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Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2024

Isle of Man Government
Reiltys Ellan Vannin

CONSULTATION REPORT

March 2024

Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2024

1. Background

1.1 The Department of Infrastructure, on behalf of the Council of Ministers, undertook a public consultation exercise in respect of the Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2024. The consultation opened on 8th January 2024, running for a period of six weeks, ending on 16th February 2024. The consultation set a series of questions in respect of the principles proposed to be included within the Application Order and sought comments and feedback on the basis of those principles and proposed application of the UK Regulations. As was set out as part of the consultation, the intention to apply over the UK Environmental Impact Assessment Regulations was that it had been determined that they were well established, well understood within the marine industry and would provide a clear framework for anyone wishing to apply for developments in Manx territorial waters. It also provides a greater level of assurances to the relevant Departments that the areas that have responsibility for would have a required legal basis in order for the relevant information to be requested and submitted in support of any future applications.

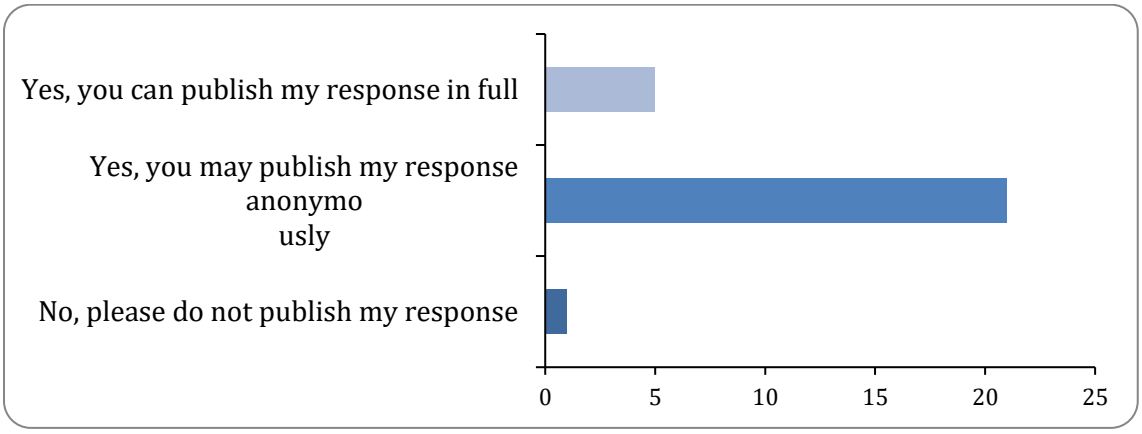
1.2 As was also set out in the consultation exercise, it is not the intention that these Regulations will apply in the long term. The Department continues to progress with the preparation of the required secondary legislation to support the Marine Infrastructure Management Act 2016 which will apply to a greater number of controlled marine activities than is proposed for these Regulations. Once the Marine Infrastructure Management Act 2016 is fully enacted, this Application Order would no longer apply as the requirements for Environmental Impact Assessments for the controlled marine activities would be covered under the provisions of the Marine Infrastructure Management Act 2016. However, the preparation of these Regulations was necessary at this time to enable the Department to consider and respond to a request for Scoping for the proposed offshore windfarm development.

2. Consultation overview

2.1 As part of the consultation, a total of 27 responses were received. The Department has considered all of these responses, and has been supported in this review by its external legal advisors. The Department requested that its external legal advisors consider all responses received, including the additional comments provided when appropriate throughout the consultation questions. In addition, the Department specifically asked the external legal advisors to consider and address the response provided by Mooir Vannin Offshore Windfarm Limited. The reason

for this was because the Department considered that Mooir Vannin Offshore Windfarm Limited is familiar with the UK legislation that the Department is proposing to apply over with the Order, and the Department wanted to ensure that all aspects of the pre-application process was captured adequately within the legislation. The consideration of its response is set out in the first half of the Consultation Report in Appendix 1 with an overview of the consideration of other responses following it. Mooir Vannin Offshore Windfarm Limited response is the only response that is identified as part of this consideration. It should be noted, whilst most of the proposals from the Department's legal advisors were accepted, a small number were not following discussions between the Department, its advisors and Chambers. Since the response attached in Appendix 1 was presented to the Department, there were many interactions between the Department, Chambers and the legal advisors in reviewing the draft Application Order and finalising it, ready for submission to Tynwald. The Department's legal advisors are satisfied with what has been submitted.

2.2 With regards the publication of responses, most responses agreed to their publication but wished to remain anonymous with one response not agreeing to publication. Taking this into account, the Department has determined that it will publish the 26 responses who have agreed to publication, but will publish all anonymously.



Option	Total	Percent
Yes, you can publish my response in full	5	18.52%
Yes, you may publish my response anonymously	21	77.78%
No, please do not publish my response	1	3.70%
Not Answered	0	0.00%

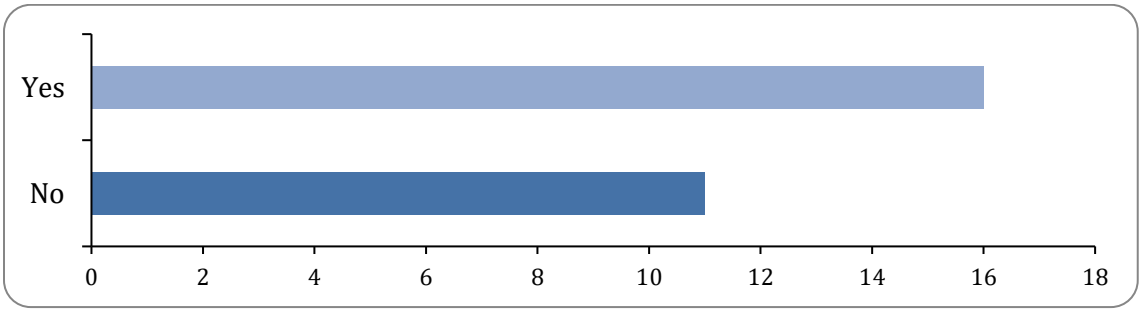
3. Format of Report

3.1 This report will follow the order of the questions asked as part of the consultation exercise; each question will be set out along with a summary of the responses received. If and where appropriate to do so, the current position of the Department will be set out.

3.2 The detailed consideration and response to comments received as part of the Consultation report is included in Appendix 1, a report prepared on behalf of the Department by its external legal advisors. As noted above, the only response clearly identified as part of that is from Mooir Vannin Offshore Windfarm Limited who gave permission for their full response to be published.

3.3 Question 1 - Do you agree with the proposal to apply over these UK Regulations in respect of the preliminary stages of application preparation, specifically in relation to the Environmental Impact Assessment process?

3.3.1 There were 27 responses to this part of the question with 16 responses agreeing, 11 not agreeing.



Option	Total	Percent
Yes	16	59.26%
No	11	40.74%
Not Answered	0	0.00%

3.3.2 Question 1 - Comments box

3.3.3 There were 15 comments submitted for this part of the question.

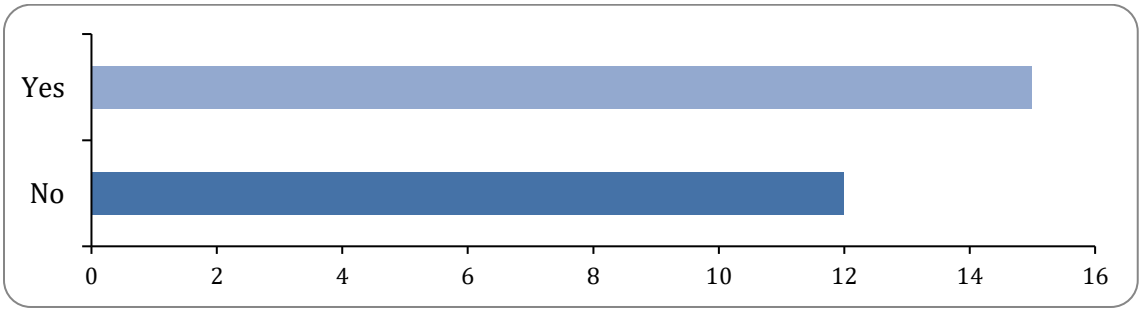
3.3.4 Responses to this question were mixed with some comments citing that there are different legislative requirements between the Isle of Man and the UK, that the application of these UK Regulations seems reasonable, and that there should be appropriate mechanisms in place for such projects. Comments received from those not in agreement included that it had not been made clear which other legislative systems had been considered prior to the proposed application of the UK process, as well as concerns that perhaps the UK system does not go far enough for environmental protection.

3.3.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.3.6 It is still the intention to apply over the appropriate and required UK Regulations by this Application Order. It has been determined that they are required in order to support the continued progression of the offshore windfarm project, and as such, the Department on behalf of the Council of Ministers has finalised the draft Application Order, supported by external legal advisors, and assistance from Chambers. This aligns with the 2024-2025 Update to the Island Plan[1], and its Strategic Priorities on Energy Security.

3.4 Question 2 - Do you agree with the proposed extent to which these Regulations will apply?

3.4.1 There were 27 responses to this part of the question; 15 of which agreed with what was being proposed and 12 not agreeing to the proposal.



Option	Total	Percent
Yes	15	55.56%
No	12	44.44%
Not Answered	0	0.00%

3.4.2 Question 2 - Comments box

3.4.3 There were 13 comments submitted for this part of the question.

3.4.4 Responses to this question were mixed with comments either in support or not supporting the proposed extent of the Regulations. Additional comments were received here which were not supporting either the overall proposal for the application of the Regulations by the Application order or were unsupportive of offshore windfarms in general. Other comments proposed that the Regulations should also include harbour areas or apply to onshore projects too.

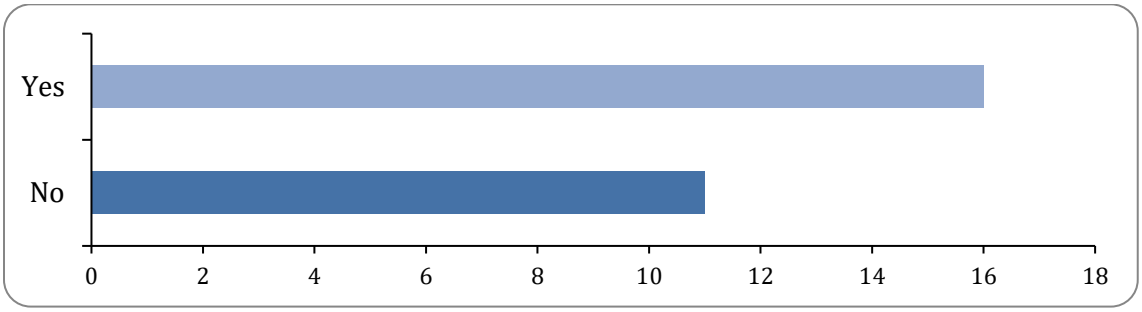
[1] https://www.tynwald.org.im/spfile?file=/business/opqp/sittings/20212026/2024-GD-0019.pdf

3.4.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.4.6 The Department has determined that it will continue to apply the Regulations to the areas proposed but there will be provision that there might be some limited application on land. This onshore element will only apply to the marine projects where they have an ancillary element that crosses over the mean high water mark where the Regulations would ordinarily have stopped. By doing this, it allows the Department to consider both onshore and offshore elements of a Scoping Opinion. At this time, the Department cannot apply these Regulations in their entirety to onshore projects. It should also be noted that these Regulations are intended to mirror the provisions that will be incorporated within the Marine Infrastructure Management Act 2016 and as such, it is not appropriate to expand their application beyond what is being proposed for the secondary under that Act.

3.5 Question 3 - **Do you agree with the limited, proposed controlled marine activities (and associated marine activities) that the Regulations will apply to?**

3.5.1 There were 27 responses to this part of the question; 16 of these supported the proposal whilst 11 did not support what was being proposed.



Option	Total	Percent
Yes	16	59.26%
No	11	40.74%
Not Answered	0	0.00%

3.5.2 Question 3 - Comments box

3.5.3 There were 11 comments submitted for this part of the question.

3.5.4 Responses to this question were mixed with concerns as to whether the Regulations would be adequately enforced, that the Regulations should cover all forms of renewable energy projects, they should cover all forms of marine development not just limited to the two proposed in the Regulations (offshore energy generation projects and submarine cables) and that they should also cover

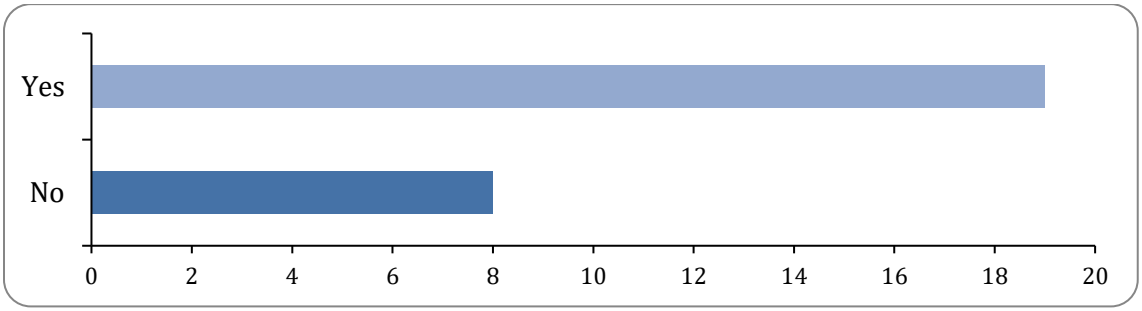
onshore developments as well. There was an additional comment cited by a respondent and applied to several of their preceding questions where they felt "Clearly one can't agree to a nebulous, unfixed group of regulations that can be used piecemeal or whenever/whenever they suit".

3.5.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.5.6 The Department has considered all these responses but at this time, it is not appropriate to expand the application of these Regulations beyond what has currently been proposed. The Department must be mindful that the Application Order is being prepared under the provisions of the Climate Change Act 2021 and as such, it should consider how these projects will support the Island's climate action. It should also be pointed out that, as advised above, the Department continues to progress the preparation of the necessary secondary legislation under the Marine Infrastructure Management Act 2016 which will include provisions for the controlled marine activities, and not be limited to the two to which this Application Order applies.

3.6 Question 4 - **Do you agree that these Regulations should provide a mechanism that recognises pre-application work to be taken into account when the Marine Infrastructure Management Act 2016 is fully enacted?**

3.6.1 There were 27 responses to this part of the question.



Option	Total	Percent
Yes	19	70.37%
No	8	29.63%
Not Answered	0	0.00%

3.6.2 Question 4 - Comments box

3.6.3 There were 8 comments submitted for this part of the question.

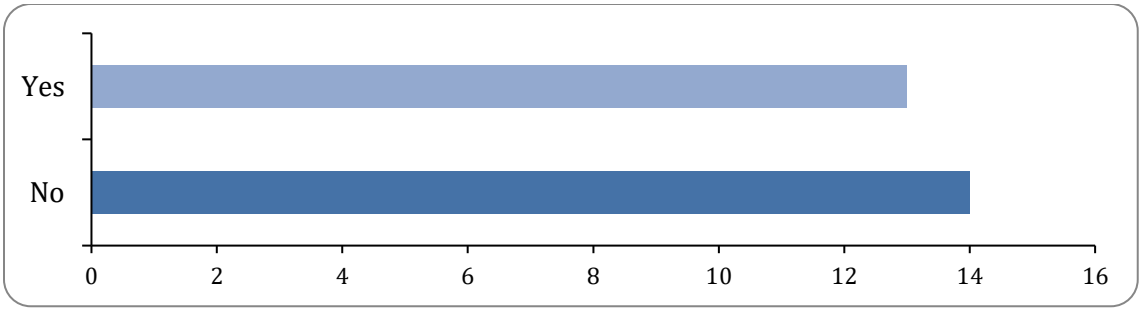
3.6.4 Responses to this question were largely supportive of this proposal.

3.6.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.6.6 It is still the intention that the Application Order will include a suitable provision which will provide that any pre-application work done in advance of either these Regulations being brought in, or prior to the full enactment of the Marine Infrastructure Management Act 2016. The provision included within this Order requires the Department to be satisfied with what has been undertaken and for this, the Department will require assistance from its external legal advisors to ensure this provision is satisfied.

3.7 Question 5 - Do you agree with what is being proposed for inclusion within the Environmental Impact Assessment process?

3.7.1 There were 27 responses to this part of the question.



Option	Total	Percent
Yes	13	48.15%
No	14	51.85%
Not Answered	0	0.00%

3.7.2 Question 5 - Comments box

3.7.3 There were 16 comments for this part of the question.

3.7.4 Responses to this question were mixed with comments suggesting that the Regulations should be more stringent, that they should also apply to onshore developments as well, that they do not go far enough while another felt that they were sufficient. Some of the other comments received raised that they need to cover shipping related activities, commercial fisheries and carbon sequestration while another response was satisfied that the Regulations would cover key areas such as climate and biodiversity. In addition, another comment highlighted that it should also take into account the installation and operating greenhouse gas emissions and that no scheme should be allowed to proceed if it is in contravention to the provisions of the Climate Change Act 2021.

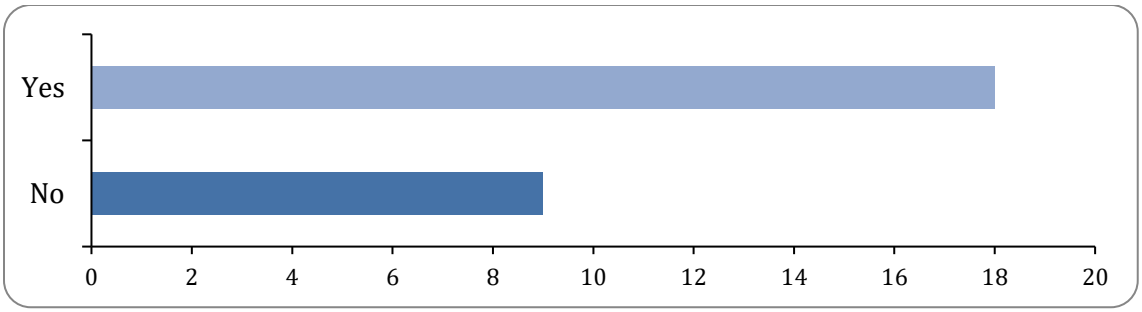
3.7.5 There was an interesting question raised as part of a response which related to the proposed omission of one of the UK Regulations which would have excluded the requirement for the relevant authority to have access to the relevant expertise to enable the appropriate assessment of the Environmental Impact Assessment once an application was submitted. This was further considered by the Department and determined that this Regulation was required, and as such, it will no longer be an omitted Regulation as part of the Application Order.

3.7.6 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.7.7 In terms of the comments with regards what is proposed to be included within the Environmental Impact Assessment process, the Department is content taking into account consideration by its external legal advisors that the issues raised in comments with regards content of the Environmental Impact Assessment is captured within the Application Order.

3.8 Question 6 - With regards to what is being proposed in respect of Scoping Opinions, do you agree with what the Regulations will contain?

3.8.1 There were 27 responses to this part of the question.



Option	Total	Percent
Yes	18	66.67%
No	9	33.33%
Not Answered	0	0.00%

3.8.2 Question 6 - Comments box

3.8.3 There were 11 comments submitted for this part of the question.

3.8.4 Responses to this question were mixed with comments again with people requesting that this should also include onshore developments. There were comments made as to the proposed omissions from the UK Regulations – as will be outlined as part of the assessment undertaken by the external legal advisors, these omissions are where it is not appropriate to apply over some of the UK

Regulations. They are not specific omissions in the process, rather there are particulars in the UK Regulations that either are not appropriate to be applied over to the Isle of Man for the two projects that these Regulations will apply to or has been determined that they are not applicable at this time.

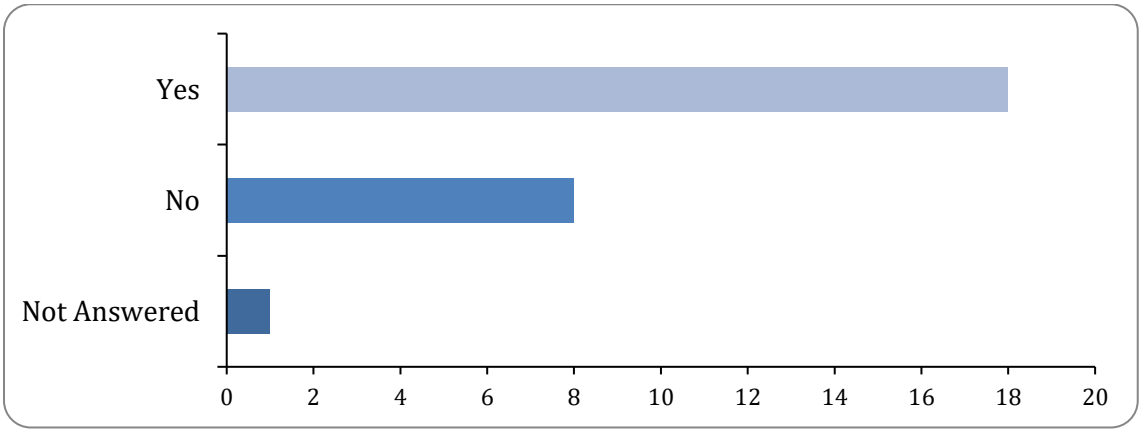
3.8.5 There were two comments made with regards the timescales proposed; one seeking to clarify that the timescales align with what is currently proposed within the Marine Infrastructure Management Act 2016 (which the Department has amended in the applied Regulations), the second relating to the assumption of a "no comment" for a nil response – the Department has determined that this is standard industry practice for similar projects in the UK and is satisfied that it can proceed on this basis.

3.8.6 There was also a comment similar to one for the preceding question relating to the expertise available within the relevant Departments of the Isle of Man Government – this has already been taken into account by way of the proposed amendment to ensure there is access to sufficient expertise. In addition, the Department is in the process of appointing an external industry advisor to assist the relevant Departments for offshore wind (in the first instance). This budget has been approved and this area of expertise has been recognised as being essential to support this process. Work is ongoing to appoint the required advisor.

3.8.7 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.9 Question 7 - Do you agree with what is proposed to be included with regards consultation for an application which requires an EIA to be submitted?

3.9.1 There were 26 responses to this part of the question.



Option	Total	Percent
Yes	18	66.67%

No	8	29.63%
Not Answered	1	3.70%

3.9.2 **Question 7 - Comments box**

3.9.3 There were 11 comments submitted for this part of the question.

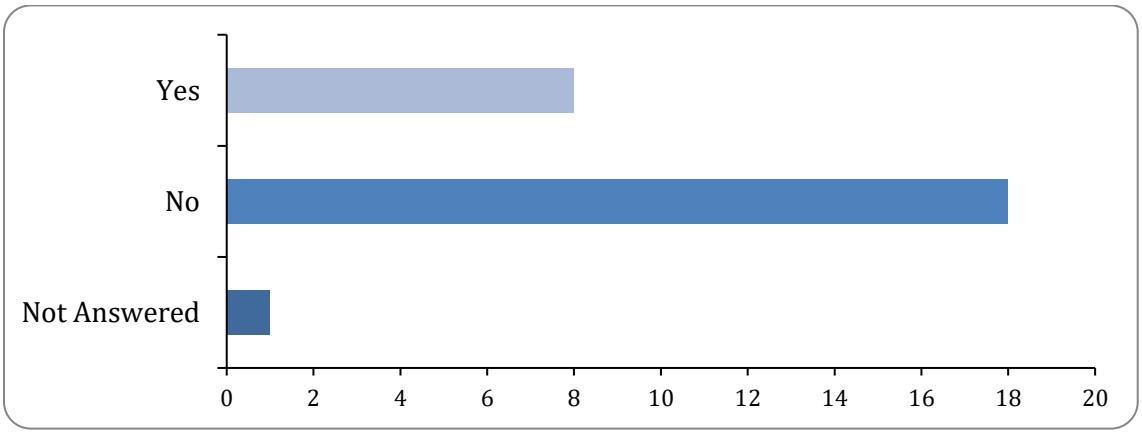
3.9.4 Responses to this question were largely supportive of what was being proposed, but with additional requests for longer time periods and a suggestion for the inclusion of the use of digital media for the advertising of the consultation.

3.9.5 One response sought clarification as to the consultation bodies – this has been considered and addressed as part of the Application Order. The Department has identified the relevant statutory bodies who would typically be involved as part of the preparation of the Scoping Opinion, and then additional bodies who the Department envisages would be involved in the process post Scoping, and prior to the submission of the application. This would not typically include non-statutory bodies however, there will be bodies identified within the Scoping Opinion who will need to be engaged as part of the stakeholder engagement. The Department has also identified bodies in the UK who would need to be engaged and consulted as part of the transboundary consultation. There is an additional clause proposed within the Application Order which sets out that if there are any other consultation bodies that the Department considers appropriate that they are engaged for consultation, then an applicant will be required to consult with them.

3.9.6 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.10 Question 8 - Do you agree that the Council of Minister should have the power to exempt a controlled marine activity from the requirements of these Regulations in exceptional circumstances?

3.10.1 There were 26 responses to this part of the question.



Option	Total	Percent
Yes	8	29.63%
No	18	66.67%
Not Answered	1	3.70%

3.10.2 Question 8 - Comments box

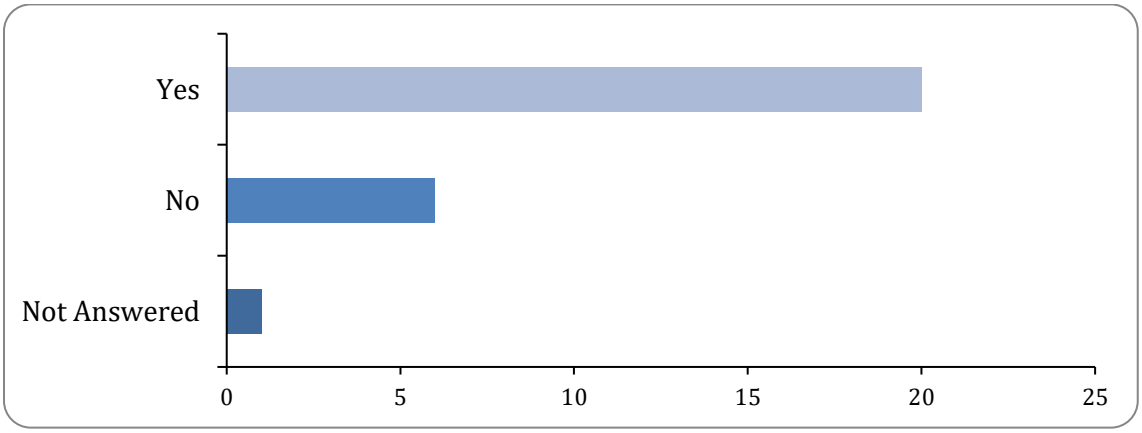
3.10.3 There were 20 comments submitted for this part of the question.

3.10.4 Responses to this question were less than supportive with what was proposed and did not support that the Council of Ministers should be able to exempt particular developments. Having taking this into consideration, and reviewing the legislative requirements as set out in the Marine Infrastructure Management Act 2016, the Department has now proposed that it will be up to the Department to make this decision, but that if such a decision is made, a reasoned justification for this must be provided and made public. The Marine Infrastructure Management Act 2016 sets out what the Department's responsibilities are in terms of the pre-application process, prior to when an application is submitted, at which point, the responsibility is transferred to the Council of Ministers. This amendment from Council of Ministers in the draft Application Order to the Department reflects the division of responsibilities set out within the Marine Infrastructure Management Act 2016.

3.10.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.11 Question 9 - **Do you agree with this proposed consequential amendment?**

3.11.1 There were 26 responses to this part of the question.



Option	Total	Percent
Yes	20	74.07%

No	6	22.22%
Not Answered	1	3.70%

3.11.2 Question 9 - Comments box

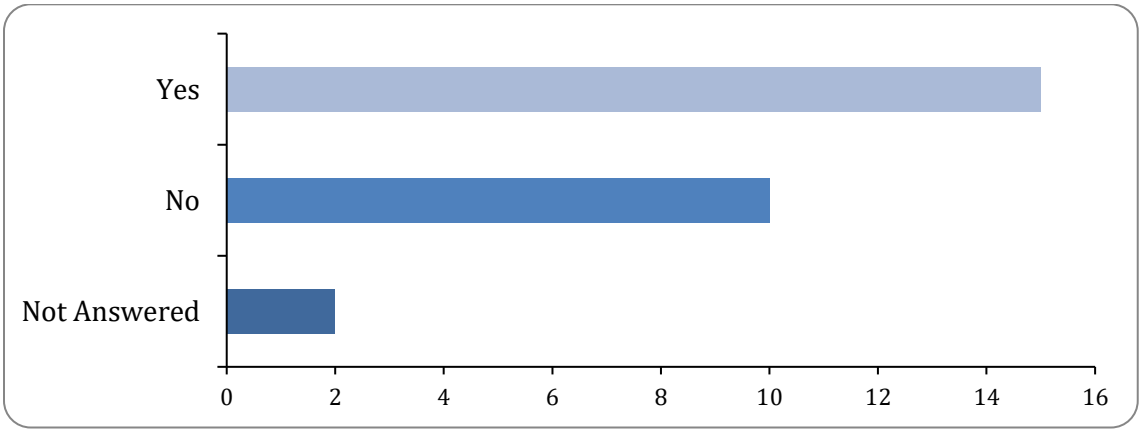
3.11.3 There were 8 comments submitted for this part of the question.

3.11.4 For the responses that answered the question posed, most were supportive of the consequential amendment and the justification for it. There was a comment in respect of the Marine Infrastructure Management Act 2016 and ensuring that whatever is proposed to be undertaken under these Regulations should be as rigorous as under the Marine Infrastructure Management Act 2016. It is the Departments intention that the processes and levels of scrutiny applied under these Regulations and that under the Marine Infrastructure Management Act 2016 will be equal. To ensure that these Regulations are consistent with the principles of the Marine Infrastructure Management Act 2016, the Department's external legal advisor has considered both sets of legislation and ensured that what is proposed as part of this Application Order will comply with the forthcoming Marine Infrastructure Management Act 2016 and its requirements. This consequential amendment is proposed to protect any pre-application works done in advance of the full enactment of the Marine Infrastructure Management Act 2016 secondary legislation that the Department is currently preparing.

3.11.5 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

3.12 Question 10 - Do you agree with the inclusion of this supplementary provision?

3.12.1 There were 25 responses to this part of the question.



Option	Total	Percent
Yes	15	55.56%

No	10	37.04%
Not Answered	2	7.41%

3.12.2 Question 10 - Comments box

3.12.3 There were 11 comments submitted for this part of the question.

3.12.4 Responses to this question were not fully supportive with what was being proposed and were critical of the need for these Regulations at this time, in advance of the Marine Infrastructure Management Act 2016. In response, the Department found itself with competing priorities since the Marine Infrastructure Management Act 2016 was introduced, and whilst work has been underway with the preparation of the required secondary legislation, the Department understood that it was limited from a legal perspective in its ability to respond to a request for a Scoping Opinion from an offshore developer. The only option available to the Department noting the timescales that that developer was working to was to pursue this legislative route.

3.12.5 The Department continues to progress with the preparation of the necessary secondary legislation under the Marine Infrastructure Management Act 2016 and it is hoped that it will be presented to the July 2024 sitting of Tynwald for approval.

3.12.6 This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

Appendix 1 – Consideration of Consultation Response by External Legal Advisor

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ISLE OF MAN GOVERNMENT

Consultation: Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2023

Key Consultation Responses and Proposed Answers and/or Actions

March 2024

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1. MOOIR VANNIN CONSULTATION RESPONSES

1.1 **Question 1**: Do you agree with the proposal to apply over these UK Regulations in respect of the preliminary stages of application preparation, specifically in relation to the Environmental Impact Assessment process?

1.1.1 **Response**: Mooir Vannin welcomes the Departments proposal to apply the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regulations") to the preliminary stages of application preparation. The specific purpose being to allow the Department to consider the Mooir Vannin Scoping Report, issue a Scoping Opinion and most importantly for this to be applied for the purposes of the Marine Infrastructure Management Act 2016 ("the Act").

1.1.2 **IOMG Answer**: Noted.

1.2 **Question 2**: Do you agree with the proposed extent to which these Regulations will apply?

1.2.1 **Response**: Mooir Vannin notes the intention pursuant to the Marine Infrastructure Regulations consultation to extend the Marine Infrastructure Consent ("MIC") to potentially include works landward of mean high water mark but does not advocate for the Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2023 ("the Order") to be applied to include such works at this stage in case of delay to its implementation.

1.2.2 **IOMG Answer**: Noted. The primary purpose of the Order is to capture "offshore renewable energy generation installations" as EIA Development; however, the Order has been amended to make it clear that this includes onshore activities where those activities are fundamentally linked to or reasonably required in connection with such offshore installations.

1.3 **Question 3**: Do you agree with the limited, proposed controlled marine activities (and associated marine activities) that the Regulations will apply to?

1.3.1 **Response**: Mooir Vannin agrees to apply the Order to the limited scope of controlled marine activities as it includes "offshore renewable energy generation" and "the laying of submarine cables." Further to this "associated marine activities" relates to infrastructure that is directly required to generate renewable energy and so would extend to offshore substations, converter stations and/or booster stations dependent upon the transmission technology being HVAC or HVDC. Mooir Vannin can therefore be confident that the Order will facilitate the development as proposed by Mooir Vannin.

If the Department were to take the view that the MIC should include works landward of Mean High-Water Mark and therefore outside of the controlled marine area, then the reach of the Order would have to be extended to apply to scoping for the works in this area. Mooir Vannin however is anxious to ensure the Order is in place as soon as practicable and so does not advocate for this extension at this stage.

1.3.2 **IOMG Answer**: As noted above, the primary purpose of the Order is to capture a limited scope of controlled marine activities. However, to facilitate a Scoping Opinion that can extend to onshore matters, the Order has been amended to encompass onshore activities which are fundamentally linked to or reasonably required in connection with the limited scope of marine activities.

At the current time, it is not the intention for the controlled marine area, or for Marine Infrastructure Consents, to extend to onshore development.

1.4 **Question 4**: Do you agree that these Regulations should provide a mechanism that recognises pre-application work to be taken into account when the Marine Infrastructure Management Act 2016 is fully enacted?

1.4.1 **Response**: Mooir Vannin is very much in support of the Order providing a mechanism to recognise pre-application work to be considered when the Act is fully enacted. Pre-application consultation is due to commence in July 2024 and Mooir Vannin cannot progress without a clear regulatory framework in place.

1.4.2 **IOMG Answer**: Noted. Further regulations on pre-application work will be set out in the secondary legislation accompanying MIMA, and it is intended that these regulations will correspond to (and, in any event, will not contradict) the provisions around pre-application in the Order.

1.5 **Question 5**: Do you agree with what is being proposed for inclusion with the Environmental Impact Assessment process?

1.5.1 **Response**: Mooir Vannin agrees with what is proposed for inclusion within the EIA process. It is noted that the requirements broadly align with Regulation 5 of the EIA Regulations. Mooir Vannin notes the requirement to include "operational effects of the proposed development." The Department is referred to Mooir Vannin's response to the question "Do you agree that the above activities should be exempted from requiring a Marine Infrastructure Consent (they would still require relevant consents under the extant consenting regimes prior to being undertaken)?" in the Marine Infrastructure Regulations consultation. Mooir Vannin would advocate for the operational effects of O&M activities to either be included within the MIC as associated marine

activities at the discretion of the developer or for those activities to be consented separately under existing regimes rather than requiring a MIC.

1.5.2 **IOMG Answer**: Noted. This will be considered further as part of the secondary MIMA Regulations.

1.6 **Question 6**: With regards to what is being proposed in respect of Scoping Opinions, do you agree with what the Regulations will contain?

1.6.1 **Response**: Mooir Vannin notes that the amended EIA Regulations broadly align with those previously provided to the Department. Mooir Vannin notes that the request for a scoping opinion is mandatory in line with s15(1) of the Act.

Mooir Vannin requests clarification as to the applicable timescales as Reg 10(6) refers to 42 days to issue a Scoping Opinion. This does not align with the statutory timetable already in s10 of the Act which requires the Department to adopt a Scoping Opinion within 30 working days.

A further clarification regarding timescales relates to Regulation 10(11) which refers to 28 days rather than 20 working days. The Act refers to working days hence the suggestion for working days throughout the MIR and the Order so that timing is consistent avoiding the potential for administrative errors. Mooir Vannin would also request that "consultation body" is defined potentially to refer to the list of consultation bodies in s15(5) of the Act.

Finally, Mooir Vannin would welcome discussion to the request for additional information prior to issue of a scoping opinion as such requests may be answered through the proposed "PEIR." The objective being that the applicant should not suffer undue delay pursuant to requests for further information.

1.6.2 **IOMG Answer**: Noted. Timescales in the Order have been amended to align with s. 10 of MIMA (30 working days and 20 working days).

The definition of consultation body has not been amended to cross refer to s. 15(5) of MIMA at this stage, as s. 15(5)(d) gives provision for the Department to specify additional persons and it is expected that the secondary MIMA regulations will provide further clarity on this pursuant to s. 15(9). The definition of consultation body is linked to Schedule A1 of the Order, which provides a comprehensive list of consultative bodies and the circumstances in which they must be consulted. It is considered that this is a more robust approach to listing consultees, and a similar approach will be taken in the secondary MIMA regulations. The power in s. 15(5)(d) of MIMA can, thereafter, be used if the Department

considers that any additional persons (beyond this list of prescribed consultees) are appropriate consultees.

Regarding additional information, the purpose of Regulation 10(10) is to ensure that the Department is not precluded from requesting additional information where it is considered that this information is required despite not being specified in a Scoping Opinion. This regulation is framed not as an express power to request additional information in fixed circumstances, but rather to the confirm that the power to request additional information is not disapplied or prevented by the scoping process.

IOMG agree that a primary purpose of the pre-application consultation process established in s. 11 of MIMA, and to be further clarified in the secondary MIMA regulations, is to ensure that a robust EIA process is taking place following the issue of a Scoping Opinion and before an application is submitted.

1.7 **Question 7**: Do you agree with what is proposed to be included with regards consultation for an application which requires an EIA to be submitted?

1.7.1 **Response**: Mooir Vannin requests clarification as to the application of this section as it reflects the requirements pursuant to s42 of the Planning Act 2008 which is the pre-application consultation requirements accompanied by the PEIR. As a side note reference is made to "development consent" in this section that requires amendment to MIC. Mooir Vannin welcomes further discussion in this regard to understand the consultation proposed and how it relates to Scoping. The provisions envisage consultation being carried out before the Scoping Opinion is provided as referred at (5) whereas the timetable in s10 and s11 of the Act provides pre-application consultation should be carried out after the issue of the Scoping Opinion. Section 2(d) also refers to a period of 30 working days (from last publication) whereas s10 of the timetable in the Act refers to 40 working days. Mooir Vannin welcome clarification as to this section of the consultation.

Subject to the application of this section to scoping, certain provisions appear disproportionate such as the need to publish in the London Gazette or the Edinburgh Gazette where land is not affected (2(b)).

1.7.2 **IOMG Answer**: As Mooir Vannin have noted, this section reflects the requirements of s. 42 of the Planning Act 2008 and the pre-application consultation requirements for PEIR. The purpose of the Order is to ensure that there is a robust regime for scoping and EIA in the lead up to an application under MIMA being submitted and, as such, it is

considered appropriate that the Order includes requirements relating to pre-application consultation.

The Order has been amended to remove any references to Marine Infrastructure Consents or MIC and, instead, refers to "development consent" which is defined as meaning any consent to carry out an EIA development (as defined in Schedule 1 of the Order). This ensures that the scoping and EIA provisions of the Order can apply to any other consents that may be required for the defined types of development.

This section of the Order has been amended (at sections 12(1) and (5)) to make it clearer that the obligations regarding pre-application consultation must be carried out after a Scoping Opinion has been issued.

The period for responses to pre-application consultation has been amended to not less than 40 working days to correspond with section 10 of MIMA.

References to the London Gazette and Edinburgh Gazette (section 12(2)(b)) have been retained but clarified to only apply where land (including land covered by water) in England, Wales, or Scotland, as the case may be, is affected.

1.8 **Question 8**: Do you agree that the Council of Ministers should have the power to exempt a controlled marine activity from the requirements of these Regulations in exceptional circumstances?

1.8.1 **Response**: Mooir Vannin notes that this aligns the s33 of the EIA Regulations and agrees with the power to exempt.

1.8.2 **IOMG Answer**: Noted. Additional changes have been made to s33 to align with the existing exemption powers and

1.9 **Question 9**: Do you agree with this proposed consequential amendment [to MIMA]?

1.9.1 **Response**: Mooir Vannin has suggested a minor but improved amendment to s61(2)(c) of the Act to read "provide for anything done under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 as applied to the Island by the Climate Change (Infrastructure Planning) (Environmental Impact Assessment) (Application) Order 2023 to have effect as if done pursuant to this Act".

1.9.2 **IOMG Answer**: Noted. This has been incorporated into the revised Order.

1.10 **Question 10**: Do you agree with the inclusion of this supplementary provision?

1.10.1 No response given.

2. KEY CONSULTATION RESPONSES FROM OTHER PARTIES

Note that responses have been taken directly from consultee responses and are unedited.

(*Addition from the Department for clarification purposes only – references to MIMA relates to the Marine Infrastructure Management Act 2016 and references to IOMG should be taken to read Department of Infrastructure)

2.1 **Question 1**: Do you agree with the proposal to apply over these UK Regulations in respect of the preliminary stages of application preparation, specifically in relation to the Environmental Impact Assessment process?

2.1.1 **Response**: It is essential that the development of renewable energy infrastructure is carried out within an effective and appropriate framework. The UK has long had the necessary regulatory framework so it makes good sense that the Isle of Man uses the required UK legislation in forming what is needed here. Applying by order amended and adapted UK legislation is acceptable but it would be much more preferable if tailor-made IoM legislation was drafted instead.

2.1.2 **IOMG Answer**: The primary purpose of the Order is to secure a legislative framework for scoping and pre-application work before MIMA and its secondary legislation (both of which are tailor-made IOM legislation) come fully into force later in the year. The UK legislation has been amended and adapted to accord with the IOM's ambitions and will correspond to MIMA.

2.1.3 **Response**: it is not clear that other legislative regimes have been consider that may be better than uk. e.g. EU. We need to be the best and not blindly follow uk.

2.1.4 **IOMG Answer**: The legislative framework for EIA in the UK has derived from the EU and has been informed by practices in other jurisdictions. In making the Order, IOMG has had consideration of legislation and best practice in the different UK consenting regimes.

2.1.5 **Response**: I would note that the link provided is to the legislation as originally made, rather than in its current revised form and I wonder if this is intentional?

2.1.6 **IOMG Answer**: The Order has been updated to reflect the current version of the UK Regulations rather than the Regulations as they were originally made.

2.2 **Question 2**: Do you agree with the proposed extent to which these Regulations will apply?

2.2.1 **Response**: The UK regulations appear to apply to both onshore and offshore development. Surely if we are to adopt the UK regulations we should adopt them fully and apply them to onshore and offshore developments.

2.2.2 **IOMG Answer**: The primary purpose of the Order is to secure a legislative framework for scoping and pre-application work before MIMA and its secondary come fully into force later in the year and, as such, the Order is limited to offshore development for the present time. Legislation may be brought in separately in future to provide further clarity around the EIA requirements for onshore developments.

2.2.3 **Response**: Perhaps it should extend to harbour areas also if these may be impacted by the infrastructure under consideration as there will still be an environmental impact and it would surely make sense if all marine areas were subject to the same assessment and consenting process.

2.2.4 **IOMG Answer**: As noted at paras.1.2.21.3.2 and 2.2.2 above, the primary purpose of the Order relates to a limited scope of controlled marine activities, namely offshore renewable energy generation installations, as it is needed to provide a pre-application legislative framework for the Mooir Vannin offshore wind farm project before MIMA and its secondary regulations come into force.

In its current form, MIMA extends to activities within the controlled marine area, which does not include harbour limits that have been established by virtue of the Harbours Act 2010 (section 7(2)). However, the Department has the legislative power to, by order, provide that certain areas (which may include harbour limits) should be included within the controlled marine area in future. This would require to be done under a separate order.

2.3 **Question 3**: Do you agree with the limited, proposed controlled marine activities (and associated marine activities) that the Regulations will apply to?

2.3.1 **Response**: Covers all renewable energy generation activities i.e. not limited to off shore wind

2.3.2 **IOMG Answer**: See responses to1.2.2, 1.3.2, 2.2.2 and 2.2.4 above.

2.3.3 **Response**: As per our answer to the question above, these regulations should apply to any controlled marine and terrestrial development.

2.3.4 **IOMG Answer**: See responses to1.2.2, 1.3.2, 2.2.2 and 2.2.4 above. Legislation may be brought in separately in future to provide further clarity around the EIA requirements for onshore developments.

2.3.5 **Response**: They should apply to all marine developments not just the two listed above. Also this should include the harbour areas too.

However, it is appreciated that this is a temporary measure until the MIMA comes into force.

2.3.6 **IOMG Answer**: See responses to1.2.2, 1.3.2, 2.2.2 and 2.2.4 above. Controlled marine activities under MIMA will be subject to separate, secondary regulations.

2.4 **Question 4**: Do you agree that these Regulations should provide a mechanism that recognises pre-application work to be taken into account when the Marine Infrastructure Management Act 2016 is fully enacted?

2.4.1 **Response**: Are you trying to ensure that if MIMA is fully enacted any work undertaken under these regs should satisfy the requirements of MIMA regarding PEIR and Scoping etc and not need repeating? If so, presumably yes - otherwise it would be a huge waste of time and money, and would cause significant delays.

However, there is a proviso that the rigour of the process under these regs should be of the highest order and not less than that required under MIMA.

2.4.2 **IOMG Answer**: Although they are being progressed to slightly different legislative timescales, IOMG has prepared the Order in parallel with the MIMA secondary regulations, and a detailed review has been carried out to ensure that the process authorised under the Order corresponds with that anticipated under MIMA.

2.5 **Question 5**: Do you agree with what is being proposed for inclusion with the Environmental Impact Assessment process?

2.5.1 **Response**: Firstly the (Respondent) feel that this should apply to terrestrial as well as marine applications.

What is quite alarming to note is that you have omitted section 5 namely "The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate."

Does this mean that the decision maker in the Isle of Man context will not expect to have "sufficient expertise to examine the environmental statement or updated environmental statement"? Surely this needs to be included with an appropriate amendment to fit the Manx context?

2.5.2 **IOMG Answer**: See answers above relating to the extent of the Order and the overlap between terrestrial and offshore projects.

The provisions regarding sufficient expertise have been re-inserted (s. 5(5) of the Order).

2.5.3 **Response**: The EIA should also describe and assess the installation and operating greenhouse gas emissions and impact on climate change. No scheme should be allowed to progress if is contrary to or contradicts the Isle of Man Government's Climate Change Act and road map. The EIA should consider the holistic environmental impact of any proposed scheme.

2.5.4 **IOMG Answer**: This requirement for an EIA to assess impact on climate change (including greenhouse gas emissions) is set out in paragraph 5 of Schedule 4 to the Order ("Information for Inclusion in Environmental Statements"). The purpose of the Order is to set out the legislative framework for scoping and pre-application environmental assessment. It would, therefore, be outwith the scope of this legislative exercise to provide that projects should not be able to proceed if contrary to the Climate Change Act, etc. – this is a matter for governmental and planning policy (as it relates to the weight to be placed on the considerations for or against granting consent).

2.5.5 **Response**: What about the inclusion of commercial fisheries, ecological good and services and carbon sequestration?

2.5.6 **IOMG Answer**: While commercial fisheries is not directly referred to in the Order (or in the underlying UK legislation), commercial fisheries has consistently been a key topic for environmental assessment on offshore projects. Commercial fisheries falls within several of the requirements under Schedule 4 to the Order ("Information for Inclusion in Environmental Statements"), as do ecological matters and carbon sequestration.

2.5.7 **Response**: Regarding the omission of sections 1c and 5 - I can see if MIMA and its regs will ultimately govern the decision-making process regarding offshore renewable energy projects, section 1c may not be directly relevant to these regs, however a s5-like requirement for the Department to have (or have access to) 'sufficient expertise' may have some relevance in order to prepare a Scoping Opinion which anticipates and covers all the necessary areas of impact. I can't imagine that there has been very much opportunity to accrue large amounts of experience and expertise regarding developments of this kind and scale locally.

One hopes that when drafting the MIMA regs that it will be provided that the Examiners appointed to examine all the compiled environmental information would have 'have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement' and be obliged to examine all the environmental information, reach a 'reasoned conclusion on the

significant effects' and incorporate it into their decision regarding consent (similar to the provisions of 1c and 5).

2.5.8 **IOMG Answer**: As is noted in para. 2.5.2, s. 5(5) (requiring sufficient expertise) has been reinserted to the Order. While the secondary MIMA regulations are still being finalised, it is the intention of IOMG that they will include similar obligations.

2.6 **Question 6**: With regards to what is being proposed in respect of Scoping Opinions, do you agree with what the Regulations will contain?

2.6.1 **Response**: Why is there 3 omitted paragraphs and why as paragraph 6 states even agree to 42 days if it can be extended at whim

2.6.2 **IOMG Answer**: The time period for issuing the Scoping Opinion has been amended to 30 working days to accord with MIMA. It is necessary to allow for a mechanism to extend the period for issuing a Scoping Opinion as there may be scenarios where additional consultation is required and it would be disproportionate to require a developer to submit a new application.

The omitted paragraphs in this section relate specifically to "subsequent applications" under the UK legislation, which are applications for approvals of matters specified within a development consent order granted under the Planning Act 2008. As this consenting regime does not apply within the Isle of Man, the references to these provisions (and the associated definition) have been deleted.

2.6.3 **Response**: item 11, should not allow for an assumption to be made, it must require a written response, within 28 days or a request for a longer time to consider the response to the environmental statement

2.6.4 **IOMG Answer**: This has been amended to 20 working days to align with MIMA, which expresses time periods in working days as opposed to calendar days.

It is a fundamental principle of the planning and consenting process that all parties should have an appropriate and known period in which to participate. IOMG cannot compel consultative bodies to participate in a consultation or to make submissions on an application. Similarly, developers and members of the public are entitled to timely processes that are not subject to undue delays. The effect of s. 10(11) does not prevent consultative bodies requesting extensions, nor does it prevent IOMG from considering or granting such requests. Rather, s. 10(11) acts as a safeguard to ensure that consultative bodies will engage on scoping requests timeously.

2.6.5 **Response**: Does the Department and the Island actually have the level of experience and expertise to adequately assess the full impact of such developments or are developments of this scale and nature somewhat outside the day to day experience of local departments? Is there a requirement to seek advice from experts and bodies elsewhere who deal with such developments on a regular basis?

If a Scoping Opinion is given by the Department and something comes to light at a later date which raises additional concerns, can the scope of the EIA or matters to be covered by the Environmental Statement be added to later on in the process or is the scope of the EIA set in stone at Scoping Opinion time?

2.6.6 **IOMG Answer**: As is noted in para. 2.5.2 above, s. 5(5) (requiring sufficient expertise) has been reinserted to the Order. This requires the Department to ensure it has access to sufficient expertise in considering and determining environmental information.

The scope of an EIA is not necessarily fixed by the issue of a Scoping Opinion. The purpose of Regulation 10(10) is to ensure that the Department is not precluded from requesting additional information where it is considered that additional information is required despite not being specified in a Scoping Opinion. This regulation is framed not as an express power to request additional information in fixed circumstances, but rather to the confirm that the power to request additional information is not disapplied or prevented by the scoping process.

S. 14(3)(b) of the Order requires an environmental statement submitted with an application to, in addition to being based on the most recent Scoping Opinion, "include the information reasonably required for reaching a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment". This section also serves to ensure that the scope of the EIA and the content of the Environmental Statement can and should be updated to reflect new information, clearer science, etc.

2.7 **Question 7**: Do you agree with what is proposed to be included with regards consultation for an application which requires an EIA to be submitted?

2.7.1 **Response**: Needs longer to be advertised - 2 weeks is too short at least 2 months

2.7.2 **IOMG Answer**: The period for advertisement (two successive weeks) is distinct from the period within which representations must be submitted (not less than 40 working days following the date of the last

notice publication). In practice, this gives a period of circa 2 months for interested parties to submit representations. IOMG would note that this period is longer than that given in other UK jurisdictions (for example, a minimum of 28 calendar days for DCO applications in England and Wales or a minimum of 30 calendar days for Section 36 Consent applications in Scotland).

2.7.3 **Response**: Especially important that notice of proposed application is displayed in a prominent and logical position in public given that the other means of communication, at least on-Island, being newspapers, are likely to reach only a small proportion of the Island's community. Online publication should perhaps also be specified.

2.7.4 **IOMG Answer**: S. 12(4) of the Order requires the applicant to arrange for a public notice to be displayed at, or as close as reasonably practicable to, the site of the proposed development in a place accessible to the public. S. 12(2) has been amended to provide for online publication of the newspaper notices in connection with the newspaper notices.

2.7.5 **Response**: Not everyone reads newspapers and more modern methods should be sort to publise the consultation. Also two weeks isn't a very long time, a month would be better.

2.7.6 **IOMG Answer**: As stated in para. 2.7.2 above, the period of two weeks only relates to the period of advertisement and not the period for response.

2.7.7 **Response**: There is not really enough information given here - who are the consultation bodies? Do these include NGOs/institutions with particular knowledge and expertise of the marine environment/benthic ecology/birds/bats/insects/marine mammals/marine invertebrates/fish etc etc etc. If not, I believe they should.

I think one of the newspapers should be the Courier and adverts should appear on line on Island as not everybody receives or reads a newspaper (even the Courier).

I believe the consultation and EIA process must be extremely open and robust for ALL marine infrastructure including renewable energy generation installations (and particularly for gas drilling and exploration). This should be adopting 'better than' current best practice to ensure biodiversity protection in a UNESCO biosphere.

2.7.8 **IOMG Answer**: The consultation bodies, together with the circumstances in which they must be consulted (i.e. reflecting that some statutory consultees should be compelled to participate where a proposed development has a particular interface with that consultee's

remit), are set out in Schedule A1. This includes bodies like Manx National Heritage. Any other institutions or persons can still participate in the process without being a formal consultation body – this includes providing responses to a request for scoping or submitting representations on conclusions of a project's environmental statement or the merits or otherwise of the proposals.

2.8 **Question 8**: Do you agree that the Council of Ministers should have the power to exempt a controlled marine activity from the requirements of these Regulations in exceptional circumstances?

2.8.1 **Response**: It is entirely appropriate that CoMin has the proposed powers but what is meant by "exceptional circumstances" should be clarified, at least in general terms and with some examples.

2.8.2 **IOMG Answer**: The exceptional circumstances referred to would require to be considered on a case-by-case basis and, therefore, cannot be explained in general terms on the face of the Order. IOMG has reinserted sections 33(3) and (4) which add another administrative process to any such exemption, namely that IOMG must have first considered whether another form of assessment is appropriate and must subsequently issue a direction to the public explaining an exemption decision and the reasons for it. S. 33(1) provides that exceptional circumstances alone will not be sufficient to exempt a development – IOMG must also consider that the application of the Order on the development in question would have an "adverse effect on the fulfilment of the development's purpose." IOMG is not aware that the powers of exemption have ever been used in other jurisdictions and, accordingly, considers that section 33 sets a high bar that must be satisfied before any exemption could be granted.

2.8.3 **Response**: There should be no exceptional circumstance that allow exemption from the protection provided by the regulations and if there where any exceptional circumstance they must be listed within the regulations and to what degree the exemption applies.

2.8.4 **IOMG Answer**: See paragraph 2.8.2 above. The exceptional circumstances referred to would require to be considered on a case-by-case basis and, therefore, cannot be explained in general terms on the face of the Order.

2.8.5 **Response**: COMIN should not be able to exempt controlled marine activities as these Regulations would appear to be proportionate and necessary to control development

2.8.6 **IOMG Answer**: See paragraph 2.8.2 above. The provisions of section 33 of the Order are directed around specific applications for EIA development and not classes of controlled marine activities.

2.8.7 **Response**: Although there is an existing precedent within planning legislation, the Council does not consider it appropriate that any marine activity scheme should be exempted from having an EIA. If the proposed scheme is significant and of national importance, CoMin should arrange for an independent assessment of the holistic environmental impacts before determining any application. Approving applications without any understanding of the potential environmental impacts would not be in the Island's best interests in the longer term.

2.8.8 **IOMG Answer**: See paragraph 2.8.2 above.

2.8.9 **Response**: Would wish to understand what 'exceptional circumstances' would be -it could be argued that any circumstance could be considered 'exceptional'.

2.8.10 **IOMG Answer**: See paragraph 2.8.2 above. As noted, it would not be sufficient for a development to be in 'exceptional circumstances' to be considered exempt, as IOMG would also require to consider that compliance with the Order would have an "adverse effect on the fulfilment of the development's purpose."

2.8.11 **Response**: There should be the option but transparency is needed to ensure significant impacts to the marine environment are not permitted and should be on a case by case basis. Full justification for each exemption will need to be provided.

2.8.12 **IOMG Answer**: See paragraph 2.8.2 above. IOMG has reinserted s. 33(4) which requires full justification to be publicised.

2.9 **Question 9**: Do you agree with this proposed consequential amendment [to MIMA]?

2.9.1 **Response**: Pre application should mean just that... PRE

2.9.2 **IOMG Answer**: The Order only imposes obligations that would and must take place before an application can be submitted (i.e. scoping, pre-application consultation, etc.).

2.9.3 **Response**: Provided that what is done under these regs is extremely rigorous and is no less rigorous that that which will be done under MIMA.

However, I do not think it should be possible for Council of Ministers to exempt a controlled activity under these regs and it then be deemed compliant with MIMA. I do not believe the scope of MIMA and currently defined 'controlled marine activities' should be changed at all.

2.9.4 **IOMG Answer**: See paragraph 2.8.2 above. The provisions of section 33 of the Order are directed around specific applications for EIA development and not classes of controlled marine activities. While the secondary MIMA regulations are being implemented separately to the Order, IOMG has prepared this Order and those regulations in parallel to ensure that the Order reflects the requirements of MIMA.

IOMG is not proposing to materially alter the definition of controlled marine activities. Schedule 1 of the Order has been amended to clarify that terrestrial elements of an offshore renewable energy generation installation should also be considered as part of an assessment, as this ensures that a holistic approach to assessment can be taken for a project.

2.10 **Question 10**: Do you agree with the inclusion of this supplementary provision?

2.10.1 **Response**: This seems reasonable provided that the actions taken would have complied with these as yet unadopted regulations, had the regulations been in force.

2.10.2 **IOMG Answer**: Noted. While the secondary MIMA regulations are being implemented separately to the Order, IOMG has prepared this Order and those regulations in parallel to ensure that the Order reflects the requirements of MIMA.

2.10.3 **Response**: So, if my understanding is correct, because MIMA is not fully enacted with regs in place (after 7 or 8 years), we have to have these regs under the Climate Change Act and anything done under these regs will be deemed to satisfy MIMA (when it is fully enacted). But as we don't actually have these regs sorted and in place either, the Council of Ministers can deem that whatever is done before these regs are in place is deemed to satisfy these regs??

It all looks like the Island has not been very organised. The Dong agreement for lease was entered into 9 years ago wasn't it?

I do not favour all these additional powers being given to Council of Ministers. I think we should just get these regs in place first.

2.10.4 **IOMG Answer**: The supplementary provision that will be enacted by section 7 is to ensure that any work carried out prior to the Order coming into force has a legislative basis