

ENERGY, INFRASTRUCTURE & NATURAL RESOURCES
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The Maritime Area Planning Bill advances

5 MIN READ

The Maritime Area Planning Bill (the **MAP Bill**) continues its progress through the Irish legislature. It has now completed the “second stage” in the Dáil (lower house), which involved debate on the general principles of the Bill. Broadly speaking, there was support in the Dáil for the legislation.

Representatives expressed some concerns regarding the need for adequate time to debate the Bill, and to ensure that maritime designations and protections are put in place before permissions for development are granted. The MAP Bill now moves to the Select Committee for Housing, Local Government and Heritage for detailed examination and proposed amendments, and the relevant Government Minister¹ is hopeful that the legislation can be finalised before year end.

The MAP Bill 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. In particular, this ambitious legislation aims to provide a 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.



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Maritime Area Regulatory Authority

The MAP Bill establishes a new Maritime Area Regulatory Authority (MARA). MARA will take over responsibility from the relevant Government Minister² for the issuing of licences to conduct surveys in the marine environment (currently termed foreshore licences in Ireland, equivalent to the UK’s seabed survey licences). MARA will also have the power to grant Maritime Area Consents (MACs) – the equivalent of foreshore leases in Ireland or the UK’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.

Licensing for marine surveys

While the Minister will continue to process foreshore licence applications for marine surveys pending the set-up of MARA, that function will then transfer to 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 currently apply 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) – at the same 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.

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

²The Minister for Housing, Local Government and Heritage.

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, 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 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 5 GW 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. 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.

The MAP Bill does not provide for public participation, appropriate assessment or environmental impact assessment in relation to the MAC application process (as a MAC is not a “development consent” for the purposes of the applicable EU requirements). However, evidence of stakeholder engagement is one of the Schedule 5 criteria, which the Minister/ MARA must take into account when deciding whether to grant MAC. MARA can attach conditions to a MAC, 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 proposed regime 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” – rather than the Board, responsible for processing such applications.

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.

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 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, i.e. the same regime as applies under the PDA.

As is also the case under the PDA, the MAP Bill 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 Bill 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 do not come into effect until the judicial review proceedings on the MAC have concluded.

Next steps

The MAP Bill now progresses to the Committee Stage. This stage involves a detailed section-by-section examination of the Bill. There is an opportunity for Government and opposition members and other stakeholders to propose changes to the text. Once that stage is complete, the Committee will report back to the Dáil, and the MAP Bill will proceed to a final vote in the Dáil. Once the Bill passes the Dáil, it will be sent to the Seanad (upper house) for consideration. We will be issuing further updates on relevant issues as they arise.



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