



Marine Infrastructure Regulations 2024



**Isle of Man
Government**
Reillys Ellan Vannin

CONSULTATION REPORT

October 2024



Marine Infrastructure Regulations

1. Background

- 1.1 The Marine Infrastructure Management Act 2016 was approved by Tynwald in 2016 and provided the framework for an overarching consenting regime for specific activities within the Island's territorial sea. There was a requirement for accompanying, secondary legislation to be prepared to provide the procedural detail to support the process. The Department of Infrastructure has been working to prepare this legislation with assistance from both the Attorney General's Chambers and external legal advisors.
- 1.2 The Department of Infrastructure undertook a public consultation exercise in respect of the proposed Marine Infrastructure Regulations to be brought forward under the Marine Infrastructure Management Act 2016. 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 Regulation and sought comments and feedback on the basis of those principles.
- 1.3 Following the close of the consultation, the Department, supported by its external legal advisors has considered all responses provided. The Department then hosted an internal Government workshop to discuss the intentions of the Regulations and progress in their finalisation. As part of this, a number of additional points for clarification were raised which the Department has considered alongside its legal advisors.
- 1.4 Following from this workshop, the Department offered a further opportunity for engagement to those who had participated in the consultation exercise, and invited them to consider the working draft Regulations with a strict deadline for return of any additional comments to be provided by April 22nd 2024. This provided the Department and its advisors to consider anything else submitted in respect of the draft Regulations, prior to finalising and making the Regulations. All comments received as part of this additional engagement opportunity have been considered by the Department, supported by its external legal advisors.
- 1.5 This Consultation Report reflects both of these opportunities for engagement, the initial public consultation exercise as well as the opportunity for those to consider the working draft Regulations. It also includes some of the other correspondence that was received prior to the Regulations being finalised by the Department.
- 1.6 In July 2024, the Department made the Marine Infrastructure (Consenting Process) Regulations 2024 ¹and laid them before the October 2024 sitting of Tynwald, as set out by the Tynwald process contained within the Marine Infrastructure Management Act 2016. There is a requirement for further secondary legislation to be prepared and the Department continues to work on this. It was determined that due to time constraints, that the Department would progress with the Regulations that related to procedures associated with the pre-application, application, examination and decision

¹ <https://tynwald.org.im/index.php/spfile?file=/business/opqp/sittings/20212026/2024-SD-0205.pdf>

making. Additional Regulations are currently being prepared in respect of the post decision procedures.

2. Consultation overview

- 2.1 As part of the public consultation exercise, a total of 33 responses were received, two of which were anonymous. The Department has considered all of these responses, and has been supported in this review by its external legal advisors.
- 2.2 The Department requested that its external legal advisors consider and provide responses to the comments received as part of the consultation process. The Department specifically asked the external legal advisors to consider and respond directly to the response provided by the proposed Mooir Vannin Offshore Windfarm Limited and this is included in the appended report. The reason for this was because the Department considered that it was beneficial to ensure that as a future applicant with experience of working in neighbouring jurisdictions, that the proposed legislation was as comparable to that of the UK as possible. 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 specifically as part of this consideration.
- 2.3 Some of the comments received as part of the consultation would suggest that the full provisions of the Act were not fully understood and as such, the Department felt it appropriate to address those within this Report. The Department continued to work with its advisors and Chambers to prepare the final Regulations. Since the report attached in Appendix 1 was first presented to the Department, there have been many interactions between the Department, Chambers and the legal advisors in reviewing the subsequent legislation and finalising it, ready for it to be made by the Department and submission to Tynwald. The Report reflects the most up to date position in terms of the consideration of comments received to the consultation exercise. The Department's legal advisors are satisfied with the Regulations that have now been made and laid before the October 2024 sitting of Tynwald.
- 2.4 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 not publish the responses received, however, many of the comments received have been included as part of the attached report with the Department's position set out where possible and appropriate to do so.
- 2.5 There were 33 responses to the consultation with two anonymous responses. This meant that due to the fact there were no contact details submitted with these responses, the Department was unable to offer the additional opportunity for engagement as there was no means of contacting these respondents. A total of 12 of these responses were responding on behalf of an organisation.

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 Department's position will also be set out.
- 3.2 The detailed consideration and response to comments received as part of the consultation is included in the Appendix 1, a report prepared on behalf of the Department by its external legal advisors. As noted above, the only responses clearly identified as part of that are from DEFA, MU and Mooir Vannin Offshore Windfarm Limited who gave permission for their full response to be published.

4. Consideration of responses to consultation questions

4.1 Question 1 - Do you agree that the Department is considering the inclusion of the principles contained within the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 as adapted and modified within the Marine Infrastructure Regulations?

4.1.1 There were 30 responses to this part of the question with 22 responses agreeing, 8 not agreeing.

Option	Total	Percent
Yes	22	66.67%
No	8	24.24%
Not Answered	3	9.09%

4.1.2 Question 1- Comments box

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

Responses to this question were largely supportive of this proposal.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department continued to prepare the Regulations using the above Environmental Impact Assessment Regulations as a basis and made any amendments where appropriate. These Regulations are well understood within this industry.

4.2 Question 2 - Do you agree with the proposed list of consultees and the circumstances under which they will be consulted?

4.2.1 There were 31 responses to this part of the question, 18 of which agreed with what was being proposed and 13 not agreeing to this list of consultees.

Option	Total	Percent
Yes	18	54.55%
No	13	39.39%
Not Answered	2	6.06%

4.2.2 Question 2 - Comments box

There were 21 comments submitted for this part of the question.

Responses to this question were mixed with comments suggesting that the Regulations should include other bodies/persons or clarify the timescales for any consultations with those bodies. It has also been suggested the list of consultees is too all encompassing.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. Where the Department felt it was beneficial for the Regulations to include additional consultees, as suggested by respondents, these have been included. All suggestions were considered. However, taking into account the response provided by the external legal advisors, it was not appropriate to include all suggested consultees and reasons for that are provided in Appendix 1.

4.3 Question 3 - Are there any other consultees that you think should be identified in the list above?

4.3.1 There were 32 responses to this part of the question; 17 of which agreed with the list of consultees proposed and 15 not agreeing.

Option	Total	Percent
Yes	17	51.52%
No	15	45.45%
Not Answered	1	3.03%

4.3.2 Question 3 - Comments box

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

Responses to this question were mixed suggesting different bodies/persons to be added to the list of consultees proposed by the Department.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. Where the Department felt it was beneficial for the Regulations to include additional consultees, as suggested by respondents, these have been included. All suggestions were considered. However, taking into account the response provided by the external legal advisors, it was not appropriate to include all suggested consultees and reasons for that are provided in Appendix 1.

4.4 Question 4 - Do you agree with this level of publication, by an applicant, of a proposed application?

4.4.1 There were 32 responses to this part of the question; 19 of which agreed with the level of publication, by an applicant, of a proposed application and 13 not agreeing.

Option	Total	Percent
Yes	19	57.58%
No	13	39.39%
Not Answered	1	3.03%

4.4.2 Question 4 - Comments box

There were 22 comments submitted for this part of this question.

The majority of responses to this question have suggested the inclusion of the use of social media, Irish newspapers, local radio, online publication, and other professional journals/publications.

Mooir Vannin would like further clarification as to the stage of the application to which the publication requirements apply, and that the publication of the application should be consistent at every stage so as to avoid any administrative error by the applicant.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Marine Infrastructure (Consenting Process) Regulations 2024 provide the final details in respect of the publication requirements for Marine infrastructure consent applications.

4.5 Question 5 - Do you agree that a similar process to the Preliminary Environmental Information Report (PEIR) should form part of the pre-application consultation process for Marine infrastructure consent?

4.5.1 There were 30 responses to this part of the question; 25 of which agreed that a similar process to the PEIR should form part of the pre-application consultation process for Marine infrastructure consent and 5 not agreeing.

Option	Total	Percent
Yes	25	75.76%
No	5	15.15%
Not Answered	3	9.09%

4.5.2 Question 5 - Comments box

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

Responses to this question were largely supportive of this proposal.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. Taking all of the comments received, the Department has decided that it will not make PEIR a mandatory inclusion under the pre-application consultation requirements in the Regulations. Whilst the Regulations do now provide for PEIR (or a similar equivalent) to be consulted on during pre-application consultation, it is at the discretion of a prospective applicant.

4.6 Question 6 - Can you see any benefits from the inclusion of a requirement pre-application whereby stakeholders have the opportunity to review and consider the preliminary studies and work done to date, and have an opportunity to provide feedback prior to an application being submitted?

4.6.1 There were 31 responses to this part of the question; 26 of which agreed that they could see benefits from the inclusion of a requirement of pre-application consultation to review and consider preliminary studies and work done to date, and have an opportunity to provide feedback prior to an application being submitted. 5 responses did not support the proposed inclusion.

Option	Total	Percent
Yes	26	78.79%
No	5	15.15%
Not Answered	2	6.06%

4.6.2 Question 6 - Comments box

There were 21 comments submitted for this part of this question. Responses to this question were largely supportive of this proposal.

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

4.7 Question 7 - Is there another mechanism that you propose which would benefit the overall application and decision making process ensuring there is sufficient stakeholder engagement at an early, pre-application stage?

4.7.1 There were 30 responses to this part of the question; 11 suggesting that there is another mechanism which would benefit the overall application and decision making process, and 19 not proposing another mechanism.

Option	Total	Percent
Yes	11	33.33%
No	19	57.58%
Not Answered	3	9.09%

4.7.2 Question 7- Comments box

There were 17 comments submitted for this part of this question all of which have been considered by the external legal advisor.

Other mechanisms suggested range from public consultations/meetings, referenda, consult licensees and planning performance agreements. Some respondents have suggested what is proposed seems appropriate, thorough and comprehensive; whilst others have suggested the list of consultees should be revisited to ensure all stakeholders have early knowledge of any application.

One respondent questioned where the opportunity for non-statutory consultees to express their views was and at what stage of the process this would be.

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

4.8 Question 8 - Do you agree that the proposed contents of an EIA as listed above adequately covers all areas of interest to be included within an EIA and subsequent Environmental Statement?

4.8.1 There were 32 responses to this part of the question; 19 of which agreed with the list of the proposed contents of an EIA and 13 not agreeing.

Option	Total	Percent
Yes	19	57.58%
No	13	39.39%
Not Answered	1	3.03%

4.8.2 Question 8 - Comments box

There were 17 comments submitted for this part of this question.

Responses to this question were largely supportive of this proposal.

Comments received suggest, as part of the Environmental Impact Assessment that:

- additional consideration should be given to the assessment of carbon emissions;
- EIA should also describe and assess the installation and operating greenhouse gas emissions and impact on climate change;
- there is no consideration of economic impact to the Island;
- commercial fisheries, ecosystem goods and services and blue carbon sequestration should be included;
- the impact on marine resource should be included but not limited to commercial fisheries, should be included as an explicit consideration within EIAs;
- Item b should be expanded to include all species that live on or above the sea-bed within the marine environment plus those that live above the sea. The reference to 'particular attention to species and habitats protected under Manx law' is insufficient as the list is limited and has not been updated for some time;
- Effect on passing marine traffic should be added; and,
- Profit, Cost, and exposure (accountability) are not addressed.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department has determined that the contents, as proposed, remain largely the same as what has now been included within the Marine Infrastructure (Consenting Process) Regulations 2014 and further explanation on this is included in Appendix 1.

4.9 Question 9 - 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)?

4.9.1 There were 31 responses to this part of the question; 15 of which agreed with the list of exempted activities and 16 not agreeing.

Option	Total	Percent
Yes	15	45.45%
No	16	48.48%
Not Answered	2	6.06%

4.9.2 Question 9 - Comments box

There were 22 comments submitted for this part of this question.

Responses to this question were mixed. In light of the responses, the Department has determined that further work is needed to understand what types of activities may be exempted and under what circumstances. As such, no exemptions are being pursued as part of this set of Regulations and the Department will determine what, if any are required at a later stage. As part of this, the Department will continue to work with its legal and industry advisors as well as relevant stakeholders. This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response.

4.10 Question 10 - Are there any other activities that you feel should be exempted from requiring a Marine infrastructure consent (noting that it only already applies to Controlled Marine Activities, as identified in section 6 of the Act)?

4.10.1 There were 31 responses to this part of the question; 9 of which thought there were activities that should be exempted from requiring a Marine infrastructure consent and 22 thought there were no other activities that should be exempted from requiring a Marine infrastructure consent.

Option	Total	Percent
Yes	9	27.27%
No	22	66.67%
Not Answered	2	6.06%

4.10.2 Question 10 - Comments box

There were 16 comments submitted for this part of this question.

Responses to this question were mixed. In light of the responses received for this question, the Department has determined that further work is needed to understand what types of activities may be exempted from requiring a marine infrastructure consent and under what circumstances any such exemptions would be applied. As such, no exemptions are being pursued as part of this set of Regulations and the Department will determine what, if any are required at a later stage. As part of this, the Department will continue to work with its legal and industry advisors as well as relevant stakeholders.

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

4.11 Question 11 - Do you agree that the consent process under MIMA should be as cost neutral as possible, to Government, and that costs are recovered as far as possible from the applicant?

4.11.1 There were 33 responses to this part of the question; 26 of which agreed that the consenting process under MIMA should be as cost neutral as possible and 7 not agreeing to this principle.

Option	Total	Percent
Yes	26	78.79%
No	7	21.21%
Not Answered	0	0.00%

4.11.2 Question 11 - Comments box

There were 18 comments submitted for this part of this question.

Responses to this question were mixed ranging from the proposed fees being too high, being a barrier to investment, to cost being considered on a case by case basis and costs should be recovered from the applicant.

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

4.12 Question 12 - Do you agree that the Isle of Man should seek to charge a comparable amount as is charged in the UK through the Planning Inspectorate?

4.12.1 There were 32 responses to this part of the question; 18 of which agreed that the Isle of Man should seek to charge a comparable amount as is charged in the UK and 14 responses received stated that they did not agree to this principle.

Option	Total	Percent
Yes	18	54.55%
No	14	42.42%
Not Answered	1	3.03%

4.12.2 Question 12 - Comments box

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

Responses to this question were mixed ranging from opinions that the fees proposed were appropriate to some of them being far too high. Some responses are repeated from the responses to the previous question.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department determined that given that the legislation is closely aligned with the principles applicable in UK legislation for similar projects, that the similar fees structure would be pursued on the Island as well. As such, fees included within the final Regulations reflect the 2023 UK fees for the Nationally Significant Infrastructure Projects as administered by the Planning Inspectorate which will be very similar to the marine projects covered under the Marine Infrastructure Management Act 2016. If it is determined that there are amendments required to the fees, the Department has the ability to do this as and when it might need to.

4.13 Question 13 - Do you suggest any other charging mechanisms that have been successfully used to recover costs to Government from the handling and examination of applications for Marine infrastructure consent regardless of the outcome of any such applications?

4.13.1 There were 30 responses to this part of the question; 7 of which included comments in respect of other charging mechanisms that could be considered.

Option	Total	Percent
Yes	7	21.21%
No	23	69.70%

Not Answered	3	9.09%
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4.13.2 Question 13 - Comments box

There were 9 comments received in respect of this question. Suggestions proposed including a Community Infrastructure Levy to fund the impact on the marine and shoreline environment to costs being recovered through the life cycle of the project rather than up-front costs.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department will give further consideration to these suggested charging mechanisms.

4.14 Question 14- Do you agree that elements of an application which are proposed to sit outside the Controlled Marine Area should be considered as part of a Marine infrastructure consent?

4.14.1 There were 29 responses to this part of the question; 22 of which agreed that elements of an application which are proposed to sit outside the Controlled Marine Area should be considered as part of a Marine infrastructure consent with 7 responses not agreeing to this.

Option	Total	Percent
Yes	22	66.67%
No	7	21.21%
Not Answered	4	12.12%

4.14.2 Question 14 - Comments box

There were 17 comments submitted for this question.

Responses to this question were largely supportive of this proposal.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department has determined that there may be, on occasions, circumstances whereby elements of an application proposed that sit outside of the Controlled Marine Area could fall within a marine infrastructure consent, and this is included within the final Regulations.

4.15 Question 15 - Do you believe that it should be limited to some elements of an application for marine infrastructure consent, or should it be applicable to all elements that sit outside the Controlled Marine Area?

4.15.1 There were 23 responses to this part of the question; 8 of which agreed that it should be limited to some element of an application for a marine infrastructure consent and 15 thought it should be applicable to all elements that sit outside the Controlled Marine Area.

Option	Total	Percent
Limited to some elements of an application for Marine infrastructure consent	8	24.24%

Be applicable to all elements that sit outside the Controlled Marine Area	15	45.45%
Not Answered	10	30.30%

4.15.2 Question 15 - Comments box

There were 17 comments submitted for this part of this question.

Responses to this question were mixed. Some respondents were supportive of the proposal that it is applicable to all elements of an application that sit outside the Controlled Marine Area. Some respondents indicated they could not comment or were against the proposal. One respondent suggested that it could be considered on a case by case basis.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department has determined that there may be, on occasions, circumstances whereby elements of an application proposed that sit outside of the Controlled Marine Area could fall within a marine infrastructure consent, and this is included within the final Regulations.

4.16 Question 16 - Are there any specific elements of an application which are proposed to sit outside the Controlled Marine Area that you believe could be considered as part of a Marine infrastructure consent?

4.16.1 There were 25 responses to this part of the question; 11 of which agreed there are specific elements of an application that sit outside of the Controlled Marine Area could be considered as part of a Marine infrastructure consent and 14 not agreeing.

Option	Total	Percent
Yes	11	33.33%
No	14	42.42%
Not Answered	8	24.24%

4.16.2 Question 16 - Comments box

There were 16 comments submitted for this part of this question.

Respondents have suggested elements which could form part of a marine infrastructure consent ranging from —

- small structures that are under a certain size or volume;
- landslide connections/installations for the delivery of the project;
- all planning consent requirements;
- any elements that are part of a structure or infrastructure that lies predominantly within the Controlled Marine Area; and,
- any that relate to marine species that live across the boundaries.

This question has been considered further by the Department's external legal advisor, see Appendix 1 for the response. The Department has determined that there may be, on occasions, circumstances whereby elements of an application proposed that sit outside of the Controlled Marine Area could fall within a marine infrastructure consent, and this is included within the final Regulations.

