



An Bille um Pleanáil Limistéir Mhuirí, 2021
Maritime Area Planning Bill 2021

Meabhrán Miniúcháin
Explanatory Memorandum



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MARITIME AREA PLANNING BILL 2021

EXPLANATORY MEMORANDUM

Introduction

This legislation intends to put in place a comprehensive and coherent planning system for the entire Maritime Area. The constituent elements of this system are: (1) Forward Planning; (2) Development Management; and (3) Enforcement. The Bill also intends to establish a new agency, Maritime Area Regulatory Authority (MARA) to undertake certain consenting and enforcement functions. The main features of the maritime planning system are set out below.

The Maritime Area

The new planning system will operate in the maritime area that will extend from the high water mark to the outer limit of Ireland's continental shelf and include the territorial seas and the Exclusive Economic Zone.

Forward Planning – the National Marine Planning Framework

- Restatement of and additions to the marine forward planning provisions of the 2018 Planning and Development (Amendment) Act that will apply to future iterations of the National Marine Planning Framework.
- Providing a statutory basis for the Marine Planning Policy Statement.
- Making a Public Participation Statement a mandatory requirement in the preparation of all Marine Spatial Plans.
- Provision for sub-national planning: Designated Maritime Area Plans (DMAPS). A designated competent authority may develop a DMAP for a region, sector or locality.
- The establishment of a Maritime Authorisation Database to ensure visibility of all consents in the maritime area granted by public bodies.

Development Management

The consenting regime established in the Bill comprises three distinct elements:

- Maritime Area Consent (The MAC):
 - sets the terms of occupation of the maritime area, including rehabilitation obligations;
 - governs the relationship between the MARA and the holder; and
 - acts as the gateway into the planning permission process. Failure to secure planning permission will terminate the MAC automatically.

- Licencing: specified maritime usages will be subject to a licencing regime and will not require a MAC or planning permission. Any activity that attracts an Environmental Impact Assessment requirement will not be licensable and will be subject to planning permission.
- Planning Permission (development consent).
 - The terrestrial planning permission regime, augmented with marine specific considerations, will be extended to the entire maritime area.
 - It is within this process that specific projects will be examined in detail including Environmental Impact Assessments and Appropriate Assessments.
 - Local authorities will examine all other applications within their own designated “nearshore area” extending a maximum of 3 nautical miles from the shore.
 - An Bord Pleanála will examine applications for specified infrastructural, all far off-shore (i.e. outside three nautical miles) projects and those which cross more than one local authority nearshore area

Enforcement and compliance

The enforcement and compliance regimes established in the Bill encompass the following:

- Provisions for ensuring compliance and enforcement with the terms of MACs and licences granted by the MARA including investigatory powers for Authorised Officers, enforcement notices and the creation of offences.
- The MARA will ensure compliance with the terms of MACs, licences and planning permission for the maritime area beyond the nearshore.
- Local Authorities will ensure compliance with planning permission conditions within their nearshore area.
- Provisions to facilitate collaboration, cooperation and coherence between the MARA, Local Authorities and other maritime enforcement bodies.

The Maritime Area Regulatory Authority

It is intended that the MARA will:

- Grant Maritime Area Consents;
- Licence specified maritime usages;
- Ensure compliance and enforcement of MACs, licences and offshore development consents;
- assume responsibility for the management and enforcement of the existing Foreshore portfolio of leases and licences currently administered by the Minister for Housing, Local Government and Heritage; and
- provide a nexus for inter-agency cooperation and collaboration.

Transitional measures

- 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.

- The MARA will assume responsibility for these MACs and Foreshore consents once established.
- A time-bound pathway to potential regularisation pathway for currently unauthorised occupation of the Foreshore. Failure to secure either a MAC or, where required, retention/substitute consent under the Planning and Development Act will result in appropriate enforcement action.

Provisions of the Bill

Part 1

PRELIMINARY AND GENERAL

Section 1. Short title, collective citations and commencement

Subsection (1) provides for the citation of the Act as the Maritime Area Planning Act 2021. Subsection (2) provides for the citation of the Foreshore Acts 1933 and 1992. Subsection (3) provides for the citation of the Electricity Regulation Act 1999. Subsection (4) provides for the citation of the Planning and Development Act 2000. Subsections (5) and (6) provide for commencement of the Act or commencement of its various sections, as the Minister so orders.

Section 2. Interpretation

Section 2 contains definition provisions for the Act. It defines “Minister” as the Minister for Housing, Local Government and Heritage.

Section 3. Application

This section defines the maritime area for the purpose of forward planning, development management and state consenting. The maritime area comprises the territorial seas (foreshore), the exclusive economic zone and the agreed continental shelf. The definitions of the constituent parts of the maritime area will be aligned with the Maritime Jurisdiction Bill once enacted.

Section 4. Legal acts of European Union given effect to by this Act

This section details the acts of the European Union given effect or further effect to, by the Maritime Area Planning Bill 2021.

Section 5. Nearshore areas of Coastal Planning Authorities

This section defines a new area to be called ‘nearshore’ from the high water mark three nautical miles seaward, in which each coastal planning authority will exercise statutory authority as provided for in the Bill, such as the granting of development consent.

Section 6. Marine planning policy statement

This section provides that the Minister for Housing, Local Government and Heritage shall prepare and publish a Marine Planning Policy Statement setting out the policy objectives and priorities of the Government in relation to marine planning by the State in the maritime area for the period to which the statement relates.

Section 7. Ministerial guidelines

This section provides that the Minister may issue marine planning guidelines to public bodies regarding any of their functions under this Act and that public bodies shall have regard to those guidelines in the performance of their functions. Guidelines under this section will be broadly

analogous to guidelines issued under Section 28 (ministerial guidelines) of the Planning and Development Act.

Section 8. Ministerial Policy Directives

This section provides that the Minister may issue policy directives to public bodies regarding any of their functions under this Act and that public bodies shall be required to comply with any such directives in the performance of their functions.

Section 9. Limitation on Ministerial powers

This section provides a limitation on Ministerial power (similar to Section 30 of the Planning and Development Act, 2000) such that the Minister shall not exercise any power or control in relation to the marine planning aspects of any particular case with which a coastal planning authority or An Bord Pleanála is or may be concerned.

This section also limits the Minister from exercising any such power in relation to MACs, licences or related enforcement matters.

Section 10. Regulations, etc.

This section provides that the Minister may, by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed.

Section 11. Expenses

This section provides that any expenses incurred by the Minister or by the MARA in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Section 12. Repeals

This section provides for the repeal of elements of the Planning and Development Acts 2000 to 2018 and the Foreshore Act 1933 superseded by the provisions of this Bill. It also revokes prohibitory orders and prohibitory notices made under the Foreshore Act 1933 superseded by part 6 of this Bill.

Part 2

MARITIME SPATIAL PLANS AND DESIGNATED MARITIME AREA PLANS

CHAPTER 1

Interpretation and Application

Section 13. Interpretation

This section includes general definitions for this Part.

Section 14. Application of Part 2, etc.

This section sets out the scope of the application of this Part including that this part shall not apply to maritime usages that relate solely to defence or national security.

CHAPTER 2

Maritime Spatial Plans

Section 15. Designation of competent authority for purposes of Maritime Spatial Planning (MSP) Directive

This section sets out that the Minister shall be the competent for the purposes of the Maritime Spatial Planning (MSP) Directive 2014. In this Part, the Minister as competent authority is referred to in the legal text as the “competent authority (M)”.

Section 16. Maritime spatial plans

This section provides that the Minister shall prepare and publish Maritime Spatial Plans. Marine Spatial Plans balance the different demands for using the maritime area including the need to protect the marine environment.

Section 17. Requirements of Maritime Spatial Planning

This section sets out the obligations on the Minister in respect of compliance with the Maritime Spatial Planning Directive when preparing Maritime Spatial Plans, and also provides that the Minister must carry out a review of such a plan or plans not later than 6 years after publication.

Section 18. Public participation on MSPs

This section requires the Minister to make arrangements to ensure compliance by the State with the public participation requirements set out in Article 9 of the Maritime Spatial Planning Directive and the Aarhus Convention. The Minister shall prepare and publish a “public participation statement” to clearly detail the form(s) of participation opportunities and mechanisms in the development of plans. A copy of the public participation statement shall also be laid before each House of the Oireachtas.

Section 19. Laying of Maritime Spatial Plans before each House of Oireachtas

This section provides that the Minister is required to lay a draft Maritime Spatial Plan, with any associated Environmental Reports and Appropriate Assessment Reports, before each House of the Oireachtas. The Minister cannot make the Maritime Spatial Plan until a resolution approving the draft has been passed by each House. The Minister must have regard to any resolution, report or recommendation of any committee of the Houses of the Oireachtas.

CHAPTER 3

Designated Maritime Area Plans

Section 20. Designation of public bodies who may make DMAPs

A Designated Maritime Area Plan or DMAP will be a management plan for a specific area and can be used to develop multi-activity area plans; to promote use of specific activities; and/or for the purposes of the sustainable use and protection of particular marine environments.

Any Minister, Local Authority or State agency can bring forward proposals to prepare a DMAP for one or more such areas. This section provides that the Minister may designate one or more than one public body to be a competent authority for the purposes of preparing and publishing a DMAP.

Section 21. Proposals for DMAPs

This section provides the various matters that must be specified within a DMAP proposal along with the approval/refusal procedure conducted by the Minister. The section also provides for a competent authority to submit a new proposal taking into account the Minister's reasons for refusal.

Section 22. Draft DMAPs

This section provides that a competent authority shall, as soon as is practicable after the DMAP proposal has been approved under section 21, prepare a draft DMAP.

Section 23. Public participation on DMAPs

This section provides that the competent authority shall prepare and publish a public participation statement to clearly detail the form(s) of participation opportunities and mechanisms in the development of plans. The Minister shall cause a copy of the public participation statement to be laid before each House of the Oireachtas.

Section 24. Minister and draft DMAP

This section provides that the competent authority shall take account of any relevant factors arising from public participation, appropriate assessment and strategic environmental assessment.

This section also provides for the procedure by which the Minister ensures consistency of the draft DMAP with the MSP Directive; the marine planning policy statement; the National Marine Planning Framework or other relevant directives and guidelines.

Section 25. Laying of DMAPs before each House of Oireachtas

This section provides that the competent authority is required to lay a draft DMAP, with any associated Environmental Reports and Appropriate Assessment Reports, before each House of the Oireachtas. The competent authority cannot make the DMAP until a resolution approving the draft has been passed by each such House. The competent authority must have regard to any resolution, report or recommendation of any committee of the Houses of the Oireachtas.

Section 26. Reviews of DMAPs, etc.

This section provides that the competent authority shall be required to carry out a review of the DMAP not later than 6 years after it was first published.

CHAPTER 4

Laying of certain DMAPs before CPAs

Section 27. Laying of certain MSPs and DMAPs before Coastal Planning Authorities (CPAs)

This section provides for DMAPs that are exclusively within the nearshore area of one or more CPAs to be laid before each CPA concerned instead of being laid before the Houses of the Oireachtas.

CHAPTER 5

Amendment of MSPs and DMAPs

Section 28. Amendment of MSPs

This section provides for the Minister or competent authority to make material and non-material amendments to plans made under this Part. The Minister may also make regulations to specify classes of non-material amendments.

CHAPTER 6

Section 29. Compliance by public bodies

This section provides that public bodies shall take the necessary measures, consistent with their functions, to secure the objectives of the National Marine Planning Framework (NMPF).

Section 30. Directions of Minister

This section provides that the Minister may give a direction to a public body to adopt such measures as are specified in the direction in relation to the implementation of Maritime Spatial Planning, compliance with the National Marine Planning Framework, or compliance with the State's obligation under the Maritime Spatial Planning Directive, and the public body must comply with such a direction.

CHAPTER 7

Appropriate assessment and strategic environmental assessment

Section 31. Appropriate assessment and strategic environmental assessment

This section confirms that Strategic Environmental Assessment and Appropriate Assessment (or screenings for same) will be undertaken as required when preparing or amending plans, guidelines and directives.

CHAPTER 8

Maritime Authorisation Database

Section 32. Definitions – Chapter 8

This section includes a definition for "Database" which means the Maritime Authorisation Database established under section 33.

Section 33. Establishment of Maritime Authorisation Database

This section provides that the Minister shall establish and maintain a Maritime Authorisation Database to ensure visibility of all relevant marine consents granted by public bodies.

Section 34. Data to which Database applies, etc.

This section provides that the data held on the database will relate to relevant authorisations (licences, consents, approvals etc.) of maritime usage.

The details held will allow Maritime Authorisation Database users to ascertain the part of the maritime area in question, the maritime usage authorised and the name and contact details of the authorisation holder.

Section 35. Correction of Database

This section provides that the Minister shall take such steps as he or she considers necessary to ensure that the particulars maintained on the Maritime Authorisation Database are correct.

Section 36. General power of Minister to obtain information relating to maritime area

This section provides the Minister with the power to direct a public body to provide the Minister with information relating to the maritime area for the purposes of keeping the Maritime Authorisation Database up to date.

Section 37. Delegation by Minister to the MARA

This section provides that the Minister may delegate any of the functions relating to the maintenance of the Maritime Authorisation Database to the MARA and also provides that the Minister shall be responsible for monitoring, approving or reviewing the performance of any such delegated functions.

Part 3

MARITIME AREA REGULATORY AUTHORITY

CHAPTER 1

Definitions and establishment day

Section 38. Definitions - Part 3

This section contains definition provisions for this Part. The “chairperson” is defined as the chairperson of the Board of the MARA. In the legal text, the Board of the MARA is referred to as “Board (M)” to differentiate it from An Bord Pleanála.

Section 39. Establishment day

This section provides that the Minister shall appoint a day for the establishment of the Maritime Area Regulatory Authority.

CHAPTER 2

Establishment and functions of the Maritime Area Regulatory Authority

Section 40. Establishment of the Maritime Area Regulatory Authority

This section provides for the establishment of a new Agency which shall be known as an tÚdarás Rialála Limistéir Mhuiri or, in the English language, the Maritime Area Regulatory Authority or the MARA.

Section 41. Functions of the MARA

This section details functions of the MARA including considering and granting Maritime Area Consents and Licence applications. Other functions of the MARA detailed in this section include the MARA’s role in relation to the enforcement and compliance of provisions of this Act.

Section 42. Matters to which the MARA shall have regard in performing functions

This section provides that the MARA shall have regard to the National Marine Planning Framework, the United Nations Convention on the Law of the Sea (UNCLOS), the Sea-Fisheries and Maritime Jurisdiction Act 2006, Government Policies and the need for co-operation between users of the maritime area, in the performance of its functions.

CHAPTER 3

Board of the MARA

Section 43. Establishment and membership of board of the MARA

This section provides for the establishment of the board of the MARA consisting of a chairperson and up to 10 ordinary members including officers from named public bodies. All appointments to the Board shall be made by the Minister of such persons that have sufficient experience and expertise to contribute to the effective and efficient performance of the MARA’s functions.

A member can be reappointed to the Board but will not be entitled to hold office for more than 2 consecutive terms and in any event may not serve for a period of more than 10 years.

Section 44. Casual vacancies

This section provides for filling of casual vacancies on the Board.

Section 45. Functions of Board (M)

This section provides that the Board of the MARA must ensure that the functions of the MARA are performed efficiently, effectively and to the highest standards, ensuring that the objectives of the MARA are consistent with those functions and the statement of strategy. The Board of the MARA must ensure that appropriate systems and procedures are in place to perform those functions and achieve those objectives. The Board of the MARA also has the responsibility for designing a comprehensive framework for the setting of levies.

Section 46. Membership of either House of Oireachtas or European Parliament, etc.

This is a standard provision which provides that members of the Board will cease to be members of the Board when elected to either House of the Oireachtas or to the European Parliament, to a local authority, or nominated to Seanad Éireann or co-opted to a local authority.

Section 47. Removal of member of Board (M)

This provision allows the Minister to remove a Board member from the Board of the MARA for reasons including incapacity, misbehaviour, performance, contravention of Ethics in Public Office standards or if they cease to be qualified to hold their position.

Section 48. Potential conflicts of interest

This section provides for situations where potential conflicts of interest arise for any member of the Board of the MARA. The member must declare their interest which is to be recorded and they must take no part in any relevant deliberations on that matter.

The Minister may remove a member of the Board of the MARA for contravening these provisions.

Section 49. Removal of all members of Board (M)

This section contains standard provisions to allow the Minister to remove all members of the Board of the MARA from office in certain circumstances.

Section 50. Meetings of Board (M)

This section provides that the Board of the MARA shall hold as many meetings as are necessary for the performance of its functions but no fewer than four per year. A quorum will comprise half plus one. Where there is an equal division of votes, then the chairperson shall have a second or casting vote.

Section 51. Committees of Board (M)

This section provides that the Board of the MARA may establish committees to assist and advise it on matters relating to its functions. Non-board members with specialist knowledge and experience may be appointed to these committees.

Section 52. Ineligibility of holders, etc., for appointment as member

This section provides that a holder of a maritime authorisation or staff member shall be ineligible for appointment to either the Board of the MARA or to a committee of the Board.

Section 53. Remuneration and expenses of members of Board (M) and committees

This section provides that the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine the remuneration and allowances for members of the Board of the MARA and committees.

CHAPTER 4

Chief Executive Officer of the MARA

Section 54. Appointment of chief executive officer

This section provides for the appointment of the Chief Executive of the MARA. The Chief Executive Officer of the MARA is appointed by the Government, after recommendation by the Public Appointments Service, following an open selection competition. The terms and conditions of appointment are as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 55. Resignation, removal or disqualification of chief executive officer

This section provides for the resignation or removal from office of the Chief Executive. The Chief Executive Officer may resign by giving notice in writing to the Minister of his or her intention to resign or be removed from office by the Government in certain circumstances.

Section 56. Functions of chief executive officer

This section provides that the Chief Executive Officer shall carry on and manage, and control generally, the administration and business of the MARA including any such functions assigned under the MAP Act or delegated by the Board.

Section 57. Delegation of functions

This section provides that the Chief Executive Officer can delegate any function assigned to him or her to a member of staff of the MARA.

Section 58. Accountability of Chief Executive Officer to committees of Houses of Oireachtas

This section provides that the Chief Executive Officer shall, at the request in writing of a Committee, attend before it to give an account of the general administration of the MARA.

Section 59. Appearance of chief executive officer before Committee of Public Accounts

This section is a standard provision that requires the Chief Executive Officer to appear before the Public Accounts Committee, whenever required in writing to do so, on matters such as those relating to the appropriation accounts and reports of the Comptroller and Auditor General.

Section 60. Membership of either House of Oireachtas or European Parliament

This is a standard provision which provides that the Chief Executive Officer will not be eligible to hold this position if elected to either House of the Oireachtas or to the European Parliament, to a local authority, or nominated to Seanad Éireann or co-opted to a local authority.

Section 61. Acting Chief Executive Officer

This section provides that the Minister may appoint a member of staff of the MARA to perform the functions of the Chief Executive Officer on a temporary basis during periods of suspension of the Chief Executive Officer or vacancy in the post.

CHAPTER 5

Staff of the MARA and other resources available to the MARA

Section 62. Staff of the MARA, etc.

This section provides for the appointment of staff to the MARA, who shall be Civil Servants and for their remuneration from MARA funds. This section also provides for the engagement of temporary staff, and the engagement of consultants and advisers.

CHAPTER 6

Co-operation

Section 63. Provision for co-operation between the MARA and public bodies

This section provides that the MARA can enter into an arrangement with a public body for the purposes of facilitating co-operation to enhance the performance of the MARA's functions and marine governance generally. Co-operation agreements may also provide for the conducting of joint studies or analysis in the maritime area.

CHAPTER 7

Corporate strategy, accounts and annual reports of the MARA

Section 64. Corporate strategy of the MARA

This section provides that the MARA shall prepare a statement of strategy within 12 months of the establishment day and thereafter not earlier than 6 months before and not later than the expiration of each subsequent period of 5 years following that day.

The statement of strategy shall include the objectives and priorities for each principal activity, the objectives and priorities for each of the principal activities and strategies for achieving those objectives; the manner to assess performance for each activity, human resource activity, organisational structure (including corporate support) and other relevant matters.

Section 65. Accounts of the MARA

This section provides for the preparation of financial accounts and for the audit by the Comptroller and Auditor General's Office of the accounts of the MARA.

Section 66. Annual report of the MARA

This section provides for the preparation of an annual report on the performance of the functions and principal activities of the MARA during the preceding year and such other matters as the Minister may specify and that copies of the report will be laid before each House of the Oireachtas.

CHAPTER 8

Miscellaneous

Section 67. Duty of the MARA to give information

This section provides that the MARA shall provide the Minister, upon request, with information that, in the opinion of the MARA, the Minister is likely to consider significant for the performance of his or her functions. The Minister may issue guidelines in relation to the giving of information under this section which the MARA shall be required to comply with.

Section 68. Disclosure of confidential information

This section prohibits the disclosure of confidential information obtained while performing the functions of the MARA by Board members, committee members, the Chief Executive Officer, staff members or any other person engaged by the MARA. This section also provides for the instances in which the disclosure of such confidential information does not contravene this section.

Section 69. Processing of personal data

This section provides that the MARA may process personal data for the purposes of the functions assigned to it by or under this Act or any other enactment and that such processing shall go no further than is necessary for the carrying out of those functions.

Section 70. Powers to specify form of document

This section provides that the MARA may specify the form of documents required for the purposes of this Act as it thinks appropriate, such as application forms.

Section 71. Immunity from suit

This section provides that no civil or criminal proceedings shall lie in any court against the MARA or a Board member, committee member, the Chief Executive, staff member or any other person engaged by the MARA if it relates to an action done in good faith during the course of performance of any function under this Act.

Part 4

MARITIME AREA CONSENT

CHAPTER 1

Interpretation

Section 72. Interpretation - Part 4

This section provides definitions required in connection with maritime area consents.

CHAPTER 2

When MAC is required, etc.

Section 73. When MAC is required prior to seeking development consent, etc.

This section provides that a person who wishes to occupy a part of the maritime area for a usage that requires development consent (planning permission) will be obliged to secure a Maritime Area Consent. This section also provides for exemptions from this requirement to be specified in Schedule 3 which can be amended by regulation.

Section 74. When MAC is required but not development consent, etc.

This section provides that a person who wishes to occupy a part of the maritime area for a usage that does not require planning permission will also be obliged to secure a Maritime Area Consent. This section also provides for exemptions from this requirement to be specified in Schedule 4 which can be amended by regulation.

Section 75. Fees for certain applications

This section provides that the Minister may by regulations, specify the fees which are to be paid to the MARA in respect of the administration of MAC applications.

CHAPTER 3

Grant or refusal of MAC and related matters

Section 76. Application for grant of MAC

This section provides for MAC applications to be made to the MARA. The MARA is not required to carry out an appropriate assessment, environmental impact assessment, or associated screenings when considering a MAC application. These assessments will be carried out by An Bord Pleanála or the Coastal Local Authority, as appropriate, in the context of a subsequent planning permission application.

Section 77. Criteria to which the MARA shall have regard in determining MAC application

This section provides that the MARA shall have regard to criteria specified in Schedule 5 in its determination of a MAC application and for the schedule to be amended by regulation.

Section 78. Grant or refusal of MAC

This section provides that the MARA will, where it is practicable, determine a MAC application within 90 days. The MARA can either grant with conditions, refuse, grant or part grant with conditions, a MAC. Where the MARA intends to refuse a MAC, the applicant will be afforded opportunity to provide additional information to the MARA for consideration relating to the reasons for the proposed refusal, prior to determination.

Section 79. Conditions attached to MAC

This section provides that the MARA may attach to a MAC one or more types of conditions listed in Part 1 of Schedule 6, which may be supplemented by regulation.

Section 80. Provisions supplementary to grant of MAC

This section provides for a number of matters relating to MAC grants including that MAC conditions shall not have any negating effect on the attaching of conditions to a related planning permission. MAC conditions are without prejudice to any conditions that may be attached as part of a development permission.

Section 81. Notification of grant or refusal of MAC, etc.

This section requires that the MARA, as soon as practicable after making a determination on a MAC application, is to publish online a notice providing details of the MAC determination.

CHAPTER 4

Assignment or amendment of MAC

Section 82. Assignment of MAC

This section sets out the procedure for holders to assign a MAC to a third party through a joint application from the prospective assignor and assignee. Any purported MAC assignment without the approval of the MARA shall be void.

Section 83. Material amendment to MAC

This section provides for material and non-material amendments to MACs and for the Minister to prescribe classes of non-material amendments by regulations. A MAC amendment will not negate the need for amendment of a planning permission should it also be required.

CHAPTER 5

Surrender of MAC

Section 84. Surrender of MAC

This section provides that the holder of a MAC can apply to the MARA to surrender their MAC.

Section 85. Determination of application under section 84

This section provides that the MARA shall determine an application to surrender a MAC. A surrender may be refused, for example, if the holder has not discharged all of their obligations and liabilities under the MAC including obligations and liabilities arising under any other enactment.

CHAPTER 6

Certain persons who are not individuals may be declared fit and proper

Section 86. MARA may declare person, etc., who is not individual to be fit and proper person

This section provides that the MARA may, by order, declare that a person or class of persons, is fit and proper so that the fit and proper test need not apply to each MAC application by such a person or class of persons.

CHAPTER 7

Levies

Section 87. Definition

This section contains definitions for this Chapter.

Section 88. Levy framework

This section provides that the MARA shall, as soon as is practicable after the establishment day and with the consent of the Minister for Public Expenditure and Reform, establish a framework to determine what levy shall be paid to the MARA by classes of potential holders of MACs for the use (including the potential use in any case where, for whatever reason, the maritime usage the subject of the MAC is yet to be undertaken) of the part of the maritime area the subject of the MAC.

In establishing the levy framework, the MARA shall have regard to the extent that there needs to be a fair and reasonable return to the State for the use, by the holders of MACs, of the property of the State that is the maritime area.

Section 89. Competitive process

This section provides that in situations where there are, or are expected to be, two or more applicants for the same part of the maritime area then the MARA may hold a competitive process such as an auction. The format of this competitive process will require the consent of the Minister for Public Expenditure and Reform.

Section 90. When levy framework applies to MAC

This section provides that the levy framework that applies to a particular MAC shall be the levy framework that is in force on the day on which the MARA grants that particular MAC.

CHAPTER 8

Rehabilitation of maritime area and emergency works

Section 91. Definitions - Chapter 8

This section contains definitions for ‘rehabilitate’ and ‘rehabilitation schedule’.

Section 92. Obligations on holder of MAC in relation to rehabilitation of maritime area

This section outlines the obligations placed on the holder of a MAC in relation to the restoration and rehabilitation of the maritime area. The obligations may include one or more of the following: the decommissioning of infrastructure; the removal of infrastructure; the partial removal of infrastructure; the re-use of infrastructure for the same or another purpose; the burying or encasing of infrastructure; the removal of any deposited or waste material.

The conditions of a MAC will include an obligation on a MAC holder to rehabilitate the maritime area before expiration.

Section 93. Power of MARA to require holder of MAC to make application under section 82

This section provides the MARA with the power to issue a notice to compel the MAC holder to make an application under section 82 where the rehabilitation schedule is no longer appropriate due to technological developments, changes in practices or submissions or recommendations.

Section 94. Emergency works in maritime area

This section is intended to facilitate urgent works of an emergency nature in the nearshore area which are required to protect life or property. This section allows the Minister to make regulations to manage such situations.

CHAPTER 9

Privately owned part of maritime area

Section 95. Privately owned part of maritime area, etc.

This section provides for the treatment of privately owned parts of the Maritime Area such that a MAC is not required. For the purposes of this Act, no part of the maritime area shall be considered as privately owned unless deemed so under the Registration of Title Act 1964.

CHAPTER 10

Special MAC cases

Section 96. Definitions - Chapter 10

This section provides interpretation for definitions within this Chapter. For this Chapter, “relevant Minister” means the Minister for the Environment, Climate and Communications.

Section 97. Relevant maritime usages and MACs before establishment day

This section provides that Minister for the Environment, Climate and Communications can, prior to the establishment of the MARA, give public notice that he or she intends to invite MAC applications or has received MAC applications for relevant maritime usages. The Minister for the Environment, Climate and Communications can grant MACs for relevant maritime usages.

Section 98. Provisions supplementary to section 97

This section provides that any MACs granted prior to the establishment of the MARA shall remain in force as if granted by the MARA and on establishment day, the role of the Minister will be replaced by the MARA in all such matters.

Section 99. Certain MSPs and DMAPs and MACs after establishment day

This section provides that the MARA may manage the MAC application process in the context of DMAPs. The MARA may use a competitive process to determine who shall be granted a MAC.

CHAPTER 11

Keeping of records, etc.

Section 100. Keeping of records and samples, etc., by holder of MAC

This Section provides for the keeping of records and samples as well as provision to the MARA of appropriate data by MAC holders relevant to certain maritime usages.

CHAPTER 12

Transitional provisions - foreshore authorisations, unauthorised usages and MACs

Section 101. Transitional provisions for certain foreshore authorisations

This section provides that the holder of a foreshore authorisation may, at any time before the expiration of their authorisation, make a MAC application to the MARA to surrender the authorisation for a MAC.

Section 102. Transitional provisions for certain unauthorised maritime usages

This section provides that a person undertaking unauthorised usage may, before the fifth anniversary of the coming into operation of this section make a MAC application relating to the unauthorised usage concerned. Planning permission such as retention or substitute consent under the planning acts may also be required.

CHAPTER 13

Judicial review and MACs

Section 103. Judicial review of matters relating to MAC applications or MACs

This section relates to judicial review matters pertaining to MAC applications or MACs. An application for leave to apply for judicial review shall be required to be made within 8 weeks of the publication of the MARA's decision.

Section 104. Provisions supplementary to section 103

This section provides that an application for section 103 leave shall be made by motion ex parte and shall be grounded in the manner specified in Order 84 (Judicial Review and Orders Affecting Personal Liberty) in respect of an ex parte motion for leave.

Section 105. Judicial review does not prevent applications for development consent

This section provides that an application to the High Court for the grant of leave for judicial review shall not prevent an application for development consent being progressed under the Planning and Development Act of 2000.

CHAPTER 14

Miscellaneous

Section 106. Strategic environmental assessment and appropriate assessment

This section provides that the Minister is not required to carry out screening for strategic environmental assessment or strategic environmental assessment, or screening for appropriate assessment or appropriate assessment when making regulations under this part.

Part 5

LICENCES AUTHORISING CERTAIN MARITIME USAGES IN MARITIME AREA

CHAPTER 1

Interpretation, application and competent authority

Section 107. Interpretation – Part 5

This section provides definitions of terms used in connection with maritime licences.

Section 108. Application

This section provides that a licence shall not be granted for a maritime usage that requires an environmental impact assessment.

Section 109. Competent Authority

This section provides that the MARA will be the competent authority for and carry out any appropriate assessments for maritime licence applications in order to comply with the Habitats Directive.

CHAPTER 2

Grant or refusal of licence and related matters

Section 110. Prohibition against undertaking certain maritime usages in maritime area without licence

This section confirms the requirement for a licence and that a person shall not undertake a maritime usage listed in *Schedule 7* unless they are the holder of a licence for such usage or the usage has an exemption from the need to hold a licence.

The Minister may make regulations to add further maritime usages to *Schedule 7* and this section provides criteria for the Minister to use in deciding whether further maritime usages can be added to *Schedule 7*.

Section 111. Exempted usage

This section provides that the Minister may make regulations to exempt classes of *Schedule 7* maritime usage from the requirement to hold a licence under this Part and it sets out the criteria by which such exemptions shall be determined, including those usages that are already authorised by or under another enactment. Any *Schedule 7* usage requiring environmental impact assessment, or appropriate assessment under the Habitats Directive, cannot be an exempted usage.

Section 112. Fees for licences

This section provides that the Minister may make regulations to specify fees to be paid to the MARA for the processing of licence applications and the fees to be paid by holders of licences upon the granting of the licence. The regulations may provide that different amounts of fees are charged

for different classes of applications or where there may be circumstances in which there can be an exemption, remission, waiver or refund of a fee.

Section 113. Application for grant of licence

This section details the licence application processes. In the first instance, the application must be made to the MARA in a form that can be specified by it, including any further information that it reasonably considers necessary for making a decision on the application.

This section also sets out the obligations in respect of appropriate assessment and environmental impact assessment.

If the MARA decides that an appropriate assessment is required, it must give notice to the applicant to initiate a public consultation process on the application and require the applicant to submit a Natura impact statement. Public submissions may be made to the MARA for a period of not less than 30 days. At the end of the public consultation process the MARA must carry out an appropriate assessment and this must be taken into account when making its decision on the application for a licence. The MARA cannot ask for any further information in respect of the licence application once the public consultation process has commenced.

If the MARA decides that an environmental impact assessment is required, it must return the application to the applicant, because a licence cannot be granted if an environmental impact assessment is required.

Section 114. Grant or refusal of licence

This section provides that the MARA can determine a licence application by granting a licence, refusing a licence, or part-granting a licence and sets out the notification requirements of same. The MARA may also attach conditions to the grant or partial grant of a licence. Where the MARA is minded to refuse a licence or partially grant a licence it may engage with the applicant on the reasons for the refusal or partial grant.

To the extent that is practicable the MARA will determine a licence application within 30 days of receipt of all the required information.

Section 115. Conditions attached to licence

This section provides that the MARA can attach conditions to a licence, which must fall within the types of conditions specified in *Schedule 8* or any regulations made to further add to these types of conditions.

It is deemed to be a condition of every licence that the MARA can revoke, suspend or amend a licence if this is necessary to enable a maritime area consent (MAC) to have full force and effect. It is also an explicit condition of every licence that the licence does not give the holder exclusive use of the maritime area the subject of the licence.

Where the MARA is minded to revoke, suspend or amend a licence it shall engage with the licence holder on such a proposal to revoke or amend the licence. The MARA has discretion to further review its decision and in the event that it ultimately decides to amend or revoke a licence, it must give at least 30 days' notice to the applicant.

Section 116. Provisions supplementary to grant of licence

These supplementary provisions clarify the following:

- Licence holders are exempt from compliance with certain sections of the Foreshore Act, 1933;
- Licence holders can be granted multiple licences;
- Before granting a licence the MARA must have regard to specified EU Directives and any subsequent Irish legislation, in addition to

any other maritime usage lawfully undertaken in the same part of the maritime area; and,

- The MARA cannot grant a licence unless it is consistent with the National Marine Planning Framework.

Section 117. Notification of grant or refusal of licence, etc.

This section sets out the publication and notification details that the MARA is required to comply with after it grants a licence, including any additional environmental screening or appropriate assessment determination publication requirements.

CHAPTER 3

Compensation for exercise of relevant power

Section 118. Compensation for exercise of relevant power

This section provides that the holder of a maritime area consent (MAC) must compensate the holder of a licence, for any loss, damage, disturbance or injury as the case may be, where the MARA decides to revoke, suspend or amend the licence on foot of a condition in the MAC providing for such action to enable the MAC to have full force and effect. Such compensation must be in accordance with a scheme of compensation that the MARA may determine.

CHAPTER 4

Assignment or amendment of licence

Section 119. Assignment of licence

This section sets out the procedures that must be followed where a licensee wishes to assign their interest in the licence. The prospective assignor and assignee must apply jointly to the MARA who will then give due consideration to the proposed assignee in accordance with the general provisions applying to applicants. Any assignment of a licence purporting to be effected without the consent required in this section shall be void.

Section 120. Material amendment to licence

This section sets out the procedure for making a material amendment to a licence, which must be approved by the MARA. The Minister may make regulations to specify classes of amendments to a licence that are non-material for the purposes of this section and the holder of a licence who wishes to make a non-material amendment to a licence must formally notify the MARA of the amendment at least 10 days before making the amendment.

CHAPTER 5

Surrender of licence

Section 121. Surrender of licence

This section provides that the holder of a licence can apply to the MARA to surrender the licence. The MARA can require the applicant to provide it with any additional information it requires in order to make a decision on the application to surrender.

Section 122. Determination of application under *section 121*

This section deals with the processes around the determination of an application to surrender a licence, including instances where the MARA can refuse the application to surrender (e.g. if the applicant has not complied with any relevant obligations pre-surrender). Any purported surrender of a licence without the MARA's consent is invalid and has no legal effect.

CHAPTER 6

Keeping of records, etc.

Section 123. Keeping of records and samples, etc., by holder of licence

This section provides that the holder of a licence may be required to keep records, samples or data for any scientific purpose and to provide them to the MARA or any specified public body if requested. Provisions are made for the protection of personal or commercially sensitive data.

CHAPTER 7

Transitional provisions – foreshore authorisations, unauthorised usages and licences

Section 124. Transitional provisions for certain foreshore authorisations

This section provides for transitional arrangements for certain existing authorisations and licences under the Foreshore Act, 1933.

Section 125. Transitional provisions for certain unauthorised maritime usages

This section provides that a person undertaking unauthorised usage may, before the fifth anniversary of the coming into operation of this section make a licence application relating to the unauthorised usage concerned.

CHAPTER 8

Judicial review and licences

Section 126. Judicial review of matters relating to licence applications or licences

This section details the judicial review procedures relating to maritime licensing.

Section 127. Provisions supplementary to section 126

This section provides that an application for section 126 leave shall be made by motion ex parte and shall be grounded in the manner specified in Order 84 in respect of an ex parte motion for leave.

Section 128. Costs in environmental matters

Section 128 makes provision for the award of legal costs in judicial review proceedings and related appeals in respect of certain provisions of the Environmental Impact Assessment Directive and the Habitats Directive, and in respect of the Strategic Environmental Assessment Directive.

Part 6

ENFORCEMENT

CHAPTER 1

Interpretation, application and material change of circumstances

Section 129. Interpretation

This section contains the definitions for this Part including definitions for ‘enforcement notice’, “investigation”, “investigation report”, “major sanction” and “minor sanction”.

Section 130. Application

This section sets out the scope of the application of this Part including how the MARA will manage proceedings under Chapters 3 and 5.

Section 131. Material change of circumstances

This section sets out what is understood by 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**Appointment and powers of authorised officers****Section 132. Authorised officers of the MARA**

This section provides that the MARA may appoint authorised officers who may or may not be members of staff of the MARA.

Section 133. Powers of authorised officers

This section sets out the powers of authorised officers. Included in the powers that may be exercised by authorised officers, when undertaking investigation and enforcement activities under this Act, are the following:

- to enter premises and board vessels;
- to secure books, records or other documents for inspection;
- to require the holder or employee to give information in relation to books, records and other documents or in relation to the maritime usage concerned.

Section 134. Privileged legal material

This section addresses the treatment of privileged legal material which is material in the opinion of the court that a person is entitled to refuse to produce on the grounds of legal professional privilege.

CHAPTER 3**Enforcement notices****Section 135. Circuit Court's jurisdiction under this Chapter**

This section sets out the jurisdiction of the Circuit Court as it relates to the issuing of enforcement notices. When the subject of an enforcement notice does not ordinarily reside in the state then the Dublin Circuit Court shall be the designated court.

Section 136. Issue of enforcement notices

This section provides that where the MARA is of the opinion that there are sufficient grounds, it shall issue a notice to the holder detailing the relevant ground and the reason the MARA is of this opinion; a direction to the holder to take such steps as are specified in the notice; a specific period within which those steps must be taken.

In the interests of procedural fairness, the MARA shall 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.

Section 137. Application for cancellation of direction specified in enforcement notice, etc.

This section provides that following application to the court by the holder in receipt of an enforcement notice, the Circuit Court can either cancel, confirm or vary the direction.

The decision of the Circuit Court on a direction specified in an enforcement notice shall be final save that, by leave of the High Court, on appeal to the High Court on a point of law by the holder, or the MARA.

Section 138. Rules of court

This section provides that the rules of court may make provision for the expedition of the hearing of proceedings under this Chapter.

CHAPTER 4**Automatic termination of relevant authorisation****Section 139. Automatic termination of relevant authorisation**

This section provides for scenarios that will automatically terminate a relevant authorisation. These termination events occur where an individual dies or is adjudicated to be 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.

CHAPTER 5**Immediate suspension of relevant authorisation, investigations and sanctions****Section 140. Circumstances in which application may be made to High Court for immediate suspension of relevant authorisation, etc.**

This section provides that where the MARA is of the opinion that a relevant ground is of such potential gravity (for reasons of safety or environmental concern or otherwise), that an immediate suspension of the relevant authorisation is warranted, then the MARA may, on notice to the holder, make an application to the High Court for an order to suspend the relevant authorisation.

Section 141. Investigations

This section provides that where the MARA is of the opinion that a relevant ground may apply to a holder that it shall appoint one or more authorised officers to carry out an investigation. The authorised officers shall 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

This section provides that following the conclusion of an investigation, an authorised officer shall prepare a draft investigation report to issue to the holder with an opportunity (within 30 days) to respond.

Following any submission received from the holder, a final investigation report will be produced and submitted to the MARA. The MARA will then, if satisfied that a relevant ground applies, determine if a minor or major sanction should be imposed.

Section 143. Confirmation of High Court required before decision under section 142(4)(a) to impose major sanction takes effect

This section provides that a decision by the MARA to impose a major sanction on a holder shall not take effect unless the decision is confirmed by the High Court.

Section 144. Appeal to High Court against decision to impose major sanction

This section provides that the holder who is subject to a decision by the MARA to impose a major sanction may appeal to the High Court against the decision.

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

This section provides that where a holder does not, within the period allowed, appeal to the High Court against a decision by the MARA to impose a major sanction, that the MARA shall make an application in a summary manner to the High Court for confirmation of the decision.

The High Court shall then confirm the decision unless it sees good reason not to do so.

Section 146. Provisions supplementary to sections 144 and 145

This section provides that where the High Court confirms a decision, the MARA shall give notice in writing of the decision to the holder and, if the decision provides for the imposition of a major sanction on the holder then the notice shall specify the day on which the suspension/prohibition is to commence.

Section 147. Matters to be considered in determining sanctions to be imposed

The section provides matters which can be considered in determining the sanction to be imposed, which include:

- that the sanction is appropriate, proportionate and sufficient,
- the seriousness of the relevant ground,
- the income of the holder and their ability to pay,
- the extent of any failure by the holder to co-operate with the investigation,
- any precedents set by a court, the MARA or another person in respect of previous

relevant grounds.

Section 148. Protection for persons reporting alleged relevant ground, etc.

This section seeks to provide protection for individuals who, in good faith, have reported alleged grounds for enforcement action to the MARA.

CHAPTER 6

Provisions supplementary to Chapters 4 and 5

Section 149. Effect of termination or revocation of relevant authorisation

This section provides that once a termination or revocation of a relevant authorisation has taken effect, the holder shall cease to be able to exercise any powers under the relevant authorisation.

Section 150. Effect of suspension of relevant authorisation

This section provides that once a relevant authorisation has been suspended, the holder shall cease to be able to exercise any powers for the duration of the suspension except for those specified in the order. All the holder's obligations shall still apply unless otherwise specified.

Section 151. Notice of revocation or suspension of relevant authorisation to be given to certain bodies

This section provides that the MARA shall, as soon as is practicable after the date on which the revocation or suspension takes effect, give notice in writing to the An Bord Pleanála CPA, EPA with the name of the holder, details of the relevant authorisation and date of revocation or suspension.

CHAPTER 7

Offences and related provisions

Section 152. No fee, etc., refundable following termination, revocation or suspension of relevant authorisation, etc.

This section provides that no refund or compensation is due to the holder of an authorisation that has been revoked or suspended.

Section 153. Offences – general

This section sets out the range of penalties that are to be imposed where a person has been found to commit an offence by not securing a MAC or other contraventions. It also includes the penalty for a person who has made a knowingly false communication under section 148(1).

Section 154. False or misleading information

This section provides that any relevant person who is guilty of providing false or misleading material to the MARA 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 5 years or both.

Section 155. Obstruction

This section provides that a person shall not obstruct or interfere with:

- the MARA,
- a member of staff of the MARA (including a person referred to in section 62(5)),
- an authorised officer, or
- a member of the Garda Síochána,

in the performance of their respective functions under this Act. A person who does so shall be guilty of an offence.

Section 156. Evidentiary presumptions

This section provides that the MARA may, by notice in writing, authorise the Chief Executive Officer or another member of staff of the MARA to provide a signed certificate which can be used as evidence in proceedings.

Section 157. Offences by bodies corporate

This section provides that where an offence under this Act is committed by a body corporate and it is proved that the offence was attributable to a person who was a director, manager, secretary or other officer of the body corporate then that person, as well as the body corporate, may have proceedings taken against them.

Section 158. Vicarious liability

This section provides that (in any proceedings brought under this Act) anything done by a person in the course of his or her employment shall be treated as if it were done by that person's employer, whether or not it was done with the employer's knowledge or approval.

Similarly, anything done by a person as agent for another person, with the authority (whether express or implied) of that other person shall be treated as if it were done by that other person.

Section 159. Summary proceedings

This section provides that an offence under this Act may be prosecuted summarily by the MARA.

Section 160. Time limit for offences that may only be brought by summary proceedings

This section sets out the time limit for taking summary proceedings for an offence under this Act.

Section 161. Costs of prosecutions

This section provides that the Court shall order a person convicted under this act to pay costs and expenses to the Minister or the MARA, as appropriate, unless the Court finds special reasons for not doing so.

Part 7

MISCELLANEOUS

Section 162. Definition

This section provides that, “relevant moneys” means any fee or costs required under this Act to be paid to the MARA, any levy required to be paid to the MARA, or any payment required to be paid to the MARA pursuant to a decision confirmed by the High Court.

Section 163. Disposal of relevant moneys

This section provides that the Minister for Public Expenditure and Reform shall, after consultation with the Minister, provide directions to the MARA as to how it shall dispose of the relevant moneys it receives.

Section 164. Recovery of relevant moneys

This section provides that the MARA may recover, as a simple contract debt in any court of competent jurisdiction, from a person by whom relevant moneys is payable, any amount due and owing to the MARA in respect of such moneys.

Section 165. Ways of giving notice, etc.

This section sets out that a notice may be given to a person by such means as by delivery, leaving at an address (where the person is ordinarily resident), sending by post or by electronic means.

For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Part 8

AMENDMENT OF PLANNING AND DEVELOPMENT ACT 2000

Section 166. Insertion of Part XXI

This section amends the Planning and Development Act, 2000 (the Act of 2000) by the insertion of a new Part XXI (Maritime Development). The purpose of Part XXI is to amend the Planning and Development Act, 2000 to establish a framework for assessing development in the maritime area. The following numbering and referencing conventions align with the Part XXI of the Act of 2000 and [PDA] denotes new sections of the Act of 2000.

CHAPTER I

Preliminary and General

[PDA] Section 278. Definitions

This section provides definitions for the purposes of Part XXI.

[PDA] Section 279. Extension of functional area of coastal planning authority

This section extends the functional area of a coastal planning authority to include its nearshore area (as defined in Section 5 of the Maritime Area Planning Act 2021), except in respect of certain provisions of the Act identified in section 308.

CHAPTER 2

Certain Development in Nearshore Area

[PDA] Section 280. Application of chapter

This chapter relates to development applications made directly to coastal planning authorities and this section sets out that it applies to development;

1. situated in the nearshore area of a coastal planning authority
2. to development situated partly in such a nearshore area and partly on land,

but it excludes certain types of strategic or large scale development listed in Schedule 8 of the Act of 2000 (as inserted by section 167(a) of the Maritime Area Planning Act 2021).

[PDA] Section 281. Obligation to obtain permission to carry out development

This section sets out that only the following can apply for permission for development to which chapter II applies:

- A holder of a maritime area consent;
- The owner of the land (including maritime sites), or be applying with the consent the owner of the land; or,
- The holder of certain leases or licences under the Foreshore Act 1933.

The application for planning permission must be made under and in accordance with section 34 (permission for development) to the coastal planning authority within whose nearshore area it is proposed to carry out the development and the chapter does not apply to development by local and state authorities (Part XI development – development by local and State authorities).

[PDA] Section 282. Consideration by planning authority of application for permission for development

This section states that a coastal planning authority shall not consider an application that was not made by the persons set out (i.e. MAC holder, site owner etc.).

When performing its functions under this section and section 34 a coastal planning authority must have regard to the matters listed in subsection (2), in addition to any obligations under Section 34 (permission for development) of the Act of 2000 including, inter alia:

- The National Marine Planning Framework;
- Marine Planning Policy Statement;

- Guidelines issues under the Act of 2000 and the Maritime Area Planning Act 2021; and,
- Other maritime specific matters.

In addition to the conditions that may be attached to a permission under section 34(4), a coastal planning authority may also attach to such a permission for development in the nearshore area any or all of the conditions listed in subsection (3).

[PDA] Section 283. Effect of bringing of judicial review of maritime area consent on application under section 34 or appeal under section 37

This section sets out that, where the MARA grants a maritime area consent (a MAC), the holder of the MAC can proceed to make an application for planning permission to the Coastal Planning Authority even though another person has made an application for judicial review of the decision to grant the MAC and the events surrounding the success or failure of such a challenge.

CHAPTER 3

Other Developments in Maritime Area

[PDA] Section 284. Definitions

This section provides definitions for this chapter.

[PDA] Section 285. Application of Chapter

This section clarifies that this chapter applies to various types of development as follows:

1. Any development wholly or partly located in the outer maritime area (outside of the nearshore area), including large scale or strategic developments as set out in Schedule 8
2. Any development in the nearshore area of more than one coastal planning authority
3. Any development partly on land and partly in the nearshore area of more than one coastal planning authority
4. Large or strategic scale developments as set out in Schedule 8 located wholly in the nearshore area of a coastal planning authority, or partly on land and partly in the nearshore area of a coastal planning authority.

[PDA] Section 286. Obligation to obtain permission to carry out development

This section confirms that if a development falls into any of the classes above, the application must be made to An Bord Pleanála (the Board) and that, in order for a person to be eligible to apply for planning permission to the Board, they must:

- Be the holder of a maritime area consent;
- Be the owner of the land (including maritime sites), or be applying with the consent the owner of the land; or,
- Be the holder of certain leases or licences under the Foreshore Act 1933.

[PDA] Section 287. Consultation with Board prior to application for permission

This section provides for the pre-planning consultation on such applications and the matters on which the Board can advise during these consultations. A person may not enter into these pre-planning consultations unless they are eligible to lodge a planning application.

[PDA] Section 288. Provision supplementing section 287

This section sets out supplementary provisions for the pre-planning consultations, including obligations to provide further information to the Board and the obligation on the Board to keep a record of the consultations.

[PDA] Section 289. Screening for environmental impact assessment in respect of proposed development

This section provides the Board with the powers to carry out screening for environmental impact assessments by reference to and application of the processes set out in Section 176A of the Act of 2000. It also limits screening requests to persons eligible to make a planning application under this chapter.

[PDA] Section 290. Opinion of Board on information to be contained in environmental impact assessment report

This section enables a prospective applicant to request from the Board an opinion in writing on the scope of the information and the level of detail that should be set out in an environmental impact assessment report.

[PDA] Section 291. Application to Board

This section sets out the process for the applications to be made to the board including:

- The fees, plans, particulars and environmental reports that should accompany any application;
- Public consultation and notice requirements; and,
- The requirements for consultation and interactions with specific persons, coastal planning authorities, public bodies or State Authorities, including the reporting obligations of those persons.

[PDA] Section 292. Provision supplementing section 291

This section sets out supplementary provisions to the application procedures, including requests for further information, including revised environmental impact statements or revised Natura impact statements, and any consequent requirement to invite further submissions or observations from any relevant persons or bodies.

It also provides the power to the Board to deem any application to be withdrawn where an applicant has failed to comply with a requirement by the Board under this section.

[PDA] Section 293. Decision by Board in respect of application under section 291

This section sets out what the Board may consider when making a decision on an application for planning permission. The Board may not grant a planning permission that would materially contravene the National Marine Planning Framework except in limited circumstances. In addition to this, the Board shall have regard to a range of matters set out in subsection (3), including, *inter alia*;

- The Marine Planning Policy Statement;
- Any relevant Regional Plans, Development Plans or Local Area Plans;

- Any submissions or observations on the application;
- Any effects on the environment or a European Site;
- Any reports of its inspectorate;
- Any areas protected in compliance with Marine Strategy Framework Directive (2008/56/EC); or,
- The objectives of maritime spatial planning (as defined in the Act).

The Board may grant permission with or without modifications and subject to any of the conditions listed in subsection (7), or it may refuse permission.

[PDA] Section 294. Provision supplementing section 293

This section sets out the publication and notification requirements for the Board in respect of each decision it makes under this chapter. It also sets out the notification requirements in respect of any further fees owed by the applicant in respect of the processing of the application.

[PDA] Section 295. Period within which decision under section 293 to be made

This section sets out that the Board is required to make a decision on an application for planning permission not later than 18 weeks after;

- the expiry of the period specified for the making of submissions or observations on the application, or
- the Board receives further information from the applicant as required by the Board, or
- the conclusion of an oral hearing in relation to the application, whichever occurs latest.

The Minister may specify any other such period in regulations.

[PDA] Section 296. Discussions with Board prior to application for alteration of development in maritime area

The section provides that a person who intends to make a request to the Board to alter the terms of a planning permission granted under section 293 can, by request, enter into consultations with the Board in advance of any such application being made.

[PDA] Section 297. Request for alteration of terms of permission to which this Chapter applies

This section sets out the process by which an application for an alteration to the terms of a permission granted by the Board must be made and what the Board must do in order to determine whether such an alteration is material or not, including any necessary consultations and environmental screenings.

[PDA] Section 298. Alteration of terms of permission that is not material alteration

This section sets out the publication and notification requirements where the Board decides that a requested alteration under section 297 is not a material alteration of the terms of a planning permission.

[PDA] Section 299. Material alteration of terms of permission

This section sets out the procedural, publication and notification requirements in respect of a decision on a requested alteration of a planning permission that the Board deems to be a material alteration, including the types of decisions that the Board may make in respect of the requested alteration and what it must have regard to when making such decisions.

[PDA] Section 300. Request for opinion of Board with regard to environmental impact assessment

This section sets out that the Board must provide to a requesting person its opinion on the scope and content of any environmental impact assessment required report in respect of a proposed alteration.

[PDA] Section 301. Environmental impact assessment report in accordance with requirement under section 297

This section sets out the mandatory requirements for any revised Environmental Impact Assessment Report (EIAR) submitted in respect of an application for an alteration to the terms of a permission.

[PDA] Section 302. Submission and notification of environmental impact assessment report and Natura impact statement

This section sets out the consultation, publication and notification requirements relating the submission of any revised environmental impact statement or Natura impact statement arising from any screening carried out by the Board when considering the application for an alteration.

[PDA] Section 303. Application of section 177AA in relation to request for material alteration of terms of permission under section 293

This section applies Section 177AA of the Act of 2000 (relating to the Habitats Directive and imperative reasons of overriding public interest) to any application for an alteration of the terms of a planning permission.

[PDA] Section 304. Effect of bringing of judicial review of maritime area consent on application for permission

This section sets out that, where the MARA grants a maritime area consent (a MAC), the holder of the MAC can proceed to make an application to the Board for planning permission even though another person has made an application for judicial review of the decision to grant the MAC and the events surrounding the success or failure of such a challenge.

[PDA] Section 305. Oral hearings

The Board may, if it sees fit, hold an oral hearing of an application, under section 291, for planning permission or a request, under section 297, for an alteration of the terms of a planning permission and this section sets out the procedures relating to such hearings.

[PDA] Section 306. Regulations

This section provides the Minister with the power to make regulations in respect of any of the listed processes.

CHAPTER 4

Manner of Application of Certain Provisions to Maritime Area

[PDA] Section 307. Definition

This section provides a definition for 'maritime development' for this part.

[PDA] Section 308. Disapplication of certain provisions of Act in relation to maritime area

This section provides that certain provisions of the Act of 2000 listed here do not apply in the maritime area. Therefore, references in the provisions listed here to the functional area, administrative area or area of a planning authority do not include references to the nearshore area of a coastal planning authority.

[PDA] Section 309. Construction of references to land

This section provides that, in the scheduled provisions of the Act of 2000, any references to “land” shall be construed as being a reference to a maritime site where that provision applies to the maritime area. It also clarifies that references to “owner” in those relevant provisions does not include references to the Minister with whom the interest of any relevant maritime site rests.

The relevant provisions of the Act are listed in Part I of the Ninth Schedule, inserted by *section 167(b)* of the Maritime Area Planning Act 2021.

[PDA] Section 310. Construction of references to proper planning and sustainable development

This section provides that references in the Act of 2000 to proper planning and sustainable development (and the objectives thereof), other the listed exceptions in so far as the Act of 2000 applies to maritime development, proposed maritime development, or otherwise in relation to the maritime area, shall be construed as references to maritime spatial planning (and the objectives thereof).

[PDA] Section 311. Construction of references to National Planning Framework

This section provides that references in the Act of 2000 to the National Planning Framework, other than the listed exclusions, in so far as the Act applies to maritime development, proposed maritime development, or otherwise in relation to the maritime area, shall be construed as references to the National Marine Planning Framework.

[PDA] Section 312. Construction of references to development plan

This section provides that references in a relevant provision of the Act (listed in Part II of the Ninth Schedule, inserted by *section 167(b)* of the *Maritime Area Planning Act 2021*) to a development plan or the development plan, in so far as that provision applies to maritime development, proposed maritime development, or otherwise in relation to the maritime area, shall be construed as references to the National Marine Planning Framework.

[PDA] Section 313. Construction of references to planning authority

This section provides that the relevant provisions of the Act (listed in Part III of the Ninth Schedule, inserted by *section 167(b)* of the *Maritime Area Planning Act 2021*) apply to the outer maritime area as if references to a planning authority, the planning authority, relevant planning authority or planning authorities were references to the Maritime Area Regulatory Authority. This ensures that the MARA has the relevant powers in the wider maritime area referred to in these provisions (including planning enforcement).

[PDA] Section 314. Application of section 5 to outer maritime area

This provisions ensure that the Board will assess section 5 applications in the outer maritime area by construing references to a planning authority, the planning authority, the relevant planning authority or the authority as references to the Board, where relevant.

[PDA] Section 315. Application of section 137

This section applies the provisions of section 137 (matters other than those raised by parties) of the Act of 2000 to Section 291 applications.

[PDA] Section 316. Application of section 146

This section ensures the application of Section 146 (reports and documents of the Board) to the maritime area.

[PDA] Section 317. Application of Part X

This section applies Part X (environmental impact assessment) to Chapter III developments and ensures that the Board is referred to appropriately in this regard.

[PDA] Section 318. Application of Part XAB

This section applies Part XAB (appropriate assessment) to Chapter III developments and ensures that the Board is referred to appropriately in this regard.

[PDA] Section 319. Public notice of application

This section confirms that, in relation to an application for permission for development to which Chapter III applies, a requirement under a provision of this Act to publish a notice in a newspaper circulating in the functional area or administrative area of a planning authority or to erect a site notice shall, in respect of a maritime site, be deemed to be a requirement to publish the notice in a national newspaper and submit same, where required.

[PDA] Section 320. Powers of entry of Maritime Area Regulatory Authority

This section provides the powers of entry referred to in sections 252 (power of authorised person to enter on land) and 253 (powers of entry in relation to enforcement) of the Act of 2000 to the MARA for the purposes of planning enforcement in the outer maritime area.

[PDA] Section 321. Prosecution of offences by Maritime Area Regulatory Authority

This section provides that the MARA may bring and prosecute summary proceedings for an offence under section 151 (carrying out or having carried out unauthorised development) and for an offence under section 154(8) (failure to comply with the requirements of an enforcement notice within the period allowed).

Section 167. Amendment of Act of 2000

The Act of 2000 is amended by the insertion of the text set out in *Schedule 10* of the *Maritime Area Planning Act 2021* as the Eight Schedule of the Act of 2000.

The Act of 2000 is amended by the insertion of the text set out in *Schedule 11* of the *Maritime Area Planning Act 2021* as the Ninth Schedule of the Act of 2000.

The Act of 2000 is amended to the extent specified in *Schedule 12* of the *Maritime Area Planning Act 2021*.

Part 9

CONSEQUENTIAL AMENDMENTS

CHAPTER 1

Amendment of Foreshore Act 1933

Section 168. Application – Act of 1993 and Maritime Area Planning Act 2021

This section provides for the proposed amendments to the Foreshore Act to remove the Minister for Housing, Local Government and Heritage responsibilities under that Act and ensure the continued operation of the regime in respect of the functions of the Minister for Agriculture Food and the Marine, other than fishery harbours.

Section 169. Amendment of section 10 of Act of 1933

This section provides that the Minister for Housing Local Government and Heritage will have no functions under this Section post enactment.

Section 170. Amendment of section 11 of Act of 1933

This section provides the Minister for Housing Local Government and Heritage will have no functions under this Section post enactment.

Section 171. Amendment of section 12 of Act of 1933

This section provides that the Minister for Housing Local Government and Heritage will have no functions under this Section post enactment.

Section 172. Amendment of section 13 of Act of 1933

This section provides that the Minister for Housing Local Government and Heritage will have no functions under this Section post enactment.

Section 173. Amendment of section 18A of Act of 1933

This section provides that the Minister for Housing Local Government and Heritage will have no functions under this Section post enactment.

CHAPTER 2

Amendment of Registration of Title Act 1964

Section 174. Amendment of section 125 of Registration of Title Act 1964

The Minister for Housing Local Government and Heritage will have no functions under this section post enactment. Section 125 of the Registration of Title Act 1964 is amended by the substitution of “Minister for Agriculture, Food and the Marine and the Maritime Area Regulatory Authority” for “Minister for Transport and Power”.

CHAPTER 3

Amendment of Foreshore (Amendment) Act 1992

Section 175. Definition

This section provides that in this Chapter, “Act of 1992” means the Foreshore (Amendment) Act 1992.

Section 176. Application – this Act and Maritime Area Planning Act 2021

This section provides for an amendment of part of the Foreshore (Amendment) Act 1992 such that on and after the Establishment Day, certain references to the relevant Minister shall be construed as references to the Maritime Area Regulatory Authority.

Section 177. Amendment of section 5 of Act of 1992

Section 5 of the 1992 Act relates to the High Court's power to prohibit continuance of certain contraventions of the Principal Act. This section provides that section 5(1)(a) of the Foreshore Amendment Act of 1992 is amended by the substitution of “appropriate Minister” for “Minister for the Environment, Heritage and Local Government”.

Section 178. Amendment of section 6 of Act of 1992

Section 6 of the 1992 Act relates to the powers of courts, Minister, local authorities in relation to mitigating and remedying effects of contravention of certain orders and notices, etc. This section provides for the substitution of “appropriate Minister” for “Minister for the Environment, Heritage and Local Government”.

CHAPTER 4

Amendment of Electricity Regulation Act 1999

Section 179. Amendment of section 14 of Electricity Regulation Act 1999

Section 14 of the Electricity Regulation Act 1999 relates to licences granted by the Commission for the Regulation of Utilities to generate and supply electricity. This section of the Electricity Regulation Act 1999 is amended so that a licence to discharge the functions of the transmission system owner may now be granted to EirGrid, in respect of transmission system assets required to connect offshore electricity generation to the onshore transmission system. The amendment provides that EirGrid is the only entity that may be granted a licence for ownership of these assets, and that all other transmission system assets remain under the ownership of ESB.

SCHEDULE 1

This Schedule restates the text of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning

SCHEDULE 2

This schedule lists the matters that the MARA may consider in determining a fit and proper person.

SCHEDULE 3

This schedule lists maritime usages for which a MAC is not required.

SCHEDULE 4

This schedule lists maritime usages for which a MAC (without need for development consent) is not required.

SCHEDULE 5

This schedule lists the criteria that the MARA shall have regard to when determining a MAC Application.

SCHEDULE 6

This schedule lists the types of conditions that the MARA may attach to a MAC.

SCHEDULE 7

This schedule lists the maritime usages which may require a licence.

SCHEDULE 8

This schedule lists the types of conditions that the MARA may attach to a licence.

SCHEDULE 9

This section details complaints and appeals to the rights commissioner in relation to protection for individuals reporting an alleged ground for enforcement action.

SCHEDULE 10

This schedule sets out the types of development that will be assessed by the Board pursuant to Section 285 of the Act of 2000 and inserts the “Eight Schedule” into same in accordance with Section 167 of this Bill.

SCHEDULE 11

This schedule lists the relevant provisions in respect of Sections 309, 312 and 313 of the Act of 2000 and inserts the “Ninth Schedule” into same in accordance with Section 167 of this Bill.

SCHEDULE 12

This schedule sets out a number of amendments to certain provisions of the Act of 2000 required to provide for the management of development in the maritime area, in accordance with Section 167 of this Bill.

*An Roinn Gnothaí Eachtracha,
Iúil, 2021.*