

ENERGY, INFRASTRUCTURE & NATURAL RESOURCES
/ ENVIRONMENTAL & PLANNING

New Irish Maritime Area Planning (MAP) legislation signed into law

The innovative and important MAP legislation was passed by both houses in the Irish legislature in late December, and the President signed it into law on 23 December 2021

The MAP Act provides for new consenting processes for foreshore licences, foreshore leases and planning permissions for various marine projects, including offshore renewable energy infrastructure. It also creates a new regulatory authority, and a regime for designating protected marine areas.

7 MIN READ

In particular, this ambitious legislation provides a “fit for purpose” mechanism for the consenting of offshore renewable energy projects in a way that complies with European environmental assessment obligations, facilitates Aarhus Convention-compliant public participation, and gives Ireland a realistic chance of delivering new renewable energy sources allowing it to meet its 2030 climate change targets. .



Maritime Area Regulatory Authority

The MAP Act establishes a Maritime Area Regulatory Authority (**MARA**). MARA will take over responsibility from the relevant Government Minister¹ for the issuing of licences to conduct surveys in the marine environment (currently termed foreshore licences in Ireland, equivalent to England’s seabed survey licences). MARA will have the power to grant Maritime Area Consents (**MACs**) – the equivalent of foreshore leases in Ireland or England’s Crown Estate Lease. MARA will also have various enforcement functions. MARA’s functions will transition across once it is set up and resourced, and the Minister will be entitled to grant applications for licences and MACs in the interim.

Representatives in the Seanad (the lower house of the Oireachtas) emphasised the need to ensure that MARA is adequately resourced and staffed. It was announced in the Seanad that an implementation committee for the establishment of MARA has been set up, which will begin work in shortly. This committee has been allocated a budget of €2m. The Minister intends to move ahead with the appointment of a chairperson and interim Board for MARA, and to advertise for a CEO.

Licensing for marine surveys

While the Minister will continue to process foreshore licence applications for marine surveys pending the setting up of MARA, that function will then transfer to MARA. The MAP Act provides for a regime that includes public participation and environmental assessment as part of that application process. The conditions that can attach to such a licence are set out in Schedule 8 of the MAP Act and are very similar to those that currently apply to foreshore licences.

Licensing for aquaculture activities will continue to be processed for the time being by Minister, but is intended to transfer this function to MARA in future.

Maritime Spatial Planning and Designated Maritime Area Plans

The MAP Act expands on the existing regime for maritime spatial planning, required under the European Union Maritime Spatial Planning Directive. The Government issued the first such spatial plan - the National Marine Planning Framework (the **NMPF**) – at the same

¹ The Minister for Housing, Local Government and Heritage, currently Darragh O’Brien TD

time as the publication of the MAP Bill. The NMPF sets out various objectives and policies to guide activities and development in the offshore area. The MAP Act requires a review of the NMPF no later than six years following the publication of the first NMPF, but in response to concern about the length of that first review, the Government has indicated to stakeholders that that first review will take place within two years.

Public bodies must comply with the objectives of the NMPF when carrying out their functions. This obligation applies in particular to authorities responsible for issuing any authorisations/consents for offshore activities. In addition, the MAP Act allows for the establishment of “Designated Maritime Area Plans” (DMAPs). DMAPs are specific parts of the maritime area that will be designated for particular “maritime usages”. Applications for MACs within these DMAPs will be subject to a specific process for “special MAC cases” provided for under the MAP Act.

Minister O’Brien has also indicated that separate legislation is underway for the designation of far more “Marine Protected Areas”. This was a particular concern raised

by Elected Representatives during the Dáil and Seanad debates. A general scheme of this legislation is currently being developed, with work on this new framework expected to continue into 2022.

Maritime Area Consent (MAC) regime

A MAC is a new “State consent” to allow for the occupation of a specified part of the maritime area. The current equivalent is a “foreshore lease” and it is similar to a Crown Estate Lease in England. Such occupation may be on an exclusive or non-exclusive basis. Once established, MARA will be the authority responsible for determining MAC applications. Until then, the relevant Minister will exercise MARA’s functions and powers in relation to MACs. Any decisions made under those transitional provisions will be carried forward once MARA is set up. A MAC serves as a “gateway” into the development consent system. Developers are required to hold a MAC before they can apply to An Bord Pleanála (the national planning Board in Ireland) (the **Board**) for development permission.

Some “special MAC cases” can be invited

by the Minister to apply for the first MACs. These provisions apply to the seven so called “relevant projects” announced on 19 May 2020. Specifically, these are offshore renewable energy projects which were, as of 31 December 2019, either the subject of an application for a “foreshore authorisation” (ie, a foreshore lease under the Foreshore Act 1933); or already held a foreshore authorisation; or had a valid connection agreement from a transmission system operator (or confirmation of eligibility for such an agreement). The stated hope of the Irish Government (announced when launching its draft Climate Action legislation) is that many of these projects will be consented and operational so as to deliver 5 GW of offshore wind energy and help Ireland meet its 2030 climate targets.

The criteria to be applied when determining whether to grant a MAC are set out in Schedule 5 of the MAP and are focused on the applicant rather than the project itself. These criteria include factors such as:

- whether the proposed usage is in the public interest
- any relevant Ministerial guidelines



- whether the developer is a “fit and proper person” (which includes an assessment of technical and financial competence and is detailed in Schedule 2)
- Consistency of the project with the NMPF, and
- the nature and extent of any preparatory work already undertaken by the developer, including stakeholder engagement

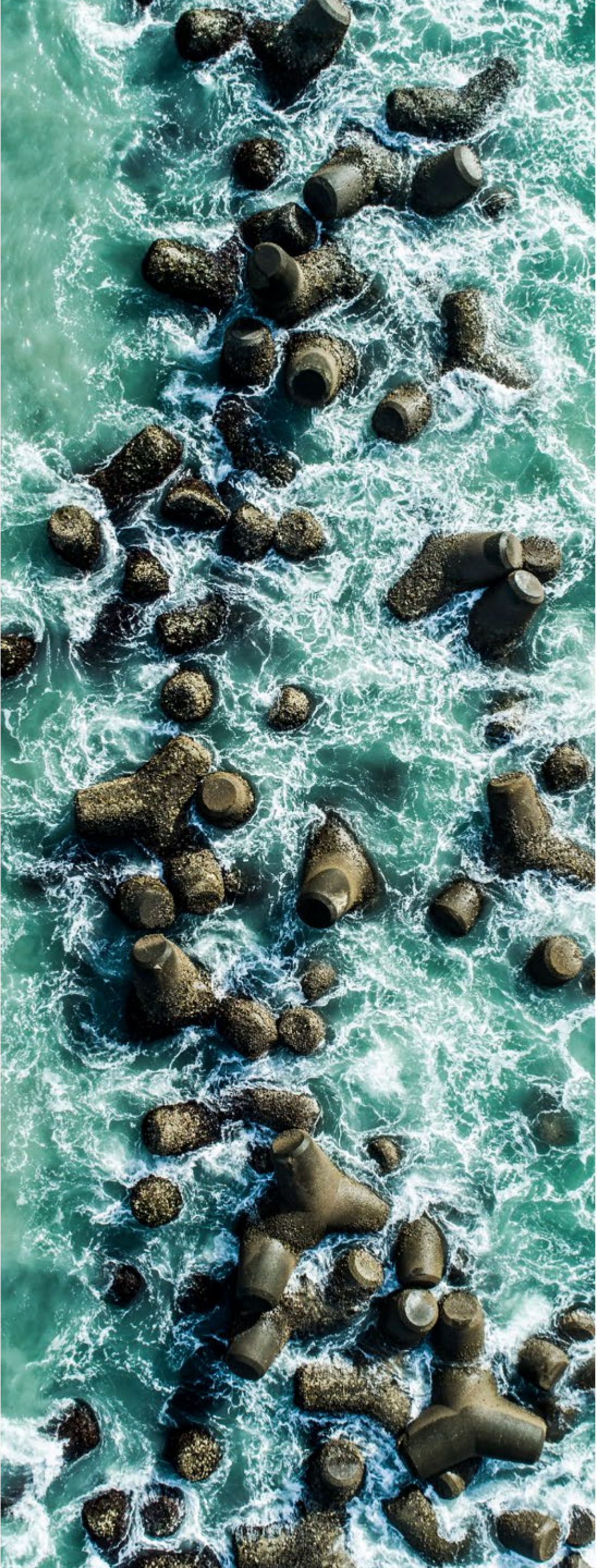
The MAP Act requires decisions on MAC applications to be made within 90 days. The MAP Act does not provide for public participation, appropriate assessment or environmental impact assessment in relation to MAC applications on the basis that a MAC is not a “development consent” for the purposes of the applicable EU requirements. However, evidence of stakeholder engagement on the project is one of the Schedule 5 criteria, which the Minister/MARA must take into account when deciding whether to grant a MAC. MARA can attach conditions to a MAC, as set out in Schedule 6.

Development Consent

The MAP Act requires specified categories of marine development, including in particular offshore renewable energy projects, to obtain planning permission under the existing Planning and Development Act 2000 (the **PDA**), amended by the MAP Act for that purpose. The Board will be the decision-maker for offshore renewable energy projects applications. The consenting regime is closely modelled on the existing consenting regime for onshore strategic infrastructure development (termed **SID**) which applications are also made straight to the Board.

Important features of the regime include the following:

- the Minister may direct the Board to “give priority” to applications for particular classes of activities
- the Board must hold pre-application discussions with developers, and may give them directions regarding applications for planning permission



- the Board may hold oral hearings, and must facilitate public participation
- the Board must conduct whatever environmental impact assessment and/or appropriate assessment is required, and
- the Board must give reasoned decisions, within 18 weeks of the application being lodged or such later period as it requires

As for SID development, there is a process for the Board to approve both “material” and “non-material” amendments to a planning permission (subject to potential environmental assessment and public participation obligations in relation to material amendments) after the decision has been made. The need for such amendments often arises during the implementation of such permissions.

In addition, the MAP Act extends the PDA regime to a proposed “nearshore area”, which is still to be designated (but by default will comprise the area extending three nautical miles from the high water mark). Certain activities within the nearshore area will require planning permission under the PDA, with the adjacent local authority -

referred to as a “Coastal Planning Authority” – rather than the Board, responsible for processing such applications.

Ministerial Guidelines and policy directives

The MAP Act allows the Minister to issue “*Marine Planning Guidelines*” to public bodies. Those bodies must generally “*have regard to*” such Guidelines in performing their functions. Those Guidelines may contain “*specific marine planning policy requirements*”, which public bodies must comply with when discharging their functions. The MAP Act also empowers the Minister to issue “*policy directives*” and affected public bodies must comply with such directives in the performance of their functions. This framework is very similar to existing provisions for land based planning.

Judicial review

The MAP Act provides for challenge by way of judicial review both of decisions of the Minister/MARA regarding MAC applications and licences, and decisions of the Board to grant permission to an offshore development. This process is subject to the

challenger first demonstrating “substantial grounds” and a “sufficient interest”, and taking the challenge in the High Court within 8 weeks of the decision, ie the same regime as applies under the PDA.

As is also the case under the PDA, the MAP Act provides that an appeal to the Court of Appeal is only available if the High Court is satisfied that the decision involves a point of law of exceptional public importance, and it is desirable in the public interest that an appeal be taken. Appeals to the Supreme Court need that court’s consent. What is novel is that the MAP Act provides that, even if a MAC is challenged by way of judicial review, the developer may still apply for, and the Board may grant, a development permission. However, such permissions will not come into effect until the judicial review proceedings on the MAC have concluded and the permission remains legally valid.

Next steps

The MAP Act has now been signed by the President and will be formally commenced in early course. It is likely that the Minister will invite the first applications for MACs

shortly, and the first MACs will likely issue in Q2 2022 with the first planning applications for offshore renewable energy projects likely to go to the Board in late Q2/early Q3 2022. The Offshore Renewable Energy Development Plan of 2014 is under review and OREDP 2 is likely to be brought forward in 2022, in tandem with the finalisation of the framework for Marine Protected Areas. We will be issuing further updates on relevant issues as they arise.

For more information please contact [Alison Fanagan](#), [Alan Roberts](#), [Ross Moore](#), [John Dallas](#) or any other member of ALG’s [Environmental and Planning](#) or [Energy, Infrastructure and Natural Resources](#) teams.



Key contacts



Alison Fanagan
Consultant
+353 1 649 2432
afanagan@algoodbody.com



Alan Roberts
Partner
+353 1 649 2108
aroberts@algoodbody.com



Ross Moore
Partner
+353 1 649 2117
rmoore@algoodbody.com



John Dallas
Partner
+353 1 649 2937
jdallas@algoodbody.com

Resources



National Marine Framework

READ MORE



Seven offshore wind projects
given relevant project status

READ MORE