DÁIL ÉIREANN

AN ROGHCHOISTE UM THITHÍOCHT, RIALTAS ÁITIÚIL AGUS OIDHREACHT

SELECT COMMITTEE ON HOUSING, LOCAL GOVERNMENT AND HERITAGE

Dé Máirt, 9 Samhain 2021

Tuesday, 9 November 2021

Tháinig an Romhchoiste le chéile ag 3 p.m.

The Select Committee met at 3 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	
Peter Burke (*Minister of State at the Department of Housing, Local Government and Heritage*),	
Thomas Gould,	
Emer Higgins,	
Paul McAuliffe,	
Cian O'Callaghan,	
Richard O'Donoghue,	
Eoin Ó Broin.	

I láthair/In attendance: Deputy Richard Boyd Barrett.

Teachta/Deputy Steven Matthews sa Chathaoir/in the Chair.

Maritime Area Planning Bill 2021: Committee Stage (Resumed)

Chairman: I welcome the Minister of State, Deputy Peter Burke, and the officials from the Department to the meeting this afternoon as we resume Committee Stage of the Maritime Area Planning Bill 2021.

SECTION 51

Deputy Peter Burke: I move amendment No. 136:

In page 52, line 12, after "functions" to insert ", or the functions of the MARA,".

Amendment agreed to.

Section 51, as amended, agreed to.

SECTION 52

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): I move amendment No. 137:

In page 52, lines 31 and 32, to delete "A person shall not be eligible for appointment as a member of the Board (M) or of a committee of the Board (M)" and substitute the following:

"Subject to *subsection (2)*, a person shall not be eligible for appointment as a member of the Board (M)".

Amendment agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

SECTION 54

"Question proposed: "That section 54 stand part of the Bill."

Deputy Eoin Ó Broin: With respect to the next couple of sections, I have a couple of small technical questions. I just wanted to alert you to that, Chairman. It might slow things down.

Chairman: We will take the technical questions and answers and then I will proceed.

Deputy Eoin Ó Broin: I apologise.

Chairman: That is fine.

Deputy Eoin Ó Broin: I will ask the questions in one go, rather than stopping at each section. Could the Minister of State give some information on the timeline for the appointment of the chief executive through the Public Appointments Service, PAS, with respect to the possibility of an interim CEO? Is that the Minister of State's intention?

Section 58 limits the consideration of matters that are in the legal process or in court proceedings. That is completely sensible, but it does seem to have a retrospective application and I wanted to query if that is the case and why.

I might as well ask it now just to expedite things, in section 63(7), again in terms of the employment of consultants, could the Minister of State advise whether the public spending code fully applies to this or if there is a more restrictive level of transparency and accountability with the appointment of consultants?

Deputy Peter Burke: Could Deputy Ó Broin please repeat the first point?

Deputy Eoin Ó Broin: If I understand right, section 58(2) places some limitations on the consideration of matters that may be before the courts, or may have previously been before the courts. Obviously the Oireachtas and its committees do not discuss matters that are currently before the courts. That is not the question. Does this section exclude the discussion at committee of matters that have previously been before the courts and have been resolved by the courts? That would seem to me to be a little bit restrictive but perhaps I have misunderstood the section.

Chairman: Would a written response to these questions be okay if the Minister of State does not have the information to hand? There were no amendments or questions on the sections.

Deputy Eoin Ó Broin: Sure. I am not seeking to delay matters. This is the only opportunity we will get to have some of this on the public record, so if it is possible to get oral answers, that is great, but if my questions are poorly framed or it is not possible, then of course I will accept written answers afterwards.

Deputy Peter Burke: I understand that if a judgment of the court has made a determination, it is okay, but we will clarify the matter for the Deputy. I do not want to say something and be proven wrong in due course, so I will clarify the position.

On the timing of the appointment of the interim CEO, the intention is to go through the PAS, but we will try to do it as quickly as possible, as soon as is practicable when the Bill is passed.

Question put and agreed to.

Sections 55 to 61, inclusive, agreed to.

SECTION 62

Question proposed: "That section 62 stand part of the Bill."

Deputy Richard Boyd Barrett: I wish to ask a question on the section.

Chairman: I ask Deputy Boyd Barrett to be as brief as Deputy Ó Broin please, given that there are no amendments to the section.

Deputy Richard Boyd Barrett: This is Committee Stage.

Chairman: Yes, I am aware of that. Deputy Boyd Barrett should ask his question.

Deputy Richard Boyd Barrett: I wish to get clarification. We are allowed to ask questions on the section.

Chairman: He can indeed, yes; he should go ahead.

Deputy Richard Boyd Barrett: There is no issue about being rushed through sections. I wish to hear a little bit more about the plans for the staffing of the new marine area regulatory

authority, MARA, and what the Minister envisages for the staffing of it. How big of an entity will it be? There is reference to consultants and approval for them. I would like to know what is envisaged, as to the type of body it is. What sort of staff will be full time? What sort of specialists will there be in particular areas of environmental expertise, marine biology and heritage? It would be useful to paint a little bit of a picture of what the authority will look like in terms of who is going to work for it.

Deputy Peter Burke: The establishment will be as soon as possible after the enactment of the Bill - ideally within a period of 12 months. We know the importance of this new groundbreaking reform in terms of enforcement and adjudicating on the consent process. It is a new transparent regime. Across government we have to negotiate the staffing and budget, which will all be part of the budgetary process. We are very clear about the magnitude and scale of the work MARA will have to do. I listened to the Taoiseach launch the marine planning framework at the Commissioners of Irish Lights headquarters, where he very clearly committed to ensuring that MARA will have the resources to deal with the complexities of the issues before it, and that the huge scale of expertise that is required would be provided for. We want the best regime possible that will determine the future processes and consents for the entire maritime area.

Deputy Richard Boyd Barrett: Does the Minister of State have any conception of how many people might be located in the office?

Deputy Peter Burke: Once the legislation is enacted, that will all have to be worked out.

Deputy Richard Boyd Barrett: Will there be further discussion on that? Will we get down to the granular detail of what type of operation this is going to be?

Deputy Peter Burke: Once the Government has passed the legislation, which is the bedrock for MARA to be established, it is a matter for the Government to negotiate its staffing arrangements and what positions will be held within it.

Deputy Richard Boyd Barrett: I take it the Minister of State has no idea what sort of staff numbers we are talking-----

Deputy Peter Burke: I cannot give an exact number and scale.

Deputy Richard Boyd Barrett: -----or how it would be structured.

Deputy Peter Burke: It will be based in Wexford. That was announced previously. I cannot give the Deputy micro-detail of what the staffing level will be within it at this time.

Deputy Richard Boyd Barrett: Or what departments or sections.

Chairman: The Minister of State is adamant he cannot give the Deputy that full and final detail at present but will on its establishment.

Deputy Peter Burke: The Department has established a unit to look into this. My job is to get this legislation through. MARA will be a major reform of the maritime area in terms of how it does its business, as I mentioned. It is a significant, good and transparent news story. In terms of the minutiae of what staffing levels will be and what budget it will have, that all has to be negotiated.

Question put and agreed to.

SECTION 63

Chairman: Amendments Nos. 139 to 145, inclusive, which are all in the name of the Minister, will be discussed together.

Deputy Peter Burke: I move amendment No. 139:

In page 58, line 36, to delete "either—" and substitute "any of the following:".

With regard to the previous session where we went through amendments relating to the administration of the sale of State property, Deputy Boyd Barrett and I had a significant discussion on it. I want to flag to the committee that we do not intend reintroducing those amendments or other amendments in that regard on Report Stage. I want to flag that and to be clear about it. We have listened to the concerns within the committee. I am making that clear from here on.

Deputy Richard Boyd Barrett: To clarify, that is a fairly important development. It is one that we welcome because it would be concerning for us if there was the potential for disposal of any part of the maritime area to private interests.

Deputy Peter Burke: We are very clear on that, and it was not about the disposal; it was an administrative function. Essentially, the ownership remained with the Department of Public Expenditure and Reform but I accept it was confusing and was causing concern in the debate. Therefore, I have withdrawn them. I am making it clear in my signal that I will not reintroduce that on Report Stage.

It was a specific administration function. We were not changing the State Property Act 1954 or the ownership structure contained in terms of the disposal. It was an administrative function that was aimed to be carried out through MARA but that is not happening now.

Deputy Richard Boyd Barrett: My recollection of it was that it specifically said - we quoted the section on the previous occasion - that it referred to the sale or disposal.

Deputy Peter Burke: As an administrative function; that was what I was saying.

Deputy Richard Boyd Barrett: Selling or disposing of is not an administrative function, in my opinion. I do not know what the Minister of State means by "administrative function" but I welcome what he said.

Deputy Peter Burke: Sometimes it is hard to win. I am withdrawing the amendments and I am making it clear that I will not reintroduce them on Report Stage.

Deputy Richard Boyd Barrett: A positive victory for Oireachtas oversight.

Deputy Peter Burke: I am working with the members through all this process and I have accepted amendments. I am being very clear on that. We want to make this the best legislation. I hope the Opposition will acknowledge that as well as we go through this process because this is a significant departure from how we do business currently.

Deputy Richard Boyd Barrett: Agreed.

Deputy Peter Burke: These interrelated amendments provide for a new section 63(1)(*a*)(iii), which enables MARA to render assistance to other bodies in the performance of their functions.

The section provides for co-operation agreements with other State bodies to co-ordinate and collaborate on related marine functions. The text, as initiated, inadvertently only provided for one-way rendering assistance to MARA. This amendment ensures that such agreements can provide for the authority rendering assistance to the other body.

The intention is that the authority becomes a centre of excellence for maritime usages and in the interests of allowing other bodies to avail of that expertise, rather than having separate units in house, it would be better for the State as a whole if this expertise could be shared in a manner that is underpinned by statute. In particular, smaller coastal planning authorities, among others, would benefit enormously from these amendments. The section is also about seeking to reduce duplication of efforts and maximising resources where possible.

Deputy Richard Boyd Barrett: My question is more on the section. Will I raise it?

Chairman: The Minister has addressed the amendments. I am open to taking questions now on those amendments or the section.

Deputy Richard Boyd Barrett: This is a sensible provision to try and ensure co-operation between, if I understand it correctly, different State agencies, Departments and public bodies that may have an interest in the maritime area, have responsibilities in the maritime area or be involved in activities in the maritime area. That seems sensible given that there are many competing imperatives in the maritime area, whether it is the protection of biodiversity, amenity uses, tourist concerns, offshore energy development, fishing or the many other matters that might be important.

It is positive that we would have agreements. How would the decision that it is necessary to have such an agreement between different bodies be triggered? Could the Minister of State respond to the concern, consistent with the concerns that we have raised throughout, that insofar as agreements might be struck between MARA and other Departments or public bodies, whether it is heritage, fishing, tourist and amenity concerns or wildlife concerns, that such agreements be screened in some way? Will the public be aware of such agreements and do we need to concern ourselves about the degree to which such agreements might run foul of the directives that we have talked a lot about such as the marine spatial planning directive, the habitats directive, the birds directive or the Aarhus Convention? In most other cases we have argued, whether it is guidelines, statements, plans or consents, one needs public knowledge, public oversight, political oversight and a concern to ensure that all directives are being complied with? Do we need to spell it out in terms of such agreements because these agreements presumably would be a little like management plans of the maritime area where there are different groups involved with an interest in the same maritime area?

Deputy Eoin Ó Broin: I have a simple question. It might be helpful to the committee if the Minister of State could give us a flavour of the kind of agreements that we are talking about. He mentioned planning authorities. Is the idea not to restrict it, but that kind of agreement? For what purpose is it? Are there other kinds of joint agreements that he is thinking of?

Deputy Cian O'Callaghan: I have a quick question. In terms of these agreements, what safeguards would there be to ensure there would not be any impacts on or conflicts with MARA's regulatory or, indeed, any of the other body's regulatory functions? Is there anything to safeguard there against any potential conflicts in any agreements made? If MARA makes an agreement with another body and is involved in regulation, could it impact on its function? How would that be protected against?

Deputy Peter Burke: I thank members for their questions. The agreements have a duty to try to improve the performance of MARA, realising its ambitions and goals. Section 41(h) on page 45 is detailed in its capturing of what we want agreements to do and to encourage co-operation with other regulators. We are talking about regulators such as-----

Deputy Cian O'Callaghan: Can the Minister of State repeat that reference?

Deputy Peter Burke: Section 41(h) on page 45 of the Bill.

Deputy Peter Burke: One could conceive agreements with actors such as the Environmental Protection Agency, EPA, the Commissioners of Irish Lights and local authorities. With regard to the queries about section 63(5) on page 59:

> A co-operation agreement, or any variation made to it, shall be in writing and, as soon as is practicable after the agreement or variation has been made and given to the Minister.

It will then be published on the website.

Deputy Richard Boyd Barrett: I thank the Minister of State for that information. It may be something to consider.

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 140:

> In page 58, to delete line 39 and substitute "maritime area;".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 141:

> In page 59, to delete line 3 and substitute "functions;".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 142:

> In page 59, between lines 3 and 4, to insert the following:
>
> "(iii) the MARA rendering assistance to the body in the body's performance of its functions where such assistance is not inconsistent with the MARA's functions,".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 143:

> In page 59, line 15, to delete "shall include provisions—" and substitute "may include any or all of the following provisions:".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 144:

> In page 59, line 18, to delete "functions," and substitute "functions;".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 145:

In page 59, line 21, to delete "matter, and" and substitute "matter;".

Amendment agreed to.

Section 63, as amended, agreed to.

SECTION 64

Question proposed: "That section 64 stand part of the Bill."

Deputy Eoin Ó Broin: Sometimes, when agencies or organisations are developing corporate strategies and this is relevant to section 64, they do some limited level of public consultation. Some of our local authorities do so. Was any consideration given to a form of public consultation in the development of the corporate strategy of MARA? If there was, why was it decided not to include it in this section?

Deputy Richard Boyd Barrett: That is pretty much what I wanted to ask.

Deputy Cian O'Callaghan: I will add to that. Corporate strategies are quite significant. Bodies follow their corporate strategies and what is in them can have considerable significance. I ask the Minister of State to address that point in terms of the question posed.

Deputy Peter Burke: I am advised it is a matter for MARA to adjudicate on the methodology to formulate its corporate strategy. In section 64, at the bottom of page 60, "MARA shall submit copies of the statement to the Minister...to be laid before each House of the Oireachtas", subsequent to that.

Deputy Richard Boyd Barrett: I ask the Minister of State to consider, as well as laying it before the Houses of the Oireachtas, the local authorities being notified about it because, there is overlap for the maritime-based local authorities between MARA and its corporate strategy and objectives and what impacts on local authorities and the communities in their areas.

Deputy Peter Burke: We are happy enough, in principle, with the idea of Deputy Boyd Barrett's suggestion. Our view is the chief executive would be doing that in the course of his tenure in terms of publishing strategy. We could potentially have a look at it.

Question put and agreed to.

Section 65 agreed to.

SECTION 66

Deputy Peter Burke: I move amendment No. 146:

In page 61, line 28, to delete "no later" and substitute "not later".

It is a small technical amendment to improve the syntax of the sentence from "no later" to "not later". It does not change the section in any substantive way.

Amendment agreed to.

Question proposed: "That section 66, as amended, stand part of the Bill."

Deputy Richard Boyd Barrett: It might be an idea for the marine area regulatory authority to indicate in its annual report submissions or lobbying to which it was subject during the course of the year.

Deputy Peter Burke: That is the lobbying Act, as I referenced in previous debates. Our view is that would capture it.

Deputy Richard Boyd Barrett: It is my view that while it is fine that there is a one-stop shop for lobbying where everything is, I also believe an important body such as the marine area regulatory authority should indicate where it has received submissions or been the subject of lobbying by any group.

Question put and agreed to.

Sections 67 to 72, inclusive, agreed to.

SECTION 73

Deputy Eoin Ó Broin: I move amendment No.147:

In page 64, between lines 25 and 26, to insert the following:

"(iii) the maritime usage is authorised in accordance with time limited development milestones as set out by the Minister requiring operations to begin within a defined period post consent.".

This is a significant part of the legislation. The Opposition has a number of concerns, which have also been part of the wider public debate. This could be a good opportunity for the Minister of State to respond to some of those concerns on the record. Our understanding, and as the officials and the Minister of State have explained to us before, is that the maritime area consent is not a grant of permission. It is a grant to allow somebody to move towards the application for a planning permission at a later stage. However, there seems to be an inference from that that the granting of a maritime area consent, MAC, is not in of itself an environmental decision, but more a procedural one.

We have all had conversations with organisations very concerned with protecting the biodiversity of our coastlines. In short, those representing fishermen. Some of their activities have already been disrupted by offshore wind companies that are now actively engaging in what would ordinarily be the process at the MAC stage, such as starting exploratory studies, etc. It is very important for us to fully understand the nature of this process, but also, once someone gets a MAC, what the obligations are. Can a MAC holder just squat and sit on it for a period? Are there development milestones - and this is what the amendment specifically speaks to - that would have to be reached in order to demonstrate that a MAC holder is progressing his or her intention to move towards a formal planning application at a later stage?

There is a related matter, which is that while the assumption of the Department seems to be that the granting of a MAC is not, in and of itself, an environmental decision. There are environmental impacts from what a MAC holder may do, on the sea bed, for example, if that holder is conducting certain types of studies or engaged in certain types of activities. Again, how that is measured is very important.

Likewise, elsewhere in these sections, there is mention of the possibility of restorative pro-

visions whereby certain types of damage may be done by the holder of a MAC in advance of submitting an application for planning permission. If I read those sections correctly, if conditions are applied to MACs, including the need to restore aspects of the marine environment depending on what has been done to them in the intervening period, does that not suggest that there are environmental impacts? If so, how do we make sure that they are properly monitored and that where problems may arise - hopefully, none will - appropriate enforcement action will be taken during the MAC stage and before the formal application seeking permission to develop?

Deputy Richard Boyd Barrett: I am just seeking clarification on the things that will not require a MAC. If I read this section correctly, these will include things where their "size, nature or limited impact on the maritime area" falls within a class does "not offend against the principles of proper management of the maritime area and sustainable usage of the maritime area". Where are the principles of proper management and sustainable usage of the maritime area against which this decision about what is or is not subject to a MAC benchmarked? Where are those principles set out?

Chairman: Is the Deputy referring to licensable activities?

Deputy Richard Boyd Barrett: Yes. Second, if I read this correctly, a MAC will not be required for activities included in Schedule 3. These activities include, for example, "maritime usage[s] for the purposes, ... [of] consisting, of prospecting for minerals, or the working of minerals, within the meaning of the Minerals Development Acts". That could possibly be called mining. Mining in the sea in the maritime area would not require a MAC, if I read this correctly. Schedule 3.7 further states:

> Any maritime usage for the purposes, or consisting, of the exploration or working of petroleum (within the meaning of the Petroleum and Other Minerals Development Act 1960), or the restoration of ... [such] area in which ... exploration ... for petroleum has taken place.

These are not small usages of the maritime area and Schedule 3 would appear to exclude them from the requirement for a MAC. The Minister of State might detail the other relevant usages because some of the others in Schedule 3 refer to other Acts that I have had time to cross-reference at this stage. I ask for a clear spelling-out of what things will not be subject to a MAC and why. On the face of it, I am deeply unhappy that mining in the maritime area or exploration for petroleum or anything to do with fossil fuels would be somehow not subject to all the processes and consents required in order to ensure those were not damaging to our precious marine environment.

Deputy Cian O'Callaghan: I will come at this issue from a slightly different angle. The thinking on MAC is that it is not an environmental decision, so it does not need to go through the processes an environmental decision would. Presumably, a MAC would allow somebody who is looking to develop in the maritime area to carry out surveying work in order to get an application together looking for a licence. If surveying work is very intensive, it can have environmental impacts, especially in sensitive areas. As we know now, it is impacting on the livelihoods of people engaged in fishing who have already experienced major disruption due to surveying work being carried out. It can also impact on whales, dolphins and cetaceans by disrupting them; intensive surveying work can push them out of an area and can have all these environmental impacts.

I am trying to understand how a MAC is deemed not to be an environmental decision when,

in effect, it gives the green light to things that can have environmental impacts, albeit more so in areas that are more environmentally sensitive or where there are particular issues or concerns in respect of marine biodiversity or habitats. Why is a MAC not an environmental decision, and not subject to those safeguards and processes, when it can have environmental impacts?

Deputy Peter Burke: I will give a little background information before I speak to the amendment. The MAC concept is new and it would be helpful from the outset to detail what a MAC is and what it is not. The MAC fulfils specific functions within the overall consenting sequence. A MAC is a property right to occupy a part of the maritime area conditional on securing other necessary approvals, it ensures due diligence that the MAC holder can undertake the proposal, manages the relationship between MARA and the holder through the MAC conditions and is the gateway into planning permission. A MAC is not a lease, it is not permission to undertake works, development or activities provided for under the Planning Act or licensing and it is not an environmental decision-making process. We have applied a single environmental assessment principle that is provided for under the Planning Act or licensing. In developing the new regime set out in the Bill we examined in detail the operation of the Foreshore Act and its interactions with the Planning Act. We have designed a new sequenced consent regime that separates the financial and property issues from the environmental and planning issues. Prospective developers will have to secure a MAC and then apply for planning permission. They will need both.

Throughout these sessions, I have worked with Members to incorporate improvements that are feasible. However, we cannot accept proposals that seek to fundamentally change the nature of the MAC process or recreate the duplication that exists under the current regime. We are creating a new, streamlined and efficient regime to better manage maritime usages. The property and planning processes must remain distinct and separate in order for the new regime to operate effectively. Much of the discussion in the earlier sessions focused on a particular sector of offshore development. I remind Members that the regime this Bill will establish is designed to be operable for maritime usages of all scales, from small slipways to major port development.

Amendment no. 147 provides for MACs granted under section 73 to be subject to a series of milestones set out by the Minister. Section 73(2) provides for regulations to exempt certain maritime usages from requiring a MAC. From a technical perspective the proposal is located in the wrong place. Moving onto the substance, it provides for the Minister to determine by regulations case by case issues best handled by the maritime area regulatory authority, MARA, in the context of specific applications and grants.

Standing further back, and looking at the intention of the proposed amendment, I believe it is to ensure that any proposal for which a maritime area consent, MAC, and ultimately planning permission is granted proceeds without undue delay.

In that regard the initiated text of the Bill already provides robustly for this. I draw members' attention to Schedule 6. No. 5 allows for the imposition of a timeframe in which to secure planning permission. No. 6 allows for the imposition of conditions relating to other statutory milestones such as planning permission.

The Deputies may wish to withdraw the amendment on foot of this explanation.

For Deputy Boyd Barrett, amendments Nos. 219 and 294 cover mining within the scope.

Deputy Richard Boyd Barrett: The Minister of State did not answer my question about

Schedule 3 and what is precluded from MAC.

Chairman: Perhaps the Minister of State will answer the other questions on amendment No. 147 and then we can come back to Deputy Boyd Barrett.

Deputy Peter Burke: Everything in Schedule 4 essentially requires a MAC, that is everything that is not in Schedule 3 or Schedule 4.

Deputy Eoin Ó Broin: On the basis of the Minister of State's answer I am happy to withdraw the amendment, but I ask that he expand briefly on two points.

I understand the difference between the MAC and the grant of permission, but there is a period between the granting of the MAC and the granting of permission where certain categories of works could be carried out such as exploratory surveys or other kinds of activities, for example large-scale offshore wind. How do we ensure that the environmental impact of that work is properly understood, assessed and addressed? That is the first question.

With respect to Schedule 6, and this speaks specifically to the amendment, obviously conditions can be applied to a MAC. If conditions are not applied to the MAC in the first instance, for example if there is not a condition to say that an application for permission has to be with the planning authority within a certain period of time, can that subsequently be added by MARA if somebody unduly delays applying for planning permission, or do they have to do this within the conditions of the MAC in the first instance?

Deputy Richard Boyd Barrett: Could I ask my question now because I must leave? I will be back, and I can read the transcript but while we are dealing with the section I wish to ask the question now as it will have gone past by the time I have returned.

Chairman: I appreciate that the Deputy must leave.

Deputy Richard Boyd Barrett: I just want to have the point clarified. I do not understand, and frankly I do not accept, that maritime area consents should not be required for explorations, surveys or whatever it might be. No justification has been given. This includes works related to looking for and extracting petroleum for example, which seems to be excluded, or exploration related to mineral extraction. What are these principles referred to in good management or sustainable management?

This is not an exact analogy but in some ways I see the MAC as a little bit like some of the licensing arrangements that some of the big industrial offshore wind companies already have under the Foreshore Act for particular areas. It is not for doing development, it is for doing surveys. The Minister of State is shaking his head but an explanation would be helpful. There are works involved in advance of an outright consent to development. Those companies doing this work do not have a consent to development, so they are doing something in advance. The Minister of State should not really patronise me while I am asking these questions, to be honest.

Deputy Peter Burke: I definitely would not do that.

Deputy Richard Boyd Barrett: Please do not.

Deputy Peter Burke: To be fair, I would not like the Deputy to accuse me of that.

Deputy Richard Boyd Barrett: A lot of head shaking does not really-----

Deputy Peter Burke: I never shook my head once, to be fair. Be reasonable here.

Deputy Richard Boyd Barrett: My point is that these companies are doing work at the moment that is impacting on fishermen, for example. The fishermen have told me that it is impacting on them. It is in advance of a full-scale development consent. According to the fishermen, there is not sufficient assessment of what is the potential impact in the areas that are being surveyed of what they are doing now. I echo those concerns. If they are doing these things under a maritime area consent, which is not an exact analogy to a foreshore licence, they are doing things in advance of a full-scale development consent that are impacting on fishermen and others. Should those works not be fully and properly environmentally assessed? Should maritime users not know exactly what is going on with regard to these things and how it may potentially impact on them?

Chairman: I appreciate that Deputy Boyd Barrett must leave. We will try to get the Deputy a response to that query. The Minister of State has also had questions from other Deputies.

Deputy Eoin Ó Broin: I had asked two questions.

Deputy Cian O'Callaghan: The first question was one I had asked also.

Deputy Peter Burke: On the first question relating to survey activities, they are subject to licensing under Part 5. They will have their own environmental assessments attached to them. Obviously, that is separate. As I already explained, a maritime area consent does not permit such activities.

Depending on the scale of the project the timeframe can be set between three and five years. It will be specified. I am not sure about operating beyond that.

Deputy Eoin Ó Broin: I thank the Minister for both responses. I have two further questions. With respect to the licences, would that also apply to the legacy projects where the MAC is essentially provided by the Minister rather than MARA, prior to the establishment of MARA? Obviously, those are the licences we would be concerned about at the moment.

Will all a MACs stipulate in their conditions the period of time that the planning application has to be applied for? Could it be a case where a MAC is applied for and there is no specific requirement within the period of the MAC to apply for planning, that MARA may take the view there is an undue delay? We keep making comparisons with terrestrial planning and our own experience. It is to work out whether at any stage there is the threat to the marine of the kind of things we see with land hoarding. That is the motivation of the question.

Deputy Cian O'Callaghan: The Minister of State is saying that obtaining a MAC does not give anyone the ability to carry out any works that could have any impact in an area but it does give them an exclusivity in terms of the area for the ability to apply for those licences and permissions. Is this it in effect and nothing more than that? It could not have any environmental impact until an application for a licence or further permission. Is that what the Minister of State is saying? Do I understand that correctly?

Deputy Peter Burke: In the first instance, I am advised that the MAC will die if it is not acted upon within a certain timeframe, and there will be conditions attached. Essentially, one will not have zombie developers.

Perhaps Deputy Ó Broin will remind me of his first question.

Deputy Eoin Ó Broin: It related to the licences.

Deputy Peter Burke: Yes, the legacy issues. I am advised that, essentially, they will remain under the Foreshore Act and will have the conditions that were originally attached to that.

Deputy Eoin Ó Broin: For those of us who do not know the detail of that, does this mean that if I had one of those legacy MACs granted by the Minister, let us call them that, must I apply for licences-----

Deputy Peter Burke: The foreshore licence will still set out the terms.

Deputy Eoin Ó Broin: Would I still have to apply to the local authority for licences to carry out surveys or exploratory activities pre-planning?

Deputy Peter Burke: One must apply to the Minister under the Foreshore Act, until the new licensing regime comes in.

Deputy Eoin Ó Broin: There will still be a requirement for me to apply for a licence albeit to the Minister, under the Foreshore Act.

Deputy Peter Burke: Absolutely, yes.

Deputy Cian O'Callaghan: Is the Minister of State saying that the MAC does not give anyone the right to carry out any activity whatsoever, and that they are all subject to subsequent processes, be it licensing or planning permissions?

Deputy Peter Burke: That is what I was clarifying, including the survey works and all those activities.

Deputy Cian O'Callaghan: Does the MAC give someone exclusivity to that piece?

Deputy Peter Burke: I would not use the word "exclusivity". It gives a right to apply for the planning.

Deputy Cian O'Callaghan: You could have five different companies with a MAC for the exact same plot of marine land or overlapping-----

Deputy Peter Burke: I do not think you would, in reason.

Deputy Cian O'Callaghan: In reason you would not, but you could.

Deputy Peter Burke: Under the development management process, essentially, that would happen because it would not allow that to happen.

Deputy Cian O'Callaghan: On the key point of environmental impacts, the Minister of State has said the MAC cannot have any environmental impacts because anything that has an environmental impact is subject to a subsequent process.

Deputy Peter Burke: That is correct.

Deputy Cian O'Callaghan: Therefore, people would be in breach of the legislation if anything they did, simply because they had obtained a MAC, were to have any environmental impact.

Deputy Peter Burke: Absolutely. They are not permitted to do it anyway. They cannot

go near it anyway.

Deputy Cian O'Callaghan: Apart from apply to do things.

Deputy Peter Burke: Exactly. Yes.

Amendment, by leave, withdrawn.

Section 73 agreed to.

Section 74 agreed to.

NEW SECTION

Chairman: Amendments Nos. 148 and 149 are related and may be discussed together.

Deputy Peter Burke: I move amendment No. 148:

In page 65, between lines 22 and 23, to insert the following:

"Application for declaration as to whether or not MAC is required, *etc*.

75. (1) A person may make an application in the specified form, accompanied by the prescribed fee, to the MARA for a declaration in writing by the MARA as to whether or not the occupation of the part of the maritime area the subject of the application for the purposes of the undertaking of the proposed maritime usage the subject of the application requires a MAC and, if so, whether *section 73* or *74* applies.

(2) Where an application under *subsection (1)* is made to the MARA, it may, by notice in writing given to the applicant, require the applicant to provide, whether in the specified form, by affidavit or otherwise, such additional information in relation to any matter to which the application relates as the MARA reasonably considers necessary to make the declaration sought by the application.

(3) The MARA shall, to the extent that it is practicable to do so, make the declaration sought by an application under *subsection (1)*, and give a copy of the declaration to the applicant, not later than 30 days after the day on which the MARA is satisfied that the applicant has complied with all the requirements of or under this section.".

Amendment No. 148, and amendment No. 149 is related, inserts a new section that allows any person to seek a declaration from the MARA as to whether a MAC is required for his or her proposed usage of the maritime area. This is a necessary administrative measure to enable potential users of the maritime area to confirm whether a MAC is required and relates to the usages exempt under Schedules 3 and 4. This will help remove any uncertainties and ensure appropriate regulation of certain usages. The MARA will issue such a declaration within 30 days of receipt of full information from the applicant. Amendment No. 149 provides for MARA to apply an administrative fee to such declarations. I am sure members will agree that this is a positive addition to the Bill.

Deputy Eoin Ó Broin: I have no objection to this. This is a follow-up to one of Deputy O'Callaghan's earlier question and it relates to this. If I understood the Minister of State correctly, the idea is not to have multiple parties all interested in a similar type of marine usage with MACs in the same territorial area. At the same time, when Deputy O'Callaghan asked

whether a MAC gave exclusive rights to seek usage in that area, it was said it was not exclusive. Does that mean there could be cases where there might be more than one operator within a MAC but there would not be multiple, depending on the purpose?

Deputy Peter Burke: It could involve different types of activities or purposes and they could co-exist.

Amendment agreed to.

SECTION 75

Deputy Peter Burke: I move amendment No. 149:

In page 65, to delete line 40, and in page 66, to delete line 1 and substitute the following:

"(a) applications under *section 75*,

(b) MAC applications, or

(c) applications under *section 84*.".

Amendment agreed to.

Section 75, as amended, agreed to.

SECTION 76

Chairman: Amendments Nos. 150 to 152, inclusive, 155 to 158, inclusive, and 160 to 162, inclusive, are related and may be discussed together.

Deputy Peter Burke: I move amendment No. 150:

In page 66, line 6, after "the" where it fourthly occurs to insert the following:

"occupation of the part of the maritime area the subject of the application for the purposes of the undertaking of the".

Amendments Nos. 150 and 155 are similar amendments that propose to ensure there is a consistency of language throughout the Bill. They ensure further clarity in the legislation about the purpose and function of the MAC, which consents to the occupation and not the usage itself.

Amendment No. 151 allows for additional information in regard to a MAC application to be provided by means other than just by affidavit by substituting "by affidavit" with "by affidavit or otherwise". This is a necessary practical change.

Amendment No. 152 proposes to make it clear that the range of potential MAC applicants will include such groups as rowing clubs, charities, community organisations etc. Section 76(4), as initiated, was inadvertently too limiting and would have excluded these groups.

Amendments Nos. 157, 158 and 160 add "in the opinion of the Minister" to avoid any doubt as to where the interpretation of such matters resides. This is standard wording from the Statute Book and does not change the substance of the regulation-making powers under this section.

Amendment No. 161 is a technical amendment to define clearly the intention of the sentence and does not change the substance of the subsection.

I will now address members' amendments. Amendment No. 156 proposes to provide a public and prescribed bodies consultation process in the MAC application procedure. I appreciate and understand the intentions behind the proposal, but I will be opposing this amendment. After my explanation, I hope members will understand the reasons.

In planning permission, the first time people normally hear of a proposal is in the set-piece public consultation on a planning permission or foreshore application. Under this regime, that set-piece consultation will be undertaken on any planning permission application. However, that will not be the start of the participation process. A key MAC assessment criterion set out in Schedule 5 is, "The extent and nature of stakeholder engagement undertaken by the applicant in respect of the proposed maritime usage." This provision places an obligation on the developer to engage substantively and seriously with the public, to the satisfaction of MARA, before it has applied for a MAC. Failure to do so will result in a refusal.

Likewise, the prospective developer will need to engage substantively with stakeholders such as NGOs and State agencies. The intention of this provision is to help ensure issues raised at the earliest possible stage inform the very design of a project proposal. To augment this approach further, amendment No. 281 proposes to include a condition requiring the MAC holder to prepare, maintain and adhere to a public engagement plan for the period from the grant of the MAC to the submission of the planning application. This will enable continued public participation during the period where the detailed plans of a particular proposal are developed and evolved before a planning application is finalised and submitted. Put simply, the days of a prospective maritime developer avoiding those whom the development might impact are ending with this legislation.

The intention of these provisions is to help ensure participation begins early, that issues are raised and can be addressed or incorporated into project design, leading ultimately to better planning applications. This is an innovative approach that is hoped will shape good developer practices and change radically the nature and effectiveness of public participation. I believe this is a far better approach than a single set-piece consultation on the MAC that would, by its nature, be limited to MAC assessment criteria. I trust members understand why I oppose this amendment for these reasons.

Amendment No. 162 proposes to insert additional text limiting the operation of subsection (7)(b) relating to procedural fairness provisions to one particular ground of refusal: inadequate level of public participation and consultation. On a purely logical level, it would not be appropriate to include an unfair limitation on a procedural fairness provision. This amendment also relies upon amendment No. 156 that intends to include a public consultation procedure, which is also opposed. For those reasons, I also oppose this amendment.

Deputy Eoin Ó Broin: A cynic might say, not that I am in any way cynical about this legislation, that by placing the responsibility, through the Schedules, on the applicant to design and manage the public participation process, there is an offloading of responsibility onto the applicant. There are certain merits in that in that they have to resource, manage and oversee it. It begs the question, however, when either the Minister in legacy cases or MARA in subsequent cases is taking a decision on the granting of the MAC or where the planning authority is taking a decision on the granting of a planning application, against what criteria do they assess if, let us call them the developer in this instance, has adhered to those requirements as set out in the Schedules as outlined by the Minister of State. How do they judge if that was adequate or not if it is not set out in the same way as other public participation processes? That is the first thing. The second thing is that I welcome the Minister of State's specific namechecking of

environmental NGOs and other stakeholders, but is there an expectation that the wider public will be involved? Here is the reason I say that. Before a planning application is put in on land, there is an earlier stage in the development process, what we call zoning, although I know it is not strictly comparable with this. Where a local authority is changing the zoning and matters come up for consideration through the development process, and there is some earlier consideration, it seems to me that while they are not analogous, there is some merit in having a wider public participation or consultation where a MAC is to be granted. If the Minister of State is saying that is what is outlined here, and there is a clear set of criteria against which a MAC applicant-planning applicant would be adjudged, that might go some way to assuage our concerns, although I am not sure how much it would do. It is about trying to ensure that a decision as important as the granting of a MAC has some public involvement.

We all have experience of this. Oftentimes, when an application has gone in, it is very late for people to impact or change that in terrestrial planning, in particular when one does not have the same level of expertise as an applicant or some professional bodies or environmental NGOs. The public in particular are often greatly disadvantaged and their ability to impact the planning process is weaker. Therefore, the earlier that participation is possible, the better. I am not looking to duplicate anything, but a MAC is a very considerable decision in and of itself, albeit not a grant of development. I am interested to hear the Minister of State's response to those questions, and depending on the answers I may well withdraw amendment No. 162.

Deputy Cian O'Callaghan: It is very much the point that often we see in terrestrial planning that communities become aware of planning issues through the different stages of the process. When there is an initial application to a council, they become aware of it and they may become aware of the zoning before that. They may well be involved in the public consultation processes at the level of An Bord Pleanála. Having public consultation at different stages is very important in terms of building up awareness of issues. It allows people in communities to gain a bit of knowledge and expertise and to talk to people and network. That is why having a strong public consultation process is important, as well as it being very important at the MAC stage, in and of itself. In terms of conditions around MACs, will there be rehabilitation conditions and when will they be specified?

Deputy Peter Burke: Could Deputy O'Callaghan please clarify the last question?

Deputy Cian O'Callaghan: In terms of granting a MAC and the conditions that go with it, does the Bill allow for conditions to be attached around rehabilitation in terms of any works that could take place or any damage that has been done to the marine environment? If one is seeking a MAC in an area where damage has already been done to the marine environment, would there be a condition on the MAC that in order to look for licences or permissions in the area, rehabilitation work must be done? Is the Minister of State saying that it could not be done as part of the MAC process but at the licensing or permission stage?

Deputy Peter Burke: That is my understanding, yes. The whole intention of this regime is to get public awareness quicker as part of a planned stakeholder engagement process with the developer or the pending application. That is the premise of the Bill that we will be trying to achieve.

MARA will consider the criteria set out in Schedule 5 and any consultation on MACs will be limited to those criteria. As referenced by other Deputies and as I mentioned, it is not MARA's role or the function of a MAC to examine or determine some of those issues, which are considered as part of the planning application. That is vital in terms of getting a robust,

stitched-in methodology that would accompany the process and have at its core public participation and also ensuring there is public awareness well before an application is submitted to make sure communities are not blindsided.

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 151:

In page 66, line 12, to delete "or by affidavit" and substitute "by affidavit or otherwise".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 152:

In page 66, to delete lines 16 and 17 and substitute the following:

"(a) a company,

(b) an EEA company within the meaning of Part 21 of the Act of 2014,

(c) a public body, or

(d) engaged principally in non-commercial activities or works.".

Amendment agreed to.

Chairman: Amendment No. 153 has been ruled out of order.

Amendment No. 153 not moved.

Section 76, as amended, agreed to.

SECTION 77

Chairman: Amendment No. 154 has been ruled out of order.

Amendment No. 154 not moved.

Deputy Peter Burke: I move amendment No. 155:

In page 66, line 27, after "the" to insert the following:

"occupation of the part of the maritime area the subject of the application for the purposes of the undertaking of the".

Amendment agreed to.

Deputy Cian O'Callaghan: I move amendment No. 156:

In page 66, between lines 28 and 29, to insert the following:

"(2) The MARA shall also provide for public consultation and consultation with prescribed bodies on the granting of a MAC and shall give due consideration to the consultation responses in determining a MAC application.

(3) The Minister shall by regulations specify—

(a) the nature of and how effective notifications for the consultations shall be made,

(b) the adequate and generous timeframes for the consultations in order to ensure the public and prescribed bodies can participate effectively,

(c) the arrangements for the provision of the information online on the application and other relevant details which are to be made available free of charge and where the information will be available to be inspected free of charge,

(d) how submissions or observations can be made on the application free of charge, in order to ensure the public and prescribed bodies can participate effectively.".

Amendment put and declared lost.

Deputy Peter Burke: I move amendment No. 157:

In page 67, line 1, after "whether" to insert ", in the opinion of the Minister,".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 158:

In page 67, line 3, after "whether" to insert ", in the opinion of the Minister,".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 159:

In page 67, lines 4 and 5, to delete "UNCLOS and the Act of 2006" and substitute "the Convention and the Act of 2021".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 160:

In page 67, line 6, after "whether" to insert ", in the opinion of the Minister,".

Amendment agreed to.

Section 77, as amended, agreed to.

SECTION 78

Deputy Peter Burke: I move amendment No. 161:

In page 67, line 18, after "practicable" to insert "to do so".

Amendment agreed to.

Deputy Eoin Ó Broin: I move amendment No. 162:

In page 68, line 18, after "MAC" to insert "on grounds including an inadequate level of public participation and consultation".

Amendment, by leave, withdrawn.

Section 78, as amended, agreed to.

SECTION 79

Deputy Peter Burke: I move amendment No. 163:

In page 69, lines 7 and 8, to delete "UNCLOS and the Act of 2006" and substitute "the Convention and the Act of 2021".

Amendment agreed to.

Section 79, as amended, agreed to.

SECTION 80

Chairman: Amendments Nos. 164, 165 and 168 are related and will be discussed together.

Deputy Paul McAuliffe: I move amendment No. 164:

In page 69, to delete lines 25 and 26.

Deputy Peter Burke: Amendment No. 164 proposes to remove section 80(2), which provides that a MAC cannot be renewed. This provision serves an important function in protecting the State's long-term interests in the property subject of the MAC. A new application would enable a new assessment in the context of the performance of the holder under the existing MAC and allow MARA the opportunity to update the terms and conditions of the occupation which may be for durations of many decades.

Some flexibility is built into the system as the duration of the MAC could be extended by way of an application to materially amend the MAC under section 83. However, that would have to be considered in the particular circumstances of the case and it would not be appropriate, in this instance, to double the lifespan of a MAC by way of amendment. I must, therefore, oppose the amendment and I hope that the member may wish to withdraw his amendment following the explanation.

Amendment No. 165 proposes to include a new provision for MARA to grant a leasehold interest where a MAC is granted for exclusive use. I must oppose this amendment for two reasons.

First, leases are property interests that arise from ownership. The State only owns to the outer limit of the territorial seas, which is the current foreshore area. Leaseholds cannot be granted beyond that limit. To do so would result in two different terms of occupation depending on location. The MAC is intended to be operable over the entire maritime area.

Second, leases as granted under the Foreshore Act create a specific relationship between the granter and holder with obligations on both sides. This makes enforcement of terms more challenging as it is viewed by the courts through the prism of a contract dispute. The obligations of MACs rest exclusively with the holder and are enforceable through the provisions of Part 6 of this Bill. MARA should not be constrained in the exercise of those powers. I trust that Deputy McAuliffe understands why I cannot accept this amendment considering the aforementioned.

Amendment No. 168 seeks to restructure section 82 procedure in respect of assignments

so that the terms and conditions are set out by way of regulation. The assignment provisions under section 82 provide for a joint application by the prospective assignor and assignee to be considered by MARA in the context of normal MAC assessment criteria under Schedule 5. I acknowledge that this procedure may be somewhat cumbersome for MAC holders. However, it is an important protection for the State's interests to ensure that any new holder is able to fulfil the obligations of a MAC and is held to the same standard. MARA must have the full opportunity to undertake proper due diligence and revise the terms and conditions of occupation, if appropriate. Control of assignments is in the hands of MARA. Therefore, considering the aforementioned, I must also oppose this amendment.

Deputy Paul McAuliffe: On the advice of the Chair and following the explanation, I am happy to withdraw my amendments.

Chairman: I have a question on the amendment. We are trying to put together planning legislation to ensure that there is a proper and fit-for-purpose planning regime for the maritime area that covers all activities. If a MAC needs to be amended, must one go right back to the start of the whole process again and reapply? There is some ministerial discretion.

Deputy Peter Burke: The MARA has the power to amend it. The power is taken away from Ministers through MARA.

Chairman: Does an amendment require going back to the start of the MAC process again?

Deputy Peter Burke: Section 83 sets out the material amendments to a MAC and the procedures around it. So they can apply to have it amended and MARA can then adjudicate on it.

Chairman: Do you have to apply for a whole new MAC or just to amend a MAC?

Deputy Peter Burke: To amend it. That is the procedure for an alteration to a MAC.

Deputy Eoin Ó Broin: Does that include suspending, for example, the abolition of the time period specified in the MAC?

Deputy Peter Burke: Yes.

Amendment, by leave, withdrawn.

Amendment No. 165 not moved.

Section 80 agreed to.

SECTION 81

Chairman: Amendments Nos. 166 and 167 are related and will be discussed together.

Deputy Peter Burke: I move amendment No. 166:

In page In page 69, to delete line 36 and substitute the following:

"(e) the purposes for which the MAC has been granted,".

Amendment No. 166 changes the statutory notice relating to the grant of a MAC. It replaces the text of section 81(e) "the nature of the maritime usage the subject of the MAC" to "the purposes for which the MAC has been granted". This is being amended to clarify and remove doubt or perception that the MAC grant approves usage itself. It does not alter the substance

of subsection (e).

Amendment No. 167 amends section 81 inserting a new subsection to ensure that notification of MAC approvals and refusals are published online. This amendment improves transparency relating to MAC decision-making, with which I hope members agree.

Deputy Richard Boyd Barrett: The notification of MACs should be more than just publishing on a website for the reasons that we discussed earlier. I put more weight on a maritime area consent than the Government has done with its view that it is not consent and not actual development, which is subject to a different process. There is more involved in the things that can be done, under the provisions of a MAC, than is suggested by the way it has been handled in the legislation. Therefore, there should be a greater degree of public notification around the granting of such MACs.

Chairman: I thank the Deputy for his observation.

Deputy Peter Burke: Suggestions were to be published, let us say it was 2 m of slipway.

Deputy Richard Boyd Barrett: If it is proposed to put 2 m of slipway into Dún Laoghaire harbour then I think that the people of Dún Laoghaire are entitled to know.

Deputy Peter Burke: The information is published. The Deputy has said that publishing on a website is not good enough so has he another idea?

Deputy Richard Boyd Barrett: I have said that bigger plans should be advertised on the radio but I do not propose that for the addition of a 2 m slipway.

Deputy Peter Burke: We can take that on board and the Deputy can mention that on Report Stage.

Deputy Richard Boyd Barrett: Yes. I do not see why these things would not be notified in some way in a local newspaper, for example. The public are entitled to know if a usage will impact on a port, harbour or beach because often these things happen and people are raging after the event. The Minister of State may consider from the legislative height of the Oireachtas that this seems trivial but often these things are not deemed at all trivial by people in local areas.

Deputy Peter Burke: I fully appreciate that. As someone who is on the ground, I can fully appreciate how these decisions can get people very frustrated very quickly. We are doing all that we can to ensure that this will be a transparent regime. I am interested in hearing the views of the Deputy.

Deputy Richard Boyd Barrett: Yes. I will have to think about the best formula. Let us be honest, a notice published on a website would pass most Deputies by, never mind members of the public.

Deputy Peter Burke: The public engagement process that we will have stitched in will give better value towards the maritime area and the work that is developed out there. Hopefully, it will avoid communities being blindsided in the future.

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 167:

In page 70, between lines 15 and 16, to insert the following:

"(4) The MARA shall, as soon as is practicable after it refuses to grant a MAC, publish on its website a copy of the notice concerned referred to in *section 78(3)*.".

Amendment agreed to.

Section 81, as amended, agreed to.

Amendment No. 168 not moved.

Section 82 agreed to.

SECTION 83

Chairman: Amendments Nos. 169 and 170 are related and will be discussed together.

Deputy Steven Matthews: I move amendment No. 169:

In page 71, to delete lines 8 and 9.

The holder of a MAC must apply to MARA for approval to amend the MAC if he or she so wishes.

Section 83(2) provides that "...the Minister may by regulations specify classes of amendments to a MAC that are, for the purposes of this section, non-material amendments." Then, section 83(3)(a) states: "that the amendments which fall within the class should be trivial, insignificant, minor or inconsequential". It is difficult to see an amendment that might be classified as "trivial, insignificant, minor or inconsequential". I wonder, therefore, why the Minister should be given the ability to do that when the amendment is of that description. What test is there for that and what classes could they be?

Deputy Peter Burke: The detail will be set out in the regulations according to the principles and policies under section 83(3). Non-material amendments are trivial matters; material amendments are not. By way of example, enlarging the subject area of a MAC by a trivial amount would not be material. Doubling the MAC area would be material.

Deputy Steven Matthews: In that case, the Minister could specify those classes of amendments that are non-material.

Deputy Peter Burke: Yes.

Deputy Richard Boyd Barrett: There is a big gap between doubling and a minor tweak. There is a big grey area in the middle. Again, I give the example of the fishermen in my area. They said as par of the survey for the proposed Dublin Array wind farm on their fishing grounds on the Kish and Codling Banks, the goalposts moved during their engagements with the companies as to the area from that they might be excluded from for the period of surveying. That was not trivial to them. No doubt, the company might have seen it as trivial, but the fishermen did not. This is a matter of concern when there is such a grey area. We are told that the Minister will specify these categories of amendments. Our concern is on the precautionary side. There is potential for a lot of slippage there and for big arguments about what is trivial and what is substantial.

Deputy Steven Matthews: The regulations may specify amendments. However, the sec-

tion 83(3)(a) states: "that the amendment which fall within in the class should be trivial, insignificant, minor or inconsequential." Is that unduly limiting? What amendments could be classified as not being that?

Deputy Richard Boyd Barrett: As not being "trivial" within maritime area consent?

Deputy Steven Matthews: Yes.

Deputy Richard Boyd Barrett: I am thinking in the area of what we are talking about. There is stuff that these companies do in advance of putting in a formal planning application for development that impact on users and on marine life, in many cases. Is it trivial or not, if they decide to say that the area they were surveying was this or we were running tests-----

Deputy Steven Matthews: We are now talking about MACs. It relates to permission to occupy the area.

Deputy Richard Boyd Barrett: We are talking about the maritime area consent, which is different. There is a distinction in this system between a formal application for a development, and the consent a company gets for doing things that are related to its plan for a development, which are not a development but which are usages of the marine area.

Deputy Peter Burke: I will certainly come back to the Deputy over all that in fine detail. He missed that aspect of it.

Deputy Richard Boyd Barrett: Apologies.

Deputy Peter Burke: The Deputy is referring to the granting of licence to do work, which is a separate process to the MAC.

Deputy Richard Boyd Barrett: Indeed.

Deputy Peter Burke: It is a separate process. A MAC does not give permission to do any works. It gives permission to occupy the area. We went into precise detail on that. We had a debate on it, unfortunately when the Deputy was away. The licensing regime is regulated separately. The environmental assessment and thresholds that it has to go through are separate. That is to do work through a licence. It is not a MAC.

Deputy Richard Boyd Barrett: Indeed, but a MAC may involve excluding some existing users from an area for a period of time.

Deputy Peter Burke: No, that would have to be adjudicated. They could coexist and there can be other activities. All that would have to be adjudicated by MARA. Again, we have had that very discussion here.

Deputy Steven Matthews: Can the regulations specify classes of amendments that are non-material amendments, which are "trivial, insignificant minor, or inconsequential"?

Deputy Peter Burke: We can look that and come back to the committee.

Deputy Steven Matthews: Given that undertaking, I will withdraw the amendment.

Amendment, by leave, withdrawn.

Deputy Peter Burke: I move amendment No. 170:

In page 71, to delete lines 15 to 19 and substitute the following:

"(5) (a) The holder of a MAC who wishes to make an amendment to the MAC which it considers to be a non-material amendment may make an application in the specified form, accompanied by the prescribed fee, to the MARA for the MARA to make such amendment to the MAC.

(b) Where the MARA is satisfied that the amendment sought is a non-material amendment (including in any case where it is so satisfied by virtue of submissions referred to in *paragraph (c)* made to it), it shall make the amendment to the MAC and issue the MAC as so amended to the holder and the MAC as so amended shall, on and after the date of such issue and for all purposes, replace the MAC as in force immediately before it was so amended.

(c) Where the MARA is not satisfied that the amendment sought is a non-material amendment, it shall, in the interests of procedural fairness, give a notice in writing to the holder stating—

(i) the MARA's reasons why it is not so satisfied, and

(ii) that the holder may, if the holder wishes to do so, within the period specified in the notice (being a period of not less than four weeks from the date that the holder receives the notice), make, in view of those reasons only, submissions in writing on those reasons for the MARA's further consideration before the MARA decides whether or not it is satisfied that the amendment is a non-material amendment.

(d) Where submissions referred to in *paragraph (c)* made before the expiration of the period concerned referred to in that paragraph do not satisfy the MARA that the amendment sought is a non-material amendment, or no such submissions are made before the expiration of that period, the MARA shall, as soon as is practicable after that expiration, give the holder notice in writing that the MARA is not satisfied that the amendment sought is a non-material amendment and setting out the reasons why the MARA is not so satisfied.

(e) Where *paragraph (b)* applies, the MARA shall, as soon as is practicable after issuing the MAC, as amended as referred to in that paragraph, to the holder, publish on its website, at a minimum, sufficient particulars of the amendment made to the MAC to enable members of the public to understand the nature of the amendment and sufficient particulars of the MAC to readily identify it.

(f) Where *paragraph (d)* applies, the MARA shall, as soon as is practicable after it gives the notice referred to in that paragraph to the holder, publish on its website, at a minimum, a copy of the notice.".

The amendment proposes to strengthen the procedure relating to non-material amendments. On review, it was determined that the procedures in initiated text might be open to attempted abuse by the more unscrupulous MAC holders to sneak through material changes. This new procedure provides MARA with a more direct control and oversight over the process and ensures that an amended MAC is issued and notification of the change is published. This amendment strengthens the authority's control over the process.

Deputy Eoin Ó Broin: I am shocked at the Minister of State's suggestion that there could be unscrupulous MAC holders. That is on the record.

Amendment agreed to.

Section 83, as amended, agreed to.

NEW SECTION

Deputy Peter Burke: I move amendment No. 171:

In page 72, between lines 10 and 11, to insert the following:

"Provisions to ensure consistency between MAC and planning permission

84. (1) This section applies where a maritime usage the subject of a MAC has planning permission (including any case where such usage has any further planning permission subsequent to the initial planning permission).

(2) Where the MARA receives the planning permission, it shall, as soon as is practicable thereafter, review the MAC and the permission (including any conditions attached thereto) to ascertain whether or not any amendments are required to be made to the MAC to ensure consistency between the MAC and the permission.

(3) Where, following a review under *subsection (2)*, the MARA is satisfied that no amendments referred to in that subsection are required, it shall, as soon as is practicable—

(a) give notice in writing to that effect to the holder of the MAC, and

(b) publish that notice on its website together with sufficient particulars of the MAC to readily identify it.

(4) Where, following a review under *subsection (2)*, the MARA is satisfied that amendments referred to in that subsection are required, it shall, as soon as is practicable—

(a) make the amendments to the MAC and issue the MAC as so amended to the holder, and

(b) publish a notice on its website stating that the MAC has been amended pursuant to this section together with sufficient particulars of the amendments to enable members of the public to understand the nature of the amendments and sufficient particulars of the MAC to readily identify it.

(5) The MARA shall, to the extent that it is practicable to do so, perform its functions under this section in relation to the MAC and the planning permission within 30 days after the date on which it receives the permission.

(6) The MAC as amended and issued under *subsection (4)* shall, on and after the date of such issue and for all purposes, replace the MAC as in force immediately before it was so amended."

The amendment inserts a new section, which provides for MARA to amend a MAC, if neces-

sary, on the foot of a planning permission grant and the conditions attached to the grant. A planning authority or the board may be minded to adjust the proposed development as part of its determination for a variety of reasons. Rather than holding up the planning process, the consent would be amended, if required, post-planning permission grant. This ensures that any MAC does not constrain the planning authority or the board in its decision-making, while allowing for any such changes to be reflected in the property consent. Provisions in Part 8 allow for engagement between MARA and An Bord Pleanála prior to finalisation of the planning decision.

Amendment agreed to.

SECTION 84

Chairman: Amendments Nos. 172 to 174, inclusive, will be discussed together.

Deputy Peter Burke: I move amendment No. 172:

In page 72, line 18, to delete "or by affidavit" and substitute "by affidavit or otherwise".

The amendment allows MARA to consider other information or materials apart from an affidavit in determining whether MARA should accept the surrender of a MAC. This is a minor practical amendment to facilitate administration of surrender applications. The word "affidavit" was too limiting to be fully practical.

Amendment No. 173 corrects a typographical error from "interest" to "interests".

Amendment No. 174 ensures that notices of a refusal of a MAC surrender are published as initiated text did not require so.

Section 84, as amended, agreed to.

SECTION 85

Deputy Peter Burke: I move amendment No. 173:

In page 72, line 32, to delete "interest" and substitute "interests".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 174:

In page 73, between lines 18 and 19, to insert the following:

"(6) The MARA shall, as soon as is practicable after it refuses to consent to the surrender of a MAC, publish on its website a copy of the notice concerned referred to in *subsection (1)(b)*.".

Amendment agreed to.

Section 85, as amended, agreed to.

SECTION 86

Question proposed, "That section 86 stand part of the Bill."

Deputy Eoin Ó Broin: I will explain the question with regard to standard residential devel-

opments. The section relates to whether a person is deemed fit and proper. Often when development consent is sought on land it is from a corporate entity. There may be directors. Some of those directors may behave in an inappropriate way. They then come off the board of directors. They are replaced by family members or other associates. The corporate entity no longer continues to have the person who may be deemed unfit and improper. How do we protect against this? The reason I am raising this is because as far back as 1977 the Law Reform Commission highlighted this as an area of particular concern with terrestrial planning. It spoke about how certain persons deemed unfit and improper are able to hide behind a veil of corporate legal structures. Is this something that has been given adequate thought with respect to this? Does it solely centre around individuals as actual persons rather than corporate entities that may have relationships with people who have come off boards? Does the Minister of State see the point I am raising? This has been particularly problematic, for example, with defective buildings and poor building practices. It is quite relevant to this section of the scheme.

Deputy Peter Burke: I hear the nature of what the Deputy is saying. This is with regard to the Minister or the local authority deeming them fit and proper. This provision does not deal with the commercial sector.

Deputy Eoin Ó Broin: This is only for non-commercial or semi-State bodies.

Deputy Peter Burke: Absolutely.

Question put and agreed to.

Section 87 agreed to.

SECTION 88

Chairman: Amendments Nos. 175 and 177 are related and may be discussed together.

Deputy Peter Burke: I move amendment No. 175:

In page 74, to delete lines 21 to 23 and substitute the following:

"for the occupation of the part of the maritime area the subject of the MAC for the purposes of the undertaking of the maritime usage the subject of the MAC (including any potential such usage where, for whatever reason, the usage is yet to be undertaken).".

Amendment No. 175 is a technical change which amends section 88 by ensuring the consistent use throughout the Bill of text relating to a MAC as being granted for the purpose of occupation.

Amendment No. 177 is a technical amendment to section 89 which allows for more flexibility in a competitive process. The initiated text limited the process to competing applications in the same area. The revised provisions allow for circumstances where competing applications may only be partially located in the same area or where it is not possible to grant both for some other reason.

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 176:

In page 75, line 28, to delete "the property of the State that is".

The purpose of amendment No. 176 is to delete redundant wording from section 88. MACs

can only be granted for property in the ownership of the State. This does not impact on the operation of the section.

Amendment agreed to.

Section 88, as amended, agreed to.

SECTION 89

Deputy Peter Burke: I move amendment No. 177:

In page 76, lines 9 and 10, to delete "relating to the same part of the maritime area" and substitute "(whether or not relating to the same part of the maritime area)".

Amendment agreed to.

Question proposed: "That section 89, as amended, stand part of the Bill."

Deputy Eoin Ó Broin: This is specific to section 89 but also relates to section 88. With regard to the setting of the levies, what is the process for deciding it? When Irish Water was standardising the connection fees from the approximately 30 local authorities it had some level of public consultation. How is it envisaged that the levies will be determined in this process?

Deputy Peter Burke: The levy framework will set out the standard charges that will apply to MACs to ensure appropriate financial returns to the State. These will be published, and the published framework at the time of the MAC decision will be applied to any application in question. This will replace the administratively unwieldy expensive and time-consuming individual property valuations required for foreshore leasing processes, as the Deputy is aware. It will also provide certainty to applicants and key process improvement in the current regime. It will not be a one-size-fits-all approach. The levy framework will be determined in accordance with section 88(3). Our approach moves away from property value as the sole determinant as under the Foreshore Act to a far broader range of considerations, including the area involved, public benefits that might arise from the usage, the level of profit that might accrue from the usage, and the legal nature of potential holders, for example, those of more limited financial means that can be accommodated. It is the explicit responsibility of MARA's board to develop the framework. It can be assisted in this task by the CEO and committees of the board. Given the wide range of interests and factors, it is envisaged that the development process will be inclusive and participatory in the same manner as will have been approached in other aspects of the new regime.

Deputy Eoin Ó Broin: A big part of that sentence was "inclusive and participatory". What does the Minister of State mean by this?

Deputy Peter Burke: The board will decide this, through consultation or the committees it will set up, with regard to how to frame it.

Deputy Eoin Ó Broin: It is likely there will be some dialogue beyond the board of MARA with regard to determining these levies.

Deputy Peter Burke: There is no doubt about this. We could not do it otherwise.

Question put and agreed to.

Section 90 agreed to

SECTION 91

Question proposed: "That section 91 stand part of the Bill."

Deputy Cian O'Callaghan: This section sets out the definition of "rehabilitate" with regard to maritime areas. It is relevant to section 2(3) of the Bill, with regard to the interpretation of the Act, which states on page 20:

> A reference in this Act to a MAC includes—
>
> (a) the maritime usage the subject of the MAC,
>
> (b) the conditions attached, or deemed to be attached, to the MAC by virtue of section 79, and
>
> (c) the rehabilitation schedule within the meaning of Chapter 8 of Part 4.

This relates to the question I asked earlier about when conditions on rehabilitation relating to a MAC would be specified. In response, the Minister of State said that conditions with regard to rehabilitation specified as part of a MAC will not be specified. Perhaps I did not quite phrase it right. As per page 20, there could be a rehabilitation schedule as part of a MAC.

Chairman: It is the rehabilitation of the consent that is to be included in the MAC and not the rehabilitation of anything done under MAC. That is my understanding. I will leave it to the Minister of State to respond.

Deputy Peter Burke: I concur.

Deputy Richard Boyd Barrett: Will the Minister of State clarify the point?

Chairman: The Minister of State would probably give better clarification.

Deputy Cian O'Callaghan: I ask the Minister of State to clarify it further. It does not relate to rehabilitation works.

Deputy Peter Burke: When the MAC is granted the conditions are clearly set out. When it is surrendered there is another application process.

Deputy Eoin Ó Broin: We are talking about this section as it relates to section 92 as well. Am I correct in saying that?

Chairman: Yes.

Deputy Eoin Ó Broin: Section 91(a)(*i*), in regard to rehabilitating part of a maritime area, refers to a treatment to "restore the part to a satisfactory state, with particular regard to the seabed, water quality, wildlife, natural habitats, landscape and seascape [...]". This concerns the restoration of any aspect of the area within the MAC that one assumes has been damaged, disturbed or affected in some negative way. One of the problems here is how will we know if this is the case. If we think about this, if a MAC is granted, then conditions are applied to it regarding the restoration which may be required at a later stage, especially in respect of whatever works might have been carried out in the context of the licences secured. If we have no baseline assessment, however, how will we know what will need to be restored and what level to restore

it to? How is that going to be determined and which agency will make that determination? Will it be MARA or other agencies?

Deputy Peter Burke: I understand that the MAC holder will have to put the area back to the way it was. The obligations are set out in section 92.

Deputy Eoin Ó Broin: Perfect. Again, let us make a comparison with terrestrial planning processes. If someone undertakes an unauthorised development on land, then, generally, a planning officer can go to see it and will know what has to be restored. Again, this is a clumsy comparison. In this case, are we saying that the sole responsibility for knowing the baseline condition falls on the holder of the MAC? How will we ensure that the holder will restore or rehabilitate an area to its original state? Is there an enforcement mechanism which allows for that?

Deputy Peter Burke: The conditions are set out in the environmental impact statement as part of the planning. Those are the baseline conditions that must be adhered to.

Deputy Eoin Ó Broin: Okay. Again-----

Chairman: I ask the Deputy to talk about this section.

Deputy Eoin Ó Broin: Yes, but there is a thread here that relates specifically to-----

Deputy Peter Burke: It is a question that is more about planning than a MAC.

Deputy Eoin Ó Broin: Sure, I accept that, but does this situation also then apply to any works that will be carried out under licence after the granting of the MAC but before the planning application is put in? Do we have an environmental baseline for-----

Deputy Peter Burke: Part 5 refers to licences and the separate methodologies in this regard.

Deputy Eoin Ó Broin: Would that give us a similar environmental baseline if damage was done during that stage, instead of post-planning, for instance?

Deputy Peter Burke: Yes, but depending on the licensed activity. Potentially, however, it would.

Deputy Eoin Ó Broin: Will the Minister of State give us some more information on this aspect?

Deputy Peter Burke: There are different types of activities and tests. Could we respond to the Deputy in writing on this question? I would be more comfortable with that.

Deputy Eoin Ó Broin: I am happy with that.

Chairman: I call Deputy Boyd Barrett, who wants to ask a question.

Deputy Richard Boyd Barrett: I appreciate that a lot happened in the 15 minutes that I was gone. Pardon me for that.

Chairman: We did our best.

Deputy Richard Boyd Barrett: Section 92 refers to the rehabilitation of the area subject to the MAC. It refers to the requirement to rehabilitate an area, which could include "the decom-

missioning 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; and the removal of any deposited or waste material". In other words, a great deal of infrastructure can be constructed under a MAC.

Chairman: No, it cannot.

Deputy Peter Burke: It is not possible.

Chairman: The MAC does not give permission to do that.

Deputy Peter Burke: It is not permissible to undertake building on foot of a MAC. The Deputy is suggesting that a whole heap of infrastructure can be put up. It cannot. It must be licensed through the licensing regime as I outlined. It is not a part of a MAC process. A MAC grants a right to occupy the area, and then it is possible to subsequently move on to planning.

Deputy Richard Boyd Barrett: It is possible to have a MAC and do absolutely nothing.

Deputy Peter Burke: Yes. We have been at pains pointing this out already. MAC holders can then move on to the planning application process.

Chairman: We addressed this point when the Deputy was drawn away.

Deputy Richard Boyd Barrett: To be clear, it is possible to have a MAC and to do absolutely nothing with it.

Chairman: The Deputy is referring to section 92, to which I have tabled an amendment. We will move to that section next. I call Deputy Cian O'Callaghan, who asked the original question.

Deputy Cian O'Callaghan: To clarify, and to close off this matter, being granted a MAC does not entitle the holder to do any of the things referred to by Deputy Boyd Barrett. Section 92, however, then talks about the rehabilitation processes that the MAC holder may have to undertake on the basis of any commissions or licences.

Deputy Peter Burke: Yes, that is correct. It is an obligation on the holder of the MAC.

Deputy Cian O'Callaghan: That obligation will be conferred on the MAC holder by virtue of the permission received and the licence and, as a double mechanism, under the MAC. It is therefore a double level of protection.

Deputy Peter Burke: Yes. It is a safeguard.

Deputy Cian O'Callaghan: It is a double safeguard.

Deputy Peter Burke: Yes.

Deputy Cian O'Callaghan: That is why it is then specified in this section, even though having a MAC does not allow the holder to do any of these things.

Deputy Peter Burke: Yes, and any works would still require planning permission. I refer to marine rehabilitation works, etc.

Question put and agreed to.

SECTION 92

Deputy Steven Matthews: I move amendment No. 178:

In page 78, to delete lines 5 to 25 and substitute the following:

"(6) The holder of a MAC to which *section 73(1)* applies shall submit the proposed programme of rehabilitation as approved by the Board no later than three months before undertaking any development the subject of such permission and which is for the purposes of the maritime usage the subject of the MAC.".

This amendment leads to the question from Deputy O'Callaghan. I hope to clear things up rather than to confuse them more. My understanding is that part of the conditions of a MAC will be that whatever conditions applied under the development consent granted must be carried out by the developer.

Deputy Peter Burke: Yes.

Deputy Steven Matthews: Therefore, when the conditions are applied to the developer or development, based on environmental impact assessments and baseline studies that will tell us what condition the area was in and to which it must be restored, or better, is it then necessary to reopen the MAC process? Could it be the case that the MAC would just state that it would be necessary for the holder to comply with the conditions set out in the development consent? What I am trying to get at is if it will it be necessary to reopen the MAC process in such a context.

Deputy Peter Burke: There can be limited reopening of the MAC process specifically in the context of the rehabilitation schedule. It must be attached to it.

Deputy Steven Matthews: To clarify, it will only be possible to reopen a specific part of the MAC process in respect of the rehabilitation part of the licence.

Deputy Peter Burke: Yes.

Deputy Steven Matthews: It is not opening up the entire MAC process again.

Deputy Peter Burke: No, it is not.

Deputy Steven Matthews: Okay. On that basis, I withdraw my amendment.

Amendment, by leave, withdrawn.

Deputy Peter Burke: I thank the Chair.

Deputy Cian O'Callaghan: Can we get a written note concerning what the Minister of State has been saying concerning this matter?

Deputy Peter Burke: Absolutely.

Chairman: That is fine. The Deputy is seeking a note to clarify the process.

Section 92 agreed to.

Sections 93 to 95, inclusive agreed to.

SECTION 96

Chairman: Amendments Nos. 179 to 182, inclusive, are related and may be discussed together.

Deputy Paul McAuliffe: I move amendment No. 179:

In page 82, between lines 8 and 9, to insert the following:

"(d) any other maritime usage as may be prescribed by order by the relevant Minister pursuant to *section 97(5)*.".

I ask the Minister of State to respond.

Deputy Peter Burke: Amendments Nos. 179 and 182 would both seek to open up the special MAC case provisions beyond the relevant projects. These provisions are specific to the relevant projects as set out in the legislation. They relate only to either existing foreshore lease applications for offshore renewable energy, ORE, or had secured agreement for a grid connection. These provisions are transitioning those projects from the old foreshore system into the new regime where each proposal will be subject to a MAC application process and, if approved, may then proceed to prepare and submit a planning application to An Bord Pleanála for consideration.

These provisions are intended to manage that transition alone and are not intended to apply to any other category of applicant. To accept this amendment would be to fundamentally change the intention of the provisions and, potentially, to open up all potential development to these transitional provisions.

I must therefore, unfortunately, oppose these amendments. The Deputy might consider withdrawing them on foot of this explanation.

Turning Government amendment No. 180, this amendment removes unnecessary and redundant language from section 97(1) relating to relevant maritime usages and MACs before establishment day. Amendment No. 181 is a technical amendment to section 97 so that it also references section 70, which deals with powers to specify forms of document.

I must flag to the committee that it may be necessary to further amend sections 96 and-or 97 on Report Stage. Work is continuing on possible minor technical changes necessary to ensure efficient operation of these sections, and I will endeavour to provide as much detail as possible to the committee in advance of Report Stage.

Amendment, by leave, withdrawn.

Section 96 agreed to.

SECTION 97

Deputy Peter Burke: I move amendment No. 180:

In page 82, lines 16 and 17, to delete "or has received MAC applications, or both,".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 181:

In page 82, line 25, after "in" to insert "*section 70* and".

Amendment agreed to.

Amendment No. 182 not moved.

Section 97, as amended, agreed to.

SECTION 98

Chairman: Amendment No. 183 has been ruled out of order.

Amendment No. 183 not moved.

Question proposed: "That section 98 stand part of the Bill."

Deputy Eoin Ó Broin: The Minister of State will correct me if I am wrong, but sections 97 and 98 refer to the granting of MACs by the Minister prior to the commencement of the formal MAC regime overseen by MARA. Again, I invite him to put on the public record additional information that may be of value to the public on how that process will be decided. I know we have discussed it previously out of committee, but it is so people understand how the awarding of MACs, particularly in respect of transitional projects, will be decided. Clearly, no public participation or consultation is part of that decision. The Minister of State might speak to the committee on why that is the case. Is there still some measure for some public participation in the granting of those MACs?

Deputy Peter Burke: I will elaborate slightly on those provisions. The Minister for the Environment, Climate and Communications will be enabled to invite applications from the relevant projects in a structured manner. The Minister will consider the applications in the context of the standard MAC provisions and assessment criteria. If a MAC is granted, then relevant projects can proceed to preparing and submitting a planning permission to An Bord Pleanála. Once established, MARA will assume responsibility for any MACs granted by the Minister for the Environment, Climate and Communications. Work is under way in that Department to develop the MAC consenting regime and guidance for those relevant projects. It is intended that a public consultation will be held on a full suite of MAC assessment processes post the enactment of this legislation. Work is also under way on the establishment of a levy framework for offshore renewable energy, ORE.

Deputy Eoin Ó Broin: To be clear, in the case of the transitional projects, it is the Minister for the Environment, Climate and Communications, not the Minister for Housing, Local Government and Heritage, who will process those MAC applications and grant the MACs?

Deputy Peter Burke: Yes.

Deputy Eoin Ó Broin: Is there any mechanism for public participation or consultation during that grant process? If not, was any consideration given to such a thing?

Deputy Peter Burke: No. There is no consideration for consultation with MACs. It is considered the same as a general MAC.

Deputy Richard Boyd Barrett: As far as I am concerned, that is a problem. The Minister of State spelled out that certain things cannot be done under maritime area consent, but applicants for all the relevant projects, so-called, will now have to apply for maritime area consent.

Is that correct? Will applicants now have to apply for maritime area consent?

Deputy Peter Burke: That is correct.

Deputy Richard Boyd Barrett: Okay, but the public will have no input on whether that is granted. They will have no avenue for making submissions on that.

Deputy Peter Burke: The public consultation takes place during the planning process-----

Deputy Richard Boyd Barrett: During the planning process.

Deputy Peter Burke: -----as I outlined previously.

Deputy Richard Boyd Barrett: Okay. We have discussed this and my views on it are well known. I will signal, for the record, that even if you cannot do anything, these projects are physically doing things now that will get consents that are impacting on fishermen-----

Deputy Peter Burke: Yes, but they are doing it under licence. That is a separate regime I discussed in detail. It is separate. It is not a MAC.

Deputy Richard Boyd Barrett: Okay, but even for the occupation of the area, to use the Minister of State's phrase-----

Deputy Peter Burke: The right to occupy.

Deputy Richard Boyd Barrett: The right to occupy it. To me , that is pre-empting proper assessment of the areas they are occupying as to whether those areas should even be up for consideration for certain types of activity. I will state that for the record. If we had had designated marine protected areas, and I know the Minister of State said it is a different process that will come later, some of the areas applicants will be allowed occupy under MACs are ones they for which would not have been able to apply for a MAC because they would not have been able to occupy them because they would have been marine protected. That needs to be spelled out clearly.

Deputy Eoin Ó Broin: I have one very quick question. The Minister of State explained that, once MARA is established, there is an obligation on the MAC applicant to engage with stakeholders prior to the application for the MAC, but also to continue to engage during the course of the MAC, which would be taken into consideration in the planning application. Will a similar obligation be in place with respect to these legacy project MACs through the Minister for the Environment, Climate and Communications?

Deputy Peter Burke: Yes. It will be the exact same.

Deputy Eoin Ó Broin: I apologise to the Chair. I have to leave, but Deputy Gould will take over for me.

Question put and agreed to.

Sections 99 to 102, inclusive, agreed to.

SECTION 103

Chairman: Amendments Nos. 184 to 186, inclusive, are related and may be discussed together.

Deputy Cian O'Callaghan: I move amendment No. 184:

In page 89, to delete lines 1 to 8.

The purpose of this amendment is to avoid a situation where there is a lack of clarity on when an applicant needs to apply for leave for judicial review. It is not properly stipulated in the Bill. As it currently stand, the courts could be beset with uncertainty on MARA, the MAC holder and the applicant. The amendment removes the entitlement to stay proceedings with the intention of ensuring the authorities specify the points in time in the decision-making process, when applications should be made and to ensure there is clarity so that applicants to the court do not risk being premature or too late if they wish to start a judicial review.

The purpose of amendment No. 185 is to extend the window for judicial reviews from eight weeks to 12 weeks. That is because of the amount of complexity, potentially, in this process and to give a sufficient amount of time. As everyone will be aware, when communities and other stakeholders are grappling with these matters, it can be very difficult for them to get the advice they need when going into the complexities of things. That is the reasoning for this amendment.

The purpose of amendment No. 186 is, in effect, to give *locus standi* for environmental NGOs if they wish to challenge decisions around the MAC process.

Deputy Richard Boyd Barrett: The marine area regulatory authority will be able to ask the High Court to stay proceedings regarding an application for a judicial review about a decision to grant a maritime area consent. Why should MARA be allowed to ask the court to set aside an application for a judicial review around a maritime area consent until after it has made its decision? I ask the Minister of State to explain in plain language why that should be the case. The other amendment relates to extending the eight weeks out to 12 weeks in light of the complexity of the process.

Deputy Peter Burke: Amendment No. 184 seeks to delete provisions that would enable MARA to stay proceedings to conclude any outstanding matters. This provision is required in circumstances where MARA may not have concluded a process and a judicial challenge is taken. In essence, the provision is to allow MARA to finish its process.

Amendment No.185 seeks to extend from eight weeks to 12 weeks the period where persons can apply for leave to judicially challenge a decision. Eight weeks is the standard period for non-environmental decisions. These provisions are for the MAC which is not an environmental decision. Section 103(6) provides for judicial discretion to extend that period

Amendment No. 186 seeks to apply the environmental decision-making standards for leave to apply for judicial review to a non-environmental decision-making process. ENGOs are not debarred from judicial challenges but will have to make a case to the courts for standing in a particular case, as would be the case for a non-environmental decision.

For the aforementioned reasons, I oppose amendments Nos. 184 to 186, inclusive.

Deputy Richard Boyd Barrett: The whole point of people resorting to a judicial review around proposals, in this case, for the occupation or, subsequently, usage of a maritime area is to try to stop decisions being made. The Minister of State has not answered my question as to the reason MARA is being given the power to set aside-----

Deputy Peter Burke: A person can take a judicial review after the process has completed.

As such, he or she would not be stopping the process.

Deputy Richard Boyd Barrett: I wonder why this provision is being included. Why is it imperative that MARA makes its decision?

Deputy Peter Burke: The courts will decide whether there is a stay or not.

Deputy Richard Boyd Barrett: Yes, but in this legislation the Marine Area Regulatory Authority is being given the right to ask the court not to grant the application for a judicial review until such time as it has made its decision.

Deputy Peter Burke: MARA will have to ask the court to do that.

Deputy Richard Boyd Barrett: Yes, but why would you do that?

Deputy Peter Burke: MARA must be allowed to conclude its process. When that process is concluded, leave can be granted for the taking of a judicial review.

Deputy Richard Boyd Barrett: If somebody believes that consideration should not be given to a maritime area consent for a particular maritime area why would he or she not have the right to go-----

Deputy Peter Burke: Surely the process would add value to whether it can or cannot. The process is being undertaken by an independent authority. When one is in possession of all of the facts, as MARA would be, there is a more open book with regard to what challenges may or may not need to be taken. It stands to reason.

Deputy Richard Boyd Barrett: I am not sure it does. The Minister of State has answered my question from his point of view.

Deputy Cian O'Callaghan: I am not clear on this. Without this provision in the legislation MARA could go to a court and seek a stay in proceedings. That would be a matter for the court to decide. It is not necessary to have this provision in the legislation.

Deputy Peter Burke: It would still be a matter for the courts.

Deputy Cian O'Callaghan: Yes. Regardless of whether this provision is in the legislation that is a matter for the courts to decide. If these amendments are not accepted, this legislation gives weight to the idea that a judicial review should not be taken until MARA is satisfied that all of its processes are concluded. In that sense, I remain concerned. It is still for the courts to decide, but it could be interpreted as somewhat infringing on the process or the independence of the courts to have to decide on that. This legislation is the Oireachtas giving a signal in that direction. I am concerned about that.

Let us take an area that is particularly sensitive in terms of the marine environment and biodiversity. It could be legitimate for somebody to want to take a case while there is a process ongoing around that. If that process has been initiated by a developer it could raise a whole range of issues about a marine sensitive area. Why would that not be appropriate? Obviously, the courts could decide it would be appropriate. Why are we seeking to somewhat curtail that through this part of the legislation or, at least, signal against that happening?

Deputy Richard Boyd Barrett: On amendment No. 186, where the body that might be considering applying for a judicial review is a public body or an NGO that has expertise or

responsibility in terms of the protection of the environment or of the marine, why should it not have the right to seek a judicial review about a particular maritime area consent application?

Deputy Peter Burke: To be clear, NGOs do have that right. The courts will make the determination. This provision facilitates the courts to give an option to allow MARA continue and complete its process. I have outlined that very clearly.

Amendment put and declared lost.

Deputy Cian O'Callaghan: I move amendment No. 185:

In page 89, line 11, to delete "eight weeks" and substitute "twelve weeks".

Amendment put and declared lost.

Question, "That section 103 stand part of the Bill", put and declared carried.

SECTION 104

Deputy Cian O'Callaghan: I move amendment No. 186:

In page 91, between lines 9 and 10, to insert the following:

"(13) For the avoidance of doubt where the applicant for judicial review under this section is—

(a) a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, and

(b) has, during the period of 2 months preceding the date of the application, pursued those aims or objectives, it shall have *locus standi* to pursue the judicial review and be deemed to have sufficient interest.".

Amendment put and declared lost.

Amendment No. 187 not moved.

Section 104 agreed to.

SECTION 105

Deputy Peter Burke: I move amendment No. 188:

In page 91, to delete lines 21 to 28.

Section 105 sought to exclude in statute MAC regulations from SEA and AA requirements relating to screening and assessments. On reflection, this section would not have been in keeping with the obligations of those directives and we are, therefore, deleting it.

Given the subject matter of the regulations, they are unlikely in themselves to have identifiable environmental effects but we cannot say that with 100% certainty for the purposes of the legislation. Screenings will be undertaken at a minimum and full assessments if required.

Amendment agreed to.

Section 105, as amended, agreed to.

Sections 106 and 107 agreed to.

NEW SECTIONS

Chairman: Amendments Nos. 189 to 193, inclusive, and 282 to 284, inclusive, are related and will be discussed together.

Deputy Peter Burke: I move amendment No. 189:

In page 92, between lines 9 and 10, to insert the following:

"Application

108. (1) A licence shall not be granted for a Schedule 7 usage that requires an environmental impact statement.

(2) Neither a prohibitory order made under section 6 of the Act of 1933 nor a prohibitory notice made under section 7 of that Act (whether made before or after the coming into operation of this section) shall operate to prevent a licence being granted for a Schedule 7 usage which falls within paragraph 12 of Schedule 7 and is to be undertaken in a part of the maritime area the subject of such order or notice."

Amendment No. 189 is a technical amendment required to enable a licence to be granted for a part of the maritime area that is the subject of a prohibitory order under section 6 or a prohibitory notice under section 7 of the Foreshore Act 1933. A prohibitory order prohibits the removal or disturbance of beach material from or in an area of seashore, other than in accordance with a licence granted under the Foreshore Act 1933. A prohibitory notice is similar to a prohibitory order except that it only applies to a named individual and is only served on a person where a prohibitory order is not in force. The provision to grant a licence where a prohibitory order or a prohibitory notice is in place already exists in foreshore legislation and this amendment will ensure that similar provision can be made under the new MAP regime.

I wish to be clear that this change does not result in a reduction in the protections for areas covered by existing prohibitory orders. Licences may already be granted under the Foreshore Act for the removal of beach material on the foreshore in these locations and the prohibitory orders simply provide protection for non-licensed activities. They create an offence where none existed prior to their introduction.

It simply maintains the existing provisions for the granting of licences in these areas and allows these licences to be granted under this section of the Bill rather than just the Foreshore Act, which will ultimately be repealed. Overall, prohibitory orders will no longer be required in the maritime area because, as a default, a licence is required for all the things set out in Schedule 7 and this includes the removal of beach material. Currently, this is only restricted in areas subject to a prohibitory order or notice. In essence, where it is currently only an offence to remove or disturb beach material in an area covered by a prohibitory order, it will now be an offence to do this in the entire maritime area.

The licensing regime has built in the relevant environmental screening and protection measures. It also includes policy protection in the form of the national marine planning framework which, as we have discussed, will ultimately comprise all MSPs and DMAPs. This amendment

is purely technical to address a direct reference to the licences granted under the Foreshore Act in the sections relating to these orders.

Deputy Cian O'Callaghan: What safeguards are in place for the surrender of licences? Has that been considered? Do we have sufficient safeguards for when licences need to be surrendered?

Deputy Peter Burke: Licensing is not relevant to this amendment. That is in section 121. We are coming to it.

Deputy Richard Boyd Barrett: I would like to get the Minister of State's view on the question of proximity to the coastline for the of granting licences for activities in the marine and the protection of heritage before licences are granted. We have suggested that we should not be granting licences for certain types of industrial development, particularly industrial offshore wind but also other major industrial-style development, within what used to be called the foreshore area.

Across much of Europe, these things are only allowed considerably farther out. A paper by the German Federal Ministry for Economic Affairs and Energy pointed out that the general distance in Germany is 53 km from shore. In Belgium, I believe the distance is approximately 37 km. There have been moves in France recently to ensure that the distance for a major offshore wind development is farther out. As far as I understand, Wales has regulations relating to distance and height, with the height of something determining how close it can be to the shore. The average distances are generally considerably farther out than some of the relevant projects which in some cases are as close as 6 km from shore. That is the thought behind amendment No. 190.

Amendment No. 191 seeks to ensure that heritage is not negatively impacted by licences of that sort.

Deputy Peter Burke: Amendment No. 190 seeks to prohibit the granting of any licence for any of the activities set out in Schedule 7 within 22 km of the coastline. The Deputies may not fully understand the purposes of the licensing provisions in the Bill. The purpose of the licensing provisions is to provide a regulatory regime for maritime usages that are of relatively low-scale or of a temporary duration. The creation of this regime would mean that the planning system is not overburdened by the authorisation of the activities set out in Schedule 7. The Deputies are apparently proposing that no dredging can take place to keep ports clear, and that scientific research be prohibited. The amendment would see local seaweed harvesting banned on the coastline, the placement of navigation markers prohibited or boat moorings being inaccessible to most recreational boaters, something, I am sure, Deputy Boyd Barrett would not be happy with.

The amendment would make Part 5 mostly redundant, as most maritime usages to be licensed under this Part will be within 22 km of the coastline. Perhaps the Deputies are attempting to ensure that no marine surveys can take place within 22 km to support specific planning applications, but there is a very significant consequence to the amendment proposed on all other maritime users, including local coastal communities, harbour and transport infrastructure and, indeed, the scientific research community.

When granting a maritime usage licence, the MARA is bound to consider all the things set out in the relevant provisions of the Bill, including the national planning framework and any ap-

propriate assessment findings. Licensing will take place in a well-managed and holistic system which, as previously discussed, balances the needs of all maritime users and the environment. I am sure that the Deputies will appreciate why I must oppose the amendment.

Amendment No. 191 provides that a licence cannot be granted without a heritage survey. While I find this proposition somewhat vague, as I think I understand the intention, let me clarify a number of points in respect of the granting of licences. Under section 116(3), MARA cannot grant a licence unless the licence is consistent with the national marine planning framework, NMPF. Part 7.3 of the framework, on heritage assets, requires that proposals consider the potential impact of their application on heritage sites from the earliest stages of project development, and states that expert advice will be required at all stages. Moreover, MARA can specify what information must accompany a licence application before a decision to license a maritime usage can be made. Section 113(3) pertains in this regard. This could include a particular assessment or report relating to heritage if and when such a survey is warranted, having regard to both the characteristics of the local receiving environment and the nature and scale of the usage proposed. MARA can simply determine that all licence applications in any area will require some form of support in respect of the assessment of heritage impacts. Therefore, this amendment is not required and has a greater impact than is warranted regarding what it is trying to achieve. It requires a "heritage survey" to be carried out for all licence applications, with no measure of professional judgment allowed to be applied or no proportionality regarding what is being proposed. For example, do all applications for temporary moorings in all areas require such a survey? Alternatively, is it only in areas where there is likely to be an impact on natural or cultural heritage?

It should be noted that the spatial data tool, as previously referred to, will be used to record the location of heritage sites and will be informed by existing and ongoing surveys. This is the tool that MARA and the public can use to establish whether there is potential for any heritage impacts of any proposal.

On a technical point, "heritage survey" has not been adequately defined here, and, as such, this provision would be extremely difficult to enforce. What would this survey entail? What are the qualifications of those who are to carry it out? What heritage assets should it examine, and in what areas? Are the areas to be cultural, historical, social or ecological? What is the extent of the survey area required for any particular licence application? Moreover, the amendment simply requires that the survey be carried out. It is silent on what should occur in the event of any significant impacts being identified. In any event, it would simply not be appropriate for all types of licensable maritime usages to require any such report in support of an application in all areas – that is why we normally prescribe these things in regulation or in policy. On the basis of my response, I hope the members understand why I have to oppose both amendments.

Deputy Richard Boyd Barrett: Unusually, I find myself agreeing with the Minister of State on this amendment. With regard to the central argument and thought behind it, I do not in any way concede, but the amendment, as currently drafted, is casting its net a bit too wide, to use a maritime metaphor. As long we do not keep using the same metaphors over and over again, it is all right. The amendment would prohibit practices that are entirely legitimate and uncontroversial within the foreshore area. With regard to minor activities being licensed, there is not a problem. I would be genuinely interested in hearing the Minister of State's thinking on this matter but we reserve the right to, and very likely will, table amendments seeking to have a requirement on the minimum distance from the shore of large-scale, industrial-style developments. I am simply pointing out, in defence of this position, that the average distance from the

shore of these kinds of developments in Europe is forever increasing. We are contemplating a process to grant consents for developments that are much closer to the shore than is generally allowed elsewhere in Europe. The Minister of State should say why we should do that. There are reasons for what I describe. People are trying to get a win–win because we need to develop offshore wind capacity but we can do that while at the same time protecting coastal amenities and the sensitive marine ecosystems and biology that often exist in what used to be called the foreshore area.

Chairman: Is there anything more that the Minister of State wishes to add?

Deputy Peter Burke: I do not have anything to add. I await the Deputy's amendments on Report Stage.

Chairman: We have discussed amendments Nos. 189 to 193, in the name of the Minister of State and the other Deputies. We now need to discuss amendments Nos. 282, 283 and 284, in the name of the Minister of State, as they are related. They pertain to Schedule 7.

Deputy Peter Burke: Amendment No. 282 is required to make it a licensable activity to disturb or remove seaweed deposited or washed up on the beach below the high-water mark by the action of tides, waves or wind. In the initiated text, paragraph 12 of Schedule 7 relied on the definition of "beach material" as set out in the Foreshore Act 1933, as amended. This definition includes a reference to seaweed. There is, therefore, an overlap between paragraphs 10 and 12, as drafted, and the potential double licensing requirement. In order to more appropriately regulate and manage this activity in and around the coastline, I am proposing to separate seaweed from beach material in order that existing rights to harvest can be specifically addressed by regulation, and in order that a specific policy framework can be developed over time that will specifically apply to licences under this category of maritime usage. As can be seen, it provides a more comprehensive description of the activity than previously set out. This amendment, combined with the revision in paragraph 12, will provide for an appropriate delineation between these categories of maritime usage.

Amendment No. 283 is a technical amendment to address a number of deficiencies in paragraph 12, as set out in the initiated text. The initiated text relies on the definition that is set out in the Foreshore Act 1933, which, in itself, is less than satisfactory because, over time, the relevant section may be repealed. This definition repeats most of the text of the existing definition but also includes additional substances, such as maerl, which can be inert when calcified, not adequately covered by the term "coral". This is an important substance that can be taken without resource at present and should now be properly regulated.

The new wording removes reference to "seaweed" from the Foreshore Act definition as it is already provided for in Schedule 7 and there was a potential conflict or double licensing requirement arising. This amendment and amendment No. 282 are simple clarifications of existing categories of maritime usages.

Amendment No. 284 is required to create a new licensable activity category that addresses Ireland's international obligations in respect of certain cables. It inserts a new paragraph into Schedule 7 and makes it a licensable activity to lay or install telecommunications cables or ducting by or between coastal states where such cables or ducting pass through the exclusive economic zone or the continental shelf but do not land in the State. Such cables and ducting will have already been screened or assessed for environmental impacts in the current country of origin. Where this has occurred, there will be further secondary legislation providing for

the appropriate exemptions from the requirement to obtain a licence in those specific circumstances. Where this has not occurred, no exemption will be available. These exemptions will only be applicable where specific notification procedures have taken place. My officials will be working with the relevant Department and the Office of the Attorney General to formulate suitable wording to accommodate same in regulations. This is a technical provision that arises from existing international agreements and is necessary to ensure compliance with same, as advised by the Office of the Attorney General. As this is explicit advice from the Office of the Attorney General, I must encourage Deputies to support the amendment.

Amendment agreed to.

Section 108 deleted.

Amendments Nos. 190 and 191 not moved.

Sections 109 and 110 agreed to.

SECTION 111

Question proposed: "That section 111 stand part of the Bill."

Deputy Richard Boyd Barrett: The section relates to usage exempted from the requirement for a licence. Unlike the maritime area consents, this relates to real activity and the freeing of an application from the requirement for a licence if the Minister decides that its impact is minimal. That is essentially what we are talking about. To use the language of the section, this relates to usages that "would not offend against the objectives listed in Article 5 of the MSP Directive" or are trivial. I am concerned about that. It is back to the issue of what is trivial and how the issue of whether these activities significantly impact on the environment is assessed. Is it the case that the Minister will simply set that out? The Minister will decide.

Deputy Peter Burke: The Minister will set it out. As the Deputy will see in the section, which is on page 93 of the Bill, it is subject to the directives for screening, assessment, etc.

Deputy Richard Boyd Barrett: The decision in respect of what is licensable is subject to all of the directives.

Deputy Peter Burke: Yes.

Question put and agreed to.

NEW SECTION

Deputy Peter Burke: I move amendment No. 192:

In page 93, after line 39, to insert the following:

"Application for declaration as to whether or not licence is required, etc.

112. (1) A person may make an application in the specified form, accompanied by the prescribed fee, to the MARA for a declaration in writing by the MARA as to whether or not the maritime usage the subject of the application is a *Schedule 7* usage and, if so, whether or not the undertaking of the *Schedule 7* usage requires a licence.

(2) Where an application under *subsection (1)* is made to the MARA, it may, by

notice in writing given to the applicant, require the applicant to provide, whether in the specified form, by affidavit or otherwise, such additional information in relation to any matters to which the application relates as the MARA reasonably considers necessary to make the declaration sought by the application.

(3) The MARA shall, to the extent that it is practicable to do so, make the declaration sought by an application under *subsection (1)*, and give a copy of the declaration to the applicant, not later than 30 days after the day on which the MARA is satisfied that the applicant has complied with all of the requirements of or under this section.".

Amendment agreed to.

SECTION 112

Deputy Peter Burke: I move amendment No. 193:

In page 94, to delete lines 34 and 35 and substitute the following:

"(a) applications under *section 112*,

(b) licence applications, or

(c) applications under *section 121*.".

Amendment agreed to.

Section 112, as amended, agreed to.

SECTION 113

Chairman: Amendments Nos. 194 to 207, inclusive, are related and may be discussed together.

Deputy Peter Burke: I move amendment No. 194:

In page 94, line 37, to delete "A person" and substitute "Subject to regulations made under *section 114*, a person".

This amendment makes section 113, relating to applications for grant of licence, subject to regulations the Minister can make in respect of the nature and extent of consultation that applicants need to carry out under a new section 114 proposed in amendment No. 197.

Amendment No. 195 is a technical drafting amendment to replace "or by affidavit" with "by affidavit or otherwise"". The effect of this amendment is that the applicant can provide MARA with additional information by affidavit or otherwise, thus widening the type of information MARA can seek to support an application and potentially reducing the burden on some applicants. For example, in some cases applicants may not have to go through the process of securing an affidavit where it would be disproportionate to the nature of the information MARA is seeking.

The purpose of amendment No. 196 is to only require MARA to carry out a screening for environmental impact assessment where it considers it necessary to so do after having regard to Schedules 5 and 7 to the Planning and Development Regulations 2001. The current drafting requires a screening in every instance and provides no objective criteria upon which such a

determination will be made. This amendment brings a level of consistency with the planning Acts and clarity in respect of the decision-making in respect of those matters and provides more certainty. Given that it is under the planning Acts that proposals that require an EIA will ultimately be assessed, it makes sense to use the same criteria to assess whether a proposed usage is eligible to apply for a licence or not. This does not dilute the existing provision as set out in the initiated text but, rather, points to specific criteria by which the screening decision will be made and, indeed, if one is necessary. EIA screening will not be required for activities not listed in the relevant annexes of the EIA directive and MARA needs the flexibility to reduce its administrative burden in this respect, but all while having very objective criteria within which it can be done. I note that planning authorities and the board already use these criteria to determine if EIA screenings are required.

To be clear, if MARA does not screen a relevant activity and it should have done so, the decision will be deficient and challengeable. If MARA screens out an activity for EIA that should have been screened in, having regard to the provisions of the planning regulations, then the decision to accept the application in the first place can be said to be *ultra vires* and could be challenged. This amendment sets the parameters for these things, bringing more certainty to the process for MARA, applicants and the general public. I am sure the Deputies will agree the rationale for this approach is sound. Amendment No. 198 is a technical drafting amendment to insert "to do so" after "practicable" and improve the syntax. The intention and effect is the same.

Amendment No. 204 requires MARA, when given notification of the refusal of a licence, to publish on its website a copy of the notice provided for under section 114(3), giving reasons for its decision. It explicitly addresses a perceived lacuna in the initiated Bill relating to the publishing of licences that were refused and ensures consistency across all types of decisions MARA can make.

Amendment No. 205 is a technical drafting amendment to insert the number of the subsection referred to, missing from the Bill as initiated, and refers to the preceding subsection (5).

Amendment No. 207 is a technical drafting amendment, to replace "or by affidavit" with "by affidavit or otherwise". The effect of this amendment is that the applicant can provide MARA with additional information by affidavit or something else in respect of an application to surrender a licence. It widens the scope of what can be submitted in order to surrender a licence and aligns it with other drafting in this Part.

Chairman: Will the Minister of State refer to amendments Nos. 200, 201 and 202? They are in his name and inclusive in this.

Deputy Peter Burke: Amendment No. 200, which has in effect also been proposed by other Deputies, allows for a condition to be attached to the licence to state that such part of the maritime area is for the exclusive use of the stated licensed usage. This will enable provision to be made for the avoidance of conflict between licensable usages in the maritime area. It is important to note that this power is discretionary and does not confer exclusive rights automatically. It is entirely up to MARA to apply this provision in specific circumstances, for example, where an applicant requires the sole use of a part of the maritime area temporarily for reasons of public safety. As stated previously, this has the same effect as Deputy Matthews's amendment and it would be my preference to use the wording that has been through the relevant experts.

Amendment No. 201 requires MARA to have regard to the national marine planning frame-

work before it decides to grant a licence. This amendment is related to the proposed deletion of lines 4 to 5 on page 100 in amendment No. 202. The current provision is difficult to administer and the proposed wording provides MARA with the required professional latitude in its decision-making. The wording is directly comparable to that used in the Planning and Development Act in respect of local authorities' obligations to have regard to their development plans when making decisions on planning applications. For instance, this provision allows MARA to apply the heritage requirements set out in section 7 of the national marine planning framework to specific applications in specific areas, as discussed earlier, but would give it the latitude not to apply these requirements where they were not required, for example, for minor licence applications where there were no heritage assets that could be impacted.

This is a standard form of wording to allow MARA to be proportional when applying the provisions of the national marine planning framework. It is not designed to reduce the requirement for large-scale operators not to comply with that framework and, where there is an explicit obligation in the framework relating to a particular licensable usage, MARA could not simply ignore it.

Amendment No. 202 is related and it removes the requirement for MARA to not grant a licence unless the licence is consistent with the national marine planning framework. This wording is inconsistent with other similar provisions in the Planning and Development Act and does not provide MARA with the requisite professional latitude to interpret the policy provisions of the framework as they relate to licensable activities. Not all of the provisions of the framework will apply to all of the usages set out in Schedule 7 in a consistent manner. Amendment No. 201 inserts a more appropriate wording that requires MARA to have regard to the framework before it decides to grant a licence.

Chairman: On the basis of amendment No. 200, I am happy to withdraw amendments Nos. 199 and 203. I understand the Minister of State has to leave shortly. Is that correct?

Deputy Peter Burke: No, I do not think so.

Chairman: I got a message. Okay, that is fine. We are happy to go until 6 p.m.

Deputy Peter Burke: Unless there is something I am not clear on. I am okay for another few minutes anyway.

Deputy Richard Boyd Barrett: MARA can decide if something is sufficiently significant to require an environmental impact assessment, EIA. If it decides that it does not or - if I have the jargon right - it screens something out which should have been in, that is challengeable. How? It is through the courts only through judicial review. There is no method for stakeholders, NGOs or members of the public to challenge a decision as to whether an EIA should have been required for the licensing of a particular activity other than recourse to a judicial review, which is an expensive, difficult and onerous process. With the exception of the rather discredited strategic housing developments, that is different from how we do things on land, where there is an initial process and a right to appeal. The only avenue once the MARA makes the decision that, for example, an environmental impact assessment is not necessary for somebody wishing to challenge that is to apply for a judicial review. That seems-----

Deputy Richard O'Donoghue: Clear.

Deputy Richard Boyd Barrett: Yes, and a bit problematic for many people.

Deputy Peter Burke: If a licensable activity requires an EIA, it is straightforward. It is planning. It is no longer a licensable activity and goes to planning.

Deputy Richard Boyd Barrett: No licensable activity would ever be subject to an EIA. Is that what the Minister of State is saying?

Deputy Peter Burke: That is correct. If it requires an EIA, it goes to planning.

Deputy Richard Boyd Barrett: So no activity can take place until it goes through the planning process.

Deputy Peter Burke: Absolutely. It is screen-in.

Deputy Richard Boyd Barrett: Okay.

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 195:

In page 95, line 6, to delete "or by affidavit" and substitute "by affidavit or otherwise".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 196:

In page 95, line 18, after "application" to insert the following:

Amendment agreed to.

Section 113, as amended, agreed to.

NEW SECTION

Deputy Peter Burke: I move amendment No. 197:

In page 96, between lines 32 and 33, to insert the following:

"Provisions supplementary to section 113

114. (1) Without prejudice to the generality of *sections 70* and *113(2)*, *(3)* and

(6) and subject to *subsections (2)* and *(3)*, the Minister may by regulations specify the nature and extent of the consultation that the applicants which fall within different classes of licence applications specified in the regulations need to carry out before making such applications.

(2) In making regulations under *subsection (1)*, the Minister shall, in addition to having regard to the other provisions of this Act, also have regard to the principle that the nature and extent of the consultation referred to in *subsection (1)* needs to be proportionate to the nature and extent of the Schedule 7 usage the subject of the licence application concerned.

(3) On and after the establishment day, the Minister shall not make regulations under *subsection (1)* except after consultation with the MARA.".

Amendment agreed to.

SECTION 114

Deputy Peter Burke: I move amendment No. 198:

In page 97, line 1, after "practicable" to insert "to do so".

Amendment agreed to.

Section 114, as amended, agreed to.

SECTION 115

Amendment No. 199 not moved.

Deputy Peter Burke: I move amendment No. 200:

In page 99, line 9, after "licence" to insert "except where the licence expressly states that such part is for the exclusive use of such usage".

Amendment agreed to.

Section 115, as amended, agreed to.

SECTION 116

Deputy Peter Burke: I move amendment No. 201:

In page 99, between lines 21 and 22, to insert the following:

"(a) the National Marine Planning Framework,".

Amendment agreed to.

Deputy Peter Burke: I move amendment No. 202:

In page 100, to delete lines 4 and 5.

Amendment agreed to.

Amendment No. 203 not moved.

Section 116, as amended, agreed to.

SECTION 117

Deputy Peter Burke: I move amendment No. 204:

In page 100, after line 38 to insert the following:

"(6) The MARA shall, as soon as is practicable after it refuses to grant a licence, publish on its website a copy of the notice concerned referred to in section 114(3).".

Amendment agreed to.

Section 117, as amended, agreed to.

SECTION 118

Deputy Peter Burke: I move amendment No. 205:

In page 102, line 6, to delete "*subsection*." and substitute "*subsection (5)*.".

Amendment agreed to.

Section 118, as amended, agreed to.

SECTION 119

Deputy Steven Matthews: I move amendment No. 206:

In page 102, to delete lines 21 to 25 and substitute the following:

"(2) The proposed assignor and the proposed assignee shall make a joint application to the MARA for the MARA's consent in writing to the assignment subject to such terms and conditions as may be prescribed in regulations.".

This relates to receivership. We could be looking at large investments in offshore renewables or data and power cable laying. In the event of the MAC holder going into receivership, what covers this in legislation? Does the MAC wither and die at that stage or is there provision whereby whatever arrangements may be made where a company goes into receivership that the project would not die but somebody else could come in and take over, provided that party is suitable and meets all the other requirements?

Deputy Peter Burke: The answer is "Yes" in that it is ended in the event of a receivership. It is covered by section 139.

Deputy Steven Matthews: If a project goes into receivership, the MAC expires. What is the process then? Somebody would have to apply for a new MAC.

Deputy Peter Burke: It is a new application.

Deputy Steven Matthews: If the development is a data cable or something like it and a company has already invested in it, the project would go into abeyance until the MAC is secured.

Deputy Peter Burke: As far as I understand it, that is the case.

Deputy Steven Matthews: Okay. That could have implications when we are trying to develop the amount of offshore renewable energy we need. In other jurisdictions it is possible to transfer it.

Deputy Peter Burke: That is the transfer of the MAC.

Deputy Steven Matthews: If a project goes into receivership, the receiver can keep it alive.

Deputy Peter Burke: I am told this puts the State in the strongest possible position under those circumstances.

Deputy Steven Matthews: That is when the MAC is ended and we would reconsider an entirely new MAC application again.

Deputy Peter Burke: Yes.

Deputy Steven Matthews: That is clear.

Amendment, by leave, withdrawn.

Section 119 agreed to.

Section 120 agreed to.

SECTION 121

Deputy Peter Burke: I move amendment No. 207:

In page 103, line 29, to delete "or by affidavit" and substitute "by affidavit or otherwise".

Amendment agreed to.

Section 121, as amended, agreed to.

Sections 122 and 123 agreed to.

SECTION 124

Question proposed: "That section 124 stand part of the Bill."

Deputy Richard Boyd Barrett: Could we get some explanation of this section's purpose?

Deputy Peter Burke: It is to manage historical unauthorised development and occupation.

Deputy Richard Boyd Barrett: It relates to unauthorised development. What would it do with historical unauthorised development?

Deputy Peter Burke: It is a transitional arrangement and if there are any changes in foreshore consent, a MAC application would be required. It would convert the foreshore consents to MACs over time.

Deputy Richard Boyd Barrett: It relates to foreshore consents.

Deputy Peter Burke: Yes. These are leases or licences.

Deputy Richard Boyd Barrett: The leases or licences will be turned into MACs.

Deputy Peter Burke: It is a transitional arrangement.

Deputy Richard Boyd Barrett: This section deals with licences rather than MACs.

Deputy Peter Burke: It relates to existing foreshore provisions. They have been granted already.

Deputy Richard Boyd Barrett: What are the types? Are they small provisions?

Deputy Peter Burke: It is a general portfolio. It takes in everything currently accounted for under the Foreshore Act. This is a transitional arrangement to bring them towards a MAC.

Deputy Richard Boyd Barrett: Surveys might be done now by offshore wind companies. Does this section relate to those?

Deputy Peter Burke: No.

Deputy Richard Boyd Barrett: There is mention of long-term occupation of parts of the marine. Is it just a rubber-stamping process for the arrangements in question?

Deputy Peter Burke: No.

Deputy Richard Boyd Barrett: There is a process.

Deputy Peter Burke: There is an application process.

Deputy Richard Boyd Barrett: Okay. That is for every activity or development. They would have to go through some sort of process to check they are legitimate.

Deputy Peter Burke: Yes.

Deputy Richard Boyd Barrett: Okay.

Question put and agreed to.

Section 125 agreed to.

SECTION 126

Question, "That section 126 be agreed to", put and declared carried.

SECTION 127

Question, "That section 127 be agreed to", put and declared carried.

SECTION 128

Question, "That section 128 be agreed to", put and declared carried.

Sections 129 to 132, inclusive, agreed to.

SECTION 133

Deputy Peter Burke: I move amendment No. 209:

In page 117, line 18, after "Act" to insert "or Part VIII of the Act of 2000".

Amendment agreed to.

Section 133, as amended, agreed to.

Sections 134 to 138 agreed to.

Chairman: We can end today's session at that point as there is a group of amendments in the next section. I thank the Minister of State and his officials for their attendance and assistance today.

Progress reported; Committee to sit again.

The select committee adjourned at 6 p.m. until 5.30 p.m. on Wednesday, 10 November, 2021.