

Marine Infrastructure Regulations

Overview

As background, in 2016, the Marine Infrastructure Management Act 2016 ('the Act' or 'MIMA') received Royal Assent. The Act is to make provision for a consenting process for certain activities in the Island marine environment and for connected purposes. In short, the Act applies to the controlled marine area, defined as the area between mean high water mark and the seaward boundary of the Isle of Man territorial sea (within the meaning of the Territorial Sea Act 1987 (an Act of Parliament)). It relates to a specific number of controlled marine areas identified in the Act as:

- a. Offshore renewable energy generation
- b. Aggregate extraction
- c. Laying of submarine cables
- d. Laying of submarine pipelines
- e. Gas drilling
- f. Carbon capture and storage and
- g. Exploration for and exploitation of natural gas and petroleum (within the meaning given by section 9 of the Petroleum Act 1986 (interpretation))

A limited number of provisions have been enacted, and the Department is now in the process of bringing the remaining part of the Act into operation. The Department is to consult on the broad principle that are to be included in the Marine Infrastructure Regulations.

The Department will determine the best way by which to introduce the Regulations, either split into component parts, or as one suite, and will be dependent on legal advice.

Why your views matter

During the passage of the Bill through the Branches, the Department gave a commitment the Department would consult on the secondary legislation resulting out of the Act.

This consultation is a direct result of that commitment. The Department would value any comments in relation to this consultation, all of which will be taken into consideration alongside the advice the Department will receive from its external legal and industry advisors. The Department's final position will be reflected in the finalised Regulations which the Department intends to be ready for the July sitting of Tynwald in 2024.

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

Central Support and Change Division

Department of Infrastructure

Sea Terminal

Douglas

Isle of Man

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?

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- 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)
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(Required)

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

Introductory

The Regulations will explain:

what is meant by certain terms used in the Regulations and

who is to be consulted for certain purposes ('relevant consultees') are either those specified in the Act itself (statutory consultees) or those listed a Schedule to these Regulations

Pre-application and Environmental Impact Assessment (EIA)

The Regulations will set out the procedure to be followed before an application for consent is made. In particular it will deal with:

- a. how Scoping Opinions are drawn up by the Department of Infrastructure at the applicant's request and it will set out the scope, and level, of detail of the information to be provided by the applicant in the applicant's Environmental Impact Assessment (EIA), which will accompany any application for Marine Infrastructure Consent
- b. pre-application consultation to be carried out by the applicant which, under section 10 of the Act, must begin after the issue of the Scoping Opinion and allow at least 40 working days for responses

It is the Department's intention at this stage that the process for scoping the Environmental Impact Assessments will be based on the [Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2017 \(gov.uk\)](#) <<https://www.legislation.gov.uk/uksi/2017/572/contents/made>> adapted and modified, as appropriate to ensure they are relevant for the Isle of Man. However, it should be noted that the Department has now engaged legal advisors as well as industry advisors so the Department will request their views on the inclusion of these principles.

The Department will also consider how the EIA process in the UK is currently being reviewed and will seek to understand the rationale for the revisions proposed. If appropriate, the Department will consider how it could best include some of these revisions within the Regulations. The Department remains committed to ensuring that the MIMA regime is appropriate and proportionate for the requirements of the Isle of Man.

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?

Please select only one item

- Yes
- No

Please explain your view:

List of consultees

Before the Department can issue a Scoping Opinion, by virtue of section 15 of the Act, the Department must consult with the Department of Environment, Food and Agriculture, the Department for Enterprise, Manx National Heritage (Manx Museum and National Trust) and any other person the Department thinks appropriate.

It is the Department's intention, when considering an application for a scoping opinion, that it consults with any neighbouring jurisdiction where the proposed activity could have an effect on the environment of that neighbouring jurisdiction.

As part of the pre-application requirements, section 11 of the Act requires a prospective applicant to consult with the Department (DOI), Department of Environment, Food and Agriculture, Department for Enterprise and any other prescribe persons.

It is proposed that the following are the prescribed persons for the purpose of section 11 of the Act. The Department has identified these consultees on the basis that they are either Departments within the Government, or are statutory providers. The circumstances when the Department would consult with these parties is also included, as are those who are considered as Transboundary consultees (identified as such) for the Department to engage with when considering an application for a scoping opinion (as per section 15 of MIMA):

- **Department of Environment, Agriculture and Food:** In relation to fisheries, marine environment, energy policy, climate change, Planning, Building Control or any relevant International Obligations the Department of Environment, Agriculture and Food has a responsibility to discharge
- **Department for Enterprise:** In relation to applications which may fall within areas of statutory responsibility or in respect of any relevant International Obligations the Department for Enterprise has a responsibility to discharge
- **Cabinet Office:** To include any elements that fall under the provisions of the Town and Country Planning Act 1999 in respect of Planning Policy or anything connected with External Relations (if applicable)
- **Manx Utilities:** In relation to electricity supply, communications and applications proposed within close proximity to the interconnector or for applications which are required to be considered under the MIMA 2016 and may be in close proximity to any MUA outfall pipes
- **Isle of Man Energy:** In relation to developments proposed within close proximity* to the offshore gas pipeline
- **Gas Networks Ireland:** In relation to developments proposed within close proximity to the offshore gas pipeline
- **Manx National Heritage:** In relation to any development proposals which may impact on the Island's cultural heritage, landscape or seascape
- **The Isle of Man Civil Aviation Administration:** In relation to all applications with an element proposed above the sea level
- **Local Authorities:** The Department will determine which Local Authorities to be consulted dependent on the application and the potential impacts from that application

*Distance proximity to be determined

- **Local Lighthouse Authority (DOI):** All applications which have the potential to impact on Safety of Life at Sea
- **General Lighthouse Authority:** All applications which have the potential to impact on Safety of Life at Sea
- **UK Health and Safety Executive:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **Maritime and Coastguard Agency:** All applications which have the potential to impact on Safety of Life at Sea
- **The Marine and Fisheries Agency:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **Marine Scotland:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **Joint Nature Conservation Committee:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **The Crown Estate Commissioners:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **The Crown Estate, Scotland:** In relation to all applications which may have a cross jurisdiction implication - **Transboundary**
- **Ministry of Defence:** In relation to all applications which may have a cross jurisdiction implication or if there could be any impact on areas the MOD exercise within Manx territorial waters - **Transboundary**
- **UK's Civil Aviation Authority:** In relation to all applications with an element proposed above the sea level - **Transboundary**
- **Other jurisdictions for transboundary issues:** Scottish Ministers, Welsh Ministers, Northern Ireland Ministers, Secretary of State (England), Republic of Ireland - **Transboundary**

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

Please select only one item

Yes

No

Please explain your view:

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

Please select only one item

Yes

No

If you said yes, then please list which other consultee(s) you think should be added and for what purpose should they be consulted:

Publication of details

It is the Department's intention that the applicant will be required to publicise details of the proposed activity prior to the submission of their application and indicate where hard copies of the proposed application along with the consultation documents relating to the application can be obtained, and the terms on which they can be obtained.

The applicant would be required to publicise the proposed application in the following publications:

- a. two of the newspapers printed and circulating in the Island
- b. Lloyds List
- c. a trade or professional journal relating to the profession of fishing
- d. whichever of the following is the most appropriate:
 - i. The London Gazette
 - ii. The Edinburgh Gazette
 - iii. The Belfast Gazette
 - iv. Iris Oifiguil and
 - v. a website maintained by or on behalf of the Council of Ministers

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

Please select only one item

- Yes
- No

Please explain your view:

Pre-application environmental information reporting and engagement

The Department is currently determining what should form part of its pre-application process within the provisions of MIMA and is considering whether a Preliminary Environmental Information Report ('PEIR') equivalent should be prepared as part of this pre-application consultation process.

The purpose of the PEIR for some of the English and Welsh projects is to provide early information to allow stakeholders to develop an informed view of the potential impacts of the development and to consider any proposed mitigation measures if they have been put forward by the applicant. This process involves identifying potentially likely significant effects resulting from the projects, allowing them to be avoided or minimised where possible, as well as identifying any potential beneficial environmental impacts. In Scotland, there is no PEIR, and limited statutory consultation prior to application submission. It is recognised that the preparation of the PEIR is an extra requirement to be provided by the applicant at significant expense and requires additional pressures on the stakeholders involved in the process as they need to consider the report, its outcomes and provide sufficient feedback if they determine it would be beneficial to their area of expertise.

The format of such a report presents the findings of the early surveys and assessments that have been carried out and reports on the significance of the results. Consultation on the equivalent in the UK is undertaken by the applicant and allows for early engagement with stakeholders. The outcome should both inform the application as well as forming part of the application submission as part of the consultation report to be submitted in support of the application.

The Department will continue to engage with Industry and legal advisors to understand how pre-application is undertaken in other jurisdictions such as Scotland where there is no PEIR equivalent requirement. Once the consultation closes, the Department will consider all responses along with discussions with its appointed advisors, and will make an informed decision as to what should constitute the pre-application requirements for future applications in the controlled marine area.

Do you agree that a similar process to the PEIR should form part of the pre-application consultation process for Marine Infrastructure Consent?

Please select only one item

- Yes
- No

Please explain your view:

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?

Please select only one item

Yes

No

Please explain your view:

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?

Please select only one item

Yes

No

Please explain your view:

Environmental Impact Assessments (EIA)

It is intended that the Regulations will set out the process for developing, and the content of, Environmental Statements (statements covering an Environmental Impact Assessment of the controlled marine activity in respect of which an application for marine infrastructure consent is sought) and which must accompany such an application.

It is the Department's intention that the process for the preparation of Environmental Statements will be based on the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and adapted and modified, as appropriate to ensure they are relevant for the Isle of Man. There will also be a provision for additional information to be supplied if it has been determined by the Examiner that insufficient information has been submitted in support of an application.

It should also be noted that MIMA requires all applications in respect of controlled marine activities to be accompanied by an EIA. There is no provision for screening of applications, the Department determined that all applications seeking a Marine Infrastructure Consent must be supported by an EIA.

It is the Department's intention that an EIA will be proportionate and applicable to the proposed activity. It should be noted that an EIA will describe and assess the direct and indirect significant effect of the proposed activity on the following:

- a. population and human health
- b. biodiversity, with particular attention to species and habitats protected under Manx law
- c. land, soil, water air and climate
- d. the seabed
- e. material assets, cultural heritage, landscape and the seascape

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?

Please select only one item

Yes

No

Please explain your view:

The application

It is intended that the Regulations will deal with formalities in respect of an application for consent. It will set out what material must accompany an application, and who to give notice of application, as required under section 19(8) of the Act. The Regulations will also specify the content of that notice.

Handling and examination of an application for consent

It is intended that the Regulations will deal with the process to be followed where an application for consent has been received, and verified, by the Department, and forwarded to the Council of Ministers for determination. In particular it will deal with the role of, and procedures to be followed, by, the Examiners who will be appointed to examine the application for consent. It is intended the Regulations will set out the constitution of the Examining Panels, which is a form of Examiners.

Once the application has been forwarded to the Council of Ministers for determination, the Department will be able to participate in the application process as a stakeholder, for example, make representations on the application to the Examiners.

The Council of Ministers must refer the application to a single Examiner or a panel of Examiners, as appointed by the Council of Ministers under sections 26 or 27, respectively, to examine the application and to report back to the Council of Ministers. It is expected that Examiners will be recruited from the UK and will have experience with the types of application to which MIMA applies. This approach is very similar to Inspectors appointed to hear planning appeals under the Town and Country Planning Act 1999. The Examiners will have to be familiar with the UK process for a Development Consent Order under the UK Planning Act 2008, which is what the MIMA is based on. Once the Council of Ministers has accepted an application, the process of public consultation will start, with the ability for individuals or groups to register as an interested party should they feel that they have sufficient interest in the application to do so. It will be at the discretion of the Examiner to consider the request as to whether to include them within the Examination process. This registration could allow that person to participate in the examination of the application by submitting evidence and/or participating in public meetings/specific issue hearings however their participation will be considered by the Examiner(s). The Council of Ministers must also notify relevant consultees that they have accepted the application for examination.

As part of the wider circulation for the public consultation, the Council of Ministers will publish the consultation details and will be:

- for at least two successive weeks in one or more local newspapers circulating around the Island
- once in a UK newspaper
- once in the London Gazette however where it is considered that there may be transboundary issues or interest from neighbouring jurisdictions, the applicant must also publish the information in other Gazettes (for applications specific to Scotland, publish in the Edinburgh Gazette, for Northern Ireland, the Belfast Gazette, and Iris Oifigiúil for the Republic of Ireland)
- once in the Lloyds List and
- once in an appropriate fishing trade journal and
- a website maintained by or on behalf of the Council of Ministers

It is the Department's intention to set out procedural matters within the Regulations relating to preliminary meetings, written representations, specific issue hearings, and public meetings. It will also set out how the Examiners will deal with an accepted application which has an inadequate Environmental Impact Assessment.

The consent

It is intended that the Regulations will deal with the procedure to be followed for the determination of an application, and the duty to inform consultees and the public about the final decision. The Regulations will complement section 36 of MIMA.

Post decision

It is intended that the Regulations will set out the process for non-material changes to a Marine Infrastructure Consent. It is the Department's intention that the process for considering an application for a non-material change to a Marine Infrastructure Consent will be similar in nature to the process for an application for a Marine Infrastructure Consent, apart from the submission of an EIA as this will not be required for a non-material change application. Non-material changes are amendments which are considered to be minor and do not significantly change any Marine Infrastructure Consent already granted.

Subsequent applications

It is intended that the Regulations will set out the process where an applicant makes a subsequent application in respect of a controlled marine activity. It is the Department's intention that the process for considering a subsequent application will be similar in nature to an application for a Marine Infrastructure Consent. An updated EIA will be required to be submitted alongside such application.

Other

It is intended that the Regulations will set out how the Council of Ministers (CoMin) will deal with activities that may have a significant transboundary effect. This is where CoMin is of the view that such an activity is likely to have significant effects on the environment in another country. In these circumstances, the Regulations will set out what CoMin is required to do in order to provide sufficient notice to their neighbouring jurisdictions, request confirmation as to whether they wish to be involved in the process, and when their involvement will be anticipated. Those identified as possible transboundary consultees has been listed on the Consultees section and your views are welcome on the list currently identified.

The Regulations will also set out obligations for the Department and CoMin of placing certain material onto the General Register including a Marine Infrastructure Consent.

Exemptions

The Department is currently considering whether it is appropriate to exempt some activities from the requirement of a Marine Infrastructure Consent, all of which will be subject to advice and based on experiences from elsewhere. It should be noted that if the Department formalised any exemptions from the requirement of Marine Infrastructure Consent, the extant legislation will apply to those activities. By exempting certain activities under the provisions of MIMA 2016 does not mean that any exemptions will not still be subject to consenting and approval requirements under other Acts (as they apply to the Island and its territorial sea), and cannot be undertaken without those relevant consents having been sought from the relevant Departments.

The Department is also seeking confirmation from its external legal advisors as to whether the inclusion of 'Exploration for and exploitation of natural gas and petroleum (within the meaning given by section 9 of the Petroleum Act 1986 (interpretation))' should remain within the provisions of MIMA or should the Department revert to using the provisions of the Petroleum Act 1986 and the Seaward Innovate Production Licence. It had been the Department's intention that by including it within MIMA, it would provide a robust, transparent consenting regime. However, initial discussions with the legal advisors have led the Department to reconsider if this is the most appropriate means for this particular activity. As such, whilst the Department is seeking your comments in respect of these proposed exemptions, depending on the final advice provided to the Department from its external advisors, it might not be relevant should it be determined that the exploration for and exploitation of natural gas and petroleum is to be excluded from MIMA, and the Department would seek to remove by way of an order, as permitted under section 6 of MIMA. The Department will work alongside the legal advisors to understand how such projects should and could be considered appropriately.

The Department will continue to work with its legal advisor and industry advisor to refine this list of proposed exemptions and the Department's final position will be formalised in the Regulations as they are presented into the Tynwald process. Should it be determined that the list of controlled marine activities also needs to be refined, this will be presented as part of this suite of legislation.

The Department proposes that the Regulations could exempt the following from the requirement for Marine Infrastructure Consent:

- a. survey work including geological and geophysical
- b. works in respect of existing outfall pipes
- c. activity site repairs and works to and in respect of existing cables and pipelines
- d. the deployment of a platform or drilling rig when used for the purposes of exploration for a period not exceeding 40 days
- e. the drilling of 6 exploration wells within a defined area
- f. the drilling of a side-tracked well and
- g. the extraction of aggregate for the purposes of flood risk management for the Lhen Trench

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)?

Please select only one item

- Yes
 No

Please explain your view:

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)?

Please select only one item

- Yes
 No

If yes, please list which other activities you feel should be exempted from requiring a Marine Infrastructure Consent:

Fees

It is the Department's intention that the consent process is cost neutral, as much as possible, to Government. Therefore, the Department will be making Regulations under section 53 of the Act to set out the fees in connection with the performance of functions under the Act. It is also the Department's intention to recover costs from the applicant to:

- a. cover the cost of the venue for any examiner where the applicant does not provide a venue and
- b. cover the cost of appointment of Examiners, by providing an application fee, a pre-examination fee and a fee for the handling of the application

The Regulations in respect of fees, closely align with the fees as currently being charged for the submission of similar applications through the UK Planning Inspectorate.

For ease of reference the following sections show the fees that are applicable to an application for a [Development Consent Order in the UK for Nationally Significant Infrastructure Projects](#) <<https://infrastructure.planninginspectorate.gov.uk/application-process/application-fees/>> (such as offshore wind farms etc), as from 1 April 2023.

Fee in respect of applications for authorisation under sections 52 and 53

A request for authorisation under section 52(2) (information about interests in land): **£1,835**

A request for authorisation under section 53(1) (rights of entry): **£1,835**

Fee to accompany application

The Planning Inspectorate must charge the Applicant a fee in respect of the decision by the Secretary of State under section 55 (Acceptance of applications) whether or not to accept the application. The fee must accompany the application:

Fee to accompany application: **£8,244**

Pre-examination fee

Following a decision under section 61 (Initial choice of Panel or single Inspector) the Planning Inspectorate must notify the Applicant in writing of the Pre-examination fee.

The Pre-examination fee is:

Single Inspector: **£23,863**

Panel of two Inspectors: **£39,464**

Panel of three Inspectors: **£55,065**

Panel of more than three Inspectors: **£78,926**

***Initial payment in respect of the handling of an application**

Where an examination is handled by a single Inspector: **£1,129** per estimated relevant day

Where an examination is handled by a panel of two Inspectors: **£1,795** per estimated relevant day

Where an examination is handled by a panel of three Inspectors: **£2,460** per estimated relevant day

Where an examination is handled by a panel of more than three Inspectors: **£3,745** per estimated relevant day

Final payment in respect of the handling of an application

Following notification of the completion of the Examination stage under section 99. The final payment is dependent on the number of days actually required for the examination:

Where a single Inspector has examined the application: **£2,258** per relevant day*

Where a panel of two Inspectors has examined the application: **£3,590** per relevant day*

Where a panel of three Inspectors has examined the application: **£4,919** per relevant day*

Where a panel of more than three Inspectors has examined the application: **£7,490** per relevant day*

*Less the initial payment

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?

Please select only one item

Yes

No

Please explain your view:

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?

Please select only one item

Yes

No

Please explain your view:

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?

Please select only one item

Yes

No

Please explain your view:

Cross-jurisdiction works

It is important to note that the Act applies to the Controlled Marine Area, defined as the area between mean high water mark and the seaward boundary of the Isle of Man territorial sea (within the meaning of the Territorial Sea Act 1987 (an Act of Parliament)); however, the Act allows the Department to make provision in relation to work or proposed works which are carried out, or are proposed to be carried out, partly in the controlled marine area and partly outside it.

The Regulations may, in particular:

- a. provide for a provision of the Act or another enactment to apply with or without modifications and
- b. provide for a provision of the Act or another enactment not to apply

The Department is currently proposing that activities extending into areas outside of the controlled marine area may be included within an application for a Marine Infrastructure Consent ('MIC') based on the fact that the greater part of the application is within the controlled marine area. This approach would be very similar to the process for obtaining a Development Consent Order for the Nationally Significant Infrastructure Projects in the UK. This would potentially provide a single consent for the whole project for an applicant instead of having to obtain separate consents and approvals in different ways and under different legislative systems, specifically, a MIC for activities in the Controlled Marine Area and planning approval for any works landward side of the Mean High Water Mark.

This could provide a robust consenting regime where there is better opportunity for wider, stakeholder engagement and the legal requirement for EIA with CoMin making the final decision.

The Department is continuing discussions with the legal and industry advisor but we welcome your thoughts on this which will feed into our overall final decision.

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?

Please select only one item

Yes

No

Please explain your view:

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?

Please select only one item

- Limited to some elements of an application for Marine Infrastructure Consent
- Be applicable to all elements that sit outside the Controlled Marine Area

Please explain your view:

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?

Please select only one item

- Yes
- No

Please explain your view: