

ENERGY, INFRASTRUCTURE & NATURAL RESOURCES
/ ENVIRONMENTAL & PLANNING

The Maritime Area Planning Bill is published!

The Irish Government published a pre-initiation version¹ of the [Maritime Area Planning Bill \(MAP Bill\)](#) on 29 June 2021. It has been long awaited and is welcome.

It will overhaul Ireland's legislative framework for planning, development management and enforcement in the maritime area. The Bill is expected to be expedited through the legislative process, following closely on the heels of the [Climate Action Bill](#).

5 MIN READ

The Bill provides for new consenting processes for foreshore licences and planning permission for offshore infrastructure projects, as well as creating a new regulatory authority and a regime for designating protected marine areas. This ambitious legislation will provide a mechanism for the consenting of offshore renewable energy projects in a way that complies with European environmental assessment obligations, facilitates public participation and gives Ireland a realistic chance of meeting its 2030 climate change targets.

“This ambitious legislation aims to provide a mechanism for the consenting of offshore renewable energy projects



Maritime Area Regulatory Authority

The MAP Bill establishes a new Maritime Area Regulatory Authority (the **MARA**), which is responsible for issuing the equivalent of foreshore licences or the UK’s seabed survey licences (for the carrying out of surveys in the marine environment), as well as Maritime Area Consents (**MACs**) – the equivalent of foreshore leases or the UK’s Crown Estate Lease, under the new regime. It also has various enforcement functions. The MARA will take over functions previously carried out by the relevant Government Minister², and those functions will transition across once the MARA is set up and resourced.

Licensing for marine surveys

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

Maritime Spatial Planning and Designated Maritime Area Plans

The MAP Bill 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**) - concurrently with the publication of the MAP Bill. The NMPF sets out various objectives and policies to guide activities and development in the offshore area.

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 eg the MARA. In addition, the MAP Bill provides for the establishment of “Designated Maritime Area Plans” (**DMAPs**). DMAPs are specific parts of the maritime area that are 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 Bill.

¹The current version of the Bill that is available is a “pre-initiation” draft. This version will be replaced with a “published version” once available, which may include further technical amendments.

²The Minister for the Housing, Local Government and Heritage, currently Darragh O’Brien TD.

Ministerial Guidelines and policy directives

The MAP Bill 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 Bill 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.

Maritime Area Consent regime

The MAC process provides for 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 the UK. Such occupation may be on an exclusive or non-exclusive basis. Once established, the MARA will be the authority responsible for determining MAC applications. Until then,

the relevant Minister will exercise the MARA’s functions and powers in relation to MACs. Any decisions made under those transitional provisions will be carried forward once the 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 were subject to 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 5GW of offshore wind energy and so help it meet its 2030 climate targets.

The criteria to be applied when determining whether to grant any MAC are set out in Schedule 5 of the MAP Bill. As anticipated, 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 with the NMPF; and
- The nature and extent of any preparatory work already undertaken by the developer, including stakeholder engagement.

The MAP Bill requires decisions on MAC applications to be made within 90 days.

As expected, the Bill does not provide for public participation, appropriate assessment or environmental impact assessment in relation to the MAC process (as a MAC is not a “development consent” for the purposes of the applicable EU requirements). However, stakeholder engagement is one of the Schedule 5 criteria, which the Minister/ MARA must take into account when deciding whether to grant MAC. The MARA can attach conditions, as set out in Schedule 6.





Development Consent

The MAP Bill requires specified categories of offshore 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 Bill for that purpose. The Board will be the decision-maker in relation to any such applications. The regime proposed is very closely modelled on the existing consenting regime for onshore strategic infrastructure development termed **SID**.

Important features of the proposed 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 there is 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 may arise during implementation of a permission.

In addition, the MAP Bill 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” - responsible for processing such applications.

Judicial review

The MAP Bill 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 is subject to the challenger demonstrating “substantial grounds” and a “sufficient interest” and taking the challenge within 8 weeks of the decision. It is noteworthy that even if a MAC is challenged by way of judicial review, the developer may proceed to apply for a development permission. However, that permission cannot be granted until the judicial review proceedings on the MAC have concluded.

The judicial review rules are generally the same as those under the PDA. One key difference is that, where there is a desire to appeal the High Court decision, not only is a certificate or leave required but it appears that any such appeal can only proceed to the Supreme Court (ie, it bypasses the Court of Appeal). This process and the associated requirements will require some clarification.

Next steps

A final draft of the MAP Bill is being prepared, and will be introduced to the Oireachtas/Houses of Parliament shortly. The Bill is due to be debated in the Dáil (Lower House) in the week commencing 12 July 2021, but no date has yet been set. The MAP Bill is substantial, and makes a number of other changes to Ireland’s planning and environmental management system for offshore developments and other relevant legislation (including establishing the legislative basis for the licensing of an offshore transmission system owner). We will be issuing further updates on relevant issues as they arise.



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

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