on the issue of land ownership of the public road corridor, along which underground linear utility services are typically laid. On the matter of road ownership, Ms. Justice Baker stated the following:

"The grass verge is prima facie the property of the applicant (Patrick Daly), and no consent to enter has been given. Thus, prima facie, there is a trespass, and the road opening licence does not of itself amount to authorisation or permission to enter upon private land."

Although the above Court judgements both related to wind farm developments and their electricity grid connections, the issues are equally or more relevant to a much wider range of sectors and industries that are very exposed to the issues highlighted in this briefing note. They include the following types of development projects that would typically require EIA/AA and require linear utility services connections that would be deemed to be integral to the development's operations.

[17] Ó Gríanna & ors -v- An Bord Pleanála & ors. High Court Record Number: 2016 No. 643 JR
[18] Daly -v- Kilronan Windfarm Ltd. High Court Record Number: 2016 No. 372 MCA

- Electricity supply connections to large-demand users (e.g. public hospitals; manufacturing facilities; data centres; industrial users; pharmaceutical plants; cement plants; etc.)
- Fibre optic data connections to large-scale data centre developments (e.g. Microsoft, Facebook, Amazon and shared data centres)
- Natural gas supply pipelines to large-demand users (e.g. pharmaceutical plants; airports)
- Petroleum pipelines from ports to storage terminals (e.g. for transport fuel; aviation fuel terminals; bitumen)
- Water supply pipeline or wastewater discharge pipes
- Electricity export connections from renewable energy developments, including but not limited to wind farms (e.g. large-scale solar; waste-to-energy district heating; wind energy).

It is critical that the planning, legal and regulatory barriers to the provision of critical utility services to these types of development are removed by the relevant Government department and regulators as a matter of urgency.

The Issue – Right to install utility services along public roads

Public road corridors play a vital role as utility corridors carrying electricity, phone, broadband, gas, water and cable TV services and infrastructure. Although the road corridor is within the control of the Roads Authority which is responsible for maintenance and upkeep of the road, unless the land under the road has been acquired by the Roads Authority for the purposes of building the road, ownership of the road generally rests with the owners of the lands adjoining the road corridor. The adjoining landowners on either side of a road generally own the land to the middle of the road. This presents a difficulty when private or semi-state entities need to install new utility services along a public road corridor.

While a Road Opening Licence allows a road to be opened and reinstated, it doesn't convey any rights to the soil or subsoil under the road corridor in which the utility services are typically installed. The installation of such utility services could be said to be a trespass on private

property, and therefore the owners of adjacent lands would, in effect, be able to veto the installation of new utility services along public road corridors.

Suggested Solution

The suggested solution to this issue is modelled on the Water Services Act 2007, which is clear on the rights of landowners with land registered to the centre of the public road**.** Section 41 of that Act covers the installation of pipes in the public road as follows:

(3) Any person authorised by a water services authority to provide water services or any person providing water services jointly with or on behalf of that person, may, in respect of the provision of those services, carry pipes through, across, over, under or along a public road, or place intended for a public road, or under or over any cellar or vault which may be under the pavement or carriageway of any public road, or from time to time repair, alter, remove or replace the same, subject to the consent of the road authority for that road.

(11) For the purposes of this Act, where a person (other than a road authority) claims an interest in or under any road –

(a) it shall be for the person concerned to prove such interest, and

(b) the value of such interest shall be taken to be nil unless it is shown to be otherwise by the person.

An amendment to the Roads Act section 13 (10) as set out below and similar to the Water Services Act's sections 3 and 41(11) (a) & (b), would strengthen the road opening licensing process. The suggestion is to add the following new clauses (in yellow) to Section 13(10) of the Roads Act 1993:

(d) Any person authorised by the Minister or granted planning permission by a planning authority or An Bord Pleanála to lay ducts, cables, pipelines, connections to existing infrastructure may in respect of that authorisation or permission, carry and lay ducts, cables, pipes, connections to existing infrastructure, through, across, over, under or along a public road or from time to time repair, alter, remove or replace same, subject to the consent of the road authority for that road.

(e) for the purposes of the consent to excavate the road under paragraph (b), where a person (other than a roads authority) claims an interest in or under the road

(i) it shall be for the person concerned to prove such interest.

(ii) the value of such interest shall be taken to be nil unless it is shown otherwise by the person.