



Tithe an Oireachtais

An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta
an Bhille um Pleanáil agus Bainistíocht Forbartha Mara

Feabhra 2021

Houses of the Oireachtas

Joint Committee on Housing, Local Government and Heritage

Report on Pre-Legislative Scrutiny of the General Scheme of the Marine
Planning and Development Management Bill

February 2021

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PREFACE



On 2 November 2020, the Minister for Housing, Local Government and Heritage, Mr Darragh O' Brien TD, submitted the General Scheme of the Marine Planning and Development Management Bill to the Joint Committee on Housing, Local Government and Heritage in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

The Joint Committee agreed to undertake pre-legislative scrutiny of the General Scheme and the Committee has endeavoured to scrutinise the proposed legislation and provide recommendations on areas where it believes changes or amendments are warranted. The approach taken by the Committee in reporting on the scrutiny of the General Scheme was not to examine each Part of the General Scheme, rather to identify the most critical issues and to focus on these.

The Committee notes the proposed bill is the most significant piece of Irish maritime legislation since the Foreshore Act was enacted in 1933 and, in the context of the National Marine Planning Framework, will fundamentally transform how Ireland manages its marine space. In light of this, the Committee is cognisant of the need to preserve and protect Ireland's marine environment and habitats while allowing for the sustainable planning and fair development and management of the maritime area. The proposed bill can enable Ireland to harness the huge potential in offshore renewable energy, help meet national and European climate targets, and bestow significant benefits on Irish communities.

The Committee has identified nine key issues and made recommendations on these issues which are explained in detail in the body of the Report. The Committee has made these recommendations in the hope that they will assist Minister O' Brien and Department officials to improve this important piece of legislation.

I would like to thank the Committee Members, individuals and groups who assisted and contributed to our consideration of this subject, specifically those who appeared before the Joint Committee and those that made submissions in writing. I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.

A handwritten signature in black ink that reads "Steven Matthews". The signature is written in a cursive style.

Steven Matthews TD
Chair of the Joint Committee

INTRODUCTION

In accordance with Standing Order 146A the General Scheme of the *Marine Planning and Development Management Bill*¹ (the General Scheme) was referred to the Joint Committee on Housing, Local Government and Heritage (the Committee) on 2 November 2020. The Committee agreed at its meeting on 10 November 2020 to undertake pre-legislative scrutiny of the General Scheme.

The Committee conducted pre-legislative scrutiny at three meetings, and engaged with various stakeholders, detailed below. The Committee also invited a number of stakeholders to make written submissions on the General Scheme and these are linked in Appendix 5.

Tuesday 24 November

Department of Housing, Local Government and Heritage

- Mr Conor McCabe, Principal Officer, Marine Planning Policy and Legislation
- Mr Bernard Nolan, Principal Officer, Marine Planning Policy and Legislation
- Mr Tom Woolley, Marine Planning Advisor

Department of the Environment, Climate and Communications

- Ms Martina Hennessy, Principal Officer, Offshore Energy
- Ms Anne-Marie Clancy, Assistant Principal Officer, Offshore Energy

Thursday 26 November

Marine Renewables Industry Association

- Mr Peter Coyle, Chairman
- Mr Simon de Pietro, CEO of DP Energy and Co President of Ocean Energy Europe
- Dr Anne Marie O'Hagan, Senior Research Fellow at MaREI Centre, UCC
- Mr Eoin McPartland, Offshore Manager, Energia

Irish Wind Energy Association

- Mr Peter Lefroy, Chairman
- Dr David Connolly, CEO
- Mr Justin Moran, Head of Public Affairs
- Mr Liam Murphy, Offshore Wind Committee

Thursday 3 December

- Dr Tasman Crowe, Director, UCD Earth Institute
- Ms Attracta Uí Bhroin, Environmental Law Officer, Irish Wildlife Trust
- Mr Pádraic Fogarty, Campaign Officer, Irish Wildlife Trust
- Ms Karin Dubsy, Director, Coastwatch
- Mr Maurice Murphy, Coastwatch

¹ <https://www.gov.ie/en/publication/25a96-marine-planning-and-development-management-bill-general-scheme/>

BACKGROUND

The General Scheme of the Marine Planning and Development Management Bill 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 (the General Scheme) was approved by the previous Government on 17 December 2019.

The aim of the General Scheme is to correct 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 General Scheme proposes to establish a new legal framework for the maritime area, which will replace the existing State and development consent systems and streamline arrangements into a single consent process with one State consent (Maritime Area Consent or MAC) to enable occupation of the maritime area and one Development Consent (planning permission) with a single environmental assessment.

The General Scheme is an important part of broader developments in the area of marine management reform particularly driven at EU level. Ireland is obliged to both transpose and fully implement *Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014* establishing a framework for maritime spatial planning. *The Maritime Spatial Planning Directive*² and the provisions of this proposed legislation in the General Scheme are a key part of Ireland's transposition and implementation of the Directive and must be fully compliant. 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 industry³.

Types of projects or activities which would fall under the new MAC system under the Marine Planning and Development Management Bill (the Bill) include offshore renewable energy and gas storage, telecommunications cables, ports, harbours, marine environmental surveys and maintenance dredging.

Under the General Scheme, the Minister for Housing, Local Government and Heritage and the Minister for the Environment, Climate and Communications will be responsible for the MAC (with each Department having responsibility for the different activities which fall under their policy remits). For the Development Consent (planning permission), coastal local authorities will be responsible for certain activities in the nearshore while An Bord Pleanála (the Board) will be responsible for all other activities (such as strategic marine infrastructure and any projects requiring an Environmental Impact Assessment and/or an Appropriate Assessment).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0089>

³ <https://www.housing.gov.ie/planning/marine-spatial-planning/foreshore/marine-planning-and-development-management-bill>

Currently maritime activities are regulated under the geographically restricted *Foreshore Act 1933*⁴ (as amended). There is no regulatory framework for offshore renewable energy projects outside of the foreshore area. The Maritime Area is defined in the General Scheme and the coastal local authorities will each define the new 'nearshore' in their own functional area.

⁴ <http://www.irishstatutebook.ie/eli/1933/act/12/enacted/en/html>

KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee has identified areas that are of particular interest and/or where further consideration should be provided. These areas are outlined as key issues within this report.

KEY ISSUE 1: MARINE PROTECTED AREAS

The Committee, in its engagement with stakeholders, raised concerns around the role and significance of Marine Protected Areas (MPAs), and their position in relation to the proposed legislation. The Committee notes that Ireland committed to designating 10% of its marine area as MPAs by 2020 and 30% by 2030. At the time of writing however, approximately 2.5% of the marine area has protection. The Committee notes that MPAs are not dealt with in any measure in the proposed Bill and has concerns that in the absence of legislative provisions for MPAs, planning consents may be granted in diverse and ecologically important areas that would likely be designated as MPAs in the future.

An Taisce, in its submission to the Committee, raised similar concerns surrounding the development of offshore infrastructure in the absence of designated MPAs, and advised that this could lead to the designation of MPAs occurring in the remnant areas after all of the other marine sectors have been allocated their geographical areas, which in turn would conflict with the ecosystems-based approach required by the *Maritime Spatial Planning Directive* and the *Marine Strategy Framework Directive*⁵. An Taisce submitted that provisions for the designation, management and protection of MPAs should be included in the proposed bill.

The Department has advised that there is currently an expert group on Marine Protected Areas due to report to the Department shortly and it is expected that legislation governing MPAs will follow subsequently. Nonetheless, the Committee has concerns that the absence of legislation for MPAs in tandem with or in advance of the proposed Bill may fall foul of European directives or lead to judicial reviews of future offshore planning applications, delaying planning and development. Insofar as it is avoidable, the Committee would not like to see a situation where planning applications, for example for wind farms, are being carried out in the absence of having a system of designated Marine Protected Areas in place.

Dr Tasman Crowe of the University College Dublin Earth Institute advised the Committee that marine spatial planning for sectoral activities and the designation and management of marine protected areas for conservation are mandated under separate EU directives and should be recognised as being distinct processes. However, he noted that the relationship between them is critical and should be given careful consideration to enable sustainable development while also achieving good environmental status, as required under the EU's integrated maritime policy. Dr Crowe advised that new national legislation is required to underpin an effective process of selection and management of MPAs and to enable greater flexibility to protect important species, habitats and other features, particularly those that are not explicitly protected under the EU directives. In this regard, Dr Crowe noted that MPAs do not necessarily have to be dealt with under the proposed legislation but reiterated that it is critical that they form part of the Marine Spatial Plan. Dr Crowe also voiced

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0056>

concerns that areas may be zoned for sectoral activities which may potentially damage important natural features before they can be protected by MPAs. Dr Crowe did note that MPAs do not necessarily exclude all activity in the relevant area, but they have site-specific objectives and management plans that can be developed to recognise different activities that may be conflicting. It was also noted that the impacts described above by the lack of designated MPAs can be somewhat offset if existing legislation surrounding environmental impact assessments and appropriate assessment is followed fully. In this regard, Dr Crowe recommended to the Committee that those species and habitats listed under the EU Birds and Habitats directives, the OSPAR Convention and the International Union for Conservation of Nature (IUCN) Red lists be taken into account as part of any planning process in the proposed legislation.

Coastwatch, in its engagement with the Committee, highlighted the importance of sustainability in expanding the State's focus on infrastructure development in the marine environment, and noted the importance of MPAs in mitigating the effects of over-fishing, pollution, and the destruction of marine habitats which in turn lead to a loss of economic and amenity activity as well as a collapse in marine life. Coastwatch advised that the approach to planning and development cannot be considered sustainable in the absence of a far more proactive approach to restoration protection and conservation.

Coastwatch also advised the Committee that the proposed Bill should include a section which defines MPAs, gives legal power to Government to designate and manage MPAs, mandates relevant government departments and bodies to actively contribute to a well-managed and coherent MPA network, and ensures compliance with international legal requirements.

Coastal Concern Alliance in its submission to the Committee also highlighted the need to develop an extensive network of MPAs before offshore wind development proceeds.

Recommendations

The Committee recommends that:

- 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.
- 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.
- 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.
- 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.

KEY ISSUE 2: PUBLIC PARTICIPATION

The Committee raised concerns with witnesses across all meetings about the level of public participation in the consent processes provided for in the proposed bill. The Committee is aware that the proposed regime in the Bill consists of a two-stage procedure, the first stage consisting of a MAC, and the second stage being a development consent. In the engagement with the Department the Committee was advised that, before a developer applies for a MAC, obligations will be set out requiring engagement with impacted stakeholders. The Department advised that it was not possible to identify these stakeholders in primary legislation as it is currently building a regime covering a variety of scales, from slipways to wind farms. The Department noted that public consultation in the context of development under the current Foreshore Act can often be adversarial and advised that the proposed legislation aims to mitigate that by placing an obligation on developers to engage with impacted stakeholders before a MAC application is made. It noted that this would ensure early awareness of proposals, ensure clarity among the public as to what the proposal is, and identify issues of concerns early in the project concept stage. The Department advised the Committee that this would be set out as statutory obligation within MAC guidelines and noted that it was also examining the possibility of including as a set criterion in the MAC that if the Minister was not satisfied with the level of public or stakeholder engagement on the project, the application would be deemed incomplete and would not be granted.

The Committee also queried the level of public engagement carried out by relevant industry bodies. Representatives from the Marine Renewables Industry Association (MRIA) explained to the Committee that both formal and informal stakeholder engagement is a fundamental step in getting the community where a development is proposed to understand the project and buy into it. Representatives from the Irish Wind Energy Association (IWEA) also highlighted the importance of community and stakeholder engagement and noted that across the industry, developers are very conscious of the need to build trust between communities and projects. The IWEA stated that community engagement and the involvement of others provide industry bodies with the best chance of having a successful project.

The Committee also has concerns about the level of public participation and methods used to engage with the public provided for in the proposed bill. Ms Attracta Uí Bhroin of the Irish Environmental Network (IEN) highlighted what she sees as unsatisfactory public participation provisions under the General Scheme. She advised the Committee that under Head 15 of the Bill a large amount of discretion has been left to the Minister to make arrangements to comply with Article 9 of the *Maritime Spatial Planning Directive* without parameters or guidelines on how public participation is provided for. She advised that under Head 23 of the General Scheme, governing the making of a marine planning scheme, the methods used to inform the public consist of posting single notices in one or more national newspapers and allowing for physical copies of the scheme to be posted at a stated place or places. Ms Uí Bhroin said that there are issues in respect of the quality of the notification and accessibility at a time when it should be ensured that everybody has a chance to be made aware of developments using diverse mechanisms, in particular electronic mechanisms.

An Taisce, in its submission, also highlighted the importance of ensuring proper public participation and consultation is provided for. An Taisce informed the Committee that public participation in the current terrestrial planning system largely stems from members of the public noticing development

applications in their area and becoming involved. An Taisce advised the Committee that this method of engagement which functions well on land will be difficult at sea and as such it is imperative that all areas of marine activity are guaranteed full public participation under Aarhus Convention principles.

Recommendations

The Committee recommends that:

- A statutory obligation requiring effective and adequate public consultation and participation as required by the Strategic Environmental Assessment Directive⁶ and Aarhus Convention, be included in all provisions relating to adoption of programmes of measures, marine spatial plans, and individual Maritime Area Consents.
- The bill provide for the refusal of Maritime Area Consent where an adequate level of public participation and consultation has not been met.
- 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 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.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0042>

KEY ISSUE 3: FISHING AND AQUACULTURE

The Committee queried the absence of fishing and aquaculture from the proposed bill and was informed by the Department that it would not be appropriate to provide for them as fishing is a competence of the European Union it would not be appropriate to provide for it. Regarding aquaculture, the Department said that the proposed regime is not solely focused towards offshore wind and telecommunications cables etc, but that is aimed at all marine activity and as such aquaculture could feature in the regime at a later date, noting this was a matter for the Minister for Agriculture, Food and the Marine.

The Department also informed the Committee that regardless of whether an activity was included in the proposed bill, all marine activities are subject to the National Marine Planning Framework, so despite fishing and aquaculture not being included, any decisions taken, policies created, and programmes or developments must take into account and meet the objectives of the National Marine Planning Framework. It advised that this is already legislated for under *Part 5 of the Planning and Development Act 2018*⁷ which has been restated in the proposed Bill and therefore decision makers are legally bound to take the National Marine Planning Framework into account.

Throughout the Committee's engagement with representatives from the IEN and the IWT, the importance of aquaculture and marine fishing was highlighted, along with the benefit these activities can have on local communities and coastal economies. Representatives also pointed to the negative impacts resulting from the poor regulation and management of these activities on important areas of biodiversity, resulting in a loss of economic opportunities, the introduction of invasive species, and the destruction of habitats. As such, representatives from the IEN advised that aquaculture and fisheries should be provided for in the proposed bill. Representatives from Coastwatch highlighted the negative impacts of unlicensed and improperly regulated and poorly managed aquaculture, with some areas even subject to tarring of the foreshore without approval, and it too advised that aquaculture should be included in the proposed legislation.

An Taisce echoed the concerns above on the omission of aquaculture from the proposed bill and acknowledged that, while aquaculture can provide a sustainable source of food and local employment when done in an ecologically sensitive way, this is often not the case in Ireland. An Taisce remarked that as a statutory consultee on aquaculture licensing it is aware of systemic failures in the licensing system which pose risks to the overall marine habitat and advised the Committee that it is important aquaculture is provided for in the proposed legislation.

Recommendations

The Committee recommends that:

- The regulation and management of aquaculture be provided for in the bill.
- 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

⁷ <http://www.irishstatutebook.ie/eli/2018/act/16/section/66/enacted/en/html#part5>

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.

KEY ISSUE 4: COMPLIANCE WITH EU DIRECTIVES

The Committee notes that compliance with European Directives such as the *Marine Strategy Framework Directive* and the *Maritime Spatial Planning Directive* is crucial to the successful enactment and implementation of the proposed Bill. In this regard the Committee notes that Head 13 of the General Scheme provides for the Minister to prepare and publish a Marine Spatial Plan known as the National Marine Planning Framework (NMPF), in compliance with the *Maritime Spatial Planning Directive*. The Committee in its engagement with the Department raised concerns that the draft NMPF is not fully compliant with the Directive, and in particular Article 8.1 which provides that “Member States shall set up maritime spatial plans which identify the spatial and temporal distribution of relevant existing and future activities and uses in their marine waters⁸”.

The Department advised the Committee that during consultation on the current draft NMPF the overriding response received was that people would prefer to see a more strategic focused plan rather than a focus on the spatial and temporal aspects. While the Department acknowledged that the current draft plan does not include many varied spatial and temporal policies, it said that it responded to stakeholder direction and has outlined the distribution of the multiple activities that occur in Ireland’s maritime area. The Department further advised that the current framework does have some spatial elements relating to various activities and their accompanying policies, but noted that the information available for every activity varies greatly and as a result some activities cannot be provided for spatially with certainty, but where they can be they are provided for.

The Department also informed the Committee that it has worked closely with the Marine Institute on a series of detailed and minute maps that appear in the NMPF, with the aim of communicating the spatial distribution of activities to all users of the maritime area to ensure all stakeholders are aware of what is happening and where. It noted that it is also working with geographic information system (GIS) officials to develop a digital tool that will communicate these maps, which it hopes will accompany the launch of the NMPF. It advised that the best available data and spatial information is updated regularly, and it hopes that that will address the requirements of Article 8.1 thoroughly.

Representatives from the IEN also raised concerns about the compatibility of the General Scheme with the *Maritime Spatial Planning Directive* and National Marine Planning Framework. While it was acknowledged that it might be acceptable to grow and develop the spatial plan over time, this must be done in ways that are consistent with the Directive, and it noted that this is important when considering issues such as strategic marine activity zones (SMAZs). In this regard, Ms Uí Bhroin from the IEN advised the Committee that under Head 21 of the General Scheme, which deals with SMZs, there is no requirement to consider such zones’ compatibility with the NMPF. Ms Uí Bhroin also noted that under the General Scheme the planning scheme that is developed to facilitate a SMAZ has to consider the NMPF but is not bound by it and as such may potentially depart from it.

An Taisce called for the proposed Bill to ensure full compliance with the *Maritime Spatial Planning Directive*, as it raised concerns the current draft NMPF does not meet the Directive’s requirements. It submitted that the draft NMPF does not constitute what can meaningfully be described as a plan for the purposes of the Directive as it fails to set out overarching strategic and spatial policies, and

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0089&from=EN>

the policies it does set out are outdated and no longer fit for purpose, referencing the 2012 plan, Harnessing our Ocean Wealth (HOOW) in particular.

Ms Uí Bhroin echoed the concerns of An Taisce and said there are issues around the adequacy of the draft NMPF in terms of its spatial and temporal dimensions. Ms Uí Bhroin advised the Committee that with regard to its practicalities as a tool to facilitate planning, it is a flat document in terms of the data provided. She advised that the paper maps are not of the same level of granularity and do not use the type of sophistication of data layers, geographic names information system (GNIS) and all those different things that should be provided to give effect to a meaningful planning tool. She advised that when someone is proposing something - be it a developer, a NGO, or a member of the public - they should be able to interrogate the plan in a meaningful way to determine the existing and future uses, the potential considerations and conflicts. She said this is what is intended and is provided for in the Directive.

An Taisce also raised concerns about a failure of the planning system to adhere to the *Environmental Impact Assessment Directive*⁹ and the *Habitats Directive*¹⁰ regarding the assessment of indirect and cumulative impacts. An Taisce noted that there is a tendency for planning proposals to be treated as standalone installations assessed on potential impacts within or in the immediate vicinity of the site area, despite the fact that many impacts including those to air, water, climate etc are not spatially bound to the development itself and the immediate surrounds. As such, An Taisce recommends that the Bill include robust provisions ensuring full compliance with the *Environmental Impact Assessment Directives* and *Habitats Directives* and that this include thorough assessment of indirect and cumulative impacts.

Recommendations

The Committee recommends that:

- 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.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0043>

KEY ISSUE 5: EDUCATIONAL AND EMPLOYMENT OPPORTUNITIES

The Committee acknowledges the huge potential of Offshore Renewable Energy (ORE) for the economy and employment in the State, as well as the ability to provide educational opportunities in a new industry, and throughout the engagement with witnesses these opportunities were discussed.

Representatives from the Department of Environment, Climate and Communications (DECC) advised the Committee that there is huge potential to bring benefits to coastal and rural communities through promoting economic growth and generating new jobs. In terms of wind turbines, although DECC noted that the State does not currently have the heavy industry to engage in manufacturing wind turbines, there would be significant potential work in deploying wind turbines as well as ongoing employment opportunities in operations and maintenance. DECC informed the Committee that work was being carried out by Enterprise Ireland in recent years to grow the SME sector where there is particular technical expertise to support the overall industry.

Representatives from the Department of Housing, Local Government and Heritage informed the Committee that it is eager to have the right foundations to support the ORE industry and will work with universities and third level institutes to achieve this. DECC advised the Committee that it is engaging with officials from the Department of Enterprise, Trade and Employment regarding supply chain issues, as well as discussing opportunities with the Department of Transport in terms of ports development. It noted also that it is seeking to engage with the Department of Further and Higher Education, Research, Innovation and Science because there are opportunities for skills development and to align the courses that may be available to maximise the opportunities for employment in the sector in the future.

Representatives from the Marine Renewables Industry Association (MRIA) also elaborated on the significant job creation possibilities and highlighted that the proposed legislation would pave the way for significant economic and social development and social change. It noted that Ireland has the world's most intensive waves and extraordinary and consistent wind speeds offshore, with the capacity over the next 20 to 30 years to meet as much as 20% of the European Union's offshore renewable energy requirements. This, it advised, presents a considerable opportunity for Ireland in respect of jobs, investment and industry, to build what could be a new pillar of the economy.

The Committee notes that the Programme for Government contains a target for achieving 5GW capacity in offshore wind by 2030 taking advantage of a potential of at least 30GW of offshore floating wind power in deeper waters in the Atlantic Ocean. In this regard, the MRIA advised that a previous study examining the job potential for the 3,500 MW target in the Climate Action Plan¹¹ showed that thousands of jobs would be created, and if the Programme for Government¹² targets can be reached there is the potential for tens of thousands of direct jobs.

In terms of the skills needed for the industry the MRIA informed the Committee that currently engineers and scientists are needed as the industry is in the investigative phase, and as time progresses there will be a need for skills in traditional areas of seamanship as well as mechanical and electrical engineering.

¹¹ <https://assets.gov.ie/25419/c97cdecddf8c49ab976e773d4e11e515.pdf>

¹² <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

The Irish Wind Energy Association (IWEA) informed the Committee that ORE has the ability to provide a wide range of jobs for a variety of skillsets, from people with apprenticeships to those with third-level degrees. It added however that there is and will continue to be a shortage, as climate action will also lead to a demand for those skills in other areas such as retrofitting, electrical vehicles, and installing heat pumps. However, it emphasised that it is not solely about engineering, as many activities go through planning, environmental studies, financing and legal aspects that also support the energy sector. It noted that it has been actively working with universities in informing them of what skills will be needed in order to avoid shortages. In addressing a possible skills shortage in the industry, the Committee raised concerns that the industry might be over-reliant on those with a third-level background. In response to this the IWEA informed the Committee that there is a strong focus by the sector on apprenticeships in the marine area and highlighted the need for schemes focused on marine opportunities that give people in coastal communities the opportunity to get involved. It described the lack of skills in marine speciality apprenticeships as a challenge that must be overcome and appealed for support to enable the development of these apprenticeships.

Recommendations

The Committee recommends that:

- 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, 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.
- Consideration be given to the introduction of local employment and training clauses for large developments to ensure community gain.

KEY ISSUE 6: INDUSTRY CONSIDERATIONS

Throughout their engagement with the Committee witnesses representing the offshore renewable and wind energy industries highlighted the potential benefits that the proposed legislation would allow the State to harness from the development of those sectors. However, the representatives also highlighted possible issues that might hamper the development of ORE projects into the future. In this regard the representatives stressed a need for the proposed legislation to provide for design envelope flexibility; streamlining; and the introduction of milestones for Maritime Area Consent.

The first of these highlighted issues arises from the length of time it takes to bring a project from the consent phase to the construction phase. Mr David Connolly from the IWEA informed the Committee there can be significant developments in the technology to be employed, and that if these developments can be accommodated when the construction phase is reached this can greatly reduce the costs of development. Mr Connolly explained that if consent for a project was secured five or six years ago and construction began today, without flexibility one would find that the technology available today is very different from what was initially envisaged in the planning application. Mr Connolly advised that different sites will need flexibility in different areas and noted that authorities in the UK allow projects to identify areas where flexibility will be needed. He highlighted the importance of this as he noted that without that flexibility a project can be stuck sourcing older technology. One benefit of flexibility, Mr Connolly advised, was that the price of offshore wind would be lower with newer technology than older technology, and he highlighted that offshore wind has seen cost reductions of more than 50% in the past five to seven years.

With regard to design envelope flexibility, the Committee raised concerns over whether this may undermine or weaken the Environmental Impact Assessment elements of the development consent process. In response to this Mr Peter Lefroy of the IWEA advised the Committee that the design envelope flexibility approach is consistent with the EIA process and advised that the industry has demonstrated a strong track record of implementing the design envelope approach while still complying with European directives and legislation of environmental assessments. He advised that it is about providing flexibility for projects to consider as wide a range of options as possible to find the right balance between minimising the environmental impact, producing the best technical proposal for the project and increasing efficiency to reduce the cost on the energy system in general.

The second issue raised by the industry representatives to the Committee centres around the streamlining of the consenting and development regime. They advised that in certain cases it would be beneficial to apply for a single planning application for both the offshore and onshore elements of a project. Though they noted that not every project would do this, there may be particular reasons a project does or does not do it. Mr Connolly gave the example of allowing projects to apply for an offshore wind farm as well as a grid connection linking the farm to the land in a single application, which would be preferable to separating the application into two different parts and moving through them in parallel. Mr Connolly explained that this would happen subsequent to the MAC process, in the development consent process, and that this process would benefit from having the option to apply for a single planning application that would make it a more streamlined process. Although this would mean local authorities would be somewhat bypassed Mr Connolly noted that Local Authorities are a statutory consultee in An Bord Pleanála decisions in any event. Mr Connolly

noted too that due to the size of offshore projects it is likely that their grid connections are at the scale the Board is currently responsible for.

SSE Renewables echoed the calls for the streamlined application process noted above and suggested that planning applications for all elements of an ORE project should be made to An Bord Pleanála whether they are located in the Maritime Area, Nearshore or on land.

In relation to the above however, the Committee is aware of the importance of public participation through all aspects of the planning process and is conscious of the need to maintain that participation while facilitating proper development. An Taisce raised issues around this aspect with regard to the designation of Strategic Marine Activity Zones, and noted that the terrestrial equivalent of such developments, Strategic Development Zones, are subject to fast-track planning processes and are often some of the largest proposals with the highest potential for adverse impacts. An Taisce noted that as these applications bypass local authorities and are lodged directly to An Bord Pleanála there is no appeal procedure and the public and NGOs etc must challenge problematic decisions by judicial review which sets a high bar to qualify to take a case. An Taisce had concerns that if the new marine planning regime prioritises these fast track processes whilst failing to designate MPAs there is a risk that sustainability and ecological protection will take a back seat to economic interests.

The third issue raised by industry representatives is that of the introduction of milestones for the Maritime Area Consent process. The witnesses advised that they would not like to have a situation where people are hoarding seabeds when they are allocated to them and as such would support the introduction of milestones to demonstrate progress. The witnesses noted that there is provision in the General Scheme for the suspension and revocation of a MAC but would welcome more clarity in this area. Then IWEA gave examples of the type of milestones that may need to be demonstrated, such as providing evidence of site development commencement in the form of geotechnical, geophysical and bird or mammal surveys, as well as submission of the development consent application. Members queried whether the suggested introduction of a design envelope flexibility would impact on the suggested demonstrable milestones and were informed by the witnesses that they would not imagine this would happen.

Mr Liam Murphy from the IWEA expanded on the suggested introduction of milestone in the MAC process and informed the Committee that from research on international jurisdictions, the approach taken by the Crown Estate in the UK would be the best solution for Ireland. They suggest a 10-year term for the MAC with evidence of site development in terms of surveys required within 18 months, and planning permission to an Bord Pleanála to be submitted within five years. He suggested that this would strike the right balance between enabling honest developers to move forward and reducing instances of hoarding.

Also in relation to the MAC regime, the IWEA noted that the FAQ document provided by the Government suggest that where planning permission is refused the proposed development cannot progress and the MAC terminates. The IWEA suggested to the Committee that setting a timeframe of the MAC for a period of 10 years may allow a developer to suitably amend the design and submit a revised planning application without having to begin the process from the start. Mainstream Renewable Power also advised the Committee in its submission that often projects are developed by a Special Purpose Vehicle (SPV) or project company and it is common for the ownership of the SPV

to change within the lifecycle of the project. In this regard they noted that under the Foreshore Acts a lease of licence is granted to the lessee or licensee and cannot be assigned or transferred without prior consent from the Minister. This has proved problematic where a project requires financing or re-financing or is the subject of a merger and acquisition. Mainstream recommended to the Committee that the proposed legislation should provide for the possibility that a project may change ownership one or more times during the multistage consenting process for ORE projects and prior to decommissioning.

In a submission to the Committee, Mainstream also raised concerns about the efficiency of the proposed regime and advised that marine environmental surveys which do not constitute “works” or a “material change of use” and which are temporary, periodic or transient should not be subject to a requirement for planning permission or designated as “exempted development” for which planning permission is only required if EIA or AA is required. Mainstream recommended that marine environmental surveys be subject to a streamlined, proportionate and transparent licensing process.

The Marine Institute in its submission to the Committee broadly welcomed the introduction of the proposed legislation but highlighted a number of areas where further clarity would be of benefit. The Institute noted that clarity on criteria that might be used to distinguish between small and large marinas, minor and major outfalls would be of great benefit to developers and all interested parties as to what Planning Authority will be responsible for determining applications. Another issue raised by the Marine Institute and one highlighted by other witnesses is related to the process and procedures that will be used in the event of a proposed development that falls within the nearshore area of more than one coastal local authority.

Recommendations

The Committee recommends that:

- 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.
- 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.
- 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.
- 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.

- Consideration be given to subjecting marine environmental surveys to a streamlined process.
- 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.
- Consideration of the management and regulation of hybrid connections be provided for in the proposed bill.

KEY ISSUE 7: COMMUNITY DIVIDEND

Community benefit was a key issue raised by the Committee in its engagement with all stakeholders and Members highlighted the positive impact ORE projects could have on communities in terms of education and training, as well as cost-saving and investment.

Representatives from DECC informed the Committee that all offshore wind developments will be supported by the renewable electricity support scheme (RESS) and that these developments will be required to establish community benefit funds prior to the operation of the project. Ms Anne-Marie Clancy of DECC noted that due to the larger scale of offshore wind developments their contributions are expected to be significantly larger than those of onshore projects. Ms Clancy also advised that in order to ensure good governance and effective disbursement of these funds to local marine and coastal communities a good principles handbook will be published by the Minister which will add terms and conditions to the RESS and establish local community participation in all fund decision making. It was noted that this was still being developed.

Members highlighted the need for community gain to be not solely directed towards coastal communities and advised that the whole country should benefit as the marine space belongs to the country and noted too that a transition to renewables will see a reduction in the reliance on fossil fuel industries which tend to be located in the midlands. The Committee queried the witnesses on the methods that could be used to secure a commitment that each profitable approved development would deliver a specific community gain and how this might work in practice. Responding to this Ms Clancy advised the Committee that a key part of the State aid clearance for the RESS for offshore wind is that a community benefit fund will be established by all successful projects, as noted above. Ms Clancy informed the Committee that the contribution for each of those projects is set at €2 per MW hour, and that these funds will be aligned to incentivise investment in local renewable energy, energy efficiency measures and climate action initiatives. To give some context, Ms Clancy noted that under the recent offshore RESS scheme the community benefit fund will deliver approximately €4.5 million per annum to sustainable initiatives targeted at those communities living in close proximity to the projects. She informed the Committee that would be amended and scaled up for future offshore projects.

Representatives from the industry informed the Committee that a 500 MW offshore wind farm would put somewhere between €3 million and €3.5 million into the community benefit fund every year for 15 years. Mr Justin Moran of the IWEA said that this can be used to invest in areas to support employment, reskilling and educational opportunities and noted that in the onshore version of RESS the Government introduced a requirement that 40% of funding is to be used to support community initiatives and sustainable development goals. In this regard he noted that it is not just about using the funding to provide employment and reskilling opportunities but also to drive a just transition, the greening of the economy and to give communities to opportunity to invest and take part in the transition to renewable energy.

Members questioned the feasibility of having a statutory requirement for large developments and applications to employ people from the live register or local community. However, the industry representatives voiced concern from a safety perspective as people working offshore are doing so in an exceptionally dangerous environment and need various training and skills to do so.

The Committee notes that there may be difficulties in identifying beneficiary communities in the case of offshore wind energy development in comparison to those related to onshore developments and in this regard notes that the Government has committed to publishing a good practice principles handbook prior to 1 July 2021, which 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 Committee also notes that the Terms and Conditions of RESS1 do not set out any specific community benefits for offshore wind nor does it indicate how to identify beneficiary communities.

Recommendations

The Committee recommends that:

- 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.
- Future iterations of the Renewable Electric Support Scheme provide for community benefits stemming from offshore wind projects.
- Consideration be given to the potential for wider dividends to be provided in respect of protecting and preserving biodiversity.
- 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.

KEY ISSUE 8: STAFFING RESOURCES

As with all significant legislation the Committee is cognisant of the need to ensure that additional and adequate resources are provided for as a result of the enactment of the legislation. In this regard the Committee queried both Departments and the industry bodies as to whether there were current resource issues or any expected resource issue moving forward.

Mr Conor McCabe of the Department informed the Committee that a recent air wind report highlighted the need for 30 persons to run the marine planning system. He advised the Committee that the Department is undertaking its own review to look at the resources required post-enactment in the Department of Housing, Local Government and Heritage, the Department of Environment, Climate and Communications, in an Bord Pleanála, and in the Office of the Planning Regulator.

Representatives from the MRIA also highlighted the need for extra personnel resources in the public service to successfully implement the legislation and advised that there would be as many as 40 additional personnel required in various government departments to realise the State's ambitions. Representatives from both the IWEA and the MRIA informed the Committee that there has been a challenge with the resources available to the DHLGH in terms of staffing the foreshore licence applications, and they understand that extra resources are to be provided to clear an existing backlog. Mr Connolly from the IWEA noted that it takes at least two years of survey work to prepare the bird and mammal surveys needed for planning applications and the bottleneck here is the delay in acquiring licences to do this. The IWEA in their submission to the Committee suggested that responsibility for foreshore licensing be given to the new independent enforcement body that is to be established, which like the EPA could function as both a licensing and enforcement body.

The representatives highlighted that there will be various secondary issues to be finalised after this legislation has passed including development guidelines etc, and there will likely be additional resources required to deal with these also.

Mr Coyle from the IWEA also highlighted to the Committee that in Scotland there are perhaps 35 or 40 people working full time on the above kinds of issues outlined in this report whereas in Ireland there have probably been half a dozen. Mr Coyle advised that this is not sustainable as the industry moves into the execution phase and noted that additional staff are required in An Bord Pleanála, in the Sustainable Energy Authority of Ireland, and both the Department of Housing, Local Government and Heritage and the Department of Environment, Climate and Communications.

Representatives from the Irish Wildlife Trust also highlighted the need for additional resources and noted that the National Parks and Wildlife Service has approximately three people working on the Marine Environment, and advised that this needs to be scaled up dramatically if planning for wind development in marine environment. Mr Fogarty from the IWT advised that the State needs to be far more proactive in managing the existing designations and information on birds special protection areas and noted that currently they do not have information on numbers or types of species in seabird colonies near where developments may take place, and advised that this is basic and necessary information.

Recommendations

The Committee recommends that:

- All Government departments and bodies be adequately resourced to effectively and efficiently carry out the 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.
- 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 environmental decision-making under the legislation.

KEY ISSUE 9: ENFORCEMENT

The Committee acknowledges that for a planning system to be successful and function properly, an adequately resourced enforcement regime is an essential requirement.

In this regard the DHLGH informed the Committee that the current system of enforcement is fragmented but following a recent decision by Government an independent body will be established to assume the marine enforcement role. The Department noted that it is currently reviewing advice from the Office of the Attorney General concerning the establishment of this agency and will update the proposed bill accordingly.

The Committee welcomes the decision to introduce an independent enforcement body but queried the Department on the agency's makeup and the timeline by which it might be in place. Responding to this the Department informed the Committee that as this was a very recent decision by Government, it is still at an early stage of development but noted that it is not the first time an enforcement agency has been established. There are various blueprints to work from such as that of the Environmental Protection Agency, and the Department will be consulting with such bodies as well as existing industry stakeholders. In terms of timelines the Department informed the Committee that there is a practical deadline for establishment of the agency as it must be in place before the first MACs are issued, which they expect to be in 2022.

Representatives from the Irish Wildlife Trust and the Irish Environmental Network also raised concerns about the level of enforcement in terms of the protection of Marine Protected Areas. They spoke of the need for the Government to detail how all aspects of enforcement will be addressed by the proposed bill.

Recommendations

The Committee recommends that:

- 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.
- 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.
- Consideration be given to transferring the responsibility for foreshore licensing to the proposed independent enforcement body.
- 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.

RECOMMENDATIONS

Recommendations

The Committee recommends that

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.
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.
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.
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.
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.
6. The bill provide for the refusal of Maritime Area Consent where an adequate level of public participation and consultation has not been met.
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 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.
8. The regulation and management of aquaculture be provided for in the bill.
9. 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.

10. 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.
11. 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, 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.
12. Consideration be given to the introduction of local employment and training clauses for large developments to ensure community gain.
13. 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.
14. 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.
15. 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.
16. 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.
17. Consideration be given to subjecting marine environmental surveys to a streamlined process.
18. 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.
19. Consideration of the management and regulation of hybrid connections be provided for in the proposed bill.
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.
21. Future iterations of the Renewable Electric Support Scheme provide for community benefits stemming from offshore wind projects.
22. Consideration be given to the potential for wider dividends to be provided in respect of protecting and preserving biodiversity.

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.
24. All Government departments and bodies be adequately resourced to effectively and efficiently carry out the 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.
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 environmental decision-making under the legislation.
26. 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.
27. 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.
28. Consideration be given to transferring the responsibility for foreshore licensing to the proposed independent enforcement body.
29. 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.

APPENDIX 1 - ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.

- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
- (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:
- Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

c. Powers of Committees (as derived from Standing Orders) [DSO 96; SSO 72]

Unless the Dáil/Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

- (1) power to invite and receive oral and written evidence and to print and publish from time to time—
 - (a) minutes of such evidence as was heard in public, and
 - (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil/Seanad;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—
 - (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Joint Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Joint Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Joint Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Joint Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Joint Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Joint Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Joint Committee, which may report thereon to the Dáil/Seanad; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under DSO 120(4)(a)/SSO 107(4)(a).

APPENDIX 2 - COMMITTEE MEMBERSHIP

Deputies: Francis Noel Duffy (GP)
Joe Flaherty (FF)
Thomas Gould (SF)
Emer Higgins (FG)
Steven Matthews (GP) - Chair
Paul McAuliffe (FF)
Eoin Ó Broin (SF)
Cian O’Callaghan (SD)
Richard O’Donoghue (IND)

Senators: Victor Boyhan (IND)
John Cummins (FG)
Mary Fitzpatrick (FF)
Rebecca Moynihan (LP)
Mary Seery Kearney (FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 30 July 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 18 September 2020.
3. The Dáil Committee of Selection nominated Deputy Joe Flaherty to replace Deputy Jennifer Murnane O’Connor on 2 February 2021.

APPENDIX 3 – LIST OF WITNESSES

- ❖ **Department of Housing, Local Government and Heritage**
Mr Conor McCabe, Principal Officer, Marine Planning Policy and Legislation Unit
Mr Bernard Nolan, Assistant Principal, Marine Planning Policy and Legislation Unit
Mr Tom Woolley, Marine Planning Advisor, Marine Planning Policy and Legislation Unit
- ❖ **Department of the Environment, Climate and Communications**
Ms Martina Hennessy, Principal Officer, Environment and Consenting Unit
Ms Anne-Marie Clancy, Assistant Principle, Environment and Consenting Unit
- ❖ **The Marine Renewables Industry Association**
Mr David Connolly
Mr Peter Coyle
Mr Simon de Pietro
Dr Anne Marie O’Hagan
Mr Eoin McPartland
- ❖ **The Irish Wind Energy Association**
Mr Justin Moran, Head of Communications & Public Affairs
Mr Peter Lefroy, Offshore Committee Chair
Mr David Connolly, Chief Executive Officer
Mr Liam Murphy
- ❖ **Coastwatch**
Ms Karin Dubsy, Director,
Mr Maurice Murphy
- ❖ **Professor Tasman Crowe, Director, UCD Earth Institute**
- ❖ **Ms Attracta Uí Bhroin, Environmental Law Officer, Irish Environmental Network**
- ❖ **Mr Pádraic Fogarty, Campaign Officer, Irish Wildlife Trust**

APPENDIX 4 – LINKS TO MEETING TRANSCRIPTS

- ❖ [Meeting of Tuesday, 24 November 2020](#)
- ❖ [Meeting of Thursday, 26 November 2020](#)
- ❖ [Meeting of Thursday, 3 December 2020](#)

Opening Statements

- ❖ [Ms Martina Hennessy, Principal Officer, Offshore Energy - Environment and Consenting Unit, Department of Environment, Climate and Communications](#)
- ❖ [Mr Conor McCabe, Principal Officer, Marine Planning Policy and Legislation Unit, Department of Housing, Local Government & Heritage](#)
- ❖ [Dr. David Connolly, CEO, Irish Wind Energy Association](#)
- ❖ [Mr Peter Coyle, Chairman, Marine Renewables Industry Association](#)
- ❖ [Ms Karin Dubsky, Director, Coastwatch](#)
- ❖ [Mr Pádraic Fogarty, Campaign Officer, Irish Wildlife Trust](#)
- ❖ [Prof. Tasman Crowe, Director, UCD Earth Institute, School of Biology and Environmental Science](#)

Submissions

- ❖ [Professor Tasman Crowe, Director, UCD Earth Institute, School of Biology and Environmental Science](#)
- ❖ [Marine Institute](#)
- ❖ [Mainstream Renewable Power](#)
- ❖ [Irish Wind Energy Association, Position Paper](#)
- ❖ [Irish Wind Energy Association, Supplementary Position Paper](#)
- ❖ [Coastal Concern Alliance](#)
- ❖ [An Taisce](#)