

The Department of Infrastructure's response to the representations received on the Primary Marine Legislation Scoping 2015

Consultation Period – 13th March – 24th April 2015

Response Table – Collated by Respondent

Strategy, Policy and Performance Division
Department of Infrastructure



Respondents to the consultation on the new Primary Marine Legislation Scoping 2015

A total of 22 responses were received in response to the consultation, two of which were received after the close of the consultation. The names of the respondents are set out in the table below and each has been allocated a respondent number. The comprehensive table which follows, groups comments by respondent and the Department's response to each comment appears alongside.

Respondent No.	Respondent	Respondent No.	Respondent
1	Dr John Gleadow / Mr Steven Essel Rongxin Power Engineering UK	12	Robert Garden On behalf of National Grid
2	Mr Bill Henderson MLC MLC, Tynwald	13	Dr Lara Howe Manx Wildlife Trust
3	Mr John Pennington Travel Watch Isle of Man	14	Pete Christian Isle of Man Friends of the Earth
4	Paul Morris Tocado	15	Andy Johnson Manx National Heritage
5	Jackie Hall Manx Basking Shark Watch	16	Bernard Warden Department of Environment, Food & Agriculture
6	Paul Cowin Douglas Borough Council Executive Committee	17	Iain Quine
7	Ian Maule Patrick Parish Commissioners	18	Dr David Beard Manx Fish Producers Organisation
8	Ian Maule Marown Parish Commissioners	19	Neil Caine Manx Utilities Authority
9	Dr Ken Milne Department of Economic Development	20	Stephen Smyth Island Aggregates Limited
10	Karl Cubbons Department of Home Affairs	21	Mrs M. I. Kerruish
11	Jennifer Brack DONG Energy Wind Power A/S	22*	Michelle Haywood Discover Diving
<p><i>* These responses were received after the deadline of 4pm Friday 24th April 2015. The responses have been logged into the consultation response but they will be flagged up as being late</i></p>			

Local Authority Comments

6	Douglas Borough Council Executive Committee	General		Supports proposed introduction of comprehensive and consolidated legislation to govern development within the Isle of Man territorial seas; Remind the Department that the foreshore at Douglas was owned to the low-water mark by Douglas Borough Council.	The Department acknowledges ownership of the foreshore at Douglas, and will endeavour to ensure any potential applicants proposing developments which cross the foreshore are also made aware of this.
7	Patrick Parish Commissioners	General		Considered consultation, no comment to make.	Department acknowledges that the consultation was considered.
8	Marown Parish Commissioners	General		Considered consultation, no comment to make.	Department acknowledges that the consultation was considered.

Government Departments

	10	Department of Home Affairs	General	No comment to make with regard to this consultation.	Department acknowledges that the consultation was considered.
	16	Department of Environment, Food and Agriculture	General	<p>10.2 – “ability to collect appropriate fees associated with the consenting process” – will this include fees for DEFA for assistance with EIA work?</p> <p>10.2 “the ability to consider approvals issued under what is the current system for consenting within the Marine environment (for example consents granted under the Harbours Act 2010, the Submarine Cables Act 2003 etc), if any of these fall under what would be the powers for the new primary legislation (i.e. large scale marine developments and associated works);”</p> <p>What does this mean?</p>	<p>The Department is proposing that there will be provision within the new primary legislation which will enable the collection of fees (to be legislated for through appropriate secondary legislation). The Department is proposing that it will seek to recover costs associated with the assessment of an application, but will not seek to return a profit. The Department will need to further consider the costs of assessing an application and EIA.</p> <p>The Department is proposing that there will be appropriate powers within the new primary legislation which will allow for variation of / amendments to consents already approved under the extant legislation to be considered under the powers of the new legislation since the provisions of the extant legislation will no longer apply to those identified activities (to which the new legislation will apply). If these powers do not exist, it may place an additional burden on an applicant who has a permission in place, but who may need to amend part of this approval. If the new legislation has no powers to</p>

				<p>14.1 – independent inspector – would be useful to know more about the expected experience and expertise of the inspector. DEFA suggested an expert panel for this and would have concerns if the inspector did not have marine expertise and experience.</p> <p>14.2 – very vague on role of TSC and therefore on input of DEFA – need more reassurance that the environmental aspects will be adequately considered.</p>	<p>consider applications to amend previous approvals, an applicant would be required to submit a full application and appropriate EIA for consideration under this new primary legislation which would place an additional, unnecessary burden on them.</p> <p>The Department considered the suggestion from DEFA in relation to a panel of experts, and there were reasons for determining that the appointment of an Independent Examiner or panel of Examiners was the favoured option. It is the intention of the Department that an Independent Examiner or panel of Examiners will be appointed in a similar way to the appointment of the Inspectors who consider applications under the terrestrial system. However, the appointment of the Examiners will be a matter for the Council of Ministers to determine as, the Council of Ministers will be making the appointments.</p> <p>The Department has set out within the Consultation Document that there will be a role for the Territorial Seas Committee ("TSC"), but this will be a procedural exercise to determine the level of involvement. The Department is proposing that DEFA along with other colleagues across Government will be involved in the Scoping exercise prior to the issue of a Scoping Opinion for an Environmental Impact Assessment ("EIA") and that DEFA has been identified as a Statutory Consultee within the Bill. By granting DEFA statutory consultee that DEFA will be fully engaged in the assessment of the application. However, given that the Department will not be undertaking the</p>
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					<p>assessment of the application, there will be a responsibility on DEFA to ensure it is fully aware of the opportunities within the process for it to become involved. DEFA, like DOI will be expected to submit its own representations on the proposal to the Independent Examiner(s), and will be required to undertake the relevant assessment of the EIA. DEFA will also be required to be present to defend its representations at the examination of the application if it makes representations on the application, particularly if there are areas of conflict which have arisen.</p> <p>The Independent Examiner(s) will be tasked with considering all representations received by all consultees on the application during the examination stage and they will return a report with their recommendation to the Council of Ministers who will make the final decision on the application. There are no other assurances the Department can give to DEFA as the Department will not be involved in the decision making process, thus making sure it is an open, transparent and independent assessment of the proposal.</p> <p>The Department has proposed that should an application which is located primarily on land have an element that falls below the mean high water mark, it will be assessed under the provisions of the Town and Country Planning Act 1999. It is likely that the Department will identify such circumstances, and such associated works it considers appropriate (this will be set out in accompanying secondary legislation). There are</p>
				<p>14.8 – when a primarily terrestrial development has a marine element, need reassurance that the EIA will adequately assess the marine element. Does this need to be addressed more specifically?</p>	

				<p>15. Particulars to be submitted with an application for consent</p> <p>"The Department has determined that an Environmental Impact Assessment ("EIA") should be submitted for applications for new developments under this new Act. The Department will undertake a scoping exercise which will inform applicants what must be included for consideration within an EIA to be submitted alongside an application for development. Any applications submitted without an EIA or if an EIA fails to comply with the scoping opinion issued by the Department, will not be considered any further, and the application will be considered as invalid. The Department will set out in the appropriate secondary legislation what could be required to be included as part of an EIA. It is the intention of the Department that the submission of an EIA must be proportionate to the proposal and must</p>	<p>provisions within the Isle of Man Strategic Plan 2007 which sets out when an EIA is to be submitted (as it applies to land). In addition, there is the provision within the Town and Country Planning (Development Procedure) (No.2) Order 2013 which allows for the Department to request information to be submitted along with the application. This would provide the ability to request that certain, relevant marine environmental information is to be submitted should it be determined it is required.</p> <p>It is the intention of the Department that a scoping opinion will be determined in collaboration with colleagues across Government who have responsibility for a wide variety of areas. This will include a number of different Government Departments working together to ensure all appropriate, relevant items for inclusion within an EIA have been identified at an early stage. There will be a role for DEFA in this, but it is not appropriate to legislate for this within the proposed primary legislation.</p> <p>Once an application has been received, it will be the responsibility of a number of Government Departments to undertake an appropriate assessment of an EIA. DOI and DED will be required to consider elements of an EIA which are relevant to them as well as DEFA. Once this assessment has been made, it will be for these Departments including DEFA to make appropriate representations to the Independent Examiner(s) who will consider their representations. Given that the Department is</p>
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				<p>be to an appropriately accepted standard.” No indication is given of DEFA’s role in assessing technical aspects. Implication is that DOI will be doing technical scoping/assessment. This is of great concern.</p> <p>16. Public participation – need reassurance that this process will not exclude participation of for example, individual fishermen who are adversely impacted by a development.</p>	<p>proposing the independent assessment an applications, the Department is not managing the assessment of the application and will not be seeking to receive and consider the consultation responses on this type of application. The Department will itself be required to consider the application and return an appropriate consultation response for consideration as part of the examination of the application. The Independent Examiner(s) will then consider DEFA’s response (amongst all other responses) particularly in relation to the EIA, and will return their report with a recommendation to the Council of Ministers who will then return the final decision on the application.</p> <p>The Department is proposing that Public Participation will commence at the pre-application stage. The Agreement for Lease (AFL) stage is limited in involvement to the Department and the applicant, as this forms part of a commercial agreement. There is no public involvement in this, nor is there any public consultation.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK’s Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK’s Planning Act 2008). An applicant will be required to</p>
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					<p>demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear in regulations regarding the publication of the application. A specified time period will be available for people to do this (likely to be 30 days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or a panel of Examiners will then consider all representations received throughout the course of the examination.</p>
			Q7	<p>Broadly yes, but as previously indicated DEFA would still prefer the legislation for seismic survey to be included in the Marine Bill for completeness and following precedent from other jurisdictions.</p> <p>DEFA would also like to see more detailed</p>	<p>The Bill contains powers to allow DEFA to prepare secondary legislation in respect of seismic surveys. The Department does not feel that it would be appropriate to require an application for seismic surveying to proceed through the proposed consenting process this new marine legislation will deliver.</p> <p>The Department has set out within the consultation document that appropriate</p>

				requirements/specification for EIA in the legislation. For example, clear reference to EU EIA Directive standards and the OSPAR Guidelines on EIA (attached).	secondary legislation will be brought forward to accompany this new primary legislation, and within the secondary, it will likely detail the process for EIA, the contents for EIA, the determination of the scope for EIA and any other requirements the Department deems ought to be set out. It is likely that consultation will be required on any forthcoming secondary legislation. It is essential to ensure appropriate enabling powers are contained within the primary legislation to facilitate the formulation of appropriate secondary legislation.
			Q8	Broadly yes, but as previously indicated DEFA would still prefer the legislation for seismic survey to be included in the Marine Bill for completeness and following precedent from other jurisdictions.	The Bill contains powers to allow DEFA to prepare secondary legislation in respect of seismic surveys. The Department does not feel that it would be appropriate to require an application for seismic surveying to proceed through the proposed consenting process this new marine legislation will deliver.
			Q9	We would like to see more clarity on the role of the Territorial Seas Committee and the process for giving full consideration to environmental and fisheries legislation and concerns. It is important that the Independent Examiner is qualified and experienced in considering marine planning issues.	The Department is proposing that there will still be a role for the Territorial Seas Committee as part of this new proposed consenting system within the new primary legislation. It is a matter of procedure to be worked out within Government as it is not appropriate to legislate for a non-statutory Body, such as the Territorial Seas Committee within the new primary legislation. It is the intention of the Department that the Independent Examiner(s) will be appointed in a similar way to the appointment of the Inspectors who consider applications under the terrestrial

					<p>We would also like to see more reference to the role of DEFA in advising on and assessing technical elements of applications. The explanation below indicates that DOI would lead on EIA scoping and assessment which is of concern as DOI does not have the necessary technical expertise and would need DEFA's input. "The Department has determined that an Environmental Impact Assessment ("EIA") should be submitted for applications for new developments under this new Act. The Department will undertake a scoping exercise which will inform applicants what must be included for consideration within an EIA to be submitted alongside an application for development. Any applications submitted without an EIA or if an EIA fails to comply with the scoping opinion issued by the Department, will not be considered any further, and the application will be considered as invalid. The Department will set out in the appropriate secondary legislation what could be required to</p>	<p>system. However, it is likely that when seeking to identify suitable Examiners, the Department will propose that they must have had experience with dealing with similar offshore applications in the UK. It will be the responsibility of the Independent Examiner(s) to take account of all relevant legislation which applies to the Island's territorial seas, not just the environmental and fisheries. It will also be the responsibility of anyone submitting a representation on the application during the examination period to ensure attention is drawn to any aspects they feel ought to be considered by an Examiner or panel of Examiners.</p> <p>The Department proposed as part of this consultation that it would seek support for the overarching principles to be identified within the new primary legislation. It is likely that the role of DEFA will be more of a procedural agreement or contained within secondary legislation as appropriate. The Department is proposing that when preparing the Scoping Opinion, it will work in collaboration with colleagues across Government. However, DEFA will be responsible to make its own representations in respect to assessing the technical elements of the application, which will then be considered by an Independent Examiner or panel of Examiners.</p>
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					be included as part of an EIA. It is the intention of the Department that the submission of an EIA must be proportionate to the proposal and must be to an appropriately accepted standard.”	
			Q10		Yes - with the proviso that the system needs the capacity and capability to set appropriate environmental and other conditions which need to be monitored and enforced.	<p>It is likely that when the Independent Examiner(s) prepare their report for consideration by CoMIN, they will suggest a number of conditions which should be attached to an approval (based on draft conditions proposed by the applicant in their draft Marine Infrastructure Consent).</p> <p>However, the Department is introducing Marine Infrastructure Consents as part of the consenting process. Conditions will be proposed by the applicant and a draft Marine Infrastructure Consent will be submitted alongside the application. These proposed draft conditions will be confirmed where appropriate by the Examiner(s) in their recommendation to CoMIN.</p> <p>It will be necessary during the examination of the application to consider the implication of any conditions proposed to be included in the Marine Infrastructure Consent.</p> <p>The Department is including within the new primary legislation a compliance type regime rather than an enforcement regime which would put the responsibility back to the applicant who would be required to demonstrate how they have complied with any conditions of a Marine Infrastructure Consent required of them.</p>

						<p>The Department is further proposing that there will be the appropriate powers contained within the new primary legislation which will enable the Department to seek to prosecute / fine if it has been determined that a consented application is found to be in breach of any conditions attached to its approval.</p>
			Q11		<p>Yes - with the proviso that the system needs the capacity and capability to set appropriate environmental and other conditions which need to be monitored and enforced.</p>	<p>It is likely that when the Independent Examiner(s) prepare their report for consideration by CoMIN, they will suggest a number of conditions which should be attached to an approval (based on draft conditions proposed by the applicant in their draft Marine Infrastructure Consent).</p> <p>However, the Department is also considering the option to introduce Marine Infrastructure Consent part of the consenting process. With the introduction of Marine Infrastructure Consents, conditions will be proposed by the applicant and a draft Marine Infrastructure Consent will be submitted alongside the application. These proposed draft conditions will be confirmed where appropriate by the Examiner(s) in their recommendation to CoMIN.</p> <p>It will be necessary during the examination of the application to consider the implication of any conditions proposed to be included in the Marine Infrastructure Consent.</p> <p>The Department is including within the new primary legislation a compliance type regime rather than an enforcement regime which would</p>

					<p>put the responsibility back to the applicant who would be required to demonstrate how they have complied with any conditions of a Marine Infrastructure Consent required of them.</p> <p>The Department is further proposing that there will be the appropriate powers contained within the new primary legislation which will enable the Department to seek to prosecute / fine if it has been determined that a consented application is found to be in breach of any conditions attached to its approval.</p>
			Q12	Yes - we welcome a requirement for an EIA.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q13	<p>Yes – but as this legislation is currently limited to large scale marine developments, we would expect most, if not all developments to require an extensive EIA. Guidelines from OSPAR are available to assist in scoping whether an EIA is required (attached)*.</p> <p>We would like to see some statutory requirement to meet an appropriate standard of EIA – e.g. the OSPAR EIA Guidelines/EU EIA Directive standards.</p>	<p>The Department is proposing that there will be a mandatory submission of an EIA for all applications for new development proposed under this new primary legislation. The Department has set out that it will follow the EU EIA Regulations and will wish to see EIAs submitted will be to an appropriately recognised standard.</p> <p>It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents which have previously been granted.</p> <p>However, depending on the nature of the application for variation submitted, Government will consider this, in collaboration with colleagues</p>

					<p>across different Departments and determine whether it is appropriate to request an EIA (which would then be proportionate to the scale of the amendments being sought). If it is determined that what is being proposed by way of an amendment merits the submission of environmental information, this will be requested, and will be required to be submitted along with an application prior to its consideration.</p> <p>By including a provision whereby all applications for variation to approvals already obtained are required to submit an EIA could prove to be inappropriate, unnecessary and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the examination of the application.</p>
			Q14	<p>Yes – DEFA supports the engagement of marine stakeholders in the process. Our experience in the marine environment indicates that good stakeholder participation and involvement at the earliest stage will reduce conflict and risk as the project develops, which is to everyone’s advantage.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>
			Q15	<p>From fisheries perspectives we would not wish to see genuine interested parties (for example fishermen who would be adversely affected) being excluded from consideration because they were not aware of the application. It is important that this process is clear and that interested</p>	<p>The Department is proposing that Public Participation will commence at the pre-application stage. The Agreement for Lease (AFL) stage is limited in involvement to the Department and the applicant, as this forms part of a commercial agreement. There is no public</p>

				<p>groups and individuals are made aware of potential implications to their commercial interests and given the opportunity to participate.</p> <p>The explanation of the process of registering as an interested party is a bit unclear: “Once an application has been received, the means by which the public can be involved will be following their registration as an “Interested Party” which will then facilitate them being involved in the remainder of the process should that be what they wish. Once the application is received, the Department will not accept comments from the general public unless they register as “Interested Parties” and this will be clear from publicised information alerting people to the application.”</p> <p>DEFA has a responsibility to represent the interests of vulnerable members of the fishing industry so reassurance/clarity on this would be useful.</p>	<p>involvement in this, nor is there any public consultation.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK’s Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK’s Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an “Interested Party” (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received</p>
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					<p>throughout the course of the examination.</p> <p>The application will be publicised when it has been accepted for examination, and the responsibility will lie with individual organisations to ensure they register their interest and return an appropriate representation for consideration within the time period allowed.</p> <p>The Department is proposing that DEFA will be identified within the legislation as a statutory consultee and will therefore not be required to register as an Interested Party, their involvement in the process will be automatic. DEFA will however, be required to make a representation on the application setting out clearly whether it supports or opposes an application and providing reasons / evidence for this position.</p> <p>Once an application has been accepted for consideration, DEFA will be in a position to ensure all relevant stakeholders it represents are aware of the application, and attention can be drawn to the process whereby they will register as "Interested Parties".</p>
			Q16	No response supplied.	
	9	Department of Economic Development	Q7	The Department of Economic Development is supportive of a streamlined marine consenting process that allows consideration of large scale marine developments and their associated works in a timely manner. The necessary investment for large scale marine developments is significant	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.

				<p>and investors require clarity and certainty on the process.</p> <p>The UK process for large scale marine developments allows for the examination of an application and decision to be reached within 12 months. The Department of Economic Development would suggest that the Isle of Man consenting process should be less than 12 months to give consideration to an application. The Department supports the ability to collect appropriate fees associated with the consenting process that are competitive with fees collected in neighbouring jurisdictions.</p>	<p>The Department acknowledges that the process for consideration of Nationally Significant Infrastructure Projects under the UK's Planning Act 2008 in the UK which sets out a clear timetable for examination of application. However, this is a well-established process which has been applied for a number of years, the process is well resourced and those involved in it are aware of the process. The UK's Planning Act 2008 does allow 12 months for a decision to be issued following the examination of an application however, there is provision within the Act to extend this deadline if and when required to do so.</p> <p>The Department has not consulted on timescales; The Department has had regard to the timetables included within the UK's Planning Act 2008 and has provided a timetable within the Bill.</p>
			Q8	Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q9	Agree - Surveys generate knowledge that assist in the appropriate design of large scale marine developments therefore, the Department of Economic Development would support all non-invasive surveys be exempted from the new Act.	The Department is proposing that survey work may be exempt from the provisions of the new legislation and may be covered by the extant legislation. This may require an applicant to consult with the relevant Departments to have

				<p>There should be a role for the Territorial Seas Committee to consider suitability of proposed surveys and ensure a balanced approach is taken to the consideration regarding the issuing of licences for survey activities.</p>	<p>their application assessed prior to consents being granted. If survey work is excluded, it will mean that there will be no requirement for an application for survey work to pass through the full process as proposed under this new legislation.</p> <p>The Bill contains powers to allow DEFA to prepare secondary legislation in respect of seismic surveys. The Department does not feel that it would be appropriate to require an application for seismic surveying to proceed through the proposed consenting process this new marine legislation will deliver.</p> <p>The Department is proposing that there will still be an advisory role for the Territorial Seas Committee included as part of the new consenting system but this role will not be legislated for. However, if survey work is to be exempted from this Act, the role the Territorial Seas Committee plays in relation to the consideration of applications for survey work under the extant legislation remains as it is, as set out in the Guide to Developers.</p>
			Q10	<p>Agree - Developers would appreciate the clarity and certainty from the proposed one overall consent process for large scale marine developments and their associated works. In the energy sector, associated works including onshore facilities, cables and pipelines are all necessary to successfully connect offshore energy production and therefore should be considered in a single consent process.</p>	<p>The Department is proposing a consenting system which will set out a clear staged process whereby all applications will follow.</p> <p>The Department is proposing that associated works which may cross the legislative jurisdictions will be further defined within accompanying secondary legislation.</p>

			Q11		Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q12		Agree - The scale and possible impact of each marine development will differ significantly therefore, it is essential that the scope of the EIA must be appropriate and proportionate to the proposed marine development. There should be a role for the Territorial Seas Committee to consider suitability of the proposed scope in the EIA to ensure a balanced approach is taken.	<p>The Department is proposing to follow the EU EIA Regulations and ensure that best practice is followed. The Department has also set out that an EIA submitted for new marine developments under the new primary legislation will be appropriate and proportionate to the scale of the development being proposed. However, the Department needs to ensure that there is a suitable EIA submitted in order for the Independent Examiner(s) to undertake a thorough examination of the application and any impacts which may result from it.</p> <p>The Department is proposing that it will engage with colleagues in different Departments to ensure the scoping exercise for the EIA will be appropriate to ensure sufficient information of an acceptable standard is supplied with an application. However, it is likely that the Department will include the provision that additional information can be requested to be submitted at identified stages within the process.</p>
			Q13		Agree - The proposal for thresholds is essential as each marine development will vary in scale and scope.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.

			Q14		Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q15		Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q16		Agree - Restricting consideration of applications only to parties registered as "interested persons" and having a genuine interest is also a useful means of achieving an orderly and timely consenting process.	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the</p>

						<p>process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received throughout the course of the examination.</p>
	15	MNH	Q7	<p>Agree - Regarding the ability of the Department to formulate a marine plan and marine policy statements if appropriate to do so and the intention to refer to this ability as a "may" rather than a "shall" (footnote 7), the need to progress certain applications through the planning process (such as renewable energy development) rather than have them held up in the absence of an approved formal marine plan is understood.</p> <p>However, there must be a strategic approach to leasing areas in the marine environment, recognising the main areas of constraint which are made known to applicants early on. The Manx Marine Environmental Assessment should help with this, as should a requirement for Environmental Impact Assessment enacted through secondary legislation.</p>	<p>The Department is not initially proposing to undertake the preparation of a Marine Plan as there is limited information available for the marine environment. However, as more and more marine information becomes available, it is hoped that should it be appropriate to formulate a Marine Plan, there are the necessary powers within the new primary legislation which will facilitate this.</p> <p>The Department would also urge any potential applicants to make full use of the Manx Marine Environmental Assessment as this is the most up to date set of information we currently hold for the marine environment.</p>	

			Q8, Q11, Q14		In agreement with all that is being proposed by the Department.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q9		Agree - The decision making process outlined is similar to existing procedures for major development on land.	The Department has considered the existing procedures for consenting both on land and sea, as well as considering the consenting systems in operation elsewhere, and has determined that there are certain elements which could add benefit to the consideration of an application for the Isle of Man's territorial seas. As such, the process being put forward by the Department of Infrastructure will combine a number of these different elements.
			Q10		Agree - This seems to be the most constructive approach and should streamline the process.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q12		Agree - Provided that the Department is open to considering advice from other arms of Government (e.g. DEFA, DED) on scoping parameters, depending on the nature of the development.	<p>The Department will actively engage the technical support and expertise of colleagues across Government to assist in the effective scoping of an EIA to ensure it is appropriate to the development being proposed.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as having a duty to take account of the responses received as part</p>

					<p>of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be a formal period of public consultation. During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of notification and publication of the application. A specified time period (likely to be 30 days) will be available for people to do this. As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received once the consultation has closed and review them throughout the course of the examination.</p> <p>The application will be publicised when it has been accepted for examination, and the responsibility will lie with individual organisations to ensure they register their interest and return an appropriate representation for consideration within the time period allowed.</p>
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			Q13	Agree - Provided that the Department is open to considering advice from other arms of Government (e.g. DEFA, DED) on scoping parameters, depending on the nature of the development.	The Department will actively engage the technical support and expertise of colleagues across Government to assist in the effective scoping of an EIA to ensure it is appropriate to the development being proposed.
			Q15	Agree - However, Manx National Heritage may still wish to participate in the marine planning process as an interested party should a proposed development affect MNH interests on land, particularly in relation to coastal properties such as the Calf of Man and Maughold Head.	<p>The Department recognises that Manx National Heritage is a landowner and may have an interest in any future development proposals. However, it is the intention of the Department to identify, within the legislation, a limited number of "Statutory Consultees" who will automatically be consulted on all applications (likely to be limited to DEFA, DED and DOI). However, it is the intention of the Bill, that the Department must consult Manx National Heritage before issuing a scoping opinion.</p> <p>The process proposed will allow for others to request to register their interests as Interested Parties and will enable their involvement throughout the process.</p> <p>Where there are issues of landownership, the Department will require notice to be served on the landowner by the applicant.</p>
			Q16	Agree - That should not cause any problems for MNH, but the Department is urged to ensure that the applicant has taken appropriate action to make the proposals widely enough known at the pre-application/consultation stage.	The Department is proposing that there will be a mandatory requirement on the applicant to ensure there is sufficient pre-application consultation undertaken prior to the submission of an application. The applicant will also be required to consider any comments received at this stage and demonstrate how they have been considered.

						There will also be a period of consultation once an application has been submitted and has been accepted for examination.
	19	Manx Utilities	Q7		Agree – However the scope of “large scale development” could be defined to make the intent clearer; for example, to exclude minor works.	<p>The Department has determined that although there is not a clear definition as to what “large scale development works” includes within the consultation document, the document does clearly set out that the Department is proposing that this Act will principally provide powers to consider applications for marine activities which will include offshore renewable energy generation, aggregate extraction, the laying of submarine cables and submarine pipelines, gas drilling, carbon capture and storage and the exploration and exploitation of natural and petroleum (as defined in the Petroleum Act 1986) and any associated works with the above (to be defined within the accompanying secondary legislation).</p> <p>The reference to large scale could be to the actual development proposed as well as the impact that it may cause to the environment. By suggesting the inclusion of minor works, a further definition of this would be required and this too could be difficult to quantify. Minor works in the marine environment could be just as detrimental to the marine environment as some of the large scale works to which the new legislation will apply.</p> <p>To that end, the Department has determined that by clearly setting out what this new primary</p>

					legislation will apply to is sufficient to ensure these projects are adequately covered by the legislation and will be consented for appropriately. For those works not proposed by the Department to be covered by this new legislation, the extant legislation will continue to apply, and applicants will be expected to apply for the relevant consents as set out within these other Acts.
			Q8	Disagree – Manx Utilities owns and operates a range of assets below the mean high water mark, for which there are permitted development rights under the Town and Country Planning Act Permitted Development Order. The proposed legislation has the potential to extinguish those rights. We would welcome the opportunity to work with you during the development of the legislation to ensure that Manx Utilities retains adequate provisions for the future management of infrastructure assets below the high water mark. Some of the Island’s designated rivers are tidal upstream of the Harbour limits. Management of these river systems might be unintentionally affected by any change to the tidal limits of the Town and Country Planning Act.	<p>The Department is proposing that by introducing this new primary legislation with its extent running from mean high water mark, a consequential amendment will be required to the Town and Country Planning Act 1999 to amend its extent to mean high water mark from mean low water mark to which it currently runs. As such, any permitted development rights afforded to any organisation under the Town and Country Planning (Permitted Development) Order 2013 will no longer apply beyond the mean high water mark.</p> <p>The Department has determined that it will seek to exclude existing outfall pipes owned by Manx Utilities through regulations made under the new primary legislation. Any proposed works to existing outfall pipes will be required to obtain the appropriate consents under the extant legislation. However, any new applications for development by Manx Utilities would be required to follow the provisions within this new legislation and to comply with any conditions attached to any such approval.</p>

			Q9		Agree – Provided that there are clear exemptions / permitted development rights for utility infrastructure	See Department response above. The Department has determined that it will exclude existing outfall pipes owned by the Manx Utilities and appropriate consents for any works proposed to these existing pipelines will be required to be sought under extant legislation. For any proposals for new outfall pipelines below the mean high water mark, a new consent will be required to be sought under this new primary legislation.
			Q10, Q11, Q12, Q13, Q14, Q15, Q16		Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
Companies						
	1	Rongxin Power Engineering JLT	General Comments		<p>As stated, the proposed legislation is to bring consenting and approvals for all marine projects into one process under a single overarching law. This is a good idea and as intended should streamline the process for developers.</p> <p>The key advantage is that all issues are decided together rather than risk a disjointed or poorly synchronized process under multiple elements of existing legislation. Further the restriction to consideration of submissions only to parties registered as "interested persons" and having a genuine interest is also a useful means of achieving an orderly and timely process. This is</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>In preparing the scoping for this new primary legislation, the Department has considered the current system of consenting for developments within the territorial seas under relevant Isle of Man extant legislation as well as looking to the experience and application of UK legislation. It is likely that elements of that legislation will be drawn upon if appropriate to be included within this new primary legislation; however, it will need to ensure it is appropriate for an Isle of</p>

				<p>desirable as in Australia a strong opposition from a remote urban area (Melbourne) forced the federal government to abandon a large hydro power development in Tasmania. This type of process should prevent undue interference by UK or Irish parties.</p> <p>It is also use that the proposed legislation will cover the inter-tidal zone and some smaller elements on land. Although I would expect the scope of activity and issues considered to be similar to that already provided for under existing legislation. Key issues for submarine power cables would seem to be offshore trenching and cable burying impacts on seabed fora and flora, land-sea shore crossings, earth return currents and magnetic compass deflection.</p> <p>It is important to note that all the decisions are ultimately taken by the Council of Ministers and so high level political support will be desirable for any application where trade-offs are necessary between economic benefits and environmental and social impacts.</p> <p>It would be useful if this legislation came into force before any application for a submarine cable or an HVDC project was made.</p>	<p>Man context.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to Section 42 of the UK's Planning Act 2008 as well as having a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008).). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be a formal period of public consultation. During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of notification and publication of the application. A specified time period (likely to be 30 days) will be available for people to do this. As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received once the consultation has closed and review them throughout the course of the examination.</p>
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					<p>Should any interested party miss this registration process, the Council of Ministers would not be able to accept any further applications for Interested Parties or any representations on the application, however, the Department will consider whether it would be appropriate to enable the public to appeal to the Examiner(s) whose decision it would be as to whether they could be involved within the process at the time of their initial assessment and examination.</p> <p>The application will be publicised when it has been accepted for examination, and the responsibility will lie with individual organisations to ensure they register their interest and return an appropriate representation for consideration within the time period allowed.</p> <p>The Department has proposed that there will be a statutory appeal mechanism included within the new legislation. This will be a challenge to the High Court on a point of law, similar to the UK's Planning Act 2008. A time limit to lodging the appeal will be set at a maximum of 30 working days from the day after the decision has been issued by the Council of Ministers. Should an appeal be lodged, the Court will determine the timetable for proceedings.</p> <p>The Department is proposing that the CoMIN will be the final decision maker on an application for development within the territorial seas. An Independent Examiner or panel of Examiners will be appointed to undertake the examination of the application and will submit a report with their recommendation for consideration by</p>
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					<p>CoMIN. This procedure has yet to be finalised.</p> <p>Should an application be received prior to the new legislation coming into force, that application will be considered under the extant legislation.</p>
4	Tocado Tidal Turbines		<p>General Comments:</p> <p>Purpose of primary legislation – makes total sense and cuts down administration for everyone inside and outside DOI;</p> <p>Secondary Legislation – I think it is important from a developers perspective that this is fully understood at the outset. Nobody will want to invest in a project that has the possibility of being subject to “contradictory” or restrictive legislation after the initial investment.</p> <p>Ability to collect fees – will these be in line with those fees currently collected in the delivery of AfLs to Crown Estate consents?</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>It is the Department’s intention that the necessary enabling powers will be contained within the new primary legislation to ensure relevant secondary legislation can be formulated if and when necessary. It is likely that the Department will consult on the secondary legislation as appropriate.</p> <p>The Department will consider the level of fees to be charged and this will be legislated for within accompanying secondary legislation. It is likely that the Department will seek to cover costs as far as possible. In determining the level of fees, the Department will consider the experience of the UK and Scotland in the collection of their fees.</p> <p>The Agreement for Lease (AfL) stage is limited in involvement to the Department and the applicant, as this forms part of a agreement. This will have no bearing on the level of fees to be collected as part of the submission of an application for development within the territorial seas.</p>	

				<p>Ability to amend / vary / revoke / enforce any permissions granted under this legislation – this needs to be thought out very carefully. As an example, Tocardo spent over 1 million Euros building substations and grid infrastructure in the Pentland First some 7 years ago. This was after the Crown Estate agreed to an AfL on the Inner Sound. This AfL was later revoked on the grounds that no tendering process had taken place. This was clearly an error on the part of Crown Estates, and they did nothing to reimburse Tocardo for the 1 million Euro loss, instead they held a tendering process whereby International Power won the AfL, and gained from our loss.</p> <p>Provision to enable the decision makers to refuse to consider an application – would be nice to know why?</p>	<p>The tendering and the AfL process will be separate to that of the consenting process. The Department is proposing that this new legislation will apply to a number of specific activities - to include offshore renewable energy generation, aggregate extraction, the laying of submarine cables and submarine pipelines, gas drilling, carbon capture and storage and the exploration and exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986) and associated works (to be defined within the accompanying secondary legislation).</p> <p>It is essential that there are powers included within this new legislation which will enable permissions granted to be amended / varied / revoked and enforced. The extant legislation will not apply to the above activities as this new primary legislation will include appropriate consequential amendments to ensure there is no cross over in legislative terms between the various current legislation and appropriate transitional provisions will be provided, via regulations, to ensure the smooth transition from one system to another.</p> <p>The new primary legislation will enable the Council of Ministers to determine whether they will accept an application for examination. The legislation will also include powers if it is determined by the Council of Ministers that they are not minded to accept the application for examination. It is likely that circumstances which this may be appropriate to apply to could include where the application does not comply with the</p>
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					<p>requirements of clause 19 of the Bill or the activities proposed do not relate to a controlled marine activity.</p> <p>If it is determined that the application will not be accepted for examination, the Council of Ministers will be required to notify the applicant of its decision and will outline its reasons for this. The legislation will contain a provision whereby this decision can be challenged.</p> <p>The Department is proposing that an EIA will be required to be submitted for all applications for new developments within the territorial seas under the provisions of this new legislation. In preparation for this, the Department will issue a Scoping Opinion which will set out the list of topics which must be considered in the assessment of the proposal. The Scoping Opinion will be prepared in collaboration with colleagues from across Government to ensure all appropriate topics are included within the assessment. It will be the responsibility of an applicant to ensure the EIA that is being submitted complies with the Scoping Opinion issued, otherwise, the Council of Ministers could refuse the application. It is likely that this will take place following the successful award of an AfL between the Department of Infrastructure and the applicant.</p> <p>Consents will be granted (or refused) based on the submission of an application and accompanying documents (including an EIA) and its subsequent independent examination by a CoMIN appointed Examiner(s).</p>
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Particulars to be submitted with an application for consent – EIAs cost several million UK pounds. This is recognized by the Crown Estate in the mainland UK for instance, and the AfLs are awarded before the EIA's take place. Full CONSENT to develop a project is only given after the EIA, plus other assessments have been carried out to the full satisfaction of all stakeholders.

There is a further reason and that is if there is no AfL issued, how is the Developer to know what or where the sea-bed and environment is to be assessed?

				Scoping takes place in the period of the Feasibility study, which forms part of a project proper, and is the point when all investment should be secured.	A Scoping Opinion will be issued to the applicant prior to the submission of an application as the completed EIA must be submitted along with the application for consideration by the Independent Examiner(s).
			Q7	Not entirely – see comments above. Some form of security or compensation model needs to be thought of.	The Department is not proposing that there would be any provision contained within the legislation to provide for any compensation associated with the determination of an application. An application will be submitted by an applicant, and it is their responsibility to ensure the appropriate information is submitted in order to facilitate an assessment of the application. However, a compensation provision is being proposed in relation to changes or a revocation to a Marine Infrastructure Consent.
			Q8, Q9, Q10, Q11, Q15, Q16	Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q12	Disagree – the EIA takes place over a 2 year period. If this were a pre-condition to application then a Developer could be looking at an extended period of up to 5 years before putting steel in the water. This is not a good deal in anyones book.	The Department is proposing that an EIA will be a requirement for all applications for new development under this new primary legislation. An appropriate and proportionate EIA will be required to be submitted along with the application. The Department will provide an applicant with a detailed Scoping Opinion setting

				<p>EIA's need to be a concurrent activity to the rest of the project – and could in cast last up to 3 to 5 years of continual monitoring if the relevant agencies deem it.</p> <p>DoI will in any case have the final right of veto as the final consent will come from them only when all the assessments, permits, consents, consultations etc have been satisfactorily dealt with.</p>	<p>out what it will expect to be contained within an EIA. This will be prepared in collaboration with colleagues across Government.</p> <p>It will be the applicants responsibility to ensure an EIA complies with the scoping opinion which will have been issued to the applicant.</p> <p>The Department is proposing that it will follow EU EIA Regulations for EIAs which will assist both in the preparation of the EIA by an applicant and its assessment.</p> <p>The final decision on an application will be made by the Council of Ministers, not by the Department. The assessment of the application will be undertaken by a CoMIN appointed Independent Examiner or panel of Examiners to ensure there is independent scrutiny of the application. The Department will not have the final right of veto even though the Department owns the sea-bed.</p>
			Q13	<p>Agree – perhaps. Criteria need to be established, in order to prevent confusion about what might or might not affect the Department's approval.</p>	<p>It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents previously granted.</p> <p>However, depending on the nature of the application for variation of conditions submitted, the Department will consider this, in collaboration with colleagues across different Departments and determine whether it is appropriate to request an EIA (which would then be proportionate to the scale of the amendments being proposed). If it is determined that what is</p>

					<p>being proposed by way of an amendment merits the submission of environmental information, this will be requested, and will be required to be submitted by the applicant prior to the consideration of the application.</p> <p>By including a provision whereby all applications for variation to approvals already obtained are required to submit an EIA could prove to be inappropriate, unnecessary and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the examination of the application.</p>
			Q14	<p>Agree – but limited to after an AfL has been awarded. Again, the DoI have final veto in the final consenting process. Public consultations are normally carried out in parallel with EIA’s Navigation assessments, local industry and grid connection discussions.</p>	<p>The Department is proposing that Public Participation will commence at the pre-application stage. The Agreement for Lease (AfL) stage is limited in involvement to the Department and the applicant, as this forms part of a commercial agreement. There is no public involvement in this, nor is there any public consultation.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK’s Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK’s Planning Act</p>

					<p>2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (30 working days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner will then consider all representations received throughout the course of the examination.</p> <p>Should any interested party miss this registration process, the Council of Ministers would not be able to accept any further applications for Interested Parties, however, the Department will consider whether it would be appropriate to enable the public to appeal to the Examiner(s) whose decision it would be as to whether they could be involved within the process at the time of the examination.</p> <p>The application will be publicised when it has been accepted for examination, and the</p>
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					<p>responsibility will lie with individual organisations to ensure they register their interest and return an appropriate representation for consideration within the time period allowed.</p> <p>The final decision on an application will be made by the Council of Ministers, not by the Department. The assessment of the application will be undertaken by a CoMIN appointed Independent Examiner to ensure there is independent scrutiny of the application. The Department will not have the final right of veto even though the Department owns the sea-bed.</p>
	11	DONG Energy	General Comments	<p>In our Tender we explained that we would welcome the opportunity to work alongside the Isle of Man Government in creating the new offshore consenting regime, and the necessary legislation to support it, drawing on our extensive experience of promoting offshore wind projects across Europe.</p> <p>We are grateful for the opportunity to participate in this consultation and would be keen to explore with you how DONG Energy could participate further to assist the Isle of Man Government in this regard, particularly in relation to the drafting of primary and secondary legislation, and any related guidance. We would welcome the opportunity to comment on the draft legislation (both primary and secondary) before it is made. We consider this would be helpful to ensure that the legislation and process is robust and in place as soon as possible, bearing in mind that establishing the offshore consent process is a critical path item and a key area of uncertainty</p>	<p>The Department acknowledges that DONG Energy is keen to continue to work alongside the Isle of Man Government whilst it creates this new consenting process. However, the Department is of the view that it would not be appropriate to engage with any offshore developers who have a vested interest in the projects likely to be consented for under this new legislation whilst the process is being legislated for. The Department is keen to ensure that this process is transparent and does not give anyone an unfair advantage over another. It is also keen to ensure that there is no perceived bias, or conflict of interest between the Department and any prospective applicants. The Department has afforded equal opportunities to all by complying with the requirements for consulting on new primary legislation, as set out in the Code of Practice for Consultation.</p>

				for the anticipated offshore projects. Our further involvement in establishing the process would also provide us with better and earlier understanding of the consenting regime we will face when promoting our offshore wind project in your territorial waters.	
			Q7	<p>Yes. The legislation should also include:</p> <p>clear qualifying criteria/thresholds that will determine whether or not the proposed development will be caught by the new offshore consenting regime, i.e. what will constitute a "large scale marine development" in terms of both nature and size</p> <p>clear qualifying criteria for an application for consent to be validly made</p> <p>time limits for determining an application for consent. Ideally this would be six months, but no more than 12 months, bearing in mind that obtaining consent is a critical path item and a key area of uncertainty for the anticipated offshore projects</p> <p>time limits for determining any appeal. Ideally this would be four months, but no more than 6 months</p>	<p>The Department is proposing that this Act will consent for offshore renewable energy generation, aggregate extraction, the laying of submarine cables and submarine pipelines, gas drilling, carbon capture and storage and the exploration and exploitation of natural and petroleum (as defined in the Petroleum Act 1986) and any associated works with the above (to be defined within the accompanying secondary legislation). For any applications which include the above activities, this new primary legislation will apply, therefore, it is not necessary to include any thresholds.</p> <p>The Department has not consulted on the principles of timescales, however, whilst drafting the Bill, a timetable has been provided for pre-application, application and post application processes.</p> <p>The Department has proposed that there will be a statutory appeal mechanism included within the new legislation. It will be a challenge to the High Court on a point of law, similar to the UK's Planning Act 2008. A time limit to lodging the appeal will be set at a maximum of 30 working days from the day after the decision has been issued by the Council of Ministers. Should an</p>

				<p>the circumstances in which a consent would amended/varied/revoked, and compensation provisions in the event of revocation not being attributable to the acts/omissions of the developer</p> <p>confirmation of whether or not the consent would enure for the benefit of the project or, if not, then a clear transfer of benefit mechanism</p> <p>protection for the developer from statutory nuisance claims attributable to the consented works</p>	<p>appeal be lodged, the Courts will determine the timetable for proceedings.</p> <p>The Department is proposing to include appropriate provisions which will facilitate the consideration of consents granted both under this new legislation and under extant legislation which will be superseded by this new legislation, and will allow for the consideration of applications to vary / amend existing consents.</p> <p>A compensation provision is included in the Bill. However, this will be restricted to where a person has been unfairly prejudiced by a change or revocation.</p> <p>The Department has determined that this new primary legislation will include the provision or the benefit of transfer of a consent.</p> <p>The Department is not proposing to include any protection for an application from statutory nuisance claims attributable to the consented works. However, the Department will ensure that no vexatious representations are taken into consideration by an Independent Examiner or panel of Examiners during the examination of the application.</p> <p>There will be powers contained within the new legislation which will override / extinguish public and private right, particularly rights of navigation. The Department has responsibility for both air and sea navigation and will ensure adherence to appropriate legislation relating to</p>
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				<p>the power to override/extinguish public and private rights, e.g. rights of navigation</p> <p>provision for legal challenge, by the developer and third parties, and precise time limits for making a claim (we suggest no greater than six weeks from the date on which the consent is granted)</p> <p>the application of the EU EIA, Birds, and Habitats Directives</p> <p>the role (if any) that community benefit arrangements are to have in the determination of an application for consent</p>	<p>this when required.</p> <p>The Department has proposed that there will be a statutory appeal mechanism included within the new legislation. will be a challenge to the High Court on a point of law, similar to the UK's Planning Act 2008. It is likely that a time limit to lodging the appeal will be set at a maximum of 30 working days from the day after the decision has been issued by the Council of Ministers. Should an appeal be lodged, the Court will determine the timetable for proceedings.</p> <p>The Department is proposing that it will follow the EU EIA Regulations, and will expect any EIA submitted will be to an acceptable standard. Best practice and guidance from elsewhere will be considered when determining the scoping opinion and for the assessment of an EIA following its submission. The Birds and Habitats Directives do not apply within the Isle of Man, however, the Department will endeavour that best practice is followed, and the Isle of Man Government complies with all its International Obligations.</p> <p>The Department has determined that there will be no provision within the legislation for community benefit to be provided as part of an application.</p>
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			Q8		Agree	
			Q9		<p>In our successful tender submission to the Isle of Man Offshore Wind Generation Leasing Round dated 14 July 2014 ("Tender") we set out our preference that the process for the determination of an application for consent for offshore development in the Isle of Man would be modelled on the marine licensing regime prescribed under the Marine and Coastal Access Act 2009 (the "2009 Act"). That legislation is relatively modern, tailor made for offshore development and would be sufficient to administer the nature and size of the projects anticipated to come forward. It could be transposed in to Isle of Man law relatively easily, thus saving time.</p> <p>The offshore transmission assets associated with our project (between the wind turbines and grid connection on the mainland) would be subject to the marine licensing regime under the 2009 Act. Therefore, by basing the Isle of Man offshore consents regime on that legislation the generation and transmission assets would be subject to very similar consent processes, and could run in parallel using the same, or very similar, documentation.</p> <p>In addition, if the new legislation is modelled on the 2009 Act, it might also be possible for guidance issued by the Marine Management</p>	<p>The Department is proposing that it will adopt a model similar to that of the model contained within the UK's Planning Act 2008, however, it is not appropriate that all provisions are transposed into Manx law. It is essential to ensure the process being proposed is appropriate for the Isle of Man context. The Department has worked with the legislative drafters to consider the appropriate wording of the legislation.</p> <p>The Department has determined that it will follow a similar consenting process to that contained within the UK's Planning Act 2008. Given that there are a number of Departments who have a vested interested in the territorial seas, it has determined that this is the most appropriate means by which an application will be assessed, and will allow for an independent assessment of the proposal to be carried out.</p> <p>If DONG Energy were to submit a similar application for development within UK territorial</p>

				<p>Organisation to be effectively adopted by the Isle of Man Government and followed by the applicant for consent.</p> <p>The above approach should result in time and cost efficiencies, helping to deliver the project on time.</p> <p>In order to assist the expedient determination of a consent application, it may also be helpful for the legislation to include the examination process prescribed under the UK's Planning Act 2008 (the "2008 Act") and associated secondary legislation, to include:</p> <p>provision to appoint more than one independent Inspector, given the potential complexity of large scale marine development</p> <p>provision to hold an examination of the application, conducted in an inquisitorial, rather than adversarial manner</p> <p>provision for the independent Inspector to</p>	<p>waters, it would also be required to submit an application for consideration under the provisions of the UK's Planning Act 2008. For onshore planning applications in the Isle of Man that are deemed to be in the national interest, the Council of Ministers may call in the planning application to allow the application to be independently assessed by a CoMIN appointed Inspector. This proposed consenting system for the territorial seas will follow a similar process. For activities not covered under this new legislation, applicants will be expected to submit applications for consideration under the extant legislation and they will be considered under existing provisions and procedures.</p> <p>The Department is proposing that an examination process similar to that contained within the UK's Planning Act 2008 will be introduced in the Isle of Man, as far as possible, ensuring that it is appropriate. The Department is seeking to ensure relevant enabling powers are contained within the new primary legislation which will allow for the subsequent formulation of secondary legislation.</p> <p>Powers sought to be included within the new primary legislation includes the powers for the Council of Ministers to appoint an Independent Examiner or a panel of Examiners</p> <p>The Department has determined that the examination of the application will take the form of consideration of written representation about it unless the Examiner(s) hold a specific issue hearing into an issue which they think it is</p>
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				<p>conduct that examination by written representation, local hearings, or a combination of the two, but not by public inquiry. Written representations and questions from the Inspector can save time in hearings. Hearings provide a better platform for members of the public to engage in the process, and for Inspectors to lead discussion of the impacts associated with the proposed development in an inquisitorial manner. These, together with formal question from the examining authority and the submission of written representations has proven to be an effective way of identifying and examining the issues raised by complex Nationally Significant Infrastructure Projects. By contrast, public inquiries tend to be too formal, costly for all parties, and a source of delay to the decision making process</p> <p>provision for setting the timescales for the stages of the examination, and a longstop dates for its conclusion, the Inspector's report to be sent to the Council of Ministers and for the decision on the application to be made. We suggest that an examination should be completed within a maximum of six months, but with discretion for the Inspector to shorten or extend this. The report should be submitted to the Ministers within two months of the examination, and a decision should be made within one month of receipt of the report.</p> <p>It would also be helpful for the legislation to clarify that where offshore electricity generating projects connect into the mainland, the position as to the need and national policy imperative for</p>	<p>necessary for it to be properly examined.</p> <p>There will be secondary legislation which will set out the procedure for the hearing process, and it is likely that consultation will be required to be undertaken on this. The Department is likely to adopt a similar process to that contained within the UK's Planning Act 2008 (as far as it is appropriate for the Isle of Man).</p> <p>The Department has not consulted on timescales associated with the stages of an examination, however, it has considered how a decision could be reached on an application, and a possible time period for this. The Department has had regard to the timetables included within the UK's Planning Act 2008 and a timetable has been devised within the Bill.</p> <p>It is not the intention of the Department to seek confirmation of the need of a project for offshore electricity generation specifically, unless this is included within the socio economics assessment of the EIA. The application of the Electricity Act</p>
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				<p>those projects, will be as set out in the National Policy Statements. In other words, the consent application would be determined having regard to the NPSs, and evidence of the need for the project will not be required as part of the determination process.</p> <p>The above approach should result in time and cost efficiencies.</p>	<p>1996 within the Isle of Man territorial waters has been amended within the Bill to disapply the requirement of a consent under the Electricity Act 1996.</p>
			Q10	<p>Agree - Yes. A single consent regime should result in time and cost efficiencies.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>
			Q11	<p>Agree - Yes. This approach should result in time and cost efficiencies.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>
			Q12	<p>In our Tender we explained that our site selection process for identifying our preferred development area for our project had already had regard to EIA/HRA principles. For example, we have used this approach to deliberately avoid sensitive environmental receptors and habitats.</p> <p>We also set out in that Tender our expectation that the process for the determination of an application for consent for offshore development in the Isle of Man would embody a requirement for EIA, e.g. perhaps based on The Marine Works (Environmental Impact Assessment) Regulations 2007. We also explained that in any event we are committed to promoting our</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>

				<p>project in line with EIA best practice, including screening and scoping exercises, and that pre-application consultation with key stakeholders could help to determine the scope of an Environmental Statement. Similarly, we confirmed our willingness to engage in HRA, if an HRA screening exercise indicated that this was necessary.</p> <p>Therefore, we recommend, and would support, the application of the EU EIA, Birds, and Habitats Directives in the new offshore consents legislation. We suggest such transposition of EU law into Isle of Man legislation could be modelled on the transposition provisions in the legislation applicable to development in England and Wales. Not only would this help us and the Isle of Man Government to ensure environmental receptors are protected, but it would also help the Isle of Man Government to comply with its obligations under the Bonn, Berne, Ramsar and OSPAR conventions.</p> <p>The legislation will also need make provision for dealing with transboundary impacts (if any) arising from the proposed development, and how the Isle of Man Government will co-ordinate with other jurisdictions.</p> <p>We believe an additional positive benefit would accrue from the development process since the EIA studies (and any subsequent monitoring) would provide detailed data on an extensive part of Manx territorial waters, improving knowledge on the distribution and behaviour of species and habitats of conservation interest, which will be</p>	
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				directly relevant to ensuring and indeed improving compliance with the Isle of Man Government's national and international obligations.	
			Q13	<p>No. The new legislation should clearly set out the thresholds/criteria relevant to determining whether or not the proposed development qualifies for EIA/HRA, whether in the case of an application for consent, variation of a consent.</p> <p>More generally in relation to the variation of consents, we would expect the legislation to set out the process, or processes, for determining applications for material and non-material amendments, and the associated timescales. Applications for material amendments should be capable of being determined within six months, and those for non-material amendments within two months. We suggest that the threshold for determining whether a proposed amendment is non-material should be where it has been demonstrated to the satisfaction of the Isle of Man Government that the amendment sought is unlikely to give rise to any materially new, or materially different, environmental effects from those assessed when determining the application for consent. This is the test that was adopted by the Secretary of State for Energy and Climate Change in the Walney Extension Offshore Wind Farm Order 2014, and other development consent orders recently granted under the 2008 Act.</p>	<p>The Department is proposing that all applications for Marine Infrastructure Consent will be required to submit an EIA, which will be appropriate and proportionate to the nature and scale of the proposed marine activity. Secondary legislation will contain more information on this, but it is not appropriate to include within the new primary legislation. Also the procedure for determining any applications which seek to amend / vary consents will also be clearly set out in secondary legislation. The Department is not proposing to include any thresholds or criteria for determining whether an EIA is required for applications which seek to vary existing approvals within the legislation.</p>

			<p>Q14</p>	<p>Yes. Public participation is to be welcomed and encouraged. It is often helpful in preparing a project and ensuring that local opinion is considered. In our Tender we explained by way of example that pre-application consultation helped determine the size of our Burbo Bank Extension Offshore Wind Farm project, the location of the grid connection point, and the route taken by the export cables between the two.</p> <p>In our Tender, we set out our expectation of how consultation might be undertaken as follows:</p> <p>(a) in establishing the scope and area of consultation, we would seek the opinion of the Isle of Man Government on how to engage with the community and stakeholders by consulting on a Community Consultation Overview (“CCO”). This CCO would be similar to the Statement of Community Consultation as required under the 2008 Act. The scope and area of consultation would be communicated to stakeholders and the wider community through publication and advertisement of the CCO in local media</p> <p>(b) we would expect a multi-stage approach to consultation, which would allow stakeholders and the community to be involved in an iterative and parallel consultation process</p> <p>(c) we would expect to work with the Isle of Man Government to identify a consultation area within which to categorise key local stakeholders and communities</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department will further consider how it would like to see public consultation undertaken by applicants. This detail will be provided within secondary legislation which will most likely be the subject of further consultation.</p>
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				<p>(d) we would expect to consult with all relevant stakeholders in the onshore and offshore human, biological and physical environments</p> <p>(e) we would expect key stakeholder groups to include, but not limited to, commercial fisheries, shipping and navigation stakeholders, aviation and defence interests, environmental agencies, nature conservation groups, local planning authorities, tourism boards and business associations.</p> <p>In terms of the timing of consultation, we set out the following expectations in our Tender:</p> <p>(a) we would expect to consult throughout the stages of the EIA, before submitting the consent application, through an iterative consultation with inputs from various stakeholders to help to identify effects and develop potential mitigation measures to reduce any adverse effects. Community consultation would be run in parallel to enable the local community to be consulted on the proposals and preliminary results from the EIA surveys</p> <p>(b) we would expect the consultation process with stakeholders and the Isle of Man Government throughout the EIA stages would include the following key activities:</p> <ul style="list-style-type: none"> • appraisal of the development site to determine the need (if any) to amend its boundaries prior to proceeding with the EIA • request of Scoping Opinion to seek a formal view on the requirements of the Environmental 	
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				<p>Statement and further discussions on the required EIA surveys' methodology, approach and scope of works</p> <ul style="list-style-type: none"> • definition of the methodology, approach and scope of works of long-lead EIA studies (bird and marine mammal surveys), so that such studies can be initiated as soon as possible • establishment of working groups (e.g. fisheries and navigational), if needed, to continue a joined-up dialogue throughout the development of the development site • provision of draft technical reports and draft Environmental Statement chapters, following the preliminary results of EIA surveys and studies, and further discussions to understand likely impact magnitude and agree common positions and appropriate mitigation measures <p>(c) the parallel consultation process with the Isle of Man local community would be communicated in the CCO, and we would consult on the proposals via at least two rounds of community consultation local events ("events"). We would be keen to discuss the scope, locations and means of consulting the Isle of Man community with the Isle of Man Government and/or the relevant local authorities (town, district, village, and parish authorities)</p> <p>(d) the events will be designed to make sure participants can provide their feedback on the project, which will be used to inform the EIA studies and discussion with stakeholders. A</p>	
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				<p>second round of consultation would be undertaken to show how the feedback from the previous round has been considered in the development of the proposals, and also consult on the preliminary environmental information coming from the EIA studies being undertaken, in the spirit of an iterative and continuous consultation process</p> <p>(e) at the end of the first round of community consultation events, we would publish a mini consultation report, which will be a short summary regarding the feedback received to the proposals and how we have considered this feedback in the development of them. The same report would be prepared at the end of the second (or last) round. Both would be made widely available at the local information points and on the project's website</p> <p>(f) we would expect that community consultation events would take place throughout the consultation area, and we have experience of holding community consultation events at the Villa Marina, Douglas and at the Ramsay Town Hall, which were organised for the Walney Extension Offshore Wind Farm project in 2012 and 2013. These events might include, but not limited to, a selection of information available to the public such as photomontages of the seascape and landscape with indicative turbine layout scenarios for the Project, printed A0 charts of the proposals to allow the public to annotate identified constraints, non-technical briefing notes of the EIA surveys and studies and their progress.</p>	
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				<p>(g) we would be willing to undertake additional consultation activities including:</p> <ul style="list-style-type: none"> • hosting project information at local Community Access Points (CAPs) throughout the Isle of Man • offering briefing documents, presentations and/or road shows to local authorities, elected Tynwald members, resident's groups and other community groups • publishing a questionnaire to be available at the events, local information points and online to collate community responses throughout the consultation process • publishing newsletters for distribution at local CAPs and via e-mail • local newspapers advertising and editorial • a dedicated project website • a dedicated project hotline / freephone telephone number for resident and community enquiries <p>The above sets out our expectation as to how consultation might be undertaken, based on our experience elsewhere. However, we suggest that new legislation should clearly set out the minimum consultation requirements for both pre and post application stages, in terms of who should be consulted, how, when and within clearly defined timescales.</p>	
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			<p>Q15</p>	<p>We agree that the legislation should clearly define those parties that are to be automatically treated as interested parties, and the process for other parties to qualify as interested parties. Those to be automatically treated as interested parties should be set out in a list in the legislation. We question whether it is necessary for individual departments with the Isle of Man Government to each be treated as interested parties. Also, given that they form part of the decision making body, we query whether they should have the status of interested party at all. It would help achieve efficiency if the different departments of the Isle of Man Government could be co-ordinated so that there is one common consultee list, and that is set out in the legislation. It should be clear from the legislation who is a statutory consultee and what the process is for all others to register as interested parties and then become a consultee.</p>	<p>To clarify, the final decision to be made at the end of the independent assessment of the application will be that of the Council of Ministers. Government Departments will have no active role to play in the decision making process. As such, relevant Departments should be identified as statutory consultees within the process as they all have a vested interest in activities within the territorial seas – DOI, as owner of the sea-bed is also responsible for Ports including air and sea navigation; DEFA is responsible for the environment and DED is the owner of mines and minerals in the Isle of Man. Each of these Departments will be responsible for making their own appropriate representations on any application.</p> <p>It may not always be appropriate for the Isle of Man Government to present a unified position on the proposal being considered. There may be unresolved issues which are of concern to any of the Departments particularly relating to the information contained within the EIA and associated proposed mitigation measures. There may also be areas of concern for some of the Departments relating to the proposed draft conditions proposed by the applicant within the draft Marine Infrastructure Consent submitted as part of this application. It is essential that these Departments are afforded the opportunity to present their perspective to an independent Examiner or panel of Examiners, if required.</p> <p>The Department is proposing that the legislation will identify appropriate consultees in the Bill and any other persons through secondary legislation,</p>
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					<p>if it is considered appropriate to include such persons as a statutory consultee.</p> <p>For other consultees, it is likely that the Department will encourage the registration of "Interested Parties" during the identified period of public consultation which will be clearly publicised once an application has been received and confirmed that it will be considered and assessed. This will follow in a similar manner to that set out in the UK's Planning Act 2008 whereby those with a vested interest express their desire to be treated as Interested Parties and provide, at that initial stage, a representation of their views on the proposed application, either in support, or opposing the application.</p>
			Q16	<p>Yes, but see above, we suggest this is modelled on the examination process under the UK's Planning Act 2008.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>
12	CMS Cameron McKenna LLP on behalf of the National Grid	General Comments		<p>National Grid's primary concern is ensuring that any new legislation does not jeopardise the delivery of, or place additional consenting burdens on, projects which have already obtained the necessary consents under the current regimes. Significant financial investment decisions are often made by businesses on the grant of offshore consents and the legitimate reliance placed upon such consents must not be undermined by legislation with retrospective effect.</p>	<p>The Department is proposing that there will be appropriate powers contained within this new legislation which will include necessary transitional arrangements to ensure any existing consents granted under the current consenting regimes for developments within the territorial seas do not require any additional consents under this new legislation. Furthermore, the Department is proposing that there will be powers contained within this new primary legislation to enable the consideration of any applications to vary / amend consents already</p>

				<p>In particular, National Grid has come together in a joint venture with Scottish Power Transmission to build the Western Link, a £1 billion project which will help to bring renewable energy from Scotland to homes and businesses in Wales and England. This project includes a subsea marine cable which is approximately 385km long and which passes through the Isle of Man's territorial seas, and the project holds consents under the Submarine Cables Act 2003, the Water Pollution Act 1993 and the Harbours Act 2010.</p> <p>National Grid welcomes the intention (expressed at paragraph 13.1) that transitional provisions would be included relating to: "any approvals granted under other pieces of legislation which would ordinarily now be covered by the proposals for the new primary legislation." However, at this stage, the Consultation provides insufficient detail to enable National Grid to understand how projects which have already obtained consents under the current legislative framework will be treated under any new legislation. Carefully drafted transitional provisions will be essential to ensure that existing consents can be relied up, and must be drafted so as to protect existing consents whether or not construction has commenced.</p>	<p>obtained under the extant legislation for those activities to which this new primary legislation relates. This new primary legislation will not apply with retrospective effect to approvals already granted and it does not intend to place an additional burden on consents granted under the extant legislation.</p> <p>The Department has proposed that any approvals granted under the extant legislation will not be affected by the introduction of this new primary legislation. Rather, it seeks to introduce a new means by which the independent assessment of applications can be undertaken in a more robust manner. However, any conditions of a consent granted under extant legislation will continue to apply, and there will be transitional provisions within secondary legislation to ensure compliance with these conditions, and provisions to take action should it be determined any of those conditions are not being complied with.</p>
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				<p>National Grid notes that there are a number of exemptions to the legislation that are proposed at section 12 of the Consultation. Projects which benefit from existing consents under the current legislative framework are not included with section 12. Inclusion of such projects consented by existing consents (whether or not construction has commenced) within the list of exemptions should be considered in drafting any legislation.</p> <p>National Grid also suggests that powers to vary existing consents in the future are included so that a variation to a project consented under the current regime does not trigger the need for whole new consents under any new regime and National Grid further suggests that ongoing maintenance works which are not yet consented are considered so that maintenance works to a project consented under the current regime does not trigger the need to re-consent the whole project under any new regime.</p> <p>Section 10 of the Consultation gives National Grid cause for serious concern. This section describes one of the powers that would be included within the future legislation as <i>"the ability to consider approvals issued under what is the current system for consenting"</i>. National Grid considers that it would be inappropriate for future legislation to place an additional consenting burden on projects which benefit from existing consent, and that it would be inappropriate for the new legislation to include any powers that allowed for the retrospective</p>	<p>The Bill contains a general power to make regulations exempting certain activities from the requirement for marine infrastructure consent. Already consent projects can be exempted under this general power.</p> <p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department needs to further consider the issue of maintenance and emergency works in relation to consents issued under the extant legislation and those consented for under this new primary legislation.</p>
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				<p>consideration, or review, of existing consents which have been lawfully granted under the current legislative framework.</p> <p>National Grid looks forward to being part of the consultation with owners and operators of offshore infrastructure as draft legislation is brought forward for the Isle of Man territorial seas.</p>	
	20	Island Aggregates	Q7	<p>It is right that the legislation should cover all potential activity in the Isle of Man's territorial seas. It is important though that the areas are zoned at an early stage, according to their potential. Thus areas rich in marine aggregates should quickly be identified and preserved for future extraction, rather than being licensed for, for example, renewable energy projects, gas drilling or any other development which would preclude the extraction of the marine aggregates.</p>	<p>It is not the intention of the Department to identify areas for specific activities within the territorial seas. There is not enough current knowledge of the marine environment to ensure that any areas identified for specific activities are the most appropriate for those specific uses. However, the Department is proposing that there will be powers within the primary legislation which will provide the ability for the Department to prepare a Marine Plan which may be able to identify areas for specific activities, if and when appropriate to do so.</p>
			Q8	<p>I would seek clarification on why the word "commercial" in relation to aggregate extraction need to be highlighted as such in the document.</p>	<p>Whilst drafting the Bill, it was concluded the word "commercial" was not easily definable. Therefore, it has been determined to delete any reference to "commercial".</p>
			Q9	<p>Disagree - The decision making process should be designed so as to make it as straightforward as possible, while giving due regard to doing the right thing for the Island.</p>	<p>The Department is proposing a consenting system which will streamline the decision making process. There will be powers within the primary legislation which will allow for the formulation of the necessary secondary legislation which will provide the detail required. Whilst the</p>

					consenting system has largely been based on that contained within the UK's Planning Act 2008, it aims to ensure the process is appropriate for an Isle of Man context.
			Q10	Agree – To look at a project in its entirety, with a single consenting system applying, would seem sensible.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q11	Agree - To look at a project in its entirety, with a single consenting system applying, would seem sensible.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q12	Agree – Yes, some projects of the type being mooted are right to be subject to an EIA, so long as this is, as the question suggests, appropriate and proportionate. As I am sure will be the case, any environmental impact must be weighed up against potential economic benefit and the correct decision for the Island taken.	The Department is proposing to follow the EU EIA Regulations which will include a list of topics which must be taken into account when taking into consideration the impacts of the proposed development. It is likely that there will be an economic assessment required to be submitted as part of the EIA (this will be determined as part of the scoping exercise which will be undertaken in collaboration with other Government Departments), and the resultant EIA will be appropriate and proportionate to the scale of the development being proposed.
			Q13	Agree – this would seem sensible.	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.

			Q14		<p>Agree – Potential developments like this are likely to raise a large amount of public interest and I would have that that, allowing individuals to register as interested parties will necessitate a large amount of administration. Perhaps a better wight*be to limit registration to interested groups, to which individuals, should they feel inclined, could align themselves.</p> <p>*assume typo – “way might”</p>	<p>The Department acknowledges the alternative suggestion proposed. However, in the interests of transparency, the Department would strongly urge anyone who has an interest in a proposed development to register their interest as an “Interested Party” during the identified time period to ensure their involvement in the process. The new legislation and subsequent secondary legislation will clearly set out the process whereby people can register their interests, and participate in the decision making process.</p>	
			Q15		<p>Agree – fair enough.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>	
			Q16		<p>Agree – This seems sensible.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>	
Organisations							
	3	Travel Watch Isle of Man	Q7		No comment		

			<p>Q8</p>	<p>Agree – how is “large scale” to be defined? For developments not “large scale”, and thus to be considered under current legislation, there appears to be no duty to consult the public, and it is a matter of concern if IOM Government does not choose to exercise its powers to consult the public.</p>	<p>The Department is proposing that this new primary legislation will apply to the consenting of offshore renewable energy projects, aggregate extraction, the laying of submarine cables and pipelines, gas drilling, carbon capture and storage and the exploration and exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986) and any associated works. Any works associated (which will be defined within accompanying secondary legislation) with the above as part of the proposal will be considered as part of that application. It is difficult to quantify “large scale”, however, the Department has said that any applications for the above activities will be considered under the provisions of this new primary legislation.</p> <p>The Department is proposing that any applications for activities which will not fall under this new primary legislation will be considered under the extant legislation. The Guide to Developers (available at http://www.gov.im/categories/planning-and-building-control/marine-planning/guide-to-developers/) provides an overview of this legislation. There are varying requirements within these Acts to consult with the public and it would be expected that both the applicant and Government would comply with these requirements. It is not the intention of this new primary legislation to amend any provisions of extant legislation other than to amend how and what the Act applies to.</p>
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			<p>Q9</p>	<p>Please clarify “written representations or by a public inquiry”. The UK UK’s Planning Act 2008 process has replaced Public inquiries with what is basically a written process but with open floor hearings. Such hearings allow questioning by the panel of Inspectors (i.e. applicants and objectors do not cross-examine) and avoid the mayhem and delays that used to be a feature of some public inquiries.</p> <p>Essential that there will be public participation in the process. The proposed new Act appears similar to UK’s Planning Act 2008 process, but with public consultation reduced to one stage. Based on TWIOMs experience of the UK process (Walney Extension, etc), a reduction to one</p>	<p>The Department is proposing that the examination of the application by a Council of Ministers appointed Independent Examiner(s) will take the form of consideration of written representations about it unless they hold a hearing into a specific issue to ensure that issue is properly examined.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK’s Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK’s Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an “Interested Party” (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30</p>
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				stage of public consultation is only acceptable if there are adequate safeguards to ensure genuine consultation, rather than the applicant merely “telling the public” and then largely attempting to ignore representations.	days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received throughout the course of the examination.
			Q10	Only acceptable if process required adequate public consultation.	As stated above, it is the intention of the Department that an applicant will be required to undertake appropriate pre-application consultation, and there will be a duty on the applicant to consider any representations received at this stage. As in the UK, the applicant will be required to demonstrate how they have considered any representations received when an application is submitted for consideration by an Independent Examiner or panel of Examiners. The Department has also proposed that there will be an opportunity to comment on an application once it has been accepted for examination, and will require anyone with an interest to register as an “Interested Party” and they can then actively be involved in the decision making process.
			Q11, Q15	No comment.	

			<p>Q12</p>	<p>TWIOM concerned at lack of clarity about DOI undertaking scoping exercise to define extent of EIA. The EIA should cover all relevant impacts irrespective of guidance from DOI, for all new applications.</p>	<p>The Department is proposing that for all new applications for development under this Act, an EIA will be required to be submitted. The Department is proposing that it will follow the EU EIA Regulations which are in operation in a number of countries, including the UK. As part of this, there is a wide range of topics included which could form part of the assessment of impacts of the proposal. The Department is proposing that an EIA will be proportionate and appropriate to the scale of the development being proposed.</p> <p>Prior to the preparation of an EIA, the Department will issue a Scoping Opinion which will be determined in collaboration with colleagues across Government. It is the intention of the Department that a scoping opinion will be determined in collaboration with colleagues across Government who have responsibility for a wide variety of areas. This will include a number of different Government Departments working together to ensure all appropriate, relevant items for inclusion within an EIA have been identified at an early stage.</p> <p>The scoping opinion will be necessary to ensure the correct information is to be included within the EIA. It is not appropriate to request that each new application for development should be required to submit an EIA which will cover every topic included within the EU EIA Regulations as not all will be relevant to each application.</p> <p>There will be no restrictions on an applicant including information within the EIA which is in</p>
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					addition to what has been included within the scoping opinion issued by the Department.
			Q13	Statement and question lack clarity. Please clarify.	<p>As part of the Consultation Document, the Department set out that "For applications which seek to vary or amend any conditions to an approval granted either under the current Marine legislation, or under the proposed provisions of this new Act allowing for approvals under the extant legislation to be considered, thresholds will be applied to determine whether an appropriate and proportionate EIA is required in order for an adequate assessment of the application to be undertaken. Prior to an application being submitted for variations to conditions, pre-application discussions will be mandatory in order to consider whether an EIA is required to be submitted with the application. Each of these applications will be assessed on what is being proposed against the provisions within the legislation and the applicant will be advised accordingly".</p> <p>The Department is proposing that all applications for Marine Infrastructure Consent will be accompanied by an EIA, which will be appropriate and proportionate to the nature and scale of the proposed marine activity. It is likely that secondary legislation will contain more information on this, but it is not appropriate to include within the new primary legislation. It is also likely that the procedure for determining any applications which seek to amend / vary consents will also be clearly set out in secondary legislation. The Department is</p>

					not proposing to include any thresholds or criteria for determining whether an EIA is required for applications which seek to vary existing approvals within the legislation.
			Q14	It is a matter of natural justice and therefore essential to have public participation in the process, with adequate notice, timescales etc. Legislation should require applicant to provide a Public Consultation Report.	<p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 working days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An</p>

					Independent Examiner or panel of Examiners will then consider all representations received throughout the course of the examination.
			Q16	Agree – Agree with registration of “Interested Parties” but suggest consideration be given for DOI and / or Independent Inspector to have discretionary power to accept late registration of “interested parties”.	Should any interested party miss this registration process as outlined, the Council of Ministers would not be able to accept any further applications for the registration of “Interested Parties.”
			Further Comments	This response is submitted as hard copy (rather than via the on-line survey) for the following reasons – So that TWIOM has a written record of its completed response; In the on-line survey, a Yes/ No tick must be given to each question before being able to proceed to the next question. As there is a provision for no comment tick, we feel that it may be misleading to summarise the overall results of this consultation by totalling the Yes and No scores.	The Department welcomes the contribution to the consultation exercise by Travel Watch Isle of Man. The Department is not intending summarising the consultation simply on the number of Yes / No answers received to this consultation. The provision of the comment box underneath each question was there to facilitate any additional comments any respondents wished to add, many of which did.
	13	Manx Wildlife Trust	Q7	Disagree - I agree that there is a need for separate and streamlined marine legislation and that existing legislation is not fit for purpose but I do not agree with what the Department is proposing. All marine developments, large and small, and existing projects/works should be included within the new legislation and any works within harbours should come under the new legislation and not under the existing Harbours Act. This way there is a singular and clear consent process for all marine developments in Manx waters.	The Department acknowledges the views of the Wildlife trust in respect of this aspect of the proposed legislation. However, there is a need for the Harbours Act 2010 to continue to apply within Identified Harbour areas to ensure the safe passage of boats etc is adhered to as a responsibility of the Ports Division. The Department is proposing that the extent of this new primary legislation will remain as has been set out – from mean high water mark to the full extent of the Isle of Man’s territorial seas (which will be referred to as the “controlled marine

				<p>Also, there is no definition of what a 'large scale' marine development is. The consultation document states offshore renewable energy projects, "commercial" aggregate extraction, submarine cables and pipelines, gas drilling, carbon capture and storage, and hydrocarbons and any associated works. However, there is no mention of dredge and disposal activities. I assume these will fall under the existing Harbours Act, which I feel is not fit for purpose. Dredging and disposal activities can have significant environmental impacts, such as the situation in Peel marina, and therefore should be included in the new legislation. It is difficult to predict what large scale projects may arise in the future, so specifying what the proposed legislation may incorporate may make the legislation inflexible. It might be worth listing them as examples rather than a definitive list. Also, the report makes reference to "commercial" aggregate extraction - what does that mean? Does that include all aggregate extraction or only under certain circumstances? This needs to be clarified.</p>	<p>area" – to include the territorial seas and the intertidal area to the landward side of the baselines for the territorial seas).</p> <p>It was determined that this new primary legislation would only apply to what would be considered as large scale development projects (those activities listed as offshore renewable energy projects, aggregate extraction, the laying of submarine cables and pipelines, gas drilling, carbon capture and storage, and the exploration and exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986) and any associated works (to be defined in accompanying secondary legislation). For those projects not listed above such as dredge and disposal activities, the extant legislation would continue to apply. However, it was further determined that it would be inappropriate to have applications for smaller projects to have to progress through the detailed consenting process as proposed for this new primary legislation.</p> <p>Activities such as dredging and disposal are activities which are the responsibility of Ports Division of the DOI and there is a statutory duty to "provide for the management, control, operation, maintenance, development and improvement of harbours and may provide facilities for vessels, goods and harbour users" (section 2 of the Harbours Act 2010). These activities will be consented for under the extant legislation.</p> <p>Due to the difficulty in defining commercial</p>
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					<p>aggregate extraction, it has been decided to drop any reference to "commercial" aggregate extraction and to refer only to aggregate extraction.</p> <p>It is likely that the Department will ensure there are provisions contained within the new primary legislation which will allow for the inclusion of projects which may need to be considered under this new primary legislation, and this is likely to be facilitated within secondary legislation. There are some projects which may currently not be feasible to be deployed within the marine environment, however, as technology advances, some of these projects may become more viable for deployment. The Department must be prepared to accept that the above list of activities is not exhaustive, enabling powers in the primary legislation to add to it in future if required.</p> <p>The Department acknowledges the suggestion about the use of the highest astronomical tide, however, the only actual measure of tide available to the Department currently is that of mean high water mark. This measurement is available for the whole of the Island, and it is proposed that this measurement is used for this legislation. Whilst it could be possible to use the highest astronomical tide, it would require a detailed survey to be undertaken of the entire coastline of the Isle of Man adding significant time to the process.</p> <p>The Department is proposing that there will be appropriate powers contained within the new</p>
				<p>I agree with the Town and Country Planning Act being changed to end at mean high water mark so as not to confuse consents. However, would it not make sense for the new legislation to start from the highest astronomical tide rather than mean high water?</p> <p>I am concerned how the enforcement of this new legislation will be enacted considering the financial constraints on the Government at</p>	

				<p>present. There is mention in the report about facilitating post-construction monitoring but what about pre-construction monitoring and EIA's where necessary? What about site inspections? How will these inspections be managed?</p> <p>Where activities cross over land and sea, the report suggests that either the Town and Country Planning Act or the new marine legislation will be used, depending on where the dominance of the work will be conducted. Although the use of only one consent process would be more helpful and streamline the process I am not sure that the Town and Country Planning Act is fit for purpose for marine licensing nor potentially is the new marine</p>	<p>primary legislation which will facilitate the enforcement of the new legislation. The Department is proposing the use of a compliance type system rather than an enforcement system similar to the Town and Country Planning Act 1999. The responsibility would then be placed on the applicant to demonstrate how it has complied with conditions attached to any consent issued.</p> <p>In terms of the financial implications associated with the enforcement of the new primary legislation, the Department is proposing to introduce relevant fees, similar to the fees applied in the UK and Scotland which should help recover some of the costs. Whilst the Department has said it is keen to be competitive with neighbouring jurisdictions, it has also been clear that it must recover as much of the cost of the assessment of an application as possible. As part of this, there will be provision for fees to be charged for post construction monitoring included within the secondary fees legislation. The Department will carefully consider the experience of the UK and Scotland, and set an appropriate fee level to address this.</p> <p>The Department is proposing that for identified works associated with proposed developments located either principally within the marine environment, or on land, that one consenting system should be used which will allow for the consideration of the project in its totality (provided the associated works have been identified in the accompanying secondary legislation).</p>
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					<p>legislation fit for purpose for land planning.</p>	<p>However, the Department is not proposing that all works associated with these projects will be considered in this way. For example, if an application is to be primarily located within the marine environment, the Department is proposing that only works identified and set out in relevant secondary legislation will enable the application to be considered under the one system. Such works could include a length of cable or pipeline to connect onto a site on the land. However, the Department is not proposing that any structural works will be considered as associated works to marine applications. Rather, these applications will be considered under the provisions of the Town and Country Planning Act 1999. However, there is provision within the Bill to make regulations to allow such works to be considered as part of the application for the Marine Infrastructure Consent.</p> <p>Furthermore, the Department is not proposing that all works proposed as part of an application located primarily on land with an element that crosses the mean high water mark will be considered under the terrestrial system. Again, the Department will clearly set out the activities deemed to be appropriate in these cases in subsequent secondary legislation. For activities proposed within the marine environment as part of a larger application (located mainly on land), if they are not considered part of identified associated works, and they are not captured by this new primary legislation, the extant legislation will continue to apply.</p>
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			<p>Q8</p>	<p>Disagree - As highlighted above, I disagree with consent being granted for the projects listed above. All marine developments, including any within the harbours and regardless of size or existing or new, should fall under the new legislation. No marine developments or works should use the Harbours Act once this new legislation is in place. This way one consenting process will cover all works/developments making it clear to developers. Also, as mentioned previously, there is no definition of what a large scale project is. Reference is made to offshore renewable energy projects, "commercial" aggregate extraction, submarine cables and pipelines, gas drilling, carbon capture and storage, and hydrocarbons and any associated works. However, there is no mention of dredge and disposal activities. I assume these will fall under the existing Harbours Act, which I feel is not fit for purpose. Dredging and disposal activities can have significant environmental impacts, such as the situation in Peel marina, and therefore should be included in the new legislation. Also the report makes reference to "commercial" aggregate extraction, what does that mean? Does that include all aggregate extraction or only under certain circumstances? This needs to be clarified.</p> <p>Again, I think the new legislation should start from the highest astronomical tide rather than the mean high water mark. This way only marine</p>	<p>The Department acknowledges the views of the Manx Wildlife Trust in respect of this aspect of the new primary legislation.</p> <p>The Department has determined that the projects it listed as part of the consultation exercise are the activities to which this new primary legislation will apply - those activities listed as offshore renewable energy projects, aggregate extraction, the laying of submarine cables and pipelines, gas drilling, carbon capture and storage, and the exploration and exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986) and any associated works (to be defined in accompanying secondary legislation). For those projects not listed above such as dredge and disposal activities, the extant legislation would continue to apply. However, it was further determined that it would be inappropriate to have applications for smaller projects to have to progress through the detailed consenting process as proposed for this new primary legislation.</p> <p>The Department has determined that in order to enable Ports Division to continue with their statutory duties with regards shipping and navigation, it will control all activities within Identified Harbour Areas. Within Identified Harbour Areas, the extant legislation will continue to apply.</p> <p>The Department acknowledges the suggestion about the use of the highest astronomical tide, however, the only actual measure of tide</p>
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				<p>developments will be handled under the new marine legislation and any land based projects will only be covered by land based planning, in this case the Town and Country Planning Act. However, I am satisfied that the extent of the new legislation will cover out to the end of our territorial sea.</p> <p>With regard to exemptions, as I have already highlighted, activities in harbours should not be exempt from this new legislation but should be included. Also, survey work should be included. This may only require a simple and quick process for the issue of a licence. For example in the UK the licensing process is tiered. The first tier applies to small scale projects and certain surveys and does not require an EIA. Whilst the second tier applies to harbour developments and larger projects which might require an EIA, whilst tier three applies to the large scale projects such as renewable and aggregate extraction projects and will require an EIA. This way the appropriate costings and resources can be applied to each application, streamlining the process and making it proportionate. I agree more appropriate legislation is required for seismic activities but not necessarily via existing DEFA legislation. Could this not be covered by the new legislation? If the Government is trying to streamline the process and make it clearer, surely one consent process for everything makes more sense?</p>	<p>available to the Department currently is that of mean high water mark. This measurement is available for the whole of the Island, and it is proposed that this measurement is used for this legislation. Whilst it could be possible to use the highest astronomical tide, it would require a detailed survey to be undertaken of the entire coastline of the Isle of Man adding significant time to the process.</p> <p>The Department acknowledges the suggestion from the Manx Wildlife Trust regarding the possibility of a tiered licensing process, however, it is still the intention of the Department to exclude all survey work from the provisions of this new legislation.</p> <p>Discussions with colleagues in other Government Departments has confirmed that existing legislation is in place to adequately provide consents for survey work. The Department is proposing that this new primary legislation will include a provision to allow regulations to be made that make provision for the application of consent regimes to seismic survey works. The Department did consider whether it would be appropriate to include survey work as part of this new primary legislation but it was determined that the existing process covered the necessary consents without requiring an application to be considered by this proposed consenting process, and by an Independent Examiner or panel of Examiners.</p>
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			<p>Q9</p>	<p>Disagree - There is inadequate information here to be satisfied with the outlined process. In the consultation document reference is made to the option of an application to be refused, but in what instance would that happen? for example, a lack of information or environmental issues etc? There is also the option for a "<i>statutory appeal mechanism within the Act which will give the Department some degree of control over appeals against the decision issued</i>" – to what degree? Can the Department overrule the decisions made by the Council of Ministers? Also, it is not clear how an Independent Inspector would be chosen/sourced or the criteria involved. What does 'independent' actually mean in terms of their role? What is the point of employing an Independent Inspector if they have no statutory control over decisions?</p>	<p>The Department in its consultation document set out that it was seeking opinions on the principles to be included within the new primary legislation. The level of detail sought by the Manx Wildlife Trust will be drawn out through subsequent secondary legislation which will be consulted on in due course.</p> <p>With regards the consideration of an application, the Department has included suitable provisions within this new legislation which will enable the Council of Ministers to refuse to consider an application if and when appropriate to do so. It is for the Council of Ministers to confirm to an applicant that their application has been accepted for examination.</p> <p>It is likely that circumstances which this may be appropriate to apply to could include where the application does not comply with the requirements of clause 19 of the Bill or the activities proposed do not relate to a controlled marine activity.</p> <p>The Department has proposed that there will be a statutory appeal mechanism included within the new legislation. It is likely that this will be a challenge to the High Court on a point of law, similar to the provision contained within the UK's Planning Act 2008. It is likely that a time limit to lodging the appeal will be set at a maximum of 30 working days from the day after the decision has been issued by the Council of Ministers. Should an appeal be lodged, the Court will determine the timetable for proceedings.</p> <p>The appointment of an Independent Examiner or</p>
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					<p>a panel of Examiners will be by the Council of Ministers in the same manner as it is done for land based applications. Once an Examiner has considered the application by the appropriate means and returned their report with a recommendation to CoMIN, it will be for CoMIN to make a final decision on the application. The Departments will have no involvement in this process. They will not be able to add further comments, defend or promote their positions, nor will they be able to lobby in favour of their preferred outcome.</p> <p>The Department is proposing that Public Participation will commence at the pre-application stage. The Agreement for Lease (AFL) stage is limited in involvement to the Department and the applicant, as this forms part of a commercial agreement. There is no public involvement in this, nor is there any public consultation.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be</p>
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Also, it is not clear at what stage there will be public consultation. This is an important part of the consent process and should be undertaken at an early stage and continue through to consent of the development or works.

					<p>submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 working days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received throughout the course of the examination.</p>
			Q10	<p>Yes, as long as all projects are included.</p> <p>In principle, the use of one legislation to manage a project streamlining the consenting process makes sense, however, the new marine legislation needs to include harbour areas and other activities, such as cable laying, otherwise it is not one consent process but two or three and may lead to confusion for a developer. New and existing projects should both be included in the new legislation. The new legislation should cover all marine activities and developments, such as dredge and disposals, cable laying, construction works etc, with a tiered approach to the</p>	<p>The Department acknowledges the support for this element of the legislation, however, as previously set out, it will not include all activities suggested by the Manx Wildlife Trust. The new primary legislation will apply to an identified number of activities (offshore renewable energy generation, aggregate extraction, the laying of submarine cables and pipelines, gas drilling, carbon capture and storage, the exploration and exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986) and any associated works with these activities (to be identified in accompanying secondary legislation). For any activities not included within</p>

				<p>licensing. As I've already outlined tier 1 would cover small and/or simple developments, such as certain research surveys (not including seismic) and mooring buoys, which are unlikely to require an EIA. Tier 2 should cover larger products such as dredge and disposal works and may need an EIA. Tier 3 should cover the largest of projects, such as aggregate extraction and renewable developments and are likely to require an EIA.</p>	<p>this list, the extant legislation will continue to apply.</p> <p>It is not the intention of the Department to introduce a tiered consenting system as this brings with it additional complexities including determining thresholds for EIA developments.</p> <p>The Department hopes that by providing a clear, staged consenting process for the identified activities to which this Act applies, there will be less confusion for an applicant than if they used the current process.</p>
			Q11	<p>Disagree - In principle, the use of one legislation to manage a project streamlining the consenting process makes sense, however, I am unsure that the new legislation will adequately cover terrestrial aspects of a project, or that the Town and Country Planning Act will adequately cover the marine aspect of a project. Also, any harbour works/developments should be covered by the new legislation rather than the existing Harbours Act, under all circumstances and not just if it makes up a small part of a larger project.</p> <p>I do agree that there should not be an overlap between the new marine legislation and the Town and Country Planning Act. However, should it not be from the highest astronomical tide rather than the mean high water mark?</p>	<p>The Department is proposing that for identified works associated with proposed developments located either principally within the marine environment, or on land, one consenting system should be used which will allow for the consideration of the project in its totality (when appropriate to do so).</p> <p>However, the Department is not proposing that all works associated with these projects will be considered in this way. For example, if an application is to be primarily located within the marine environment, the Department is proposing that only works identified and set out in relevant secondary legislation will enable the application to be considered under the one system. Such works could include a length of cable or pipeline to connect onto a site on the land.</p> <p>The Department has proposed that should an application which is located primarily on land</p>

					<p>have an element which will fall below the mean high water mark, it will be assessed under the provisions of the Town and Country Planning Act 1999. It is likely that the Department will identify such circumstances when this would apply, and such associated works it considers appropriate (this will be set out in accompanying secondary legislation). There are provisions within the Isle of Man Strategic Plan 2007 which set out when an EIA is to be submitted (as it applies to land).</p> <p>In addition, there is the provision within the Town and Country Planning Act 1999 which allows for the Department to request information to be submitted along with the application (Town and Country Planning (Development Procedure) (No.2) Order 2013. This would provide the ability to request that certain, relevant marine environmental information is to be submitted should it be determined it is required.</p> <p>Furthermore, the Department is not proposing that all works proposed as part of an application located primarily on land with an element that crosses the mean high water mark will be considered under the terrestrial system. Again, the Department will clearly set out the activities deemed to be appropriate in these cases in subsequent secondary legislation. For activities proposed within the marine environment as part of a larger application (located mainly on land), if they are not considered part of identified associated works, and they are not captured by this new primary legislation, the extant legislation will continue to apply.</p>
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						<p>The Department has determined that in order to enable Ports Division to continue with their statutory duties with regards shipping and navigation, it will control all activities within Identified Harbour Areas. Within Identified Harbour Areas, the extant legislation will continue to apply.</p> <p>The Department acknowledges the support for the proposal to ensure there is no legislative cross over within the intertidal areas. However, with regards the suggestion about the use of astronomical highest tide rather than using the mean high water mark as a gauge, the Department acknowledges that the only actual measure of tide available to the Department currently is that of mean high water mark. This measurement is available for the whole of the Island, and it is proposed that this measurement is used for this legislation. Whilst it could be possible to use the highest astronomical tide, it would require a detailed survey to be undertaken of the entire coastline of the Isle of Man adding significant time to the process.</p>
			Q12	Disagree - As all marine developments should come under the new legislation, large or small, an EIA may not be required for all applications. I refer back to my comments regarding a tiered licensing system. However, I agree that any required EIA's should be proportionate to each individual case based on various criteria, such as scale, location, cumulative impacts, environmental issues etc. The EIA should be fit for purpose and be to an appropriately accepted	<p>The Department acknowledges support for the requirement that an EIA should be proportionate to the scale of the development proposed.</p> <p>The Department is proposing that for all activities to which this Act applies, an EIA will be mandatory for new developments. It will be appropriate and proportionate to the scale of the development proposed.</p>	

					<p>standard.</p> <p>It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents previously granted.</p> <p>However, depending on the nature of the application for variation submitted, Government will consider this, in collaboration with colleagues across different Departments and determine whether it is appropriate to request an EIA (which would then be proportionate to the scale of the amendments being sought). If it is determined that what is being proposed by way of an amendment merits the submission of environmental information, this will be requested, and will be required to be submitted by the applicant prior to the consideration of the application.</p> <p>By including a provision whereby all applications for variation to approvals already obtained are required to submit an EIA could prove to be inappropriate and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the examination of the application. By including the provision that a decision will be taken on a case by case basis provides that an EIA can be required if and when appropriate. It is not the intention of the Department to include prescriptive thresholds within secondary legislation for this type of application.</p> <p>For all other activities which do not fall under this new primary legislation, the Department is</p>
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					proposing that the extant legislation will continue to apply.
			Q13	<p>Agree - Existing projects should be reviewed on a case by case basis and if a new licence is to be issued for an existing development then consideration to environmental impacts should be given. A continuation licence should not just be handed out without due process and consideration for environmental impacts. This may mean completing an EIA. However, I agree that any required EIA's should be proportionate to each individual case based on various criteria, such as scale, location, cumulative impacts, environmental issues etc. The EIA should be fit for purpose and be to an appropriately accepted standard.</p>	<p>The Department is proposing that for all activities to which this Act applies, an EIA will be mandatory for new developments. It will be appropriate and proportionate to the scale of the development proposed.</p> <p>Should licences be required to be reissued for existing projects, this Act is not proposing that an EIA will be required, unless the application sought to vary / amend the existing consent.</p> <p>The Department is proposing appropriate powers to be contained within this new primary legislation which will enable the consideration of already consented projects provided they fall under the provisions of this new primary legislation. For those activities which do not fall under this new primary legislation, the extant legislation will continue to apply.</p> <p>The Department acknowledges support for the requirement that an EIA should be proportionate to the scale of the development proposed.</p>
			Q14	<p>Agree - Public participation should start from the very beginning and go right to the end of the process. Providing comments/representation at the pre-application stage is useful and gives interested parties the chance to comment on issues early on in the process. However, there is likely to be limited detailed information regarding</p>	<p>The Department is proposing that Public Participation will commence at the pre-application stage.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation. There will be a</p>

				<p>the application at that time. So, the option should be available to add further comments/representations once more information is available. The consultation document states "<i>During the examination stage, all Interested Parties will be invited to provide further written evidence if they wish about the issues they identified in their representations</i>". This suggests that if an issue arises later in the process and was not identified at the pre-application stage or changes to the original application are required then it cannot be discussed. Often issues arise as a project develops, therefore there should be measures in place to allow for new issues or changes to be addressed further down the line should it be necessary.</p>	<p>requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as a duty to take account of the responses received to the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses to their consultation exercise.</p> <p>Once an application has been received, there will be an element of public consultation again. During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this. As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner or panel of Examiners will then consider all representations received throughout the course of the examination.</p>
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			Q15	<p>Disagree - Interested parties should include DOI, DEFA and DED but this is a very limited list. The list should also include anyone who is a marine user, whether for recreation or commercial reasons, such as commercial fishermen, researchers, anglers, divers, boat owners etc – to name but a few. Any marine activity can affect any number of users so all relevant parties should be included in the “interested parties” list and not just three Government departments.</p>	<p>The Department proposed that the DOI, DED and DEFA would be included as statutory consultees owing to their legislative responsibilities under the current legislation. It is essential that these Departments are afforded appropriate opportunities to make representations on any applications for new developments particularly if there are any areas of concern or in conflict with their statutory duties.</p> <p>The Department has proposed the registration of “Interested Parties” as part of the new legislation to ensure anyone with an interest in a specific application can be involved throughout the process. Not all marine users will have an interest in each of the marine applications which may be submitted, nor would it be appropriate to include all marine users on a consultee / interested party list. The responsibility will be on each user to ensure they are included within the process.</p> <p>There is provision within the Bill to prescribe other person as statutory consultee, if the Department consider it would be appropriate to prescribe those persons.</p>
			Q16	<p>Disagree - I think any marine user should be able to become an “Interested Party” at any time. As a project develops the environmental issues and the users of that environment may change. Therefore anyone should be able to join the process should they become affected by the proposed development at any time.</p>	<p>The Department is proposing a system similar to that in operation in the UK which sets out the requirements for registration of “Interested Parties”. It is essential to ensure there is an identified time period within which anyone with an interest in the application could register as “Interested Parties”. However, it is essential that</p>

					<p>there is a restricted time period to this in order to ensure all those actively engaged within the process can consider all representations in a timely manner and respond to any issues raised.</p> <p>The Department appreciates that the project may change and issues may be raised, however, it is essential to clearly identify the time scales within which representations can be received, otherwise, it could stall the examination of the application.</p>
14	Isle of Man Friends of the Earth	Q7	<p>Agree - It is not entirely clear what is being omitted from this 'streamlined' process, other than doing away with the input of the TSC. This could still be very valuable in informing applicants what is expected, in order to save time later in the process if poorly formulated applications can thus be avoided. The previous value of TSC input is expressly acknowledged in the Consultation paper.</p> <p>Re 8.1, I understand the intention of the phrase "aim to ensure that there is a sustainable approach", but this is too loose. There should be a statement to the effect that demonstrably unsustainable developments will be turned down: if sustainability means anything, then it makes no sense to allow the possibility of unsustainable developments being approved.</p>	<p>The Department has set out in the Consultation Document that there will still be a role for the Territorial Seas Committee to play, however, it will not form part of the decision making process of an application. The role of the Territorial Seas Committee will continue as it is currently for applications which are to be considered under the provisions of the extant legislation.</p> <p>Whilst it is not the intention of the Department to approve schemes which are considered to be unsustainable, the purpose of an EIA is to assess the impacts from any of this type of scheme proposed on the environment to determine whether what is being proposed is acceptable and whether appropriate mitigation measures have been proposed where impacts have been identified.</p> <p>Any EIA submitted along with an application will be subject to scrutiny by Government Departments and the general public (through the public consultation exercise) and any</p>	

					representations made on this will be considered by an Independent Examiner or a panel of Examiners.
			Q8	<p>Unable to give an unqualified Yes - Re 11.1. The question should provide for the consideration, and consequent granting or denying of consent, not "to provide for the consenting of large scale marine developments". It is vital to avoid any possibility that there is some sort of presumption in favour of consenting.</p> <p>Re 11.1, most of the examples of projects are self-explanatory, but the word "hydrocarbons" in isolation requires amplification.</p>	<p>The Department is proposing that this new primary legislation will include powers which will enable the consideration of applications for new development to which the Act applies. The Department has not set out that there will be a presumption in favour of development applied to this proposed model for consenting. Rather, it is seeking to include the powers which will facilitate the consideration of an application, and return a final decision on that.</p> <p>The Department has further considered the inclusion of hydrocarbons and has determined it is more appropriate to include "the exploration and the exploitation of natural gas and petroleum (as defined in the Petroleum Act 1986).</p>
			Q9	<p>Again, cannot give an unqualified answer, too many unanswered questions involved.</p> <p>Re 14.1. Who will decide, and how, whether to consider the merits of an application by written representations or a Public Enquiry? What criteria will be applied to the decision?</p> <p>Also, what sort and degree of control over appeals does the Department have in mind?</p> <p>Re 14. How, when and by whom will the "compliance regime be considered"?</p>	<p>The Department is proposing that the means by which an application is to be examined will be determined by an Independent Examiner or a panel of Examiners, who will set the examination timetable. It is likely that for the larger type applications received, may have certain issues examined through a specific issue hearing while for smaller applications, including those which may be for a variation / amendment to a condition attached to a previous consent, that it would be more appropriate to consider these by way of written representations. The Department</p>

					<p>is not proposing that there will be any specific criteria applied for the Examiner(s) to apply when determining how to consider the application, this will be a judgement call based on their previous experience of similar applications and the most appropriate means for a recommendation on that application to be made.</p> <p>The Department has proposed that there will be a statutory appeal mechanism included within the new legislation. It is likely that this will be a challenge to the High Court on a point of law, similar to the UK's Planning Act 2008. It is likely that a time limit to lodging the appeal will be set at a maximum of 30 working days from the day after the decision has been issued by the Council of Ministers. Should an appeal be lodged, the Court will determine the timetable for proceedings.</p> <p>The Department is including within the new primary legislation a compliance type regime rather than an enforcement regime which would put the responsibility back to the applicant who would be required to demonstrate how they have complied with any conditions of a Marine Infrastructure Consent required of them.</p> <p>The Department is further proposing that there will be the appropriate powers contained within the new primary legislation which will enable the Department to seek to prosecute / fine if it has been determined that a consented application is found to be in breach of any conditions attached to its approval.</p>
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			Q10	<p>Again, not an unqualified “yes”.</p> <p>I agree CoMin is a better forum than just one Ministerial decision. However, Tynwald has previously accepted papers by the then DEFA Minister Phil Gawne on climate change, describing the dangerous contributions of burning fossil fuels, allied to a commitment to 80/50 reduction in our carbon emissions. Decisions on approval of major new fossil fuel extraction should give due consideration to the climate change risks involved if we are to be an internationally responsible jurisdiction, and not hide behind the alternative term “hydrocarbons”. Also, there are additional huge unquantified risks if any development seeks to employ “unconventional” extraction methods, such as fracking or undersea coal gasification. For both of these reasons I feel Tynwald must be fully involved in considering consent for any such application.</p>	<p>The Department is proposing that as part of an application submission, an appropriate and proportionate EIA should be included. This EIA will need to comply with the scoping opinion which will be prepared in collaboration with colleagues across Government. As part of the EIA, an applicant will be required to demonstrate that they have fully considered all possible impacts associated with the proposed development on the environment and how these identified impacts could be mitigated against. It is likely that an EIA will also require the consideration of construction / extraction methods which will be used. There will be an opportunity prior to, and following the submission of an application to allow for public consultation on the proposal.</p> <p>The Department is proposing that in making their decision, the Council of Ministers will have regard to the Examiner’s report and recommendation following the examination of the application.</p>
			Q11, Q12, Q15	Agree	
			Q13	<p>Do not agree, a proportionate and appropriate EIA should accompany every variation application. If it meets these two criteria it should not be an undue burden on the applicant.</p>	<p>It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents previously granted.</p> <p>However, depending on the nature of the application for variation submitted, Government will consider this, in collaboration with colleagues</p>

					<p>across different Departments and determine whether it is appropriate to request an EIA (which would then be proportionate to the scale of the amendments being sought). If it is determined that what is being proposed by way of an amendment merits the submission of environmental information, this will be requested, and will be required to be submitted by the applicant prior to the consideration of the application.</p> <p>By including a provision whereby all applications for variation to approvals already obtained are required to submit an EIA could prove to be inappropriate and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the examination of the application. By including the provision that a decision will be taken on a case by case basis provides that an EIA can be required if and when appropriate.</p>
			Q14	<p>Agree in principle - Re 16.1 However, there is a need for much more explanation of what is required of applicants in order to satisfy the condition that they "undertake appropriate public consultation prior to the submission..." in terms of what, how, and in what timescales.</p>	<p>The Department has proposed that as part of this scoping exercise, it will set out the principles to be included as part of the primary legislation. Once the powers have been included within the primary legislation, there is the opportunity to provide a greater level of detail within secondary legislation which is likely to be consulted on. The Department has said that there will be the opportunity for public participation at the pre-application stage but the format of this has not yet been confirmed.</p> <p>The Department has also set out that there will be an opportunity to comment once the</p>

				<p>Re 16.2. I agree that those who wish to register as "Interested Parties" should do so, and thereby be "invited to take part in relevant stages of the examination". However, referring back to 16.1, I do not agree that it is reasonable that the Department "will not accept comments from the general public unless they register as "Interested Parties" ". It is possible, indeed likely, that public understanding and knowledge about no doubt highly technically and environmentally complex developments will take time to develop. They should not be disbarred from adding their voice to the debate because they were not sufficiently knowledgeable to lodge a formal application at an early stage.</p>	<p>application and EIA has been received, and confirmation has been given that it will be considered. It is likely that the Department will follow a similar process to that set out in the UK's Planning Act 2008 but the Department must ensure that the process devised is appropriate to be applied to a range of applications. Further detail on this will follow.</p> <p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>With regards the acceptance of late comments following the close of the public consultation exercise (following acceptance of an application), should any interested party miss this registration process, the Council of Ministers would not be able to accept any further applications for Interested Parties or any representations on the application. However, the Department will consider whether it would be appropriate to enable the public to appeal to the Examiner(s) whose decision it would be as to whether they could be involved within the process at the time of their initial assessment and examination.</p>
			Q16	<p>Agree, subject to detail about what the "identified time period" for applications will be.</p>	<p>The Department is proposing that the time limit for registration as "Interested Parties" will be 30 working days. This is in line with provisions contained within the UK's Planning Act 2008.</p>

	18	Manx Fish Producers Organisation	Q7	<p>Agree – I have ticked the yes box but there are certain proviso's. There needs to be sufficient control over the Department to ensure that it does not abuse the new powers. For example, one point refers to the ability to amend / vary / revoke / enforce any permissions granted under this legislation. If this means that once permission has been granted (having gone through the appropriate investigations such as EIA) and is subject to certain recommendations and limitations imposed as a result of the EIA and the Independent Inspectors report, then the Department should not be allowed to amend or vary those recommendations without further consultation with the appropriate bodies. If this power to amend / vary / revoke / enforce is purely to ensure that any company being granted a licence adheres to the licence conditions then this would be acceptable, although presumably this would anyway be dealt with under the conditions of the contract. I think the key point here is that the Department cannot be allowed such powers whereby they can change or alter permissions except for enforcement purposes.</p> <p>It also says there should be the ability to facilitate any necessary secondary legislation – again this should be subject to the necessary consultations and appropriate discussions.</p> <p>There should be power to ensure that anyone a granted a licence properly compensates anyone who has reduced income as a result of any permissions granted. I refer specifically to the</p>	<p>The Department is proposing that the new primary legislation will have adequate powers to allow any applications submitted seeking to vary / amend consent, there are powers to do this. The Department is not intending that it will make the decision on any such application, rather, the Department has set out that all applications will be considered by a CoMIN appointed Independent Examiner or panel of Examiners who will undertake the examination of all applications. The Examiner will pass a recommendation to the Council of Ministers who will consider it and make the final decision on the application submitted.</p> <p>An applicant who seeks to vary a consent must clearly set out what that amendment is and this will allow the Department to determine whether an EIA is required to be submitted alongside the application.</p> <p>The Department in its consultation document has set out that should it be necessary and appropriate to bring forward secondary legislation, that it is likely that this will required public consultation to be undertaken.</p> <p>The Department is not proposing the inclusion of a provision to provide compensation should a reduced income result from a consent.</p>
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					Manx fishing industry who are going to be affected more than any other industry by marine developments.	
			Q8		Agree – It must be noted that there area from high water to low water is an extremely sensitive and ecologically rich zone which creates unique ecological niches for many organisms. Extreme care must be taken and appropriate departments and experts consulted before there is any permission granted for any work in these areas.	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department further acknowledges that there are areas within the intertidal and territorial seas which are environmentally sensitive, and the Department will rely on the expertise and technical skills of colleagues within the Department of Environment, Food and Agriculture to ensure that the assessment of any impacts from proposed developments are appropriately undertaken and mitigated for. This is likely to be considered as part of the Scoping opinion for an EIA which will be required for all new developments proposed from mean high water mark out to the full extent of the territorial seas.</p>
			Q9		Agree – Provided public participation in the process is not simply a tick box exercise and that the Council of Ministers do take notice of the Independent Inspector. There is a real concern within the wider public and certainly within the fishing community, who are likely to be most affected by any licences granted under this Act, that the Department sees maximising income to be the main and only driver in any marine development. There is an existing fishing community which depends totally on the marine	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department has set out as part of the proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's</p>

				<p>environment in its present state and which supports a large number of tax payers and which contributes greatly to the Manx GDP. Any income from marine developments that affects the income potential of the fishing industry must be carefully looked at to see how much actual net gain there may be.</p>	<p>Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 working days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner will then consider all representations received throughout the course of the examination.</p> <p>Should any interested party miss this registration process, the Council of Ministers would not be able to accept any further applications for Interested Parties, however, the Department will consider whether it would be appropriate to enable the public to appeal to the Examiner whose decision it would be as to whether they could be involved within the process at the time</p>
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					<p>of the examination.</p> <p>The Department is proposing that the decision maker on applications to be considered under this new Act will be the Council of Ministers, not the Department. The role the Department will play once an application has been submitted and notification has been given that it has been accepted for consideration will be that of a stakeholder and a statutory consultee. The Department will need to ensure it submits appropriate representations to the Independent Examiner(s) during the examination of the application. The Council of Ministers will take account of the Independent Examiner's report, however, they will return their final decision. It is likely that there will be a requirement for justification of reasons for approval or refusal, particularly should this decision go against the recommendation of the Examiner(s).</p> <p>There will be a responsibility placed on the fishing industry to ensure they demonstrate the impact a proposed development under this new primary legislation could have to the Independent Examiner(s), particularly in monetary terms if this is of most concern to them. An Independent Examiner(s) will then need to consider their representations along with other evidence during the examination of the application.</p>
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			Q10		<p>Agree – If a project is to go ahead and has been properly investigated (EIA) and present users compensated then one consenting scheme seems to be a logical step.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas. However, the Department has not proposed compensation for any present users of the marine environment within this new primary legislation. There is currently no mechanism for compensation within extant legislation and the Department isn't proposing would seek to introduce this within the new primary legislation.</p>
			Q11		<p>Agree – Provided EIA on both land and sea has been carried out for any project that covers both areas, paying particular attention to the ecologically sensitive tidal areas.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department is proposing that all applications for new developments will be required to submit an EIA which will consider any impacts on the environment from the proposed development. The Department will consider in cases where some elements of the proposed development cross the mean high water mark onto land whether an EIA is required. There will be limited opportunities for associated works proposed on land to be considered as part of one application (the Department will carefully set these out within appropriate secondary legislation) and a decision will be taken as to what information will be required to be submitted by an applicant at that stage. For applications which are proposed to go from land into the marine environment, the Department will carefully consider what environmental information will be required to be submitted in order to demonstrate the impacts of the proposed development. The Department will work in close collaboration with colleagues</p>

					across Government to ensure appropriate environmental information is being requested in circumstances when proposed developments cross legislative jurisdictions.
			Q12	Agree – When looking at the type of EIA it is not just Government Departments who should decide what is appropriate or proportionate. The fishing industry as well as NGO’s and other stakeholders have expertise that should be used to decide the most appropriate and proportionate form of EIA.	<p>The Department is proposing that it will collaborate with colleagues across Government to ensure an EIA is scoped, ensuing it is appropriate and proportionate to the proposed development being considered. The Department is not proposing to involve any external stakeholders in this exercise. The Department is confident that colleagues across Government should ensure all relevant issues will be included within the scoping opinion and will best represent the views of the wider stakeholders they also seek to represent.</p> <p>There will be opportunities for external stakeholders to consider any environmental information made available by an applicant at the pre-application stage, and another opportunity once an application has been submitted and it has been confirmed that it is acceptable for consideration.</p>
			Q13	Disagree – Presumably in the granting of any application all aspects have initially been considered and the permission given would be based on these findings. To ask for a variation on an approval without the requirement to refer back to the original EIA or to carry out a further EIA would effectively mean that the original EIA findings could be by-passed. In short, if there is a required for a variation on an approval it must	It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents previously granted. Consideration will be given as to whether it would be appropriate to include sufficient threshold levels which may provide more guidance for applicants on this.

				<p>be up to the applicant to prove the case i.e. to provide new evidence which was not previously included within the original EIA. This can then be looked at by experts and stakeholders who contributed to the original EIA.</p>	<p>However, depending on the nature of the application for variation submitted, Government will consider this, in collaboration with colleagues across different Departments and determine whether it is appropriate to request an EIA to be submitted (which would then be proportionate to the scale of the amendments being sought). If it is determined that what is being proposed by way of an amendment merits the submission of additional environmental information, this will be requested, and will be required to be submitted by the applicant prior to the consideration of the application.</p> <p>By including a provision whereby all applications for variation to consents already obtained are required to submit an EIA could prove to be inappropriate and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the examination of the application. By including the provision that a decision will be taken on a case by case basis provides that an EIA can be required if and when appropriate.</p> <p>It is not the intention of the Department that the findings of the original EIA will be "by-passed", rather the submission of an additional EIA may not be required in all cases.</p>
			Q14	<p>Agree – This is essential. The marine environment is used by all of us in some form or other and everyone has a right to have their say. The Manx public and the Industries most affected by any marine development must be</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>The Department has set out as part of the</p>

				involved in this process and their thoughts properly considered. We cannot simply have a box ticking exercise.	<p>proposals for this new primary legislation that it will include Public Participation as part of the application process. It is proposing that there will be a requirement on the applicant to undertake appropriate pre-application consultation, similar to section 42 of the UK's Planning Act 2008 as well as a duty to take account of the responses received as part of the consultation (section 49 of the UK's Planning Act 2008). An applicant will be required to demonstrate how they have considered responses received during the consultation exercise in their consultation report to be submitted along with their application.</p> <p>Once an application has been received, there will be an element of public consultation again.</p> <p>During this time, anyone who has an interest in the process will be required to register their interests as an "Interested Party" (similar to the process in the UK). The Department will ensure that this is made clear at the time of publication of the application. A specified time period will be available for people to do this (likely to be 30 working days). As part of this process, any Interested Parties will be required to make their representations on the application, and state whether they support or oppose the application and clearly state their reasons for this. An Independent Examiner will then consider all representations received throughout the course of the examination.</p>
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			Q15	<p>Agree – DEFA in particular must have their input. The concern here is that the DOI and DED are large Departments while DEFA is relative small and therefore may not have an equal influence on decisions. DEFA also have the expertise in the marine environment and their opinion should not be over-riden just so that the larger Departments can simply maximise income stream from OUR territorial waters.</p>	<p>It is the intention of the Department that DOI, DEFA and DED will all be granted Interested Party status based on the acknowledgement that they all have statutory responsibilities for the territorial seas (DOI – owner of the seabed, with responsibility for Ports, including ports and airport, DEFA – responsibility for the marine environment and DED – retains ownership of all mines and minerals within the territorial sea). The Departments will be responsible for submitting their own representations to the Independent Examiner(s) on each application to be considered. An Independent Examiner(s) will afford all representations the opportunity to be considered, and will seek further clarification on any issues raised if appropriate for them to do so.</p> <p>The final decision in this process will come from the Council of Ministers and it will be up to them to consider the recommendation from the Independent Examiner(s) in their report following the close of the examination. The Departments will have no involvement in the process at this stage and cannot exert any influence over the Council of Ministers at this stage.</p>
			Q16	<p>Disagree – We are dealing with serious and far-reaching decisions here with any large scale marine developments being granted licences being with us for the foreseeable future. These are not short-term proposals. Therefore throughout the process there must be an open channel whereby new evidence can be presented as and when and so “Interested Parties” must be</p>	<p>The Department is proposing that there will be public participation in the process before an application is submitted and within an identified time period once an application has been accepted for consideration. After this stage, should any further representations be made, they must be made to the Independent Examiner(s) who will make a decision as to</p>

				<p>a fluid term and open access allowed throughout. We are dealing with unbroken ground here. For example wind farms have been developed before and been in existence for some years but few, if any, have been developed within major queen scallop and king scallop grounds. The EIA cannot therefore be simply a review of available literature and original scientific research needs to be carried out over a number of years to see how construction and running of wind farms affects the survival as well as breeding capacity of these species. Don't forget these animals cannot simply swim away. Therefore "Interested Parties" only allowed to register their interest in a restricted period may exclude vital input.</p>	<p>whether or not to include them within the examination of the application.</p> <p>The Department is not proposing to enable the presentation of new evidence once the examination has been opened. It is essential that there are identified cut off dates to ensure everyone involved within the process is aware of all representations and evidence being submitted for consideration, and they are all afforded equal opportunities to review and comment on these.</p> <p>The submission of late evidence may impact on another stakeholders evidence, and they should be able to consider this in their submission if required. Also, by having these clearly set out dates, it allows everyone within the process to be aware of the most recent and up to date submissions for examination. If there are no identified dates, there is less control over the submission of evidence and it could become quite problematic in managing the process.</p> <p>It is likely that as part of a decision on a proposed development, should it be an approval, a number of conditions could be attached to ensure the applicant demonstrates that the development has not had a detrimental impact on the marine environment. Such conditions have been applied to other offshore renewable energy developments, some with much success. The Department is considering including a similar system of Development Consent Orders as is in operation in the UK which will require the preparation of a Marine Infrastructure Consent by an applicant to be submitted in conjunction</p>
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						with an application and this will be tested at the examination. Amendments to this may be proposed by the Council of Ministers and a final Order issued on the project.
	22	Discover Diving	Q7		Agree – This change will mean that ASSI’s come into this legislation e.g Kallow Point.	The designation of ASSI’s will continue to fall under the responsibility of DEFA. However, any proposed developments within the marine environment will need to take account of any ASSI’s as well as other conservation designations which fall below the mean high water mark.
			Q8		Agree – I would have preferred to have the concept of Environmental Impact Assessment considerations listed in the powers as well.	The Department is proposing to ensure there are sufficient enabling powers within the primary legislation which will allow for an EIA to be requested and assessed. Although it didn’t specifically set it out within the consultation document, the EIA will form part of the consenting process, and will be legislated for on that basis. The Department is proposing that there will be accompanying secondary legislation which will set out the EIA process in greater detail, and it is likely that there will be further public consultation on this secondary legislation.
			Q9, Q10, Q14, Q15, Q16		Agree	The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.
			Q11		Assuming that consultation is extended to parties that may have an interest in land based development but would not comment on marine developments.	The Department is proposing that there will be public participation required to be undertaken in line with the provisions of the new primary legislation and any accompany secondary legislation.

			<p>Q12</p>	<p>Agree – The EIA should not be completed by Government Departments (although they should be consulted). Independent assessment is crucial.</p>	<p>The Department is proposing that an EIA should be completed and submitted alongside an application for development by an applicant. A scoping opinion will be provided by Government which will set out what will be expected to be contained within an EIA and an applicant will be required to comply with this. The Scoping Opinion will be prepared in collaboration with colleagues from across Government to ensure all appropriate topics are included within the assessment.</p> <p>Although it may be possible for Government to supply some of the data required, the responsibility will not be on Government to ensure an appropriate assessment of the impacts of the proposal on the identified topics has been undertaken. It is essential that Government is not involved in this stage, as Government will ultimately have to assess the Environmental Statement and make any representations on this to the Independent Examiner(s).</p> <p>It is the intention of the Department that there will be an independent assessment of the EIA as part of the examination process. While Government will be afforded the opportunity to consider the Environmental Statement, along with a wide range of stakeholders (as afforded through the consultation process), any representations made on the Environmental Statement will be considered by the CoMIN appointed Independent Examiner(s) when they undertake the examination of the application. Should they require further information or</p>
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						clarification on any subject matter, they will be in a position to request clarification or the submission of further evidence to support their position.
			Q13		Disagree – Submit in all cases. Vary the depth if necessary but don't create the possibility that it might be avoided. That decision is too subjective.	<p>It is the intention of the Department that it will not always be a requirement to prepare and submit an EIA with applications which seek to vary / amend consents previously granted. Consideration will be given as to whether it would be appropriate to include sufficient threshold levels which may provide more guidance for applicants on this.</p> <p>However, depending on the nature of the application for variation submitted, Government will consider this, in collaboration with colleagues across different Departments and determine whether it is appropriate to request an EIA (which would then be proportionate to the scale of the amendments being sought). If it is determined that what is being proposed by way of an amendment merits the submission of additional environmental information, this will be requested, and will be required to be submitted by the applicant prior to the consideration of the application.</p> <p>By including a provision whereby all applications for variation to approvals already obtained are required to submit an EIA could prove to be inappropriate and an additional burden on both the applicant and consultees alike who will then have to consider the information submitted before preparing any representations for the</p>

					examination of the application. By including the provision that a decision will be taken on a case by case basis provides that an EIA can be required if and when appropriate.
Individuals					
	2	Bill Henderson MLC	General	<p>Broadly in favour, we need one set of rules brought together in one cohesive approach suitable for 2015 and beyond.</p> <p>Need to consider new and emerging marine developments.</p> <p>Would like to see any legislation having strict environmental guidelines to as best practice is followed in protecting the marine environment.</p> <p>There should be powers to designate, where appropriate areas proved or thought to be of ASSI interest.</p> <p>Would like to see legislation taking into account any consequential pollution, environmental degradation as a result of "activities".</p>	<p>The Department will ensure there are provisions contained within the legislation which will enable the consideration of any future technologies which may become viable in future.</p> <p>It is the intention of the Department to ensure appropriate EIA legislation is introduced which will follow the EU, and will ensure best practice is to be followed.</p> <p>It is not the intention of the Department to enable the designation of conservation areas within this new Act. This responsibility and subsequent power lies with the Department of Environment, Food and Agriculture who will continue to fulfil their statutory duties.</p> <p>It is not the intention of the Department to include provisions which will take into account pollution or environmental degradation as a</p>

					<p>result of activities to be permitted under this new legislation. There will be a compliance type regime to ensure any developments are carried out in accordance with the consents and penalties will be applied should the developer not adhere to these. The Department will continue to work with the Department of Environment, Food and Agriculture to agree collective action should there be any consequential pollution or environmental degradation as a result of developments permitted under this new primary legislation.</p> <p>The Department has been actively engaged with the Department of Environment, Food and Agriculture in determining the scoping for this new legislation, taking into account both current legislation and its statutory responsibilities. The Department will continue to work closely with DEFA to ensure suitable environmental provisions are contained within the new primary legislation. The Department has not engaged with the Manx Wildlife Trust to date, as it is one of many external stakeholders. DEFA will represent the views of many of the environmental organisations. However, a response to this consultation has been received from the Manx Wildlife Trust and consideration has been given to that.</p>
	17	Iain Quine	Q 7, Q8, Q9, Q10, Q11, Q12, Q14, Q15, Q16 Q13	<p>Would hope that DEFA and the Manx Wildlife Trust are being involved</p> <p>Agrees with what is proposed;</p> <p>Agrees, adds if necessary.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p>

	21	Mrs M. I. Kerruish		<p>Agrees with the proposed powers to be included within the new legislation; Agrees with intention to consider applications above mhw as part of the marine application; Agrees with the requirement for submission of EIA; Agrees with intention to consider requirement for EIA on case by case basis; Agrees with all that is proposed for public participation.</p> <p>Land sea Interface – does not agree with Q10 – Concerned that if only one consenting system is enacted, it may be easier for developers to gain planning permission without full and detailed EIAs or detailed plans on their land based development proposals.</p>	<p>The Department acknowledges the support for the proposals to be included within the new primary marine legislation for the territorial seas.</p> <p>It is the Department’s intention that the associated works which will be considered as part of one overall marine application will be specified within the accompanying secondary legislation, and will not include anything which would ordinarily require an EIA on its own (as specified within the Isle of Man Strategic Plan 2007). It is likely that the types of associated works which will be permitted will be smaller components such as a specified length of cabling or pipeline.</p> <p>The detailed plans may not be necessary, however, depending on the types of associated works proposed, the Department will identify the level of detail required in order to permit consideration as part of the examination of the application.</p>
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