

Maritime Area Planning Bill 2021

Bill No. 104 of 2021

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Abstract

The Maritime Area Planning Bill 2021 provides the legislative framework for a new streamlined development consent process for activities in the maritime area including offshore renewable energy projects. The Bill will also establish a new body, the Maritime Area Regulatory Authority to undertake certain consenting and enforcement functions in the new regime. Enactment and implementation of the Bill will help Ireland to reach its climate action and renewable energy targets.



Contents

Glossary and abbreviations.....	4
Background to the Bill	6
Need for the Bill	6
Aim of the Bill.....	6
General Scheme	6
Regulatory Impact Analysis (RIA).....	6
PLS of the General Scheme.....	7
The 2021 Bill.....	7
Development Management Process	8
Marine Area Consent (MAC)	8
Licensing.....	9
Development consent.....	9
Enforcement and offences	9
Stakeholder commentary	9
L&RS resources on the Bill	9
High level overview of the Bill	10
Schedules to the Bill.....	15
Ireland’s ocean resource and maritime jurisdiction.....	15
Ireland’s ocean resource	15
Marine conservation and Marine Protected Areas	15
Expanding the MPA network	16
Stakeholder commentary on the urgency of introducing MPA legislation.....	16
Ireland’s maritime jurisdiction	17
Maritime area proposed under the Bill.....	18
Foreshore.....	18
Offshore renewable energy	19
Globally.....	19
Ocean energy.....	20
Europe and the UK.....	20
Ireland.....	20
Transitional Protocol for Relevant Projects.....	21
Relevant projects	21
Developer Guidelines.....	23

Renewable Energy Support Scheme 1.....	23
RESS 1 and community benefits.....	23
Offshore RESS.....	24
Stakeholder concerns	24
Public acceptance and community benefits of ORE	24
Policy context of the Bill	26
Marine Strategy Framework Directive	26
Harnessing Our Ocean Wealth.....	26
Offshore Renewable Energy Development Plan (OREDP).....	27
OREPD 2	28
Marine Spatial Planning Directive.....	28
National Marine Planning Framework.....	28
Marine Planning Policy Statement.....	29
Climate Action Plan, 2019.....	29
Maritime Jurisdiction Act, 2021.....	29
Anticipated legislation on Marine Protected Areas.....	30
Pre-legislative scrutiny of the General Scheme.....	30
Principal provisions of the Bill	39
Part 2: Marine Spatial Plans and Designated Maritime Area Plans	39
Chapter 1	39
Chapter 2	39
Chapter 3	40
Chapter 4	42
Chapter 5	42
Part 3: Maritime Area Regulatory Authority (MARA).....	42
Chapter 1	42
Chapter 4	43
Chapter 5	44
Chapter 6	44
Chapter 7	44
Chapter 7	44
Part 4: Maritime Area Consent (MAC).....	44
Exclusion of fishing and aquaculture from MAC	44
Chapter 1	44

Chapter 2	44
Chapter 3	45
Chapter 4	45
Chapter 5	45
Chapter 6	45
Chapter 7	45
Chapter 8	45
Chapter 9	46
Chapter 10	46
Chapter 11	46
Chapter 12	46
Chapter 13	46
Chapter 14	46
Part 6: Enforcement (Chapters 1-6)	47
Chapters 1 - 6	47
Chapter 1	47
Chapter 2	48
Chapter 3	50
Chapter 4	51
Chapter 5	51
Part 6, Chapter 7: Offences.....	53
Chapter 7	53
Stakeholder commentary on enforcement.....	57

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Glossary and abbreviations

Due to the complexity of the Maritime Area Planning Bill (the Bill) and the many maritime and planning policies and regulations it interacts with, the L&RS has produced a detailed Glossary of the terms and abbreviations used in this area and across the various relevant documents in Table 1, hereunder.

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
AA	Appropriate Assessment for designated sites of ecological importance
Committee	Joint Oireachtas Committee on Housing, Local Government and Heritage
Continental shelf	The area from 200 nautical miles (nm) to a maximum of 350nm, or the end of the topographical continental shelf, whichever is shorter
CPA	Coastal Planning Authority
Departments	Department of Housing, Local Government and Heritage and of the Environment, Climate and Communications
DMAP	Designated Maritime Area Plan – under the Bill a DMAP will be a management plan for a specific area and can be used to develop multi-activity area plans, to promote specific activities and/or to for the sustainable use and protection of particular marine environments. ¹
EEZ	Exclusive Economic Zone, the area from 12nm to 200nm to sea.
EIA	Environmental Impact Assessment for certain proposed developments
EIAR	Environmental Impact Assessment Report – the report that comes out of the EIA process
Foreshore	The area from mean high water mark to a point 12nm from the low water mark.
General Scheme	General Scheme of the Marine Planning and Development Management Bill 2019
GES	Good Environmental Status as set out under the MSFD
High Seas	All seas around the world that are not part of the territorial sea or internal waters of a State
IMP	Integrated Marine Plan, Harnessing our ocean wealth, an integrated marine plan for Ireland
Licence	A new system of maritime licensing is set out in the Bill. Licences are required for certain activities in the maritime area which do not require planning permission or an EIA.
Maritime Area	Defined under the Bill for the purposes of forward planning, development management and state consenting as the area of sea extending from the high water mark to the outer limit of the State's continental shelf.
MAC	Maritime Area Consent – one part of the new system for development management set out in the Bill.

¹ Oireachtas.ie, 2021. Maritime Area Planning Bill, Explanatory Memorandum [online]. Available at: [b10421d-memo.pdf \(oireachtas.ie\)](#) [accessed on 125.09.2021]

MARA	Maritime Area Regulatory Authority –a new authority to be established under the Bill with responsibilities under the newly proposed MAC and licencing systems.
MPDM Bill	Marine Planning and Development Management Bill 2019
Minister	Minister for Housing, Local Government and Heritage
MPPS	Marine Planning Policy Statement
MSP	Marine Spatial Planning - the tool to manage the use of our seas and ensure that human activities take place in an efficient, safe and sustainable way.
MSP Directive	Maritime Spatial Planning Directive of 2014
MSFD	Marine Strategy Framework Directive of 2008
NDP	Ireland's National Development Plan 2018-2027 (which includes strategic investment priorities to transition to a low carbon and climate resilient society)
Nearshore	Defined in the Bill as from the high-water mark to three nautical miles seaward for the purpose of CPAs.
NIS	Natura Impact Statement, the report that comes out of the AA process and, where required, is submitted as a part of the planning application
Nm	Nautical mile – 1,852m (as defined in the Maritime Jurisdiction Act 2021)
NMPF	Draft National Marine Planning Framework launched in 2019
NPF	Ireland's National Planning Framework to 2040
ORE	Offshore Renewable Energy
OREDP & OREDP2	Offshore Renewable Energy Development Plan (2014) and OREDP2 is the anticipated new OREDP.
PLS	Pre-legislative scrutiny of the General Scheme of the MPDM Bill
PPS	Public Participation Statement – required under the Bill when preparing MSPs and DMAPs.
RES-E	Renewable Energy Share in electricity
RESS 1	The new Renewable Electricity Support Scheme (RESS 1) which provides financial support to renewable electricity projects in Ireland including offshore wind farms.
SMAZ	Strategic Marine Activity Zone. SMAZs were included in the General Scheme but have now been replaced with DMAPs in the Bill.
ABP	An Bord Pleanála
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UN SDGs	United Nations 2030 17 Sustainable Development Goals

Introduction

To assist members with their debating of the Bill, this Bill Digest (Digest) provides information on:

- Background to the Bill;
- High level overview of the Bill;
- Ireland's ocean resource and maritime jurisdiction;
- Offshore renewable energy;
- Policy context for the Bill;
- Pre-legislative Scrutiny of the General Scheme; and
- Principal provisions of the Bill.

Background to the Bill

Need for the Bill

Currently maritime activities are regulated under the geographically restricted [Foreshore Act 1933](#) (as amended). Outside of the foreshore area (which only stretches to 12 nm from the low water mark), there is no regulatory framework or development consent process comparable to Ireland's land planning system and this has stymied any growth of an offshore renewable energy sector here.

Aim of the Bill

The aim of the Bill is to fix the lack of cohesion in Ireland's marine planning consent regimes, which includes gaps and duplication across various consent processes (foreshore, planning and environment). To achieve this, the Bill proposes to establish a new legal framework for the maritime area and replace the existing foreshore, planning and environmental processes with a single streamlined consent process.

The Bill is an important part of broader developments in marine management reform including Ireland's National Marine Planning Framework (NMPF), launched on 1 July 2021. It is also a key piece of legislation which is needed to help Ireland reach its climate action and renewable energy targets by enabling the development of an offshore renewable energy industry.²

General Scheme

The General Scheme of the Marine Planning and Development Management Bill 2019 has evolved from the General Scheme of the Maritime Area and Foreshore (Amendment) Bill 2013 which was published in October 2013 and underwent pre-legislative scrutiny with the then Oireachtas Joint Committee on Environment, Culture and the Gaeltacht in November 2013. However, the Maritime Area and Foreshore (Amendment) Bill was never published. On foot of legal advice from the Attorney General's Office, it was decided to take a more holistic and comprehensive approach to planning for development and activities in the maritime area and the final [General Scheme of the Marine Planning and Development Management Bill 2019](#) (the General Scheme) was approved by Government on 17 December 2019.³

Regulatory Impact Analysis (RIA)

A Regulatory Impact Analysis (RIA) on the Marine Planning and Development Management Bill 2019 was published online by the Department of Housing, Local Government and Heritage in July 2019. However, as of 13 September 2021, the L&RS could not find a link to the 2019 RIA online.

² Department of Housing, Local Government and Heritage, 2020. *The Marine Planning and Development Management Bill* [online]. Available at: <https://www.housing.gov.ie/planning/marine-spatial-planning/foreshore/marine-planning-and-development-management-bill> [accessed on 17.11.2020]

³ Department of Housing, Local Government and Heritage, 2019. *The Marine Planning and Development Management Bill* [online]. Available at: <https://www.housing.gov.ie/planning/marine-spatial-planning/foreshore/marine-planning-and-development-management-bill> [accessed on 13.11.2020]

Despite significant evolution of the Bill since then, an updated RIA for the Bill has not been published by the Department.

PLS of the General Scheme

The Oireachtas Joint Committee on Housing, Local Government and Heritage conducted pre-legislative scrutiny (PLS) on the General Scheme and held public hearings between 24 November and 3 December 2020. The Committee published their report in February 2021 and identified nine key issues and made 29 recommendations. Some of those recommendations which related directly to the Bill have been partially or fully incorporated into the final text of the Bill.

The 2021 Bill

The Bill was published on 12 August 2021 and is scheduled for second stage debate in Dáil Éireann on Wednesday and Thursday, 15 and 16 September 2021. The Bill provides a regulatory and marine planning framework for activities in the maritime area. It has evolved significantly since the General Scheme was published and contains the following key features as set out in the explanatory memorandum to the Bill⁴:

- The **maritime area** - the new planning system will operate in the maritime area which is defined in the Bill and will extend from the high-water mark to the outer limit of Ireland's continental shelf and includes the territorial seas and the Exclusive Economic Zone (EEZ).
- **Forward marine planning** under the National Marine Planning Framework which includes for:
 - Restatement and additions to the marine forward planning provisions of the [Planning and Development \(Amendment\) Act 2018](#) which provides the legal basis for marine spatial planning (this is revised from the approach in the General Scheme to making these amendments);
 - Placing Marine Planning Policy Statements (MPPSs) on a statutory footing;
 - Enabling regional planning in the form of Designated Marine Area Plans (DMAPs) (the DMAPs replace the Strategic Marine Activity Zones proposed in the General Scheme and now include a mandatory Public Participation Statement);
 - Placing Marine Spatial Plans (MSPs) on a on a statutory footing (the [National Marine Planning Framework](#) or NMPF is Ireland's first MSP and was published in June 2021); and
 - Establishing a Maritime Authorisation Database.
- **New development management (consenting) regime** for the maritime area to be made up of three parts:
 1. Maritime Area Consent System (MAC) (this has changed from the General Scheme which provided for a MAC *and* Planning Interest which are now merged into one process);

⁴ Oireachtas.ie, 2021. Maritime Area Planning Bill, Explanatory Memorandum [online]. Available at: [b10421d-memo.pdf \(oireachtas.ie\)](#) [accessed on 125.09.2021]

2. Licensing for certain maritime usages which do not require planning permission or an EIA (replaces the proposed local authorities licencing regime in the General Scheme); and
 3. Planning permission (development consent) (now extended to the entire maritime area). An applicant cannot be granted planning permission without first being granted MAC.
- Establishes a **Maritime Area Regulatory Authority (MARA)** which will grant MACs, licence specified maritime usages, ensure compliance with MACs, licences and offshore planning permissions. The MARA is new and was not included in the General Scheme.
 - **Enforcement and compliance** –MARA is responsible for enforcement and compliance with MACs and licences. Costal Planning Authorities (CPAs) will be responsible for compliance with planning permission within their **nearshore area** (the nearshore is a new area defined in the Bill as the area from the high-water mark to three nautical miles from shore and planning in the nearshore area is the responsibility of the CPA [except for developments which fall under the remit of An Bord Pleanála]).
 - **Transitional measures** for ‘relevant projects’ (offshore wind energy projects that are already in development) - the transitional measures will enable these relevant projects to be in position to apply for a MAC once the Bill is enacted and prior to the establishment to the MARA which will expediate these projects.

The Bill is designed to work for all types and sizes of maritime projects from the harvesting of seaweed to the development of offshore renewable energy. Other types of projects or activities which fall under the Bill include gas storage, telecommunications cables, ports, harbours, marine environmental surveys and maintenance dredging.

A sub-group of the Project Ireland 2040 Oversight and Delivery Board, *Marine 2040*, will be established to oversee the implementation of the new marine planning system.⁵

Development Management Process

As set out above, there are three parts to the development management process under the Bill – MAC, licensing and planning permission.

Marine Area Consent (MAC)

Set out in Part 4 of the Bill, MAC replaces the existing foreshore consent system under the remit of the Minister for Housing, Local Government and Heritage (it does not replace the foreshore consent process for fishing and aquaculture which remains the responsibility of the Minister for Agriculture, Food and the Marine) and covers the whole maritime area as defined in the Bill.

A person who wishes to occupy a part of the maritime area for a usage that requires planning permission (development consent) must **first** apply to MARA for a MAC. MAC is the State consent and considers the property and the person, **not** the project, it is the *gateway* into planning. MARA

⁵ Department of Housing, Local Government and Heritage, 2021. *Maritime Area Planning Bill 2021, Briefing Note*. Provided to the L&RS by the Department, 13 September.

will be responsible for the administration and management of MAC while the Minister for Environment, Climate and Communications is responsible for transitional 'relevant projects'.

Licensing

Part 5 of the Bill provides for a new maritime licensing system for the granting or refusal of certain maritime activities including dredging, marine environmental surveys for the purposes of scientific discovery or research and the installation or placement of navigations markers or aids to navigation. The licensing system is for lower order activities and seeks to treat these activities in a flexible and proportionate manner that frees up the planning system. **Schedule 7** of the Bill lists the maritime activities that may require a licence. If the activity requires planning permission or an Environmental Impact Assessment (EIA), then it requires a MAC. MARA is responsible for granting and refusing licences as well as ensuring enforcement and compliance with licences.

Development consent

Set out in Part 8 of the Bill, the development consent or planning permission aspect of the development management process for the maritime area will be based on Ireland's terrestrial planning system which is regulated under the *Planning and Development Act 2000* (as amended) and the *Planning and Development Regulations 2001* (as amended) and augmented with marine specific considerations. It will extend to the whole of the maritime area. Under the Bill, CPAs will be responsible for administering the planning process for certain maritime activities in the nearshore while ABP will be responsible for all other activities (such as strategic marine infrastructure and any projects requiring an EIA).

Enforcement and offences

The Bill gives the MARA the power to appoint authorised officers with significant investigative powers, to prosecute summary offences and to impose minor and major sanctions (up to €5 million) where provisions of the Bill have been contravened. Major sanctions must be confirmed by the courts.

Stakeholder commentary

Several issues were raised by stakeholders during PLS of the Bill including concerns over the role and significance of Marine Protected Areas (MPAs) and how they interact with the provisions of the Bill, the importance of public participation and of community benefits from offshore renewable energy projects and the reasons for the exclusion of fishing and aquaculture from the Bill. Separate to PLS, environmental experts expressed worry at the delays in putting in place a system to significantly expand Ireland's MPAs and industry had concerns over the provision for automatic MAC termination in the Bill.

L&RS resources on the Bill

The L&RS would like to draw readers attention to the [L&RS Bill Briefing Page](#) on the Bill which provides links to, among other things, the Bill, the L&RS and Committee PLS papers, recent media articles, L&RS and Government resources, official and specialist commentary, and links to related maritime legislation in Ireland and relevant European directives.

The [L&RS PLS paper](#) includes the following appendices, if members are further interested in these areas:

- Sovereign rights in the marine area;
- A comparison of the existing terrestrial and the evolving marine planning systems in Ireland;
- Environmental Impact Assessment (EIA); and
- Appropriate Assessment (AA).

High level overview of the Bill

This Bill is 248 pages long. It has nine Parts (broken into 49 chapters and 181 Sections) and 12 Schedules. Due to the length and complexity of the Bill, this Digest presents a very high-level overview of the Bill (Table 1) rather than providing the usual summary of all substantive elements of the Bill which would result in a very lengthy table of provisions.

Under the Principal Provisions section of this Digest, the key elements of the Bill are considered in more detail.

The nine Parts of the Bill and the 12 Schedules are set out **Table 1, High level overview of the Bill** below. Table 1 is not exhaustive, it does not list the contents of every section, rather it gives an overall picture of what the Bill provides for.

Table 1: High level overview of the Bill

Chapter	Sections	Provisions
Part 1: Preliminary and General		
	1 - 12	Part 1 includes for the provision of the interpretation and application of the Bill. It defines the maritime area (the area of sea extending from the high-water mark to the outer limit of the State's continental shelf) and the nearshore areas of Coastal Planning Authorities (CPAs) (from the high-water mark to three nautical miles seaward) and provides for marine planning policy statement and Ministerial guidelines, policy directives and limitation on their powers as well as regulations, expenses, repeals and revocations.
Part 2: Maritime Spatial Plans (MSPs) and Designated Maritime Area Plans (DMAPs)		
1	13 - 14	This chapter provides for the interpretation and application of Part 2 of the Bill.
2	15 – 19	Chapter 2 includes provisions for Maritime Spatial Plans (MSPs) including the designation of competent authorities for the purposes of the MSP Directive, preparing and publishing MSPs, public participation and the requirements of marine spatial planning.
3	20 – 26	This chapter provides for Designated Maritime Area Plans (DMAPs) and includes designation of public bodies who may make DMAPs, proposals, drafts and reviews for DMAPs and public participation.

Chapter	Sections	Provisions
4	27	Provides for the Laying of certain DMAPs before CPAs.
5	28	Provides for the Amendment of MSPs and DMAPs.
6	29 – 30	Provides for Public bodies and the National Marine Planning Framework (NMPF) - for compliance by public bodies and Directions of Minister.
7	31	This chapter provides for Appropriate Assessment and Strategic Environmental Impact Assessment.
8	32 – 37	This chapter provides for a Maritime Authorisation Database and includes definitions, establishment of the database, what data will apply as well as corrections to the database and general powers of the Minister to obtain information on the maritime areas as well as designation by the Minister to the Maritime Area Regulatory Authority (MARA).
Part 3: Maritime Area Regulatory Authority (MARA)		
1	38 – 39	This chapter provides for the definitions and establishment day for MARA.
2	40 – 42	Provides for the establishment and functions of MARA. Functions include considering and granting MAC and licence applications and certain enforcement and compliance functions under the Act.
3	43 – 53	This chapter provides for the Board of MARA including establishment, membership, functions, meetings and committees of the Board as well as casual vacancies, removal of Board members, remuneration and expenses.
4	54 – 61	This chapter provides for Chief Executive Officer (CEO) of MARA including appointment, resignation and functions of the CEO as well as accountability of the CEO to the Houses of the Oireachtas and the appearance of the CEO in front of the Committee of Public Accounts (the PAC Committee).
5	62	This chapter provides for staff of MARA and other resources available to MARA.
6	63	This chapter provides for co-operation between MARA and other public bodies.
7	64 – 66	This chapter provides for corporate strategy, accounts and annual reports of MARA.

Chapter	Sections	Provisions
8	67 – 71	This chapter provides for Miscellaneous provisions including the duty of MARA to give information, disclosure of confidential information and processing of personal data as well as immunity from suit.
Part 4: Maritime Area Consent (MAC)		
1	72	This chapter provides for the interpretation of Part 4 of the Bill.
2	73 – 75	This chapter provides for when MAC is required (i.e., when a MAC is required prior to seeking planning permission, when a MAC is required but planning permission is not and fees for certain applications.
3	79 – 81	This chapter provides for the grant or refusal of MAC and related matters including the application to grant a MAC, grant or refusal of a MAC, conditions attached and notification of grant or refusal of a MAC.
4	82 – 83	This chapter provides for the assignment or amendment of a MAC .
5	84 – 85	This chapter provides for the surrender of a MAC .
6	86	This chapter provides that certain persons who are not individuals may be declared fit and proper .
7	87 – 90	Provides for Levies including the definition, framework, and competitive process of levies and when the levies framework applies to MAC.
8	91 – 94	This chapter provides for the Rehabilitation of maritime areas and emergency works including definitions, obligations of the MAC holder regarding rehabilitation, power of MARA to require the MAC holder make an application under S.83 (material amendment to the MAC) and emergency works.
9	95	Provides for Privately owned part of maritime area
10	96 – 99	Provides for Special MAC cases ('relevant offshore wind farm projects') including definitions, relevant maritime usage and MACs before establishment day and certain MSPs and DMAPs and MACs after establishment day.
11	100	Provides for the Keeping of records and samples etc. by the holder of the MAC.
12	101 – 102	Provides for Transitional provisions for: <ul style="list-style-type: none"> • certain foreshore authorisations; and

Chapter	Sections	Provisions
		<ul style="list-style-type: none"> • certain unauthorised maritime usages.
13	103 – 105	Provides for Judicial Review and MACs
14	106	Provides for Miscellaneous provisions – Strategic Environmental Assessment (SEA) and Appropriate Assessment (AA)
Part 5: Licences authorising certain maritime usages in the maritime area		
1	107 – 109	Provides for the interpretation of Part 5, its application and competent authority.
2	110 – 117	Chapter 2 provides for the grant or refusal of a licence and related matters including prohibition against undertaking certain maritime usages in the maritime area without a licence, exempted uses, fees, application for a licence, grant or refusal of a licence and conditions attached as well as provisions supplementary to grant of licence and notification of grant or refusal of a licence.
3	118	Provides for Compensation for exercise of relevant power.
4	119 – 120	Provides for the Assignment or material amendment of a licence.
5	121 – 122	Provides for the surrender of a licence.
6	123	Provides for the Keeping of records , samples etc. by the licence holder.
7	124 – 125	Provides for Transitional provisions for: <ul style="list-style-type: none"> • certain foreshore authorisations; and • certain unauthorised maritime usages.
8	126 - 128	Provides for Judicial Review and licences and supplementary provisions and costs in environmental matters.
Part 6: Enforcement		
1	129 – 131	Provides for interpretation, application and material change of circumstances.
2	132 – 134	Provides for Appointment and powers of authorised officers of MARA and privileged legal material.
3	135 – 138	Provides for Enforcement notices including the Circuit Courts jurisdiction under this Chapter, the issue of enforcement notices, application for cancellation of direction specified in enforcement notice etc. and rules of court.

Chapter	Sections	Provisions
4	139	Provides for the automatic termination of relevant authorisation .
5	140 – 148	This Chapter provides for Immediate suspension of relevant authorisations, investigations, and sanctions .
6	149 – 152	Chapter 6 sets out Provisions supplementary to Chapters 4 and 5 including effect of suspension and/or termination of relevant authorisations, notice of revocation / termination to be given to certain bodies and no fees etc. refundable after termination, revocation or suspension of relevant authorisation, etc.
7	153 - 161	Sets out Offences and related provisions including general offences, false or misleading information, obstruction, evidentiary presumptions, vicarious liability, summary proceedings, time limits for offences that may only be brought by summary proceedings and costs of prosecution.
Part 7: Miscellaneous		
	162 - 165	This Part provides for the definition of 'relevant moneys' (any fees or costs required to be paid to MARA under the Act or required to be paid to MARA by a High Court) and the disposal and recovery of relevant moneys as well as ways of giving notice etc.
Part 8: Amendment of the <i>Planning and Development Act, 2000</i>		
	166 - 167	Part 8 provides for the insertion of a new Part, "Part XXI Maritime Development" into the <i>Planning and Development Act 2000</i> for the purpose of establishing a framework for assessing development in the maritime area.
Part 9: Consequential amendments		
1	170 – 175	This Chapter makes amendments to various sections of the <i>Foreshore Act, 1933</i> .
2	176	This Chapter amends section 125 of the <i>Registration of Title Act 1964</i> .
3	177 – 180	This Chapter makes various amendments to the <i>Foreshore (Amendment) Act 1992</i> .
4	181	Provides for the amendment of section 14 of the <i>Electricity Regulations Act 1999</i> .

Source: compiled by the Library & Research Service on review of the Bill, September 2021.

Schedules to the Bill

There are 12 Schedules to the Bill which deal with the following issues:

1. Maritime Spatial Planning Directive;
2. Fit and proper person;
3. Proposed maritime usages to which Section 73(1) shall not apply;
4. Proposed maritime usages to which Section 74(1) shall not apply;
5. Criteria that MARA shall have regard to in determining MAC application;
6. Types of conditions that MARA may attach to MAC or that are deemed to be attached to MAC;
7. Maritime usages which may be undertaken in maritime area pursuant to licence;
8. Types of conditions that MARA may attach to a licence;
9. Redress for Contravention of Section 148(5);
10. Insertion of 8th Schedule of *Planning and Development Act 2000*;
11. Insertion of 9th Schedule of *Planning and Development Act 2000*; and
12. Amendment of certain provisions of *Planning and Development Act 2000*.

Ireland's ocean resource and maritime jurisdiction

Ireland's ocean resource

As an island nation, Ireland is surrounded by a vast marine environment which supports a significant ocean economy. In 2019, Ireland's ocean economy had a turnover of €5.8 billion, supported over 31,000 full time jobs and marine-related industries directly contributed approximately €2 billion in value added (approximately 1% of GNI).⁶ This diverse marine resource offers huge potential for us to tap into the global industries of seafood, ocean tourism and offshore renewable energy, with possibilities for new health, scientific and technical applications. Ireland's marine environment also provides many tangible though non-commercial benefits – as a rich source of biodiversity and a valuable amenity for Ireland's inhabitants and visitors.

Marine conservation and Marine Protected Areas

Ireland has an extensive marine environment, rich in habitats, species and cultural significance. It provides a wide range of ecosystem services which underpin health and wellbeing, regulate climate and support fisheries, aquaculture, recreation, tourism and biotechnology, all of which are significant contributors to Ireland's economy and essential to many livelihoods, especially in coastal and island communities. It is also an essential link to the wider world through shipping and increasingly hosts diverse energy infrastructure. Although much of Ireland's marine environment is in generally good condition, biodiversity

⁶ Government of Ireland, 2021. *National Marine Planning Framework*. Available at: <https://www.gov.ie/en/publication/60e57-national-marine-planning-framework/> [accessed on 13.09.2021]

loss and ecosystem degradation are of wide concern due to increasing pressures such as overexploitation, habitat loss, pollution, and climate change.⁷

Marine Protected Areas (MPAs) are geographically defined parts of the marine environment where a limit or ban has been placed on human activity or offshore industry to protect marine habitats, to allow safe breeding grounds for threatened and endangered species and to increase biodiversity. Despite Ireland's biodiversity rich seas, only a small percentage of our marine environment is protected, primarily under the Natura 2000 network (as Special Areas of Conservation [SACs] and Special Protection Areas [SPAs] under the Habitats and Birds Directives respectively), covering only 10,420km² or 2.13% of Ireland's total maritime area of nearly 488,762km².⁸

MPAs are a key tool in ensuring the conservation and restoration of marine ecosystems and the current level of protection falls far short of international targets to which Ireland is committed. The 2020 Programme for Government, *Our Shared Future*, committed to reaching Ireland's target of 10% under the Marine Strategy Framework Directive (MSFD) as soon as is practical and aim for 30% of MPAs by 2030. This is in line with the EU Biodiversity Strategy.

Expanding the MPA network

The Government initiated a process in Autumn 2019 aimed at expanding Ireland's network of MPAs and established an MPA Advisory Group tasked with providing independent and expert advice and recommendations on how to proceed. The MPA reported back to Government in 2020 with recommendations for the expansion of Ireland's network of MPAs.⁹ As a part of the process, the MPA Group engaged with stakeholders and their final report was published in January 2021. A public consultation phase was then initiated from February to July 2021. The next step will be for the development of legislation on the identification, designation, and management of MPAs which is expected to be developed later in 2021 and into 2022.

Stakeholder commentary on the urgency of introducing MPA legislation

Concerns have been raised about the delays in establishing a regulatory framework for MPAs with the MPA Advisory Group stating that new legislation is urgently needed to protect Ireland's marine environment from damaging human activities, pollution, biodiversity loss and climate change. However, the MPA Advisory Group also noted that there are other environmental protections in place and developments such as offshore wind farms applying for MAC and development consent will also have to go through the EIA process.¹⁰ In their Report following PLS of the General Scheme, the Committee noted their concerns that once the Bill is enacted, developers may be granted MACs in ecologically important areas that would likely be designated as MPAs in the future and that this may be detrimental for the marine environment.¹¹

⁷ MPA Advisory Group, 2020. *Expanding Ireland's Marine Protected Areas Network* [online]. Available at: <https://www.gov.ie/en/publication/135a8-expanding-irelands-marine-protected-area-network/> [accessed on 13.09.2021]

⁸ MPA Advisory Group, 2020. *Ibid*

⁹ MPA Advisory Group, 2020. *Ibid*

¹⁰ O'Sullivan, K, 2021. Radical overhaul of marine planning to begin with draft Bill this week. *The Irish Times* [online]. 28 June. Available at: <https://www.irishtimes.com/news/science/radical-overhaul-of-marine-planning-to-begin-with-draft-bill-this-week-1.4606182> [accessed on 13.09.2021]

¹¹ Joint Committee on Housing, Local Government and Heritage, 2021. *Report on pre-legislative scrutiny of the General Scheme of the Marine Planning and Development Management Bill* [online]. Available at:

Ireland's maritime jurisdiction

The recently enacted [Maritime Jurisdiction Act, 2021](#) provides, among other things, an updated restatement of Ireland's jurisdiction in the maritime area and includes definitions of the continental shelf, the Exclusive Economic Zone (EEZ), internal waters and the territorial seas. This Bill must be consistent with the definitions and terminology in the 2021 Act.

Ireland has one of the highest sea-to-land ratios in Europe with an estimated 7,711 km of coastline or 4% of the European coastline.¹² Our foreshore area comprises 9.7million acres or 39,9605km² which equates to 36% of Ireland's land area¹³ and extends from the low water mark to 12 nautical miles (nm), the vast majority of which is State owned. Our EEZ - the area that stretches from the outer boundary of the foreshore to 200nm (except where we share boundaries with other countries within this limit, e.g. the Irish Sea bound by Ireland and the UK) incorporates the water column, seabed and subsoil and covers an area of approximately 450,000km². From the EEZ limit of 200nm to 350nm out to sea, or the end of the topographical continental shelf, whichever is shorter, is known as the continental shelf.

The High Seas are governed by the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS provides that the territorial seas forms part of the State's territory. Full territorial rights do not extend to the EEZ or continental shelf although in the EEZ, the State is entitled to exercise sovereign rights over natural resources, has full jurisdiction over marine scientific research and for the protection of the marine environment. In the continental shelf however, the State exercises a limited form of jurisdiction over marine protection and has sovereign rights to natural resources in, on or under the sea-bed but our rights do not extend to the water above (which is part of the 'High Seas').

Ireland has unresolved maritime boundary issues over two other areas in the continental shelf – the Southern part of the Hatton-Rockall area and part of the seabed in the Celtic Sea and Bay of Biscay. Jurisdiction on these areas will be determined through UNCLOS and international agreements.¹⁴

The Marine Institute published the [Real Map of Ireland](#) which depicts Ireland's current continental shelf (as of November 2009), which is one of the largest seabed territories in Europe, representing a 220 million acre marine resource and copied here.

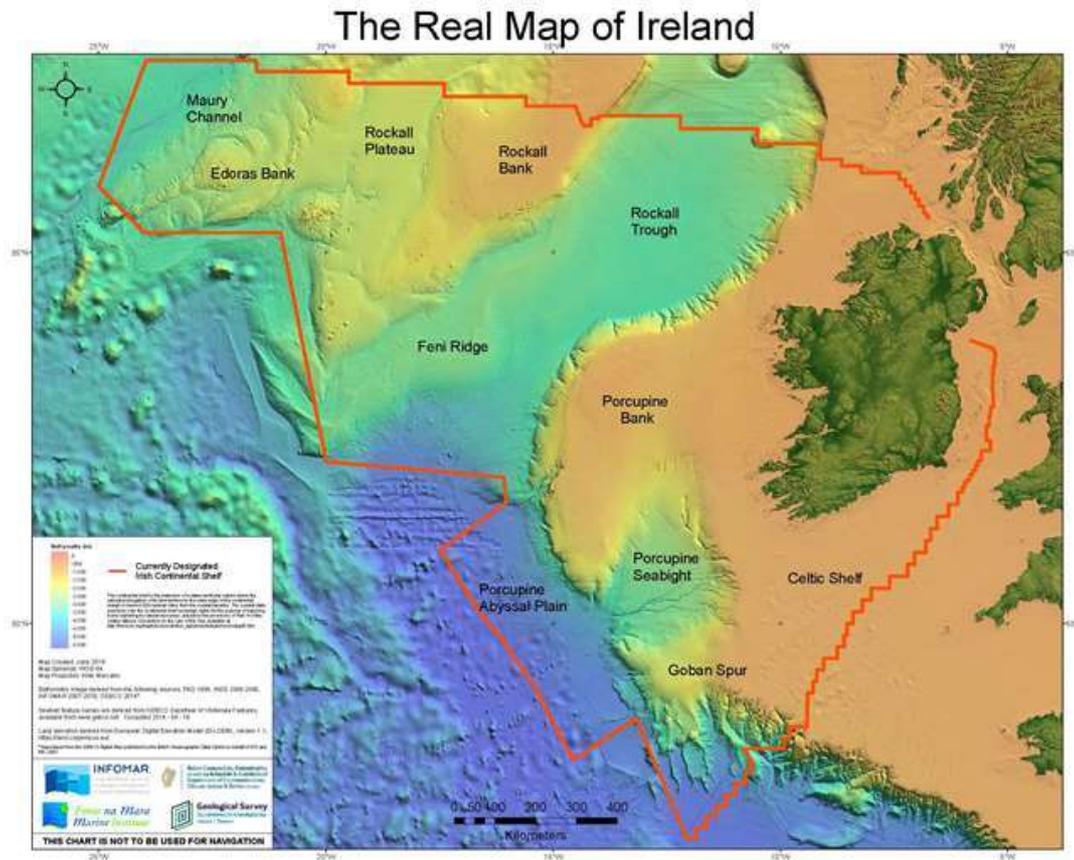
https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-02-16_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-marine-planning-and-development-management-bill_en.pdf [accessed on 02.07.2021]

¹² NUI Galway, 2019. *Ireland's Ocean Economy, June 2019*

¹³ Department of Environment, Heritage and Local Government, 2013. *A new planning and consent architecture for development in the marine area, consultation paper* [online]. Available at:

<http://www.environ.ie/en/Publications/DevelopmentandHousing/Foreshore/FileDownload,32268,en.pdf> [accessed on 05.11.2013]

¹⁴ Marine Institute, 2012. *Ireland's Marine Strategic Framework Directive Implementation* [online]. Available at: <https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/Environment/Water/FileDownload%2C32063%2Cen.pdf> [accessed on 23.11.2020]



Source: Marine Institute, n.d. *Real Map of Ireland* [online]. Available at: <https://www.marine.ie/Home/site-area/irelands-marine-resource/real-map-ireland> [accessed on 23.11.2020]

Maritime area proposed under the Bill

Section 3 of the Bill defines and establishes the **maritime area** for the purposes of the new marine planning system as “the area of sea extending from the high water of ordinary or medium tides of the sea to the outer limit of the continental shelf and includes:

- a) The sea and tidal area of internal waters of the State within the meaning of the Act of 2006,
- b) The territorial seas of the State within the meaning of section 82 of the Act of 2006;
- c) the EEZ of the State within the meaning of Part 3 of the Act of 2006; and
- d) the continental shelf of the State.”

Currently, the [Foreshore Act, 1933](#), the [Continental Shelf Act, 1968](#) and the [Sea Fisheries and Maritime Jurisdiction Act, 2006](#) provide the national legislative framework for activity in these respective areas.

Foreshore

For the purposes of the Bill, the concept of the foreshore is gone and is replaced with the newly defined maritime area which includes the newly defined nearshore (from the high-water mark to three nautical miles from shore). Development consent (planning permission) is the responsibility of the Coastal Planning Authority (CPA) (local authority or LA) in the nearshore and An Bord Pleanála (ABP) in the rest of the maritime area as set out in Figure 1.

Figure 1: Planning responsibilities in the maritime area



Courtesy of the Department of Housing, Local Government and Heritage, September 2021.

Offshore renewable energy

Globally

According to the International Energy Agency (IEA), in their most recent comprehensive report on offshore wind energy, *Offshore wind outlook 2019*, in 2018, globally, offshore wind energy had a total capacity of 23 giga watts (GW), 80% of which was in Europe. However, despite its potential and its growth over recent years, offshore wind energy accounts for only 0.3% of the world's electricity generation.¹⁵

Europe added 2.9GW of offshore capacity during 2020 (supplied by The Netherlands, Belgium, the UK, Germany and Portugal) bringing its total installed wind capacity to 25GW which corresponds to 5,402 grid-connected turbines across 12 countries.¹⁶

Most offshore wind farms in Europe are located around the British coast and off the coastlines of Germany, Denmark, the Netherlands and Belgium. Outside of Europe, in 2018, China had the fastest growing market for offshore wind energy, adding more capacity than any other country. In

¹⁵ IEA, 2019. *Offshore wind outlook 2019* [online]. Available at: <https://www.iea.org/reports/offshore-wind-outlook-2019> [accessed on 14.09.2021]

¹⁶ Wind Europe, 2021. *Offshore wind in Europe – key trends and statistics 2020* [online]. 8 February. Available at: [Offshore wind in Europe – key trends and statistics 2020 | WindEurope](#) [accessed on 14.09.2021]

2018, the UK hosted over 16% of installed offshore wind energy capacity and share of global electricity supply followed by Germany with almost 12% and China with over 7%.¹⁷

Ocean energy

It is important to note that there are other sources of ocean energy too including tidal and wave energy. While these technologies are at an earlier stage of development than offshore wind energy, they are still a significant resource.¹⁸

Europe and the UK

The EU Strategy on Offshore Renewable Energy is an important part of Europe's Green New Deal as offshore renewables are needed to help Europe achieve a clean energy transition and reach its 2050 carbon neutrality goal. The Strategy was published by the Commission on 19 November 2020 and proposes to **increase Europe's offshore wind capacity from its current level of 12 GW to at least 60 GW by 2030 and to 300 GW by 2050**. The Commission aims to complement this with **40 GW of ocean energy** and other emerging technologies such as floating wind and solar by 2050.¹⁹

The UK is the leading country globally for offshore renewable energy and in October 2020, Prime Minister Boris Johnson stated his intent that every home in the UK would be powered by offshore wind energy within the next decade. This is as a part of the UK's 'Build Back Greener' plan due later this year which will help put the UK on track to meet its 2050 carbon neutral goal.²⁰

Ireland

In 2019, Ireland produced 12% of our total energy needs from renewable sources, most of which is produced in the form of electricity and most of this is produced from wind. Wind was responsible for the generation of 32% of Ireland's electricity needs in 2019.²¹ Almost all of this is produced onshore and Ireland has only one operational offshore wind farm – the 25MW [Arklow Bank Wind Park](#) (located approximately 10 km off the coast of Arklow, Wicklow in the Irish Sea and commissioned in 2004).

The Government set a target of achieving 70% renewable electricity generation by 2030 in their 2019 *Climate Action Plan*.²² The development of an offshore renewable energy (ORE) industry here forms the backbone of the strategy to make this happen. Enactment of the Bill and the new

¹⁷ IEA, 2019. *Ibid*

¹⁸ Further information on ocean energy is available from the SEAI *Ocean Energy* portal, [here](#) and from Ocean Energy Ireland, [here](#).

¹⁹ European Commission, 2020. *EU Strategy on offshore renewable energy* [online]. Available at: https://ec.europa.eu/energy/topics/renewable-energy/eu-strategy-offshore-renewable-energy_en [accessed on 18.11.2020]

²⁰ Elgot, J., Harvey, F. and Ambrose, J., 2020. Boris Johnson to unveil plan to power all homes with wind energy by 2030. *The Guardian* [online]. 5 October. Available at: <https://www.theguardian.com/politics/2020/oct/05/boris-johnson-to-unveil-plan-to-power-all-uk-homes-with-wind-by-2030> [accessed on 18.11.2020]

²¹ Sustainable Energy Authority of Ireland (SEAI), 2020. *Energy in Ireland* [online]. December. Available at: [Energy in Ireland 2020 Report \(seai.ie\)](#) [accessed on 14.09.2021]

²² DCCAE, 2019. *Climate Action Plan* [online]. Available at: <https://www.dccae.gov.ie/en-ie/climate-action/publications/Pages/Climate-Action-Plan.aspx> [accessed on 28.07.2020]

Renewable Electricity Support Scheme (RESS 1) are key tools in enabling Ireland to reach this target.

However, the current lack of a regulatory framework for ORE has been identified as a key barrier to greater deployment of offshore wind in Ireland²³ and Ireland's ambitions to increase ORE are dependent on delivering a modern, robust licensing and regulatory system. Given the long lead in times for ORE projects (estimated at up to a decade from concept to putting wind turbines in the water²⁴), for Ireland to reach our climate and renewable energy (RE) targets, this legislation must be enacted as soon as possible and will enable ORE projects to be developed beyond the limits of the foreshore (12nm).

Transitional Protocol for Relevant Projects

Action 25 in the Annex of Actions of the Governments 2019 *Climate Action Plan* aims to facilitate the development of offshore renewable energy. It provides several steps to do so, including the development of a **Transitional Protocol** to give guidance to Relevant Projects (offshore wind farms already in the system).

In January 2020, the Departments of Housing, Planning and Local Government and Communications, Climate Action and the Environment developed and published a transition protocol and invited applications (from these 'Legacy or Relevant Projects').

Relevant projects

According to the Department of the Environment, Climate and Communications, there are seven 'Relevant Projects' – these 'Relevant Projects' are offshore wind farm projects (five off the east coast and one off the west coast) which have applied for over 3,000MW in total and are currently in the formal grid connection process with Eirgrid. They have not yet undergone planning and all are dependent on the enactment of the Bill.

The Relevant Projects are:

- Oriel Wind Park (located in the Irish Sea off the coast of County Louth, to the East of Dundalk Bay);
- Innogy Renewables (two projects - Bray and Kish Banks, located 10km from the coast of Dublin and Wicklow counties);
- Codling Wind Park (two projects - Codling I and Codling II, located 13km from the coast between Greystones and Wicklow);
- Fuinneamh Sceirde Teoranta, (Skerd Rocks, located some 5km and 8km off the coast of Carna in County Galway); and
- North Irish Sea Array Ltd. (North Irish Sea Array, located between 7km and 17km off the coast of the Dublin, Meath, and Louth counties.²⁵

²³ MHC, 2020. *The limit does not exist for offshore renewables in the Programme for Government* [online]. 29 June. Available at: <https://www.mhc.ie/latest/insights/the-limit-does-not-exist-for-offshore-renewables-in-the-programme-for-government> [accessed on 27.07.2020]

²⁴ Personal communications with the Departments, 23 November 2020.

²⁵ Merrion Street.ie, 2020. *Ibid*

One further project (Arklow Bank) is expected to proceed under the *Foreshore Act 1933* (as amended). In order to reach the Government's latest commitments of 5,000MW of capacity off Ireland's eastern and southern coasts, a further 2,500-3,000MW capacity is needed.²⁶

In May 2020, the Government announced that the Relevant Projects could continue to work and update several aspects of their projects so that they will be able to apply for MACs under the Bill, once enacted.²⁷

This is confirmed in the Explanatory Memorandum to the Bill which states that:

- The Minister for the Environment, Climate and Communications will consider a limited number of MAC applications (relevant projects) prior to the establishment of MARA to expedite planning permission applications for those projects.
- All ongoing foreshore consent applications made prior to the establishment of MARA will be determined by the Minister for Housing, Local Government and Heritage. No further applications under the Foreshore Act will be made to the Minister.²⁸

Due to the long lead in time for ORE projects, it is important that those Relevant Projects already in the pipeline and advanced under the *Foreshore Acts* be facilitated first under the transitional measures in the Bill – these projects are expected to apply for MACs in 2022 resulting in the projects being energised by 2026 or later. Transition stage projects must be capable of being built and connected by 2030 and limited to the East/South (grid and technology) – these projects are expected to apply for MACs in 2022 and be energised by 2028 or later while future projects will be developed under the enduring plan-led regime with strategic sites selected on the basis of OREDP2 (the anticipated new Offshore Renewable Energy Development Plan), Designated Maritime Area Plans (DMAPs) and marine spatial planning (MSP). It is expected that these projects could apply for MAC post 2024 and the projects be energised in 2030 or later.²⁹

Marine planning in Ireland is currently developer-led but the Bill will change this, and marine planning will gradually become plan-led with transitional measures for those ORE projects already in the system. The Netherlands has a plan-led system while the UK is developer-led. The Department of the Environment, Climate and Communications provided the Committee with information on ORE during their private presentation on Tuesday 17 November which also set out some of the advantages and disadvantages of developer-led versus plan-led systems: developer-led systems may have a shorter lead-in time while the majority of societal benefits are associated

²⁶ Department of the Environment, Climate and Communications, 2020. *Offshore Renewable Energy and the MPDM Bill Explanatory Note*. Provided to the L&RS by the Department on 18 November 2020 and updated through personal communications with the Department on 12 September 2021.

²⁷ Merrion Street.ie, 2020. *Ministers English and Bruton Announce the Transition of Offshore Renewable Energy Projects*. 19 May [online]. Available at: https://merrionstreet.ie/en/News-Room/Releases/Ministers_English_and_Bruton_Announce_the_Transition_of_Offshore_Renewable_Energy_Projects.html [accessed on 22.11.2020]

²⁸ Oireachtas.ie, 2021. Maritime Area Planning Bill, Explanatory Memorandum [online]. Available at: [b10421d-memo.pdf \(oireachtas.ie\)](https://www.oireachtas.ie/en/bills/2021/1/b10421d-memo.pdf) [accessed on 125.09.2021]

²⁹ Departments of HLGH and ECC, 2020. *Marine Planning and Development Management Bill* (PowerPoint presentation to the Committee, 17 November 2020) (slide 37).

with plan-led systems. As a result, Ireland proposes a phased transition from developer-led to plan-led so as not to unduly delay the Relevant Projects.³⁰

Developer Guidelines

The Department of Housing, Local Government and Heritage has published a set of guidance documents for offshore renewable energy developers in relation to:

- Marine Baseline Ecological Assessments & Monitoring Activities;
- Environmental Impact Statements; and
- Natura Impact Statements.

Further information is available [here](#).³¹

The NMPF states that the Departments of Housing, Local Government and Heritage and of the Environment, Climate and Communications, together with other stakeholders will develop statutory Marine Planning Guidelines on Development Consent, “to support best practice throughout the planning process for ORE, including the development of a specific visualisation assessment in relation to design and layout of proposed developments.”

Renewable Energy Support Scheme 1

The new [Renewable Electricity Support Scheme](#) (RESS) provides financial support to renewable electricity projects in Ireland. It is an important part of progressing Ireland’s target of 70% renewable electricity by 2030 and will operate from 2020 to 2025 (with an opportunity to extend) to deliver on 2030 targets. During 2020 - 2025, it is envisaged that at least four competitive auctions for renewable electricity generation will be run. On 20 July 2020, the Government announced that it had received approval for State aid from the EU to operate the new RESS out to 2025. Results from the first auction (RESS 1) were approved by the Minister for the Environment, Climate and Communications, Eamon Ryan, TD on Friday 11 September. Successful projects in RESS 1 included seven community renewable energy schemes. The Government press release is available [here](#). The complete list of results is available from Eirgrid.³²

RESS 1 and community benefits

RESS sets out to deliver, among other things, “community ownership and partnership.” The [terms and conditions of RESS 1](#) (February 2020)³³ provides for two aspects of community participation:

1. Community-Led Projects; and

³⁰ Department of the Environment, Climate and Communications, 2020. *Offshore Renewable Energy and the MPDM Bill Explanatory Note*. Provided to the L&RS by the Department on 18 November.

³¹ DHLGH, 2020. *Guidance documents for offshore renewable energy developers* [online]. Available at: <https://www.gov.ie/en/publication/3d6efb-guidance-documents-for-offshore-renewable-energy-developers/> [accessed on 20.11.2020]

³² Eirgrid, 2020. *RESS 1 Final Auction Results* 10 September [online]. Available at: [http://www.eirgridgroup.com/site-files/library/EirGrid/RESS-1-Final-Auction-Results-\(R1FAR\).pdf](http://www.eirgridgroup.com/site-files/library/EirGrid/RESS-1-Final-Auction-Results-(R1FAR).pdf) [accessed on 13.09.2021]

³³ Government of Ireland, 2020. *Terms and conditions for the first competition under the Renewable Electricity Support Scheme RESS1:2020* [online]. Available at: https://www.dccae.gov.ie/documents/RESS_1_Terms_and_Conditions.pdf [accessed on 08.05.2020]

2. Community Benefit Fund (defined as a “fund to be set up by a Generator whereby the Generator will contribute €2 per MWh to such fund for the benefit of the community in accordance with these Terms and Conditions”).

If a developer fails to comply with the community participation provisions, the Letter of Offer may be withdrawn. All RESS1 projects must establish a community benefit fund. The terms and conditions further state that: “A Good Practice Principles Handbook will be published by the Minister (or a nominated body) prior to 1 July 2021. This will lay out a range of principles, including the need to ensure community participation in fund decision-making via the establishment of a local committee, which should encourage successful dispersal of funds.” The terms and conditions do not set out any specific community benefits for offshore wind nor does it indicate how to identify the beneficiary communities. However, the Government has committed to continuing to investigate opportunities for citizen investment and “to further develop the overall package of community participation and benefits in future RESS auctions” (DCCAE, 2020).³⁴

Offshore RESS

While offshore wind was an eligible technology under RESS 1, the RESS 1 results do not include any offshore wind farms.³⁵ An EOLAS article from February 2021 indicated that offshore wind will receive its own ring-fenced capacity in a second auction due to take place this year however, the L&RS could find no timetable for this. The Government did issue a press release in May 2021 announcing the publication of the *Policy Statement on the Framework for Ireland’s Offshore Electricity Transmission System* which also stated that there will be three scheduled offshore wind specific RESS auctions this decade that will enable Ireland to meet the 5GW objective by 2030.³⁶

Stakeholder concerns

The importance of community benefits from ORE was a key issue raised several times by stakeholders who presented to the Committee during PLS of the General Scheme in 2020. While community benefits are included in the T&C of RESS 1, the Committee noted that none of these are specific to offshore wind nor does RESS 1 indicate how to identify beneficiary communities.

Public acceptance and community benefits of ORE

There is no European-wide requirement for benefit schemes for communities affected by offshore wind farms, and the only examples of European member states with community benefit policies in place identified were Scotland which has voluntary guidance for communities and developers and Denmark which requires 20% of all renewable energy projects be offered to local communities.

³⁴ Government of Ireland, 2020. *Terms and conditions for the first competition under the Renewable Electricity Support Scheme, Supplementary Note in relation to citizen investment* (February) [online]. Available at: https://www.dccae.gov.ie/documents/RESS_Investment_Scheme_Supplementary_Note.pdf [accessed on 15.05.2020]

³⁵ Eirgrid, 2020. *RESS 1 Final Auction Results* 10 September [online]. Available at: [http://www.eirgridgroup.com/site-files/library/EirGrid/RESS-1-Final-Auction-Results-\(R1FAR\).pdf](http://www.eirgridgroup.com/site-files/library/EirGrid/RESS-1-Final-Auction-Results-(R1FAR).pdf) [accessed on 13.09.2021]

³⁶ Gov.ie, 2021. *Policy Statement on the Framework for Ireland’s Offshore Electricity Transmission System* [online]. Available at: <https://www.gov.ie/en/publication/5ec24-policy-statement-on-the-framework-for-irelands-offshore-electricity-transmission-system/> [accessed on 13.09.2021]

For offshore wind farms in the UK, it is generally at the discretion of the developer what type and how much community benefit they offer and that this must come from some type of corporate social responsibility. This is despite policy guidance provided by the Highland Council in Scotland.

Opposition to onshore wind farms is well known but vocal and effective anti-offshore wind farm protests have also been recorded and while community benefit schemes are well established for onshore wind farms, they are not as commonplace for offshore wind farms. There is a general lack of policy and guidance on community benefit schemes for offshore wind farms across Europe except for Scotland and Denmark. This is likely because, while opposition does exist, it is not as powerful as the anti-onshore wind farm lobby. Developers have also been quick to point out the “difficulties” in identifying nearby communities and the infancy of the industry and project economics.³⁷

Benefits associated with offshore wind include clean energy generation, energy security and investment. Being offshore and thereby spatially removed from the nearest community also helps reduce certain impacts such as shadow flicker and noise, which are common complaints associated with onshore wind farms. Negative effects include bird collisions and possible impacts on their flight paths, potential damage to local fishing, recreational use of the surrounding sea and visual impact on sea vistas and the coastline. Community benefits can represent a means to address the imbalance between benefits and negative impacts associated with offshore renewables. They have a social justice aspect in the form of energy justice – making sure that local communities have a say in any proposed renewables projects in their area and ensuring their concerns are taken on board. Examples of community benefits include co-ownership options, discounted electricity prices, financial incentives and / or apprenticeships and training opportunities for locals.

Offshore wind farms are yet to reach their potential in Ireland. Offshore wind is included in the latest RESS1 and this policy also provides for a community benefits fund and community ownership of renewable energy projects. However, there is currently no Irish policy on how community benefit schemes could be developed or how communities and benefits can be identified and understood with regards to offshore wind farms. Ireland could learn from the UK experience, and the ownership requirements in Denmark.

As every location and community for any future proposed offshore wind farm is different, it is important that a one-size-fits-all approach is not taken. The research and learnings from the onshore wind development challenges indicate that any policy for community benefit schemes for offshore wind should be flexible and encourage early and open communications with the local communities. However, despite policies in place in both Scotland and Denmark, the uptake of voluntary community benefit schemes by developers in Scotland has been poor and the percentage of community ownership in offshore wind farms in Denmark is low.

³⁷ Kerr, S., Johnson, K. and Weir, S., 2017. Understanding community benefits from renewable energy development. *Energy Policy* 105 (2017) 202-211 [online]. Available at: <https://www.sciencedirect.com/science/article/pii/S030142151730109X?via%3Dihub#s0075> [accessed on 01.05.2020]

Policy context of the Bill

The Bill is an important part of wider ongoing reform of marine governance. Some of the key policy documents of relevance to the Bill include:

- Marine Strategy Framework Directive (2008);
- Harnessing Our Ocean Wealth (2012);
- Marine Spatial Planning Directive (2014);
- Offshore Renewable Energy Development Plan (2014);
- National Marine Planning Framework (2020);
- Marine Planning Policy Statement;
- Climate Action Plan, 2019;
- [Maritime Jurisdiction Act, 2021](#); and
- Anticipated legislation on MPAs.

These documents are further discussed below.

Marine Strategy Framework Directive

The [Marine Strategy Framework Directive 2008/56/EC \(MSFD\)](#) was transposed into Irish legislation by [European Communities \(Marine Strategy Framework\) Regulations, S.I. no. 249 of 2011](#). The overarching aim of the Directive is to achieve or maintain Good Environmental Status (GES) in all European waters by 2020. In order to achieve this aim, each member state is required to draw up a marine strategy for their coastal and marine waters. This involves defining GES, setting environmental targets and indicators, implementing monitoring programmes for on-going assessment and developing and implementing Programmes of Measures to achieve GES. The MSFD is implemented in six-year cycles commencing in 2012. Ireland published its first MSFD initial assessment report in 2013, followed by the development of a monitoring programme in 2015 and a programme of measures in 2016. Ireland is now in the first phase of its second cycle which involves re-assessing our marine environment. Public consultation was carried out between December 2019 and February 2020 and the Update to Part 1 of Ireland's Marine Strategy was published in June 2020.³⁸

Harnessing Our Ocean Wealth

The Government published, *Harnessing our ocean wealth, an integrated marine plan for Ireland* in July 2012. The Integrated Marine Plan (IMP) builds on Government commitments to enhance the maritime area. The aim of the IMP is to provide:

“a new momentum for growth in the marine area” and furthermore “seeks to ensure government departments work together more efficiently and effectively on the diverse issues related to the marine”.

³⁸ Department of Housing, Local Government and Heritage. *Marine Strategy Framework Directive 2008/56/EC Article 17 update to Ireland's Marine Strategy (June 2020)* [online]. Available at: http://www.housing.old.gov.ie/sites/default/files/publications/files/2020_june_article_17_update_to_irelands_marine_strategy_part_1_articles_8_9_10_final.pdf accessed on 19.11.2020]

To achieve this, the Government identified three strategic goals with sustainable development at their core:

1. “**Goal 1** focuses on a *thriving maritime economy*, whereby Ireland harnesses the market opportunities to achieve economic recovery and socially inclusive, sustainable growth.
2. **Goal 2** sets out to achieve *healthy ecosystems* that provide monetary and non-monetary goods and services (food, climate, health and well-being).
3. **Goal 3** aims to increase our *engagement with the sea*. Building on our rich maritime heritage, our goal is to strengthen our maritime identity and increase our awareness of the value (market and nonmarket), opportunities and social benefits of engaging with the sea.”³⁹

Harnessing Our Ocean Wealth undergoes annual progress reviews and further information is available [here](#).⁴⁰

As well as being responsible for the new marine planning framework, *Marine 2040* (a sub-group of the Project Ireland 2040 Oversight and Delivery Board) will be responsible for aligning the NDP, the NMPF and the renewed edition of *Harnessing Our Ocean Wealth* which will serve as the marine development activation plan.⁴¹

Offshore Renewable Energy Development Plan (ORED)

In February 2014, the Department of Communications, Energy and Natural Resources (DCENR) published the [Offshore Renewable Energy Development Plan](#) (ORED).⁴² The ORED provides a framework for the sustainable development of offshore renewable energy in such a manner as does not adversely affect Ireland’s rich marine environment. It aims to support the increase of indigenous renewable energy thereby improving Ireland’s energy security, helping to reduce greenhouse gas emissions and tackle climate change and creating green jobs.

Following public consultation, an interim review of the ORED was published in 2018. This review noted, among other things, that the lack of a regulatory system for ORE projects beyond the foreshore has meant that developers are unable to attract investment due to uncertainty over the consenting process and concerns over timelines.⁴³

³⁹ Government of Ireland, 2012. *Harnessing our ocean wealth, an integrated marine plan for Ireland* [online]. Available at:

<https://www.ouroceanwealth.ie/sites/default/files/sites/default/files/Publications/2012/HarnessingOurOceanHealthReport.pdf> [accessed on 17.11.2020]

⁴⁰ Our ocean wealth, n.d. *Update on progress* [online]. Available at: <https://www.ouroceanwealth.ie/update-progress> [accessed on 20.11.2020]

⁴¹ Department of Housing, Local Government and Heritage, 2021. *Maritime Area Planning Bill 2021, Briefing Note*. Provided to the L&RS by the Department, 13 September.

⁴² DCENR, 2014. *Offshore Renewable Energy Development Plan* [online]. Available at: <https://assets.gov.ie/27215/2bc3cb73b6474bebbe810e88f49d1d4.pdf> [accessed on 20.11.2020]

⁴³ Government of Ireland, 2018. *ORED Interim Review May 2018* [online]. Available at: <https://www.gov.ie/en/publication/e13f49-offshore-renewable-energy-development-plan/> [accessed on 20.11.2020]

OREPD 2

The Sustainable Energy Authority of Ireland (SEAI) launched a tender for the creation of a Strategic Environmental Assessment (SEA) and an Appropriate Assessment (AA) for the new OREDP (OREDP 2) on 30 August 2021.⁴⁴

The OREDP 2 is expected to inform the identification and designation of candidate areas for future offshore renewable energy development under the new system set out in the Bill.⁴⁵

Marine Spatial Planning Directive

The [Marine Spatial Planning Directive \(2014/89/EU\)](#) (MSP Directive) creates a common framework for marine spatial planning in Europe and requires all coastal member states to establish maritime spatial plans by 2021. According to the draft NMPF, under the Directive, member states must:

“...consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses...

and

“...use their maritime spatial plans to aim to contribute to the sustainable development of energy sectors at sea, of maritime transport, and of the fisheries and aquaculture sectors, and to the preservation, protection and improvement of the environment, including resilience to climate change impacts. However it also allows Member States to pursue other objectives such as the promotion of sustainable tourism and the sustainable extraction of raw materials.”⁴⁶

The MSP Directive was originally transposed into national legislation by *EU (Framework for Maritime Spatial Planning Regulations, 2016 (S.I. 352 of 2016))* but they were strictly limited to measures required to transpose the directive and were repealed and replaced with [Part 5 of the Planning and Development \(Amendment\) Act 2018](#).

National Marine Planning Framework

The result of the marine spatial planning process is a marine spatial plan (MSP) and Ireland's first MSP, the [National Marine Planning Framework](#) (NMPF) was published on 30 June 2021. The NMPF sets out the policy framework for how we want to use, protect and enjoy our seas over the

⁴⁴ ETENDERS, 2021. OREDP 2 - *Strategic Environmental Assessment (SEA) and Appropriate Assessment for Offshore Renewable Energy Development Plan* [online]. Available at: [Public RFT - Strategic Environmental Assessment \(SEA\) and Appropriate Assessment for Offshore Renewable Energy Development Plan 2 \(eu-supply.com\)](#) [accessed on 09.09.2021]

⁴⁵ Buljan, A., 2021. *Ireland opens tender for Strategic Environmental Assessment for New Offshore Renewable Energy Development Plan* [online]. 3 September. Available at: [Ireland Opens Tender for Strategic Environmental Assessment for New Offshore Renewable Energy Development Plan | Offshore Wind](#) [accessed on 09.09.2021]

⁴⁶ Government of Ireland, 2019. *Draft National Marine Planning Framework* [online]. Available at: https://www.housing.gov.ie/sites/default/files/public-consultation/files/draft_national_marine_planning_framework_final.pdf [accessed on 19.11.2020]. Page 16

next 20 years. It is intended as the marine equivalent of the land-based National Planning Framework and provides for the sustainable use of Ireland's maritime area to 2040.

Marine Planning Policy Statement

Following a period of public consultation during the summer of 2019, the Government published its [Marine Planning Policy Statement](#) (MPPS) alongside the draft NMPF in November 2019. The MPPS:

- “Draws together and describes the existing components of Ireland's marine planning system;
- Outlines a vision for the future development of the marine planning system;
- Sets out the overarching policies and principles the Government expects marine planning bodies and other public bodies that engage with the marine planning system to observe (in terms, for example, of public engagement, transparency, governance, environmental assessment, climate action, social and economic benefit); and
- Sets out high-level priorities for the enhancement of the marine planning system in Ireland.”⁴⁷

Climate Action Plan, 2019

The 2019 [Climate Action Plan](#) put forward a list of key actions required to meet our 2030 climate targets and put us on a trajectory for net-zero emissions by 2050.

Key actions included, among other things, to:

Facilitate the development of Offshore Wind, including the connection of at least 3.5 GW of offshore wind, based on competitive auctions, to the grid by 2030.

Several steps were identified to achieve this included the enactment of the Bill and development and enactment of the secondary legislation following enactment of the Bill to enable implantation.⁴⁸

The 2019 [Climate Action Plan](#) also included the commitment that, “70% of our electricity needs will come from renewable sources by 2030.” To achieve that commitment, the June 2020 Programme for Government, [Our Shared Future](#), gave priority to the drafting of the Bill. It also committed to developing a long-term plan for how Ireland can take advantage to our offshore renewable energy resources and to increasing Ireland's commitment from 3.5GW of offshore wind by 2030 to setting a path to achieving 5GW capacity in offshore wind by 2030 off Ireland's Eastern and Southern coasts.

Maritime Jurisdiction Act, 2021

The [Maritime Jurisdiction Act, 2021](#) provides an updated restatement of Ireland's jurisdiction in the maritime area and gives effect to certain provisions of the United Nations Convention on the Law

⁴⁷ Department of Housing, Local Government and Heritage. *Marine Planning Policy Statement* [online]. Available at: <https://www.gov.ie/en/publication/3e262-marine-planning-policy-statement/> [accessed on 10.09.2021]

⁴⁸ DCCA, 2019. *Climate Action Plan* [online]. Available at: <https://assets.gov.ie/10207/c8f59b1734af460fa310ddb20e01388.pdf> [accessed on 13.11.2020] (Action 25)

of the Sea (UNCLOS). The 2021 Act includes definitions of the continental shelf, the EEZ, internal waters and the territorial seas. The Bill must be consistent with this terminology.

Anticipated legislation on Marine Protected Areas

As set out earlier in the Digest, the Department has indicated that legislation for the identification, designation, and management of MPAs will be developed commencing in November 2021 and continuing into 2022.

Pre-legislative scrutiny of the General Scheme

The Oireachtas Joint Committee on Housing, Local Government and Heritage (the Committee) agreed to undertake pre-legislative scrutiny (PLS) of the General Scheme of the Bill which began on 24 November with a series of public hearings as set out in Table 2.

Table 2: Dates and Witnesses - Joint Committee on Housing, Local Government Climate Action - public meetings on the PLS of the General Scheme of the Marine Planning and Development Management Bill 2019

Date of Committee Meeting	Witnesses
Tuesday, 24 November 2020	Officials from the Department of Environment, Climate and Communications; and Officials from the Department of Housing, Local Government and Heritage
Thursday, 26 November 2020	Representatives from Marine Renewables Industry Association; and Representatives from Irish Wind Energy Association.
Thursday, 3 December 2020	Representatives from the Irish Environmental Network; and Representatives from Coastwatch.

The Committee also received several written submissions and responses on the General Scheme. The L&RS provided the Committee with a pre-hearing PLS briefing paper on the General Scheme of the Bill in November 2020 to assist them with their PLS⁴⁹ and the Committee published their PLS report on the General Scheme of the Bill on 16 February 2021.⁵⁰ The Report identified nine key issues and set out a total of 29 recommendations.

⁴⁹ L&RS, 2020. *Marine Planning and Development Management Bill, PLS Paper* [online]. Available at: https://ptfs-oireachtas.s3.amazonaws.com/DriveH/AWDData/Library2/LRS%20Publications/pdf/PLS%20paper%20on%20GS%20of%20MPDM%20Bill_final_23.11.2020_040221_123652.pdf [accessed on 02.07.2021]

⁵⁰ Joint Committee on Housing, Local Government and Heritage, 2021. *Report on pre-legislative scrutiny of the General Scheme of the Marine Planning and Development Management Bill* [online]. Available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-02-16_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-marine-planning-and-development-management-bill_en.pdf [accessed on 02.07.2021]

Table 4 sets out the Committee's nine key issues and 29 associated recommendations and the Department's response to each recommendation and whether it was accepted, partially accepted or not accepted. Table 4 also provides a 'traffic light' system which is an analysis (by the L&RS, **not** the Department) as to what impact the recommendation had on the drafting of the Bill (explained in Table 3). A number of recommendations did not relate directly to the Bill. However, as the Department responded to all recommendations, these are kept in Table 4 for completeness.

Table 1 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Error! Reference source not found. to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	
Key issue identified by the Committee but that does not relate directly to the Bill.	N/A

Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations with responses provided by the Department of Housing, Planning and Local Government (13 September 2021).

No.	Recommendation as per Joint Committee on Housing, Planning and Local Government Report (February 2021)	L&RS 'traffic light'	Response from Department of Housing, Planning and Local Government on whether addressed (either in whole or in part) in the Bill or elsewhere
Key issue 1: Marine Protected Areas			
1	The completion of designation, and specification of regulation and management of Marine Protected Areas based on ecosystem requirements, required under Article 13(4) of the Marine Strategy Framework Directive as the basis for any spatial plan and consents, be provided for in the proposed bill as a precondition to the making of any plan or the granting of any consent under the legislation.		Not accepted by the Department – Legislation is being developed separately by MHLGH to provide comprehensively for the definition, identification, designation and management of marine protected areas (MPAs), which is necessary to expand Ireland's network of protected sites in the sea. The scope and complexity of this process with respect to Ireland's extensive maritime area and ecosystems, along with its need to remain independent of the statutory

			<p>consent process, necessarily means that the MPA legislation will post-date the establishment of the new spatial planning regime that is primarily centred around human activities. The Bill provides for consideration of any and all legally protected marine sites including MPAs, once designated, at both a project level and in the preparation of Marine Spatial Plans.</p> <p>Further information on MPAs is available at: https://www.gov.ie/en/publication/e00ec-marine-protected-areas/</p>
2	Alternatively, the Department prioritise the introduction of separate and complementary legislation to complete the designation, regulation and management of Marine Protected Areas and subsequently that Marine Protected Areas are included in the National Marine Planning Framework and Marine Spatial Plan.		<p>Accepted by the Department –</p> <p>As above. Development of the legislation is ongoing.</p>
3	The Government implement interim measures to protect areas of the marine environment given the disparity between the introduction of the proposed legislation and the absence of legislation regulating Maritime Protected Areas.		<p>Partially accepted by the Department –</p> <p>Existing measures for the protection of the marine environment and its features such as Environmental Impact Assessment and Appropriate Assessment requirements, the conservation of Ireland's Natura 2000 network of sites (i.e. SACs, SPAs) and the protection of listed species and habitats under the Birds and Natural Habitats Regulations and the Wildlife Acts, plus Ireland's binding environmental targets under the Marine Strategy Framework Directive, already apply to the Maritime Area. DMAPs will take into account the environment of the area involved and includes provision, <i>inter alia</i>, for allowed/restricted uses, mitigating measures for the impacts of certain usages, measures to avoid adverse impacts and environmentally beneficial measures.</p> <p>The Bill provides that project level decision makers will have to give due regard to existing and new designations.</p> <p>The first National Marine Planning Framework, established this Summer, already applies to decision makers and State actors in the Maritime Area. The NMPF puts at the heart of all decision, plan and policy making, ocean health and protection of our marine ecosystem.</p>
4	All ecosystem requirements of the Maritime Spatial Planning and Marine Strategy Framework Directives, in particular those of species and habitats listed under the EU Birds and Habitats directives, the OSPAR Convention and the International Union for Conservation of Nature Red lists be taken into account as part of any planning process in the proposed legislation.		<p>Partially accepted by the Department –</p> <p>The first National Marine Planning Framework already applies to decision makers and State actors in the marine space. Measures supporting the requirements of the MSFD, such as the achievement and maintenance of Good Environmental Status been expressed in the NMPF. The Birds, Habitats and EIA Directives are provided for by specific procedures in the proposed amendments to the Planning and Development Act.</p>

Key issue 2: Public participation

5	A statutory obligation requiring effective and adequate public consultation and participation as required by the Strategic Environmental Assessment Directive and Aarhus Convention, be included in all provisions relating to adoption of programmes of measures, marine spatial plans, and individual Maritime Area Consents.		<p>Partially accepted by the Department –</p> <p>The Bill provides for extensive measures to support the requirements of the SEA Directive and Aarhus Convention. Strategic Environment Assessments, including public participation of various elements, such as DMAPs and Guidelines will be undertaken at the appropriate time as part of their development.</p> <p>Marine Spatial Plans, including DMAPs, are subject to a mandatory Public Participation Statement that will detail the timeframes, procedures and mechanisms for public participation specific to the particular plan in development. That Statement will be laid before the Oireachtas to assist and enable relevant Oireachtas Committees to participate and inform the development process.</p> <p>At a project level, the Bill provides for public consultation including, where required, the requisite EIA and AA consultation, within the planning permission and licensing processes.</p> <p>The MAC process relates primarily to due diligence on the “fit and proper” nature of applicants and the financial terms to apply to the permission for occupation. MAC grants will be subject to securing planning permission where the project detail and environmental impacts will be assessed.</p> <p>It is therefore not appropriate to apply an additional level of public consultation element to the MAC procedure. To do so would recreate the inefficient, duplicative and burdensome regime that the Bill seeks to replace.</p>
6	The bill provide for the refusal of Maritime Area Consent where an adequate level of public participation and consultation has not been met.		<p>Accepted by the Department -</p> <p>The level of engagement by applicants with potentially impacted stakeholders is a key MAC assessment criterion. The MAC process will not consider directly matters raised that are appropriate to the planning permission application process. The process is intended to help ensure that the public is involved at the early conceptual stages of project design with a view to incorporating or resolving issues before any applications are made. The precise nature and detail of that engagement will be project type specific and consideration of the level will be proportionate to the scale and scope of the particular proposal.</p>
7	The bill provide for enhanced public consultation measures surrounding the notification of the public in relation to the adoption of marine protected area designations, the drawing up of marine spatial plans, the designation of strategic marine activity zones and the determination of applications for planning permission or		<p>Accepted by the Department -</p> <p>As above in the response to recommendation 5, Marine spatial plans, including DMAPS which replace the proposed strategic marine activity zones, will be subject to a mandatory Public Participation Statement in which such detail relating to a specific plan will be clearly laid out.</p>

	<p>consent. This should include notifying the wider public of any developments and should not be confined solely to the locality in which the development is being proposed. Measures employed should include electronic means via websites and social media, as well as traditional media such as various national and local newspapers. Time periods for public participation should allow the public sufficient time to plan and participate effectively and in recognition of the volumes and complexity of information involved.</p>		<p>With respect to the planning application processes provided for in the Bill, the requirement for the publication of a newspaper notice for each application is widened to include national newspapers.</p>
Key issue 3: Fishing and aquaculture			
8	<p>The regulation and management of aquaculture be provided for in the bill.</p>		<p>Partially accepted by the Department -</p> <p>The consent regimes set out in MAP provides a platform for consolidation of other marine consenting functions. Government decision of June 2021 has committed all Government Departments with a marine consenting regime not included in this Bill, including aquaculture, to review their regime with a view to considering incorporating the function into the MAP regime. The outcome of those reviews will be subject to Government decision.</p>
9	<p>Alternatively, that the spatial planning for aquaculture be provided for in the bill, in order to meet the requirements of the Maritime Spatial Planning Directive that consent can only be granted in areas that are designated as suitable in the spatial plan, and to provide for overall compatibility and compliance of marine planning and consents.</p>		<p>Accepted by the Department -</p> <p>The National Marine Planning Framework already to aquaculture licensing. Spatial designations will be considered as part of a DMAP process. The DMAP provisions are sufficiently flexible to develop plans on a regional, local or sectoral basis.</p>
Key issue 4: Compliance with EU Directives			
10	<p>The bill be proofed to ensure full compliance and compatibility with The Marine Strategy Framework Directive, Environmental Impact Assessment Directive, Habitats Directive, Birds Directive, Water Framework Directive, Shellfish Waters Directive, Bathing Waters Directive, Waste Framework Directive, Maritime Spatial Planning Directive, measures implementing those Directives, and the Dumping at Sea Act and Sea Pollution Act.</p>		<p>Accepted by the Department -</p> <p>The Bill sets out the procedures for the preparation of forward plans and project level assessments through MACs, licensing and planning permission. The obligations on competent authorities, state actors and decision makers resulting from the wide range of Directive and legislation referenced in the recommendation continue as now and will be taken into consideration, where appropriate to the measure, directive or legislation in the context of a particular project assessment or development of a plan.</p>
Key issue 5: Educational and employment opportunities			
11	<p>The Department of Housing, Local Government and Heritage together with the Department of the Environment, Climate and Communications and the Department of Further and Higher Education, Research,</p>	<p>N/A</p> 	<p>Accepted by the Department -</p> <p>A "top team" to this effect is in the process of being established, with membership from academia and the Departments mentioned, and with the addition</p>

	Innovation and Science, engage with education institutes and industry bodies with a view to developing and implementing a range of courses and apprenticeships to address potential future skills shortages in the Offshore Renewable Energy sector.		of the Department of Enterprise, Trade and Employment and also Enterprise Ireland. The Expert Group on Future Skills Needs (EGFSN), chaired by DETE, will shortly publish a report, Skills for the Low Carbon Economy, which will support the work of the top team.
1 2	Consideration be given to the introduction of local employment and training clauses for large developments to ensure community gain.	N/A	Partially accepted by the Department - When determining large-scale planning application, An Board Pleanála will be able to condition community gain in much the same way as it currently does with Strategic Infrastructure Developments. With regard to offshore wind developments supported under the Renewable Electricity Support Scheme (RESS), in order to capture the maximum economic benefit for hosting local communities, the draft terms and conditions for the first offshore auction under the scheme (ORESS 1) propose that operation and maintenance facilities are required to be headquartered in an Irish port. A public consultation on these terms and conditions will be launched later this month [Sept]. The accompanying consultation paper will specifically call for evidence regarding the potential impact and effectiveness of a local employment and training clause.
Key Issue 6: Industry considerations			
1 3	Consideration be given to the allowance of design envelope flexibility subject to periodic review as part of the planning process in instances where there are no detrimental environmental impacts.		Partially accepted by the Department - Whilst such an approach is desirable, the practical implications on the findings of any EIA / AA carried out in respect of a proposed development need to be considered in detail. Even perceived immaterial deviations from a granted scheme may have impacts that will need to be assessed. S146B of the Planning and Development Act already provides for this and similar provisions have been provided for in the Bill. Notwithstanding this, the Bill provides for the preparation of planning regulations that can set out the parameters of future planning applications and there may be an opportunity to further review the detailed requirements for individual applications in this context, in a manner that is consistent with the land-based planning regime and that protects the interests of the wider public.
1 4	Consideration be given to the streamlining of the consent process to one authority in all instances, and subject to adequate public consultation procedures. In the event of the legislation providing for determinations in respect of such a process, such determinations should ensure public participation is provided for at the earliest stage not only when all options are open in accordance with the Aarhus Convention.		Accepted by the Department - MARA will undertake a number of consenting roles under the new regime, with the Relevant Minister construct and Local Authority permitting regime replaced. The enhanced agency/licensing model will provide for considerable streamlining. It is appropriate for coherence, expert competencies and practicalities relating to coastal development to retain development consent consideration within the planning system by local authorities and An Bord Pleanála as appropriate.

			Stakeholder engagement by prospective developers will begin prior to any MAC application at the conceptual stage of project design.
1 5	The bill be amended to provide for a requirement for developers to meet time-limited specific development milestones, these milestones to be provided for in secondary legislation, for the Maritime Area Consent and for mandatory conditions in consents requiring operations to begin within a certain period post-consent, or agreement of a binding commitment to do so, subject to the possibility of financial penalties for late completion.		Accepted by the Department - The MAC model as currently set out in the legal text provides for a schedule of conditions which may be attached to the MAC, including an adherence to a specified work programme and the setting of dates when events or obligations are to be performed by the MAC holder. This may be impacted and updated to account for planning permission conditions. It is a general provision with project specific timeframes to be set out in conditions appropriate to the proposal. Robust enforcement provisions include fines and other sanctions for breach of MAC/Planning/Licence conditions are provided for. MACs will have a set time-limit after which point if planning has not been granted the MAC will terminate.
1 6	Consideration be given to inserting a provision in the bill to facilitate the change of ownership of a project during the consenting process. This should include a requirement of consent to transfer such interest, and for time limited public participation on the decision to consent to the transfer, and a proviso that a change in the identity of the ultimate beneficial owner be regarded as a transfer for which consent is required, duly linked to definition of 'person concerned' at Head 28.		Accepted by the Department - The Bill provides for assignments of the MAC to a new owner through a joint application process. The standard MAC suitability tests (fit and proper person etc.) will apply to any new potential owner including the ability to comply with MAC conditions as granted.
1 7	Consideration be given to subjecting marine environmental surveys to a streamlined process.		Accepted by the Department - Such surveys will be considered in the new licensing regime provided for in the Bill. The licensing procedure will be applied proportionally to the scale of the proposed activity. It is envisaged that certain minor activities will only require minimal consideration. Activities that may impact on Natura 2000 sites will be subject to Appropriate Assessment. Activities that require an EIA will not be licensable and subject to planning permission instead.
1 8	Further clarity in the bill be provided for surrounding the criteria used to distinguish between small and large marinas, and minor and major outfalls. Such criteria should reflect the characteristics and status of the receiving waters.		Accepted by the Department - Such uses are scheduled in the draft Bill and will broadly reflect existing SID provisions. An Bord Pleanála will have ultimate authority when considering whether an application is to be made to it or a local authority and will be dependent upon the nature, scale, detail and location of particular proposals. Discharges from outfalls will continue to be regulated by the EPA and local authorities under the Wastewater Discharge Authorisation process.

19	Consideration of the management and regulation of hybrid connections be provided for in the proposed bill.		Accepted by the Department - Any single project proposal will be subject to a single MAC assessment and single Planning Permission or licence as appropriate.
Key issue 7: Community Dividend			
20	The Good Practice Principles Handbook provide for an adequate, transparent, and fair distribution of benefits to communities. However, given the nature and scale of development envisaged it would be appropriate to provide for wider public consultation on the matter of community dividend.	N/A	Partially accepted by the Department - For offshore wind projects supported under the RESS, community benefit contributions will be required. In order to ensure good governance principles of transparency and fair distribution of these funds, guiding principles will be established for their disbursement, based on the terms and conditions of ORESS 1 in the first instance, due for public consultation later this month [Sept].
21	Future iterations of the Renewable Electric Support Scheme provide for community benefits stemming from offshore wind projects.	N/A	Partially accepted by the Department - RESS is beyond the scope of the MAP Bill. Community Benefit Funds and the contribution level of €2/MWh are established in the design of all RESS auctions, onshore and offshore. This design feature is included in the State Aid notification for RESS and is not expected to change.
22	Consideration be given to the potential for wider dividends to be provided in respect of protecting and preserving biodiversity.	N/A	Not accepted by the Department - This is beyond the scope of primary legislation. While MARA (and MECC in the interim) has the power to establish a levy framework for MACs appropriate to proposals it is ultimately a matter for DPER to determine the appropriate disbursement of funds.
23	Consideration be given to the potential for wider dividends to be provided in respect of grants and scholarships to promote academic excellence in marine biodiversity and also for the support and development of truly independent studies and assessments associated with marine biodiversity.	N/A	Not accepted by the Department - As above
Key issue 8: Staffing resources			
24	All Government departments and bodies be adequately resourced to effectively and efficiently carry out their functions stemming from the introduction of the new marine planning system, both in terms of facilitating efficient development and effective marine environmental protection. Consent application fees should be calculated to contribute to the costs of such resourcing.	N/A	Partially accepted by the Department - Departmental Staff will continue to lead the further development of the NMPF and constituent elements. Continued cross-departmental collaboration and multi-agency working groups both spread the staff resource impacts and increase the breadth of marine competencies across the system.
25	Consideration be given to the expertise and benefit provided by eNGOs to the decision-making under this legislation and the additional burden and volume of consultation which is likely to arise, and the need to provide for additional supports to enable them participate effectively in the	N/A	Partially accepted by the Department - The Bill provides scope to a prescribe range of bodies for the purposes of planning permission decision making. The MAP Bill provides for a single environmental assessment of proposal. This elimination of the existing duplicative assessment

	environmental decision-making under the legislation.		regime will remove a significant burden from the eNGOs in relation to specific projects. The issue of additional supports is not marine specific and beyond the scope of the legislation.
Key issue 9: Enforcement			
2 6	Further clarity surrounding the enforcement regime be provided for in the bill, particularly in relation to the enforcement of environmental provisions contained in the both the current bill and existing environmental legislation.		Accepted by the Department - The modalities and responsibilities of enforcement are clearly laid out in the legal text. MARA will be responsible for enforcement of MACs licences and offshore planning permissions. Local Authorities will continue to be responsible for enforcement of coastal development extended into the new nearshore area.
2 7	The enforcement body provided for in the bill be adequately resourced to enable it to effectively administer its obligations under the bill and related legislation. The enforcement body be subject to a requirement to ensure prompt, effective and dissuasive enforcement in order to comply with requirements of EU Directives, and subject to supervision by an external supervisor to guard against regulatory capture. The enforcement body be required to provide publicly available detailed quarterly reports on their activities.		Accepted by the Department - MARA will be a well-resourced independent agency carrying out certain consenting functions. Work is ongoing to determine appropriate structures, staffing levels and skills requirements for MARA to undertake the functions set out in the Bill. MARA will have robust investigation and enforcement powers and a specified statutory function to promote and monitor compliance relating to its functions under the Bill. MARA will report on its enforcement activities in its annual report to be laid before the houses of the Oireachtas. It is intended that MARA will perform its functions in an open and transparent manner with the modalities of notifications to be detailed during its establishment process.
2 8	Consideration be given to transferring the responsibility for foreshore licensing to the proposed independent enforcement body.		Partially accepted - MARA will be responsible for managing the existing MHLGH foreshore consent portfolio. No further foreshore consents will be granted by MHLGH with the exception of applications on hand upon MARA establishment to be determined. Minister for Agriculture, Food and the Marine foreshore consents will continue to be administered by that Department pending review in the context of Marine 2040. MARA will consider MAC applications for all project types appropriate to the new regime.

29	<p>Consideration be given to the provision of surety or bonds against the potential costs of cleaning up and/or otherwise remediating or addressing environmental damage in the marine environment consequent on activities or consents granted, and in respect of the costs associated with the retirement and proper disposal or re-use of materials deployed in the marine environment from consents granted to survey or develop in the marine environment.</p>		<p>Accepted by the Department -</p> <p>MACs will contain a rehabilitation schedule setting out the “end of life” obligations on MAC holders to rehabilitate or restore the maritime area appropriately. This schedule may evolve over the lifetime of the MAC due to technological or best practice evolution. MACs will also include a condition on holders to indemnify the State in relation to breach of the MAC conditions and any liabilities arising from the undertaking of the maritime usage including rehabilitation.</p>
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Source: L&RS is grateful to the Department of Housing, Planning and Local Government for providing their analysis of how the Committees recommendations impact on the Bill. The traffic light assessment represents the analysis of the L&RS.

Principal provisions of the Bill

This Bill has nine Parts, 181 Sections and 12 Schedules and is 248 pages long. Due to the length and complexity of the Bill, each provision is not analysed in detail here. Rather an overview of what each principal provision does is provided here. **This review is not exhaustive.**

Part 2: Marine Spatial Plans and Designated Maritime Area Plans

Part 2 of the Bill set out the framework for MSPs and DMAPs. Chapters 6, 7 and 8 of Part 2 are not reviewed here.

Chapter 1

Sections 13 and 14 set out how competent authority, protected site and relevant site should be constructed and provide that this Part applies to the maritime area but shall not apply to maritime usages that relate solely to defence or national security.

Chapter 2

As set out in the Policy background of this paper, Ireland’s first MSP, the [National Marine Planning Framework](#) (NMPF) was published on 30 June 2021. The NMPF sets out the policy framework for how we want to use, protect and enjoy our seas over the next 20 years.

Section 15 designates the Minister as the competent authority for the purpose of the MSP Directive who shall carry out the process of marine spatial planning and prepare and publish a plan.

Section 16 sets out the objectives of the plan (or MSP) as follows:

- Analyse and organise maritime uses in the maritime area so as to achieve ecological, social and economic priorities;
- Establish a national Government strategy for strategic planning and sustainable maritime use in the maritime area;
- To apply an ecosystem approach; and
- Promote the co-location of various maritime uses in the maritime area.

Section 16 further provides that the competent authority may prepare an MSP for the whole maritime area and different MSPs for different geographical and/or sectoral areas of the maritime area.

Section 17 sets out the requirements for maritime spatial planning which include, during the preparation of a plan:

- a) Complying or ensuring compliance with the requirements of paragraphs 1 and 2 of Article 6, and Articles 10, 11 and 12, of the MSP Directive;
- b) taking account of circumstances particular to the marine region to which the Convention for the Protection of the Marine Environment of the North-East Atlantic, done at Paris on 22 September 1992, applies; and
- c) having regard to the obligations of the State under UNCLOS and the *Maritime Jurisdiction Act 2006*.

It also provides that the Minister carry out a review of the existing NMPF (and of future MSPs when in place), not later than six years since its publication and either prepare and publish a new plan to replace it, or, if not, to explain and publish (on a Government website) the reasons why not.

Section 18 provides for public participation on MSPs and requires the Minister to, as soon as appropriate, following a review of the NMPF (and later MSPs when in force), publish a “Public Participation Statement” (PPS) on a Government website. The PPS must set out the processes decided on in relation to the involvement of interested persons in the preparation of a relevant document. The competent authority shall take all reasonable steps to comply with the PPS and keep it under review, revising it if considered necessary or expedient (and publish the revised PPS on a Government website).

The Minister may, by regulations, specify requirements of the PPS including public consultation times, public notices, and information on the proposed methods of public participation.

The Minister may also make regulations to ensure that the PPS has regard to principles and policies including compliance with the Aarhus Convention, Directive on Public Participation and Article 9 of the MSP Directive, incorporation of national and international good practices relating to public participation, inclusive public participation and appropriate use of social media to raise awareness.

Section 19 provides for the laying of PPS before each House of the Oireachtas.

Chapter 3

DMAPs will be management plans for specific areas which can be used for multi-activity area plans, to promote the use of specific activities and/or for the purpose of the sustainable use and conservation of a particular marine environment.⁵¹

DMAPs can be regional, sectoral, or local.

⁵¹ Oireachtas.ie. *Explanatory Memo* [online]. Available at: [b10421d-memo.pdf \(oireachtas.ie\)](#) [accessed on 125.09.2021] Page 5.

Section 20 enables the Minister to designate one or more than one public body to be the competent authority for preparing and publishing (on the website of the public body) DMAPs having consulted with that one or more public body in advance.

Section 21 provides that the competent authority, once designated must prepare a “relevant proposal” for a DMAP to specify, among other things, the proposed objectives, geographical area, protected site, maritime usages, prohibitions and/or restrictions, existing DMAPs and/or existing maritime uses and the timeframe within which the DMAP will be prepared. The competent authority must then submit the relevant proposal to the Minister for approval to draft a DMAP based on the proposal. The Minister may then approve or refuse (with reasons) the proposal and, if approved, the competent authority may prepare the draft DMAP.

Section 22 provides that the competent authority prepares a draft DMAP as soon as practicable after it has been approved and that the draft DMAP shall be consistent with, among other things, the Marine Planning Policy Statement (MPPS), the National Marine Planning Framework (NMPF) and relevant guidelines and policies. It must specify, among other things, the aims of the NMPF that the draft DMAP seeks to attain or assist in the attainment of, geographical and/or sectoral areas of the maritime area to be included, the maritime usages, prohibitions and/or restrictions, and any proposed measures to avoid or mitigation negative impacts from the maritime usages on protected sites, species or habitats. An appropriate assessment (AA) and a strategic environmental assessment (SEA) must be carried out on the draft DMAP.

Section 23 provides that once the draft DMAP has been prepared, the competent authority must prepare and publish on its website, a Public Participation Statement (PPS). The PPS shall set out the processes decided on in relation to the involvement of interested persons in the preparation of a relevant document. The competent authority shall take all reasonable steps to comply with the PPS and keep it under review, revising it if considered necessary or expedient (and publish the revised PPS on its website).

The Minister may, by regulations, specify requirements of the PPS including public consultation times, public notices, and information on the proposed methods of public participation.

The Minister may also make regulations to ensure that the PPS has regard to principles and policies including compliance with the 1998 Aarhus Convention, 2003 Directive on Public Participation and Article 9 of the MSP Directive, incorporation of national and international good practices relating to public participation, inclusive public participation and appropriate use of social media to raise awareness.

Section 24 provides that the competent authority shall revise the draft DMAP if necessary to take into account any relevant considerations raised during public consultation and from the AA and SEA on the draft DMAP and submit the draft DMAP to the Minister. The Minister shall review the draft DMAP to ensure it is not inconsistent with the Marine Spatial Planning Directive, the Marine Planning Policy Statement (MPPS), the National Marine Planning Framework (NMPF) or any relevant guidelines or policies. Where an inconsistency is identified the Minister may recommend that the draft DMAP be amended, and where he does so, the competent authority shall amend the draft DMAP, carry out an AA and SEA of the amended draft DMAP and then revise the draft DMAP.

Section 25 provides for DMAPs to be laid before each House of the Oireachtas.

Section 26 provides that DMAPs must be reviewed at least every six years by the competent authority and following the review, the competent authority shall prepare and publish a new DMAP or if not, put a statement on its website setting out the reasons for that decision.

Chapter 4

Section 27 concerns DMAPS that apply exclusively within the nearshore (the area from the high-water mark to three nautical miles from shore) of one or more Coastal Planning Authorities (CPAs). In this case, the competent authority may be the CPA(s) and the DMAP shall not be made until a resolution has been passed by the CPA(s) and once made, a copy of the DMAP shall be laid before the CPA(s).

Chapter 5

Section 28 provides for material and non-material amendment of MSPs and DMAPs.

Part 3: Maritime Area Regulatory Authority (MARA)

Part 3 of the Bill provides for the establishment of a new agency, the Maritime Area Regulatory Authority (MARA) which will be responsible for MACs and maritime licensing processing.

Chapter 1

Sections 38 and 39 set out the definitions relevant to Part 3 and provides for an establishment day.

Section 40 provides for the establishment of MARA, a body corporate with perpetual succession and an official seal.

Section 41 sets out MARAs functions which include:

- considering, granting and revoking or suspending both MAC applications and MACs and licence applications and licences;
- Promotion and monitoring compliance as well as securing enforcement of MACs and licences;
- Investigation of suspected offences and instances of non-compliance;
- Prosecuting offences by way of summary proceedings;
- Referring cases to the DPP at MARAs discretion;
- Fostering and promoting co-operation between regulators of the maritime area; and
- Undertaking all administrative responsible for foreshore authorisations and performing other functions conferred upon it by this Act.

The MARA must be independent and made up of a Board, Chief Executive Officer and other staff members and shall have the powers necessary or expedient for the performance of its functions.

Section 42 provides that the MARA has regard for various obligations and policies as well as the need for co-operation between users of the same part or adjoining parts of the maritime area, or both.

Section 43 provides for the establishment of the Board consisting of a chairperson and up to 10 ordinary members from named public bodies (Department of Housing, Local Government and Heritage, Department of Environment, Climate and Communications, Department of Public Expenditure and Reform, Department of Transport, Office of Public Works, County and City Management Association). The Minister shall appoint the chairperson and other members of the Board. The chairperson and ordinary members shall not serve more than a five-year term and if re-appointed shall not serve more than two consecutive terms.

Section 44 provides for filling casual vacancies.

Section 45 provides for the functions of the Board which include to ensure that the functions of MARA are performed efficiently and effectively, to set MARAs objectives, to advise and make recommendations to the Minister regarding Ministerial or Government policies affecting the functioning of MARA.

Sections 46 – 53 provide for:

- 46** A person who is a **member of either House of the Oireachtas or European Parliament** etc. is not eligible to be on the Board of MARA.
- 47 Removal of a member of the Board** (may be removed by the Minister for reasons including if he/she is adjudicated bankrupt or convicted of any indictable offence).
- 48 Potential conflicts of interest**
- 49 Removal of all members of the Board** (by the Minister if, for example the Board fails to achieve a quorum for three consecutive meetings or does not comply with a judgement or a direction of the Minister. Or, if the Boards functions are not being performed efficiently and effectively).
- 50 Meetings of the Board** (no limit on number of meetings, may be called by the chairperson or by any five members of the Board if the chairperson refuses to call a meeting).
- 51 Committees** (the Board may establish committees to assist and advise on matters relating to its functions).
- 52 Persons ineligible for appointment** as a member of or a committee of the Board (ineligible if the person is the holder of a MAC, a licence, a foreshore authorisation or the if the person is the CEO or a member of staff of MARA).
- 53 Remuneration and expenses** of members of the Board and committees (may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform).

Chapter 4

Sections 54 – 61 provide for **Chief Executive Officer (CEO) of MARA** as follows:

- 54** Appointment of CEO (appointed by Government following an open selection competition through the Public Appointment Service (PAS) for the appointment of CEO of MARA with terms and conditions determined by the Minister with the consent of the Minister for Public Expenditure and Reform).
- 55** Resignation, removal or disqualification of CEO (may resign by giving written notice or may be removed by Government whether or not the Board recommends it).
- 56** Functions of the CEO (to carry on, manage and control MARAs administration and business and any other assigned to him/her).
- 57** Delegation of functions (may delegate functions in writing to a member of MARA staff).
- 58** Accountability of the CEO to committees of the Houses of the Oireachtas.
- 59** Appearance of the CEO before the Committee of Public Accounts (the PAC).
- 60** A person who is a member of either Houses of the Oireachtas or European Parliament is not eligible to be CEO of MARA.
- 61** The Minister may appoint (and terminate) an acting CEO if the CEO has been suspended or a vacancy occurs.

Chapter 5

Section 62 of the Bill provides that MARA may appoint staff (with the consent of the Minister given approval of the Minister of Public Expenditure and Reform).

Chapter 6

Section 63 provides for co-operation between MARA and public bodies for several reasons including assisting with the performance of their respective functions, avoiding duplication, ensuring consistency in decision making, enabling consultation and conducted joint studies or analysis if appropriate.

Chapter 7

Sections 64 – 66 relates to MARAs corporate strategy, accounts and annual reports.

Chapter 7

Sections 67 – 71 provide for miscellaneous provisions including the duty of MARA to give information, disclosure of confidential information, processing of personal data, powers to specify form of document and immunity from suit.

Part 4: Maritime Area Consent (MAC)

Maritime Area Consent (MAC) is the first element of the new development management process set out under the Bill. A person who wishes to **occupy** a part of the maritime area for a usage that requires planning permission must first apply to MARA for MAC. MARA must grant the MAC *before* the applicant can apply for planning permission. The MAC replaces foreshore consents under the remit of the Minister for Housing, Local Government and Heritage and eliminates duplication of environmental assessments.

Exclusion of fishing and aquaculture from MAC

Questions were asked during PLS of the General Scheme, by members and stakeholders as to why the foreshore consent system is continuing as is for fishing and aquaculture (activities regulated by the Minister for Agriculture, Food and the Marine) and not included in the Bill. Various environmental stakeholders discussed the aquaculture industry during PLS and recommended the inclusion of aquaculture in the Bill. However, aquaculture remains excluded from the Bill. The Department responded that while aquaculture is not in the Bill now, it could be included in the MAC system later.

Chapter 1

Provides for the interpretation of Part 4

Chapter 2

Section 73 provides that where planning permission is required for a proposed maritime usage in a part of the maritime area, the person must first apply for a MAC for the occupation of that part of the maritime area for the purpose of such usages. Exemptions are set out in Schedule 3.

Section 74 provides that where planning permission is not required, the person must first apply for a MAC for the occupation of that part of the maritime area for the purpose of such usages. Exemptions are set out in Schedule 4.

Section 75 provides that the Minister may, by regulations, specify the fees to be paid to the MARA in respect of the administration of MAC applications.

Chapter 3

Section 76 provides that a person may make an application to MARA (accompanied by the specified fee) for the granting of a MAC for the proposed maritime usage the subject of the application.

Section 77 sets out the criteria MARA shall have regard to when determining a MAC application while **Section 78** provides that MARA may grant or refuse a MAC or grant with conditions and do so, within 90 days (where possible) after the applicant has complied with all the requirements relating to the application.

Sections 79 – 81 provide for conditions attaching to a MAC, provisions supplementary to grant of the MAC and the notification of the granting of refusal of a MAC.

Chapter 4

Sections 82 and 83 provide for **assignment of MAC** (where the holder of a MAC wishes to assign the MAC to another person) and **material amendment to MAC**.

Chapter 5

Sections 84 and 85 provide for the holder of a MAC to apply for the surrender of a MAC and the determination of the application to surrender.

Chapter 6

Section 86 provides that MARA may declare by order that a person is a fit and proper person to be granted and to hold a MAC.

Chapter 7

Sections 88 - 90 provides that MARA shall establish a levy framework to determine what levy shall be paid to MARA by the holder of a MAC for the use of the part of the maritime area the subject of the MAC. The levy framework may provide different levies for different classes of MAC and different maritime usages. The levies may be determined on a competitive basis if there are two or more applicants for the same part of the maritime area.

Chapter 8

Section 91 defines rehabilitate and rehabilitation schedule.

Section 92 outlines the obligations of the holder of MAC regarding the restoration and rehabilitation of the maritime area. Obligations may include the decommissioning, removal or partial removal of infrastructure, re-use of the infrastructure, burying or encasing of infrastructure and/or the removal of any deposited waste material. The MARA will not grant a MAC unless there is a rehabilitation schedule attached.

Section 93 provides that if the MARA decides that, after the granting of MAC, for various reasons, the rehabilitation schedule is no longer appropriate, then the MARA may require the holder, by notice in writing to amend or replace the existing rehabilitation schedule and the holder of the MAC must comply with the notice.

Section 94 provides that a relevant person is not required to be a holder of a MAC to undertake emergency works such as sea defences and in other situations.

Chapter 9

Section 95 provides for where a part of the maritime area is privately owned.

Chapter 10

Chapter 10 provides for Special MAC cases.

Section 96 defines the relevant Minister as the Minister for Environment, Climate and Communications.

Section 97 provides that, as a transitional mechanism, the relevant Minister will consider MAC applications for those 'Relevant Projects' (those offshore wind energy projects already in the system and discussed earlier in this Bill Digest) prior to the establishment of MARA when it will hand over responsibility.

Section 98 provides that any MACs granted prior to the establishment of MARA must remain in force as if granted by MARA and on establishment day, the role of the relevant Minister for this Chapter will be replaced with MARA.

Section 99 provides that MARA may manage the MAC application process in the context of DMAPs and may use a competitive process to determine who shall be granted a MAC.

Chapter 11

Section 100 provides for the keeping of records and/or samples and for the preservation of scientific information concerning the maritime areas and enables MARA to request (in writing) copies of specific data.

Chapter 12

Section 101 provides for the transition of existing foreshore consents to MACs over time. If the project has been constructed this is simply a property matter set out in the new MAC. If construction has not begun, then planning permission may be required if not already secured.

Section 102 provides a pathway for regularisation of unauthorised usages under foreshore legislation and planning. To fully regularise, a particular usage would have to secure a MAC and a retention/substitute consent (planning permission) under the *Planning and Development Act 2000* (as amended). Enforcement could be undertaken under both the Bill and planning legislation in a twin track.

Chapter 13

Sections 103 – 105 provide for the judicial review of matters relating to MAC applications or MACs. A judicial review does not prevent the holder of the MAC from applying for planning permission.

Chapter 14

Section 106 confirms that, when making regulations under this Part of the Bill (MAC), the Minister is not required to carry out a screening for, or an Appropriate Assessment (AA) or a screening for, or a Strategic Environmental Assessment (SEA).

Part 6: Enforcement (Chapters 1-6)

Chapters 1 - 6

Part 6, Chapters 1 - 6 of the Bill deals with enforcement, it sets out the powers of authorised officers appointed by MARA, the serving of enforcement notices and the imposition of minor or major sanctions. Chapter 7 deals with offences.

Chapter 1

Section 129 sets out definitions for Part 6 of the Bill. The most significant of these are:

“holder” means the holder or former holder, as appropriate, of a relevant authorisation;

“major sanction”, in relation to a holder, means—

(a) the revocation of the relevant authorisation concerned and a prohibition (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) against the holder making a relevant application for a new relevant authorisation or a particular class of relevant authorisation,

(b) the suspension for a specified period of the relevant authorisation concerned and a prohibition for a specified period against the holder making a relevant application for a new relevant authorisation or a particular class of relevant authorisation,

(c) a direction to the holder that the holder pay a sum, as specified in the direction but not exceeding the prescribed amount (or, if no amount is prescribed, not exceeding €50,000), to the MARA, being the whole or part of the cost to the MARA of an investigation of the holder,

(d) a direction to the holder that the holder pay a sum, as specified in the direction but not exceeding the prescribed amount (or, if no amount is prescribed, not exceeding €5,000,000), to the MARA by way of a financial penalty for an act of the holder specified in the direction, or

(e) any combination of any of the sanctions specified in paragraphs (a), (c) and (d) or paragraphs (b), (c) and (d);

“minor sanction”, in relation to a holder, means—

(a) the issue, to the holder, of—

- (i) advice,
- (ii) a caution,
- (iii) a warning, or
- (iv) a reprimand,

or

(b) any combination of any of the sanctions specified in *paragraph (a)*;

“relevant ground”, in relation to a holder, means that—

- (a) the holder has contravened a relevant provision,
- (b) the holder is contravening a relevant provision,
- (c) the holder has contravened a relevant provision in circumstances that make it likely that the contravention will continue or be repeated,
- (d) there has been a material change of circumstances of the holder,

- (e) the holder (including in the holder's former capacity as an applicant for the relevant authorisation concerned) has given information to the MARA under this Act that was false or misleading in a material particular, or
- (f) the holder has failed to comply with an enforcement notice.

Section 130, Application provides that MARA can initiate proceedings under Chapter 3 (enforcement notices) or Chapter 5 (immediate suspension of relevant authorisation, investigations and sanctions) or both depending on the circumstances. It can also abandon proceedings started under one Chapter and initiate proceedings under the other Chapter.

Section 131, Material change of circumstances sets out what is a material change of circumstances for the purpose of this Act. Situations where there has been a change of circumstances of the holder or of the maritime area that may adversely affect the proposed maritime usage are considered material changes.

Chapter 2

Chapter 2 of Part 6 deals with the **appointment and powers of authorised officers**.

Section 132, Authorised officers of MARA provides that MARA can appoint persons to be authorised officers for the purpose of all or any provisions of the Bill. The appointment can be for a fixed period and appointments are not limited to MARA staff members.

Every authorised officer appointed under this section must be given a warrant of appointment. This warrant (or a copy) must be produced to a person affected where requested when the authorised officer is carrying out any power under the Act.

Section 133, Powers of authorised officers provides that the powers conferred on an authorised officer by this section can be exercised for the purposes of: (a) ascertaining whether or not a relevant ground applies to a holder,

(b) ascertaining whether or not an offence under this Act has been committed or is being committed, or

(c) otherwise securing the enforcement of this Act or *Planning and Development Act 2000*.

This is regardless of whether or not an investigation is being carried out.

An authorised officer may do all or any of the following:

(a) at all reasonable times enter (or, as appropriate, board) any premises, at which there are reasonable grounds for believing that any books, records or other documents in relation to any relevant authorisation are kept, and search and inspect the premises and books and other documents, records or other documents on the premises (including photographing/videoing/recording the premises or such books, records or other documents on the premises);

(b) secure for later inspection any premises or any part of a premises in which such books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;

(c) require any holder or any person employed by the holder to produce to the authorised officer such books, records or other documents and in the case of information in a non-legible form to reproduce it in a legible form or to give to the officer such information or explanation as the officer may reasonably require in relation to any entries in such books, records or other documents;

- (d) inspect and take copies of or extracts from, or remove for a reasonable period for further examination, any books, records or other documents in whatever form kept (including, in the case of information in a non-legible form, a copy of or extract from such information in a permanent legible form) which the officer finds or which is produced to the officer in the course of inspection;
- (e) require any holder or any person employed by the holder to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such books, records or other documents;
- (f) require any holder to give to the authorised officer any information which the authorised officer may require in regard to the maritime usage concerned or in regard to the persons carrying on such usage or employed in connection therewith;
- (g) require any person by whom or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer reasonable assistance in relation thereto;
- (h) summon, at any reasonable time, any other person employed in connection with the maritime usage concerned to give to the authorised officer any information which the officer may reasonably require in regard to such usage and to produce to the authorised officer any books, records or other documents which are in that person's power or control;
- (i) require any person employed in the premises concerned by any holder to prepare a report on aspects of the maritime usage concerned specified by the authorised officer or to explain entries in any books, records, documents or other materials referred to in this section.

An authorised officer may not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant issued by a judge of the District Court authorising such entry. A judge of the District Court must be satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this section held on any premises or any part of any premises. The judge can then issue a warrant authorising an authorised officer, accompanied by other authorised officers or by a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter (or, as appropriate, board) the premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this section.

A person who has in his or her power, possession or procurement any books, records or other documents referred to in the section must produce them at the request of an authorised officer and permit the authorised officer to inspect and take copies of, or extracts from them. He or she must also give any information which may be reasonably required and give such other assistance and information to an authorised officer as is reasonable in all the circumstances of the case.

An authorised officer may be accompanied by a member of the Garda Síochána when using their powers under the Act.

Any authorised officer can certify to the High Court a refusal by any officer, employee, shareholder or agent of a holder to produce any book, record or document which it is his or her duty under this section to produce, or refuses to co-operate with an authorised officer when required to do so, or refuses to answer any question put to him/her. The High Court can enquire into the case and, after hearing any witnesses and any statement which may be offered in defence, make any order or direction as it thinks fit.

Section 134, Privileged legal material - nothing in Chapter 2 of Part 6 of the Bill will compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material. However, the disclosure of information may be compelled, or possession of it taken, provided the compelling of its disclosure or the taking of its possession is done so that the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the court of the issue as to whether the information is privileged legal material⁵².

“Information” means information contained in a document, a computer (including a personal organiser or any other electronic means of information storage or retrieval) or otherwise;

“Privileged legal material” means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

Either the person who was compelled to disclose the information or the person to whom the information was disclosed can apply to the court for a determination as to whether the information is privileged legal material. The confidentiality of the information must be maintained before a determination is made by the court.

The court can give interim or interlocutory directions before making of a final determination of an application. This can include the appointment a person with suitable legal qualifications possessing an appropriate level of experience and the independence from any interest in either of the parties to examine the information, and prepare a report for the court with to the court of its determination as to whether the information is privileged legal material.

Chapter 3

Chapter 3 provides for **Enforcement notices**

Section 135, Circuit Court’s jurisdiction under this Chapter provides that the Circuit Court will have jurisdiction to hear and determine proceedings under this Chapter in relation to an enforcement notice given to a holder. The Circuit Court will be for that circuit in which the holder the subject of the enforcement notice concerned resides or ordinarily carries on any profession, business or occupation.

When the subject of an enforcement notice does not ordinarily reside in the state then the Dublin Circuit Court will be the designated court.

Section 136, Issue of enforcement notices provides that where the MARA is of the opinion (the relevant opinion) that a relevant ground applies to a holder, then the MARA can give the holder a notice in writing, accompanied by a copy of this Chapter:

- (a) stating the relevant opinion,
- (b) specifying the relevant ground as to why it is of that opinion and the reasons why it is of that opinion,

⁵² A similar provision can be found in the section 26 of the *Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021*.

(c) directing the holder to take such steps as are specified in the notice to remedy the relevant ground or, as the case may be, the matters occasioning it, and

(d) specifying a period within which an application under that section to cancel a direction specified in the notice may be made) within which those steps must be taken.

In the interests of procedural fairness, the MARA must first give the holder a notice in writing of its intention to issue an enforcement notice and provide reasonable opportunity for the holder to respond.

The MARA may cancel an enforcement notice by notice in writing given to the holder. Where the holder fails to take the steps specified in an enforcement notice given to him or her, the MARA may, on notice to the holder, apply in a summary manner to the Circuit Court for an order requiring the holder to take those steps (or to take such varied or other steps for the like purpose as may be specified in the order). The Circuit Court can make the order sought; make the order sought subject to such variations to those steps as specified in the order, or make the order sought subject to such other steps for the like purpose specified in the order; or can dismiss the application.

Section 137, Application for cancellation of direction specified in enforcement notice, etc. provides that a holder who has been given an enforcement notice can apply to the Circuit Court for the cancellation of any direction in the notice. This must be done no later than 30 days after being given the notice and the holder must put the Circuit Court on notice of the application.

The Circuit Court can: (a) cancel the direction, (b) confirm the direction, or (c) vary the direction, and, make an order as to costs. An appeal can only be made to the High Court on a point of law and not on a point of fact.

Chapter 4

Chapter 4 of Part 6 deals with the **automatic termination of relevant authorisation**.

Section 139 provides that a relevant authorisation will terminate where the holder is an individual, the holder dies, or is adjudicated bankrupt (whether in the State or elsewhere), or becomes an arranging debtor (whether in the State or elsewhere).

Termination also occurs where a body corporate commences a voluntary winding-up or becomes subject to a winding-up order or has a receiver or examiner appointed. Failure to be granted a necessary development consent will also terminate the relevant authorisation.

The MARA must as soon as is practicable after it becomes aware of the termination under this section of a relevant authorisation, publish a notice on its website—

- (a) stating the name of the holder,
- (b) giving particulars of the authorisation sufficient to identify the authorisation,
- (c) stating the ground under *subsection (1)* on which the authorisation was terminated, and
- (d) the date on which the termination occurred.

Chapter 5

Chapter 5 of Part 6 of the Bill deals with the **immediate suspension of relevant authorisation, investigations and sanctions**.

Section 140 sets out the circumstances in which an application may be made to High Court for immediate suspension of relevant authorisation. It applies when the MARA is of the opinion that a relevant ground may apply to a holder and the potential gravity of such ground (whether for safety

or environmental reasons or otherwise), if it were found that it does so apply, is so great that the immediate suspension of the relevant authorisation concerned is warranted until steps or further steps are taken under Chapter 3 or this Chapter.

The MARA can apply, on notice to the holder, to the High Court for an order to suspend the relevant authorisation. The High Court may determine an application by:

(a) making any order that it considers appropriate, including an order suspending the relevant authorisation the subject of the application for such period, or until the occurrence of such event, as is specified in the order, and

(b) giving to the MARA any other direction that the High Court considers appropriate.

Section 141, Investigations provides that when MARA is of the opinion that a relevant ground may apply to a holder then it can cause an investigation to be carried out to identify any relevant ground. It can appoint an authorised officer (or more than one) to carry out the investigation, and to submit an investigation report following the completion of the investigation.

The authorised officers must give notice to the holder of the matter including copies of any relevant documentations and afford the holder the opportunity to respond within 30 days.

Section 142, Actions to be taken by authorised officer and MARA upon completion of investigation sets out that after the conclusion of an investigation, an authorised officer must prepare a draft investigation report. It will be sent to the holder who has an opportunity to respond to the draft report within 30 days. A final investigation report will be prepared, following any submission received from the holder, and will be sent to the MARA. If the MARA is satisfied that a relevant ground applies, then it will determine if a minor or major sanction should be imposed.

The MARA can cause further investigation to be carried out when it is not satisfied that a relevant ground applies to the holder the subject of the investigation but is of the opinion that a further investigation of the holder is warranted.

The MARA must let the subject of the investigation know as soon as practicable the decisions it has made and the reasons for doing so. It must take into account the factors set out in section 147 before deciding whether to impose a minor or major sanction.

A major sanction cannot be imposed by MARA until it is confirmed by the High Court.

Section 144, Appeal to High Court against decision to impose major sanction provides that the subject of a decision to impose a major sanction can appeal the decision to the High Court. The appeal must be made no later than 30 days after the receipt of the notice. re the sanction and the MARA must be informed of the decision to appeal.

The High Court can hear any evidence presented or argument made, including evidence or arguments which were not presented or made to an authorised officer or the MARA.

The High Court can either—

(i) confirm the decision the subject of the appeal, or

(ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision to do either or both of the following:

impose a different major sanction on the holder;

impose a minor sanction on the holder,

or

to impose neither a major sanction nor a minor sanction on the holder,

The High Court must also consider section 147 in making a decision on the appeal.

Section 145, Application to High Court to confirm decision to impose major sanction

provides that where no appeal is made within 30 days then the MARA will apply to the High Court for confirmation of the decision to impose a major sanction. The High Court will confirm the major sanction unless the Court considers that there is good reason not to do so.

Section 146, Provisions supplementary to sections 144 and 145 provides that a decision by the High Court under section 144 or an application under section 145 is final. An appeal can only be made to the Court of Appeal on a point of law. Where the High Court confirms or gives a decision then the MARA must inform the holder in writing as soon as practicable.

Section 147 Matters to be considered in determining sanctions to be imposed provides that the MARA or the High Court must consider certain factors before making a decision on minor or major sanctions. These include the seriousness of the relevant ground, the income of the holder, the co-operation of the holder during the investigation and whether previous

(m) whether a sanction in respect of the relevant ground has already been imposed on the holder by a court, the MARA or another person.

Section 148, Protection for persons reporting alleged relevant ground, etc. aims to protect individuals who have reported alleged grounds for enforcement action to the MARA in good faith.

For example, an employer must not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee who reported alleged ground to MARA in good faith. Penalisation includes:

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, including selection for redundancy,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.

Part 6, Chapter 7: Offences

Chapter 7

Chapter 7 of Part 6 of the Bill deals with **offences and related provisions**. Offences are in addition to any minor or major sanction that may be imposed on a holder. This chapter sets out penalties for various offences under the Act ranging from a fine of up to €5,000 to a financial

penalty of €250,000 and terms of imprisonment of up to five years. It also provides that a person found guilty of any of the offences is liable to pay the Minister or the MARA, the costs and expenses of the action, measured by the court, unless the court satisfied that there are special and substantial reasons for not so doing

Section 153(1) provides that a person who contravenes s.68(1) (disclosure of confidential information) will be guilty of an offence and will be liable:

- (a) on summary conviction,⁵³ to, a class A fine⁵⁴ or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment,⁵⁵ to a fine not exceeding €50,000 or imprisonment for a term not exceeding two years or both.

Section 153(2) sets out that a person who contravenes

Section 73(1) which prohibits a person looking for development permission (where required) for a proposed maritime usage in a part of the maritime area unless he or she is, in respect of that part, the holder of a MAC for the occupation of that part for the purposes of such usage.

Section 74(1) which prohibits a person undertaking a maritime usage (where development permission is not required unless he or she is, in respect of that part, the holder of a MAC for the occupation of that part for the purposes of such usage

Section 110(1) which prohibits undertaking a Schedule 7 maritime usage (other than an exempted usage) certain maritime usages in maritime area without a licence for such usage:

will be guilty of an offence and will be liable (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding five years or both.

Falsely representing an authorised officer: Section 153(3) provides that a person who falsely represents himself or herself as an authorised officer is guilty of an offence and liable:

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding two years or both.

Failure to comply with an order made by the Circuit Court under s.136(7)(a) (where an application is made to the Circuit Court because a holder is not complying with an enforcement order), will result following conviction on indictment to a fine not exceeding €250,000.

Section 153(5) provides that a person who contravenes s.139(2)(a) or (b), (3)(a) or (b) or (4) (dealing with actions following an automatic termination of relevant authorisation) will be guilty of an offence and liable on summary conviction to a class A fine.

⁵³ A trial without a jury

⁵⁴ A maximum of €5,000

⁵⁵ Following a trial with a jury

Section 153(6) sets out that a person who, without reasonable excuse, **contravenes a direction** referred to in section 146(4) (where a holder whose relevant authorisation has been revoked or suspended pursuant to a decision confirmed or given under s.144(3) or 145(2) by the High Court must comply with any directions of the MARA given to the person in respect of the surrender or temporary surrender of the relevant authorisation and any copies thereof) will be guilty of an offence and liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

Section 153(7) provides that a person who makes a communication under section 148(1), which the person knows to be false, that a relevant ground may apply to a holder, or that a contravention of a provision of this Act by a person other than a holder may have been or may be being committed, will be guilty of an offence and liable

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding three years or both.

S.153(7) does not apply to a communication that is a protected disclosure within the meaning of the *Protected Disclosures Act 2014*.

Section 153(9) provides that an employer who contravenes section 148(5) (penalising etc. an employee for communicating information about a relevant ground to MARA in good faith) will be guilty of an offence and be liable

(a) on summary conviction, to a class A fine and imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding three years or both.

Section 154, False or misleading information provides that any relevant person who knowingly, or recklessly, provides the MARA with information which is false or misleading in a material particular in his or her capacity as a relevant person shall be guilty of an offence and shall be liable:

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding five years or both.

A “relevant person” means— (a) the case of a relevant application, the applicant, or (b) a holder.

Section 155, Obstruction provides that a person must not interfere with, or otherwise obstruct (including obstruct by way of withholding information reasonably required by, or by knowingly or recklessly providing false or misleading information to):

(a) the MARA,

(b) a member of staff of the MARA (including a person referred to in section 62(5)),

(c) an authorised officer, or

(d) a member of the Garda Síochána in the performance of their respective functions under this Act.

A person who contravenes subsection (1) will be guilty of an offence and liable:

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both,
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding two years or both.

Section 156, Evidentiary presumptions deals with permissible presumptions in relation to evidence. It provides that in proceedings, a certificate signed by an authorised person containing a relevant statement will be evidence, unless the contrary is shown, of the matters the subject of the relevant statement.

Section 157, Offences by bodies corporate sets out that where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, then that person, as well as the body corporate, will be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Section 158, Vicarious liability provides that anything done by a person in the course of his or her employment will be treated for the purposes of this Act, as done also by that person's employer, whether or not it was done with the employer's knowledge or approval in any proceedings brought under this Act,

It will be a defence for the employer to prove that the employer took such steps as were practicable to prevent the employee— (a) from doing that act, or (b) from doing in the course of his or her employment acts of that description. However, it is not a defence to show that the employer did not know what was happening.

Section 159, Summary proceedings - an offence under this Act may be prosecuted summarily by the MARA rather than the DPP under s.159 of the Bill.

Section 160, Time limit for offences that may only be brought by summary proceedings provides that notwithstanding s.10(4) of the *Petty Sessions (Ireland) Act 1851*, summary proceedings for an offence under this Act to which that provision applies may be instituted:

- (a) within 12 months after the date on which the offence was committed,
- (b) within six months after the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge, whichever is the later, provided that no such proceedings shall be commenced later than two years after the date on which the offence concerned was committed.

Section 161, Costs of prosecutions provides that the court will order a person convicted of an offence under this Act to pay the Minister or the MARA, the costs and expenses of the action, measured by the court, unless it is satisfied that there are special and substantial reasons for not so doing. The costs or expenses will include any such costs or expenses reasonably incurred by the Minister or the MARA in relation to the investigation, detection and prosecution of the offence, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers. This provision could have the effect of a person charged with an offence under the Act of pleading guilty to an offence rather than risking having to pay court and MARA expenses.

Stakeholder commentary on enforcement

Based on the pre-initiation draft of the Bill published by the Department in July 2021, Matheson reported (July 2021) that industry had concerns over the provision for automatic MAC termination in the Bill stating that:

A key point raised by industry stakeholders is the potential for automatic termination in the event of a failure to obtain planning permission. The Bill does not appear to fully address industry concerns that an applicant should be permitted to lodge a fresh application: a MAC will automatically terminate in circumstances where the holder has been refused planning permission “*in circumstances where no further step can be taken by the holder, or a court, in respect of that application.*” This wording does not appear to accommodate fresh planning applications.⁵⁶

This relates to **Section 39** of the Bill and the wording does not appear to have changed.

⁵⁶ Matheson, 2021. *Making Irish Offshore Renewables Happen* [online]. Available at: <https://law.matheson.com/48/2188/uploads/maritime-area-planning-bill-july-2021.pdf> [accessed on 13.09.2021]

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