

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

Overview

This consultation exercise is to provide an opportunity for comment on the proposed application of the Infrastructure (Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (of Parliament) under the provisions of the Climate Change Act 2021, section 31. Consultation is required under Section 35.

Why your views matter

The purpose of this consultation exercise is to comply with the principles of the Council of Ministers Public Engagement and Consultation Principles (October 2017) and to provide an opportunity for the consideration of the proposals.

By way of background, the Department of Infrastructure has been pursuing the formulation of a set of secondary Regulations to be prepared under the provisions of the Marine Infrastructure Management Act 2016. The Department continues to progress with this work, including undertaking consultation on those principles, and it is hoped they will be fully enacted following Tynwald in July 2024.

The Department granted an Agreement for Lease to the then DONG Energy (now Orsted, and the Mooir Vannin Offshore Wind Farm) in 2015.

As part of the pre-application requirements, and to inform its application, Orsted needs to seek a request for Scoping Opinion from the Department. The proposed regulations will enable this initial step in the process to proceed whilst work continues on finalising the regulations under the Marine Infrastructure Management Act 2016.

Responding to this consultation

You can respond to this consultation online by visiting the Consultation Hub at consult.gov.im. Alternatively you can fill out this paper version and email it to ian.brooks@gov.im or post it to:

Ian Brooks

Legislation and Policy Officer
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IM1 2RF

About you

What is your name?

Name

What is your email address?

Email

Are you responding on behalf of an organisation?

Please select only one item

- Yes
- No

Organisation

May we publish your response?

Please read our [Privacy Policy](#) </privacy_policy/> for more details and your rights.

- Publish in full – your first name and surname, organisation name, along with full answers will be published on the hub (your email will not be published)
- Publish anonymously – only your responses will be published on the hub (your name, organisation and email will not be published)
- Do not publish – nothing will be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- Yes, you can publish my response in full
- Yes, you may publish my response anonymously
- No, please do not publish my response

The Climate Change Act 2021

The Climate Change Act 2021 sets out in Section 31 'Application of UK legislation to the Isle of Man':

1. The Council of Ministers or the Department* may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any UK legislation to which this section applies
2. An order under this section may include provision repealing or amending any provision of any enactment (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of any UK legislation applied to the Island by the order
3. This section applies to:
 - a. any provision of UK legislation or
 - b. any instrument of a legislative character made under UK legislation, which relates, directly or indirectly, to climate change action, or mitigating potentially negative consequences arising from climate change, and to environmental protection
4. For the purposes of subsection (3), provisions that relate to climate change action, or mitigating potentially negative consequences arising from climate change, or to environmental protection, include provisions relating to:
 - a. the generation and regulation of renewable energy and the technologies associated with renewable energy
 - b. the conservation, protection and restoration of biodiversity, ecosystems and improving the natural environment
 - c. waste and resource management
 - d. air and water quality, including the regulation of air and water pollutants and their sources and
 - e. the control of products that fail to meet standards specified for the protection of the environment
5. The Council of Ministers may by order amend subsection (4)
6. An order made under this section must have annexed to it a text of the instrument applied by the order, incorporating the exceptions, adaptations and modifications specified in the order

It is the intention that the Council of Ministers will use this provision of the Climate Change Act 2021 to apply over the **Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (of Parliament) (gov.uk)** <<https://www.legislation.gov.uk/ukSI/2017/572/contents/made>> . These Regulations set out a well-defined, well established process for Environmental Impact Assessments and will provide the ability for the Department of Infrastructure to consider and respond to a current request for Scoping Opinion, and further enabling this to transfer into the Marine Infrastructure Management Act 2016 as and when Orsted submits its application for the proposed development of an offshore wind farm.

*Means the Department of Environment, Food and Agriculture under the Climate Change Act 2021.

Purpose

The purpose of these Regulations is to provide a regime governing scoping reports, requests for, and the issuing of, scoping opinions, Environmental Impact Assessments and in respect of anticipated or prospective applications for consent to carry on a controlled marine activity. In addition, the purpose of these Regulations is to directly or indirectly enable climate change action; mitigate potentially negative consequences arising from climate change; and enable environmental protection.

It should be noted that these Regulations will not act to provide consent to any controlled marine activities proposed within the controlled marine area. All required consents must be sought in the relevant manner from the responsible Department(s). These Regulations have been proposed to provide a mechanism whereby the Department of Infrastructure can handle a request for Scoping Opinion and ensure that this pre-application work forms a recognized requirement if and when an application is submitted for the controlled marine activities to which these Regulations apply when the Marine Infrastructure Management Act 2016 is fully enacted.

Not all of the UK Regulations will be applied over, it has been determined that the current requirements relate primarily to the Scoping of the Environmental Impact Assessment and how that is handled, and the type of information that is expected to be included within the Environmental Impact Assessment process.

References to the 'Department' within these Regulations 'means the Department of Infrastructure of the Isle of Man established under section 1 of the Government Departments Act 1987 (of Tynwald)'

Where the Regulations will apply

It is the intention that the Regulations will only apply to a specific area, the controlled marine area, as defined in the Marine Infrastructure Management Act 2016 section 7:

1. The controlled marine area is the area between:

- a. Mean high water mark and
- b. The seaward boundary of the Isle of Man territorial sea (within the meaning of the Territorial Sea Act 1987 (an Act of Parliament))

2. But an area within harbor limits determined in accordance with the Harbours Act 2010 is not part of the controlled marine area

What the Regulations will apply to

It is also the intention that the Regulations will be limited as to what they apply to. It is the intention that these Regulations formulation under the provisions of the Climate Change Act 2021 can only apply to specific controlled marine activities (including associated marine activities in respect of these controlled marine activities), namely:

- offshore renewable energy generation installations and
- laying of submarine cables

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?

Please select only one item

- Yes
- No

Please explain your view:

Do you agree with the proposed extent to which these Regulations will apply?

Please select only one item

- Yes
- No

Please explain your view:

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

Please select only one item

Yes

No

Please explain your view:

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?

Please select only one item

Yes

No

Please explain your view:

Environmental Impact Assessment (EIA)

The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed controlled marine activity.

It is the intention that the following will be included within the Regulations, as they will apply in the Isle of Man (in the controlled marine area, to the identified controlled marine activities and associated marine activities). They are based on the UK regulations, and have been amended (or omitted as applicable) so they are appropriate for the Isle of Man:

1. The environmental impact assessment ('the EIA') is a process consisting of:
 - a. the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant
 - b. the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other Manx enactment in respect of EIA development and
 - c. omitted
2. The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors:
 - a. population and human health
 - b. biodiversity, with particular attention to species and habitats protected under [any law that implemented] Directive 92/43/EEC and Directive 2009/147/EC Manx law, international law and, where the proposed EIA development has transboundary effects, the laws of any other State that may be affected by it
 - c. land, soil, seabed, water, air and climate
 - d. material assets, cultural heritage, the landscape and the seascape
 - e. the interaction between the factors referred to in sub-paragraphs (a) to (d)
3. The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects
4. The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development
5. Omitted

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

Please select only one item

Yes

No

Please explain your view:

Scoping Opinion

It is proposed that in respect of the Scoping Opinion, the following is included within the Regulations:

1. A person who proposes to make an application in due course for consent to carry on a controlled marine activity must ask the Department to state in writing its opinion as to the scope, and level of detail, of the information to be provided in the environmental statement
2. Omitted*
3. A request under paragraph (1) must be accompanied by a scoping report (a 'scoping report') which must include:
 - a. a plan sufficient to identify the land
 - b. a description of the proposed controlled marine activity, including its location and technical capacity
 - c. an explanation of the likely significant effects of the activity on the environment and
 - d. such other information or representations as the person making the request may wish to provide or make
4. Omitted
5. When the Department has received a request for a scoping opinion under paragraph (1), it must, if it considers that it has not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which it requires additional information
6. The Department must not adopt a scoping opinion in response to a request under paragraph (1) until it has consulted the consultation bodies, but must within 42 days beginning with the date of receipt of that request, or where they have notified the person making the request that they require additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request
- 6.A. The period of 42 days referred to in paragraph (6) may be extended by agreement between the Department and the applicant
7. Omitted
8. Omitted
9. Before adopting a scoping opinion the Department must take into account:
 - a. any information provided about the proposed controlled marine activity
 - b. the specific characteristics of the activity and
 - c. the likely significant effects of the activity on the environment
- 9.A. A scoping opinion issued by the Department must set out the scope and level of detail of the information to be provided by the applicant in their environmental statement

9.B. Where the Department has adopted a scoping opinion in response to a request under paragraph (1) it shall publish that opinion in such manner as it considers will be most likely to bring it to the attention of those likely to be affected by it

10. Where the Department has adopted a scoping opinion in response to a request under paragraph (1), the Department shall not be precluded from requiring of the applicant additional information in connection with any statement that may be submitted by that applicant as an environmental statement in connection with any application for consent to carry on a controlled marine activity

11. If a consultation body does not within 28 days of being consulted under paragraph (6) respond stating:

- a. the information it considers should be provided in the environmental statement or
- b. that it does not have any comments,

the Department is entitled to assume that the consultation body in question does not have any comments on the information to be provided in the environmental statement or the updated environmental statement.

*References to 'Omitted' reflect that it has been determined that the equivalent Regulation from the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572) are not required as part of these Regulations, and are therefore 'Omitted'.

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

Please select only one item

- Yes
- No

Please explain your view:

Consultation

As part of the application of the UK EIA Regulations, it is proposed that the following is included in respect of consultation:

1. As part of the EIA process and as part of consultation to be undertaken before making an application for development consent, the proposed applicant must:
 - a. publicise the proposed EIA development and
 - b. consult the consultation bodies

2. An applicant who proposes to make an application in respect of a proposed EIA development must publish a notice of the proposed application:
 - a. for at least two successive weeks in one or more newspapers published and circulating in the Island
 - b. once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette and
 - c. where the proposed application for consent relates to offshore development:
 - i. once in Lloyd's List and
 - ii. once in an appropriate trade or professional journal relating to the profession of fishing
 - d. The notice must include:
 - a. the name and address of the applicant
 - b. a summary of the main elements of the proposed application
 - c. a statement that the documents, plans and maps showing the nature and location of the proposed development are available for inspection free of charge at the places (including at least 1 address in the vicinity of the proposed development), times and for the duration set out in the notice
 - d. any charge for copies of any of the documents, plans or maps
 - e. details of how to respond to the publicity and
 - f. a deadline for receipt of those responses by the applicant, being not less than 30 working days following the date when the notice is last published

4.The applicant must arrange for a notice of the proposed application, which must include the matters specified in paragraph (3) of this regulation, to be displayed at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public

5.The consultation referred to in paragraph (1)(b) must include consultation on the proposed development in respect of which a scoping opinion has been requested and a development consent may subsequently be sought and, in particular, must include consultation on the potential size and scope of that development

6.The proposed applicant must prepare a report on the consultation containing:

- a. an overview of the consultation process including any other engagement undertaken by the proposed applicant
- b. an explanation of the steps taken by the proposed applicant to comply with the requirements of these and any relevant guidance
- c. details of how the proposed applicant has taken account of any responses to the consultation
- d. a summary of relevant responses to the consultation (but not a complete list of responses)
- e. if appropriate, an explanation as to why responses suggesting major changes to a proposed EIA development were not followed
- f. a plain English summary of its contents

NOTE – The Marine Infrastructure Management Act 2015 Regulations are still being prepared, and will be consulted on imminently. They will contain pre-application requirements in respect of the controlled marine activities within the controlled marine area within the provisions of the Marine Infrastructure Management Act 2015. The Department of Infrastructure will undertake a review of the MIMA Regulations against what is proposed as part of these Climate Change 2021 Regulations to ensure there is consistency and continuity across both.

The Department of Infrastructure intends that the Marine Infrastructure Management Act 2016 will be fully enacted following the July 2024 sitting of Tynwald when the Regulations that sit underneath it will be presented.

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

Please select only one item

- Yes
- No

Please explain your view:

Exemptions

It is proposed that there will be the power for the Council of Ministers to exempt a controlled marine activity from the requirements of these Regulations where the circumstances are exceptional and the Council of Ministers considers that compliance with these Regulations in respect of that activity would have an adverse effect on the fulfilment of the activity's purpose.

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?

Please select only one item

Yes

No

Please explain your view:

Consequential amendment

The Marine Infrastructure Management Act 2016 sets out in S.61:

1. The Department may by regulations make transitional provision in connection with the commencement of this Act
2. In particular, the regulations shall aim to ensure continuity of process so far as possible; and for that purpose the regulations may:
 - a. Provide for anything done under a consenting regime to have effect as if done under this Act
 - b. Provide for anything done in preparation for or in connection with anything done or to be done under a consenting regime to have effect as if done for a similar purpose in connection with this Act

As part of the preparation of these Regulations, it is proposed that there will be a consequential amendment to the Marine Infrastructure Management Act 2021, namely after section 61(2)(b) add:

c.'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 for a similar purpose in connection with this Act'

The purpose of this consequential amendment is to ensure that anything done in these Regulations can be considered as being part of the pre-application work undertaken.

*SD

Do you agree with this proposed consequential amendment?

Please select only one item

Yes

No

Please explain your view:

Supplementary provision

In addition to the proposed consequential amendment, it is further proposed that the following will be included within the Regulations:

The Council of Ministers may direct that anything done in anticipation of these Regulations coming into operation:

- a. which would be required under them if they were in operation, to have effect as if done under these Regulations or
- b. in preparation for, or in connection with, anything to be done under these Regulations, as if done for the purposes these Regulations

Do you agree with the inclusion of this supplementary provision?

Please select only one item

Yes

No

Please explain your view:

Further work

The Department of Infrastructure continues to work with advisors to understand some of the provisions contained within the UK Regulations, and seek to understand whether they are appropriate to include within these 'adapted and modified' Regulations.

The Department of Infrastructure acknowledges that there are areas where further investigation and consideration are required, however, it values all comments received as part of this consultation exercise. It should also be noted that before the Application Order can be finalised, the Department of Infrastructure will instruct its advisors to undertake a comparison of both the Application Order and subsequent Regulations, as proposed under the Climate Change Act 2021 along with the draft Marine Infrastructure Management Act 2016 Regulations to ensure there is continuity between both Acts which relate to the controlled marine activities within the controlled marine area. It is essential that they complement each other.

All feedback received as part of this consultation exercise will be taken into account alongside the views of the Department's advisors, and the final position on these Regulations will be formalised through the subsequent Application Order which will be made by the Council of Ministers under the Climate Change Act 2021.