

## **MARINE INFRASTRUCTURE POST CONSENT REGULATIONS CONSULTATION DOCUMENT**

The Department is in the process of bringing the remaining parts of Marine Infrastructure Management Act 2016 ("MIMA") into operation and the next stage is by way of the preparation of these post consent Regulations. The Regulations will set out what happens once a consent has been granted but where an applicant determines they wish to request some amendments to that consent, whether they be non-material or material changes, or for the implementation of that consent, as per sections 42-49 of MIMA.

The Department will determine which of these Regulations it will introduce and when. Specifically, the Regulations may provide for —

- (a) the processes and requirements in respect of non-material change (section 42), and material change applications and revocation (section 43);
- (b) consultation for applications for non-material change and material changes and revocation;
- (c) implementation plans including their form and content (section 45);
- (d) the powers of entry (section 47) that are required as part of the implementation of a consent granted under the Act;
- (e) confirmation of compliance (section 48); and,
- (f) remedial works (section 49).

### **CONSULTATION PROCESS**

It is the intention of this consultation that the principles proposed to be included within the forthcoming Regulations will be outlined and views sought on those. Once all views have been considered, and any required amendments made to the Regulations, the Department will prepare the final version of the Regulations and proceed with making them and laying before a future sitting of Tynwald. At this time, there is no commitment that all of the relevant provisions of the MIMA to which this consultation relates will be brought forward at the same time, if at all. Further work will likely be required for some of the provisions, however, views are being sought on the current principle proposals. If these change, it will be as a result of this consultation, or advice to the Department from external legal or industry advisors.

## **INTRODUCTION**

It is the Department's intention that where appropriate the overarching principles set out below are applied to preparation of the Regulations:

- **Overarching Principle 1 – Align as closely as possible to existing UK legislation for similar projects.**
- **Overarching Principle 2 – Use similar provisions and principles to those already enacted in the MIMA Consenting Regulations.**

The rationale is that the UK legislation is well established, and well understood for these projects which will be consented for under MIMA. The Marine Infrastructure (Consenting Process) Regulations 2024 ("MIMA Consenting Process Regulations") and provisions are already enacted, they have been prepared based on both industry and legal advice, and were informed by a public consultation. In addition, an applicant and relevant stakeholders will be familiar with these as part of the original Marine Infrastructure Consent being granted and as such, there is an understanding of the process rather than introducing a different mechanism for these post consent applications.

The Department will continue to review this approach as part of the preparation of these Regulations. At this stage, it is likely that what will be included from both the UK and MIMA Consenting Process Regulations will relate to the manner by which notices and statements etc will be published, the identification of stakeholders for the process, the way in which the application will be Examined and determined (including the appointment of independent Examiners, the types of meetings they will hold etc as well as the preparation of their report with recommendation being provided to Council for its decision).

**Q1 – Do you agree that these Regulations should align as closely as possible with similar provisions in UK legislation for these types of applications?**

**If you do not agree, please provide your reasons.**

**Q2 – Do you agree that, where possible, similar provisions as included within the MIMA Consenting Process Regulations should be included in these Regulations?**

**If you do not agree, please provide your reasons.**

## **REQUIREMENT FOR ENVIRONMENTAL IMPACT ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS**

### **Material Change application**

For material change applications, which are changes that represent a significant deviation from the original consent, the Department intends to follow the provisions already included within the MIMA consenting regulations. This will mean that all material change applications must be accompanied by an Environmental Impact Assessment (EIA) and Environmental Impact Statement (EIS).

### **Non -Material Change application**

A non-material change application is one that does not depart too far from the original consent that has been granted, and does not change much in principle in respect of the project that has been granted consent.

The well-established system in operation in the UK does not require an Environmental Impact Assessment (EIA) (including the resultant Environmental Impact Statement (EIS)) to be submitted for a non-material change application. The Department, in line with the principles set out above, intends to align with this approach.

An EIA will have been submitted in support of the original application and will have been examined as part of the process, prior to consent being granted by way of a Marine Infrastructure Consent. The purpose of this non-material change application will be to request a change to a non-material element of the consent that has already been granted, and given that it is deemed to be non-material, there will be no requirement for an EIA (or EIS) to be submitted.

This is consistent with the approach in the UK whereby an applicant is required to supply "any documents and plans considered necessary to support the application" but this does not need extend to an EIA or EIS.

**Q3. Do you agree that the regulations should make provision that applications for non-material changes do not need to be accompanied by an EIA or EIS?**

**If you do not agree, please provide your reasons.**

## **CONSULTATION REQUIREMENTS**

For non-material and material change applications, the Department is proposing that there is limited pre-application consultation undertaken by the applicant. This will follow a similar format to that in the UK but modified, as appropriate, so that it is relevant for the Isle of Man.

It will be the responsibility of the prospective applicant to publicise the notice of the application. The notice will include a summary of the main elements of the application, where the documents will be available to view and details as to how to respond to the publicity including a deadline for receipt of these responses to be returned. The manner by which the notice is to be published will follow provisions included within the MIMA Consenting Process Regulations.

In addition to this publicity, the applicant will be required to consult specified persons and these persons will be set out in the Regulations or can be confirmed upon the applicant's request. It is likely that these specified persons will be those already identified in the MIMA Consenting Process Regulations, and were involved in specific steps as part of the original consent. This aligns with both the UK and the provisions already included within the MIMA Consenting Process Regulations in terms of pre-application consultation.

Depending on the type of application, there may also be a requirement that an applicant must also supply the Council of Ministers or other Departments of the Isle of Man Government with the same information that it will supply to all other pre-application consultees (or specified persons) and this must be done either on or before commencing consultation with other stakeholders.

Confirmation that both of these requirements have been fulfilled will likely be required to be submitted by the applicant alongside applications, as is consistent with the UK requirements.

**Q4. Do you agree with how the Department intends to include pre-application consultation for non-material and material change applications within the Regulations?**

**If you do not agree, please provide your reasons.**

## **HANDLING, EXAMINATION AND DECISION OF AN APPLICATION FOR CONSENT FOR NON-MATERIAL OR MATERIAL CHANGE**

At the beginning of the application process, the Department is proposing that confirmation is required as to whether an application is non-material, material or whether a new application should be submitted. The intention is that a prospective applicant will seek confirmation as to the intention of their application to assist with its preparation. This is considered to be time efficient as it will provide early clarity as to whether the change is deemed to be material or non-material, or if a new application is required. In order for this to be done, it is proposed that an overview of the change application is submitted along with any relevant information to support that position. If there is a cost implication to this, the Department is proposing that a fee is charged for this step in the process.

This proposal is a slight deviation from what happens in the UK whereby applicants are encouraged to discuss their application with the UK Planning Inspectorate prior to submission. There are no similar provisions in the MIMA Consenting Process Regulations as it is not required for the initial application for Marine Infrastructure Consent. This confirmation would provide comfort for both the applicant and those involved in the process that the correct type of application is being submitted for the changes being requested. Such a confirmation is more beneficial prior to the preparation of the application rather than an application submitted to realise it should have had an EIA accompany it, for example, and then pre-application consultation etc would be required to be undertaken again.

**Q5. Do you agree that the Regulations include that confirmation is required as to the type of application to be submitted, and any costs incurred will be covered by the applicant?**

**If you do not agree, please provide your reasons.**

For the assessment of a non-material change application, the Department is proposing that an Independent Examiner will determine how to consider the application. This is likely to be by way of the written representations and considering responses to the above consultation only. There will be no requirement for Public Meetings, Hearings etc given that the application should be relatively minor in terms of the changes to the marine infrastructure consent. Should the Examiner require any additional information or clarification, they shall have the power to request that from any party.

For the assessment of a material change application, the Department is proposing that the similar provisions already included within the MIMA Consenting Process Regulations will be included as part of the process for material change applications. This will include the provisions relating to the referral of the application by Council to independently appointed Examiners, provisions around their appointment and how they will undertake the examination, written representations and the process by which the Hearings, Public Meetings etc will be conducted by the Examiners and the opportunities for participation in this process. Timescales will also be included as part of these Regulations where possible however it is likely that there will be flexibility available for altering these timescales. This is a process that will already have been followed by an applicant, and anyone else as part of the original Marine Infrastructure Consent so there is a familiarity with it.

In both instances, once the assessment of the application has been completed, the Examiner will then provide Council with a report containing a recommendation for its review. Council will consider this report and recommendation and will make a decision on the application. The same process will be followed as it did for the original consent – the decision will be made by Council, the applicant and relevant consultees etc will be notified, and the decision will then be made public. If the original consent was made by Order, the change must be made by Order, and it will then be submitted into the Tynwald process for approval at a future sitting of Tynwald.

Whilst this is a departure from the UK process, this is the process provided for in the MIMA Consenting Process Regulations in terms of the Examination and Decision making process for a MIMA application.

**Q6. Do you agree that the Regulations will provide for Independent Examiners to examine the applications and provide a report with a recommendation to Council?**

**If you do not agree, please provide your reasons.**

## **FEES**

The Department will work with colleagues as well as industry advisors to determine the correct level of fees to be paid for these applications. This will take into consideration the provisions of the UK legislation as well as what is included within the MIMA Consenting Process

Regulation fees to ensure adequate cost recovery to Government incurred in the assessment and determination of any applications.

**Q7. Do you agree that the Regulations should include fees for these applications and that these should be set at a level that represents cost recovery to Government?**

**If you do not agree, please provide your reasons.**

In addition to the proposals above in respect of the non-material and material change applications, the Department also wishes to consult on other post consent provisions. The requirements within MIMA are that the Department “may” make these Regulations. As such, the following are going to be explored and further considered with input from the Department’s advisors, and if it is determined that they should be enacted, they will be included as part of this set of Regulations. If further work is required, they may follow as an additional set of Regulations.

Should you wish to provide any commentary on the below, the Department will take this into account. The Department will however report in its consultation report as to whether it intends to pursue these provisions by way of Regulations.

**Section 45 Implementation Plan** – this sets out that prior to undertaking any work in reliance on a marine infrastructure consent, the person proposing to carry out the work must submit to the Department a detailed plan of the work to be carried out. This plan will be required to be submitted in writing, and it is the intention that this plan may include, but will not be limited to, the reference to some of the specific conditions, requirements or mitigation measures that it seeks to implement from the Marine Infrastructure Consent, any sequencing or timescales associated with these as well as any engagement with stakeholders or other bodies that might be required to fulfil this. It is likely that it will also set out the construction scheduling. Further consideration of this requirement is needed, and work will be supported by the Department’s industry advisors.

**Section 47 Powers of Entry** – it is the intention that there will be consideration of this alongside powers already provided for in Section 18 of MIMA. Where additional powers are required in order to ensure the appropriate support for the enforcement of any conditions of

a Marine Infrastructure Consent, the Department will ensure that these are provided for in forthcoming regulations.

**Section 48 Confirmation of compliance** – further consideration is required in respect of this provision, however, it is likely that the Department will ensure that there is provision for conditions to be discharged with the assistance of relevant Departments. Ultimately the enforcement of the Marine Infrastructure Consent is the responsibility of the Department, but engagement with other Departments with responsibilities for various aspects of the territorial sea will be undertaken as and when appropriate to do so before the Department confirms compliance.

**Section 49 Remedial Works** - at this time, the Department is not minded to pursue the preparation of Regulations under this provision and seek to rely on the powers within the MIMA solely. However, further engagement with its industry advisors is required to explore the requirements of this provision.

**Q8. Have you any comments you wish to submit in respect of these additional post consent requirements?**