



A CONSULTATION DOCUMENT ON NEW PRIMARY LEGISLATION FOR THE ISLE OF MAN TERRITORIAL SEAS



**Isle of Man
Government**
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1. Background and Introduction

1.1 At Tynwald Court in June 2014¹, the then Minister for Infrastructure advised that the Town and Country Planning Act 1999 (Extension to the Territorial Seas) Regulations 2013² had been revisited by Officers within the Department and the Attorney General's Chambers in response to a query regarding development in Manx waters for which consent had previously been granted. "The Department came to the conclusion that to proceed along its original proposed path to introduce marine planning legislation may unduly confuse the current operation of the consenting regime for applications. It would, in effect, be creating an additional layer, burden, of consenting requirement for developers beyond that which is currently required by the existing legislation".

1.2 The Minister then explained that "The Department has therefore concluded that the most appropriate way forward is to revoke the 2013 Regulations³ as soon as possible with the intention of bringing forward new bespoke primary legislation to implement a single consenting regime for the territorial seas". The Department has committed to the formulation of bespoke primary legislation for the marine environment, and this consultation exercise is one of the first stages of this process. The Department has worked with various Government Departments to best understand what other Departments wish to see included within this legislation, in line with their Departmental responsibilities and considering existing legislation which currently applies to the territorial seas.

2. The Isle of Man Territorial Sea

2.1 Historically the Island has long laid claim to the sea limit of three nautical miles, encompassing an area of 770 square kilometres.

2.2 In 1991, the Island's territorial seas were extended to 12 nautical miles in most directions with the exception to the north of the Island where the UK/Scottish coastline is less than 24 nautical miles away. It is within this area that the territorial limit only goes to

¹ <http://www.tynwald.org.im/business/hansard/20002020/t140617.pdf>

² These Regulations extended the Town and Country Planning Act 1999 to the territorial seas to consider any applications for development within the territorial seas. However, rather than establishing an improved process for approving developments, it added the requirement for an additional approval alongside the other approvals required under existing legislation. The Regulations did not achieve the streamlined consenting process it was hoped it would.

³ The 2013 Regulations were revoked by the Town and Country Planning Act 1999 (Extension to the Territorial Seas) Regulations 2014

the median line. In securing this extension to Manx waters, the Isle of Man also secured ownership of all petroleum, gas and all minerals other than coal within the extended area.

2.3 In 1995, further arrangements were sought to acquire the coal rights, which were confirmed in Manx law under the Territorial Sea (Rights to Coal) Act 1996.

2.4 The Department of Infrastructure (“**DOI**”) owns the sea-bed to the extent of the Isle of Man territorial waters⁴, and as such, plays a similar role to that of The Crown Estate in the UK. The Department has the ability to issue a commercial lease of the sea-bed for a specified time period provided the Department is satisfied that the application and appropriate accompanying information is acceptable, usually after a tender/bid process and entry into an Agreement for Lease with the successful party.

2.5 Most activity within the territorial seas is controlled through a number of different pieces of legislation. Some of this is the responsibility of the DOI who currently administer the process and issue the appropriate consents, while other Government Departments will follow their procedure for consenting using their legislation. Even when the proposed legislation comes into operation, the DOI will continue to grant a commercial lease of the sea-bed for proposed developments as owner of the sea-bed.

2.6 Note - The colloquial term “territorial seas” is used interchangeably with “territorial waters” which is used as a defined term in the majority of the legislation (Acts) mentioned in this Consultation Document. Unless otherwise specifically stated, all Acts referred to are Acts of Tynwald, the Island’s legislature.

3. Legislation – Current Situation

3.1 There are a number of pieces of legislation which apply within the Isle of Man territorial seas, some of which may be relevant for the consideration of any applications. These are listed below. Further information about these Acts is contained within the Guide

⁴ The extension of the territorial sea is set out in the Territorial Sea Act 1987 as “the breadth of the territorial sea adjacent to the Isle of Man shall for all purposes be 12 nautical miles; and the baselines from which the breadth of that territorial sea is to be measured shall for all purposes be those established by Her Majesty by Order in Council”.

Baselines are further defined within the Territorial Waters Order in Council 1964 as “except as otherwise provided in Articles 3 and 4 of this Order, the baseline from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured shall be low-water line along the coast of all Islands comprised in these territories”.

to Developers (available at <http://www.gov.im/categories/planning-and-building-control/marine-planning/guide-to-developers/>).

3.2 Legislation – Department of Infrastructure

The Department of Infrastructure (“**DOI**”) is responsible for a number of pieces of marine legislation;

- Harbours Act 2010
- Submarine Cables Act 2003

Including:

- The Submarine Cables (Application for Authorisation) Regulations 2004
- The Submarine Cables (Fees) Regulations 2012
- The Submarine Cables (Authorised Persons) Regulations 2004
- The Submarine Cables (Safety) Regulations 2004
- Water Pollution Act 1993 (Part 2)
- Petroleum Act 1986
- Wreck and Salvage (Ships and Aircraft) Act 1979
- Town and Country Planning Act 1999

3.3 Legislation – Other Departments

There are also a number of Acts which fall under the responsibility of other Departments, including the Department of Environment, Food and Agriculture (“**DEFA**”) and the Department of Economic Development (“**DED**”) which may be relevant for any development proposals within the territorial seas. These Acts are listed by Department below;

DEFA -

- Wildlife Act 1990
- Fisheries Act 2012
- Water Pollution Act 1993 (Part 1)
- Health and Safety at Work etc Act 1974

DED -

- Minerals Act 1986
- Mineral Workings (Offshore Installations) (Isle of Man) Act 1974

More detail on all these Acts is provided in Appendix 2 “Legislative Framework” of this Consultation Document.

4. Role of the Territorial Seas Committee and its responsibilities

4.1 The Territorial Seas Committee (“TSC”) was established following the purchase of the territorial seas from 3-12 nautical miles from the UK Crown Estate in 1991. Membership of the TSC comprises Officers from the DOI (Chair); DEFA; Treasury; DED; Cabinet Office; the Manx Utilities Authority and the Attorney General’s Chambers. The TSC may invite other parties as the agenda requires.

4.2 The TSC is a non-statutory body and it has no statutory powers. The role of the TSC in the development process is that of an advisory body. It reviews applications made to the DOI (under the Harbours Act 2010, the Submarine Cables Act 2003 and the Water Pollution Act 1993) with regards to the member Officers Departmental responsibilities and any appropriate consultation responses from outside of the TSC. The Chair will consider any representations from the TSC members and will then formulate a preliminary recommendation for initial consideration by the Minister for the DOI.

5. The approval process under the existing legislation

- 1- Initial stage** – this involves the lease expression of interest whereby the Department enters into an agreement for lease.
- 2- Consenting stage** – applicants will work under the guidance from the relevant Departments and the Territorial Seas Committee to ensure sufficient information is supplied to enable a decision to be made.
- 3- Decision stage** – the Territorial Seas Committee will give its initial consideration of the application. The DOI Minister will make the Council of Ministers and the Environment and Infrastructure Committee aware of the proposed course of action. The DOI Minister will then determine whether or not to grant consent for the application. Should consent be granted, the DOI will then enter into a formal lease of the sea-bed with the applicant / developer.

6. Purpose of the new Primary Legislation

6.1 The main purpose of this new primary legislation is to bring together the necessary components of the existing legislation that relate to the territorial seas to develop one streamlined system for consenting. It is proposed that by creating one system with the appropriate legislation, it will provide a greater level of clarity and certainty for potential applicants and stakeholders throughout the process. It is proposed that there will be the necessary powers within this new Act to amend and / or revoke existing legislation if and

where appropriate however the Department will be guided by advice from the Attorney General's Chambers on this.

6.2 It is the intention of the Department that this new Marine legislation will contain the appropriate overarching powers required to enable the Department to formulate the necessary secondary legislation to provide greater detail and clarity to the process. Consultation on the formulation of secondary legislation will take place at a later date. It is likely that some secondary legislation will be required to be in place at the same time as when the primary legislation comes into operation.

7. Purpose of this Consultation Exercise

7.1 This Consultation Document sets out the overarching principles the Department is proposing which will form the basis of this new primary legislation. The consultation will run for 6 weeks, commencing on Friday 13th March 2015 and ending on Friday 24th April 2015 at 4pm.

7.2 There are a number of questions at the end of particular sections for your consideration. A list of the consultation questions has been included in Appendix 1.

8. Guiding Principles for the new marine legislation

8.1 The overarching principles for this new legislation will be to deliver a streamlined decision making process which will aim to result in one overall consent for a development proposal within the territorial seas. It will aim to ensure there is a sustainable approach to marine development taking into account all of the various activities which currently take place (and consideration of those which could take place) within the territorial seas. It is also hoped that the legislation will detail a clear staged process which will be followed by applicants and decision makers alike when submitting and considering an application for development.

9. Extent of this new Act

9.1 It is proposed that this new Act will extend from the mean high water mark to the extent of the Isle of Man's territorial seas (as previously defined in Section 2) and will

exclude identified Harbour Areas⁶. Within identified Harbour Areas, the Harbours Act 2010 will continue to apply to the management, control, operation, maintenance, development and improvement of harbours. If appropriate, other pieces of legislation will continue to apply within the Harbour Areas. The exception to this will be in relation to any associated works which may terminate or pass through a defined Harbour Area.

9.2 The Department is proposing an amendment to the Town and Country Planning Act 1999 to have its full extent run to the mean high water mark instead of the mean low water mark as it is currently. Amending the provisions within the Town and Country Planning Act 1999 in this way will result in no cross over between the two different legislative systems within the intertidal area. There may be the ability within the new legislation to provide the facility for applications which cross between the land to the sea to be considered under any one piece of legislation dependent on the proposal meeting certain defined criteria.

9.3 The Department is also proposing that the area covered by the proposed Marine legislation is to be referred to as the marine environment as it goes beyond the widely accepted definition of the territorial seas (i.e. the new Act will include the territorial seas, as measured from the baselines, generally taken to be mean low water mark as well as the intertidal area up to mean high water mark).

10. Consideration of issues to be included within the new primary legislation

10.1 It is the intention of the Department to ensure there are the appropriate powers within this new primary legislation which will allow the Department to formulate necessary and appropriate secondary legislation (and to enable it to make any amendments to this) if and when required.

10.2 The overarching powers the Department is seeking to include within this new legislation will include:

- a consenting process for large scale marine developments and their associated works;
- the ability to collect appropriate fees associated with the consenting process;

⁶ Harbour Areas are defined within the Isle of Man Harbour Byelaws 1930 Appendix II. The Department will ensure there are appropriate powers within this new Act which would reflect any amendments to these defined Harbour Areas.

- the ability for the Department to formulate a marine plan and marine policy statements if appropriate to do so⁷;
- the ability to amend/vary/revoke/enforce⁸ any permissions granted under this legislation;
- provision which will allow for the prosecution of offenders and the ability to pursue fines if a breach of a permission has occurred;
- the ability to form legal agreements if required;
- the powers to consider, and the subsequent management of the decommissioning of a project;
- the powers to identify licensable activities through Regulations which will not be consented for under this new Act, rather, it will require consent under extant legislation;
- the ability to facilitate inspections of the project when required, along with associated powers of entry and powers to board boats associated with these large scale marine developments and associated works;
- powers to facilitate post construction monitoring, inspections, along with the assessment of any post construction work;
- the ability to formulate any necessary secondary legislation as required;
- 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); and,
- the ability for the Department, if appropriate, to facilitate a mechanism to enable applications which cross from one environment to another (from land to marine or vice versa as well as applications which terminate or pass through identified Harbour Areas) to be dealt with by the most appropriate legislation, which may in some cases be solely the new Marine legislation or the Town and Country Planning Act 1999.

⁷ The Department is intending on including the powers to formulate a marine plan as a “may” rather than a “shall”. The Department favours the use of the word “may” rather than “shall” as it enables a degree of flexibility should these powers be required to be invoked in future rather than a “shall” which may stifle consideration of an application should it be determined a Plan should be in place to enable a decision to be made. The absence of a marine plan or a marine policy statement will not hinder a decision being made on an application.

⁸ The Department is actively looking at whether a compliance type regime will be suited to ensuring that developments are built, operated and decommissioned in the manner agreed through any applications.

CONSULTATION QUESTION 1

Do you agree with what the Department is proposing this new legislation should include?

11. What the new Act will consent for

11.1 The Department is proposing that this new bespoke primary legislation will principally provide for the consenting of large scale marine developments which will include offshore renewable energy projects, "commercial" aggregate extraction, submarine cables and pipelines, gas drilling, carbon capture and storage, and hydrocarbons and any associated works for the above. For all other applications, the current legislation will continue to apply.

CONSULTATION QUESTION 2

Do you agree with the Department's intention that this new Act should have the powers to consent for the projects listed above within the area the Act applies to (i.e. from mean high water mark to the full extent of the Island's territorial seas excluding identified Harbour Areas)?

12. Exemptions to the new Act

12.1 The main type of activity which is being proposed to be exempt from this new Act is that of survey work. There are two main areas of survey work; that purely for scientific research purposes, and that which forms part of the preliminary work as part of testing for a specific development proposal. For all surveys, appropriate licences will continue to be obtained through the extant legislation if appropriate.

12.2 One type of survey which has raised concerns with DEFA is that of seismic survey. The extant legislation does not adequately legislate for seismic surveys, so the Department (DOI) is proposing through this new Act appropriate amendments to relevant DEFA legislation (likely to include the Wildlife Act 1990 and the Fisheries Act 2012) which would set out that a licence would be required to be granted by DEFA prior to any seismic surveys being undertaken. By amending DEFA legislation, it will allow for DEFA to request the necessary information to make an informed judgement on the impact a proposed seismic survey would have on the marine environment and issue appropriate licences. Other legislation may continue to apply to this type of survey work also.

13. Consequential Amendments / Transitional Provisions

13.1 The Department is intending that there are powers within the new Act which will allow for any consequential amendments or transitional provisions to any other Acts to be addressed. This will relate mainly to any approvals granted under other pieces of legislation which would ordinarily now be covered by the proposals for the new primary legislation.

13.2 It is proposed by the Department that any amendments to other Acts applying within the marine area will have to make it clear that this new proposed Marine legislation will apply to its identified extent (from mean high water mark to the full extent of the Isle of Man territorial seas but excluding identified Harbour Areas) and for the identified activities only. It will be necessary to ensure there are amendments to the appropriate Acts which reflect this. However, it will be essential that the extant legislation continues to apply within those areas where this new Act does not cover and for activities not covered by this new Act.

14. The decision making process

14.1 The Department is proposing in the new Act that an application is considered by an Independent Inspector, as appointed by the Council of Ministers. The means by which this will be considered will either be by way of written representations or by a Public Inquiry, and this will be determined on a case by case basis as appropriate. The Independent Inspector will return their report with their recommendation to the Council of Ministers who will then consider it. The Council of Ministers will make the final decision on the application. There will be a statutory appeal mechanism within the Act which will give the Department some degree of control over appeals against the decision issued.

14.2 The Department is proposing that the decision making process will likely include the following principles.

- One overall consent is to be given (as far as possible – exceptions will be if it is not possible to consider the application as one);
- Provision to enable the decision makers to refuse to consider an application;
- There will be role for both the Territorial Seas Committee and the Environment and Infrastructure Committee in this process (not legislated for);
- All applications will be considered by an Independent Inspector either by way of written representations or by a Public Inquiry;

- The Council of Ministers will consider the recommendation of the Independent Inspector and will return the final decision on the application;
- There will be public participation in the process;
- There will be a statutory appeal mechanism included within the new Act which will enable the Department to manage to some degree any challenges to a decision; and,
- A compliance type regime will be considered to ensure any conditions attached to an approval are fully complied with.

14.3 Should it be determined that a proposal is deemed acceptable, one overall consent will be issued and may contain conditions as appropriate.

CONSULTATION QUESTION 3

Do you agree with the Department's intention to proceed with this proposed decision making process?

14.4 Applications which have both a land and a sea component

14.5 It is the intention of the Department to provide one process for the consideration of all large scale marine developments and associated works within the Isle of Man territorial seas. If there are any applications which have any components being proposed which fall above the mean high water mark, the Department is proposing that there will be powers within this new Act which will enable this to be considered alongside the marine aspects of the proposal in one process. This will require amendments to the Town and Country Planning Act 1999 to permit this.

14.6 The extent of the Town and Country Planning Act 1999 is currently to mean low water mark. The Department is proposing that this should be amended to mean high water mark as this new Act is proposed to run from mean high water mark. By proposing these amendments, the Department is aiming to reduce any uncertainty as to the extent of the two Acts, and eliminate any overlap within the intertidal area. The process which will consider all components together in one application will be determined in line with the provisions of this new Act, thereby superseding any provisions in operation under the Town and Country Planning Act 1999.

14.7 The Department is proposing that for any applications which are largely located within the marine environment (from mean high water mark to the full extent of the territorial seas) which may also have a small component part proposed to be located on land (i.e. above mean high water mark), the provisions contained within this new Marine legislation may be extended to such applications¹⁰. Therefore, for those components of the application which lie on land, the provisions of the Town and Country Planning Act 1999 would not apply.

14.8 The reverse to the above may also apply. The Department is proposing that if an application is proposed to be primarily located on the land with a component part proposed to be located within the sea, it may be considered under the provisions of the Town and Country Planning Act 1999. The new Act will have the appropriate powers to enable this to be enacted.

14.9 It is further proposed by the Department that should any components of an overall application primarily located within the marine environment cross through an identified Harbour Area, these applications will be considered as part of the overall application under this new Marine legislation. Therefore the provisions of the extant legislation which would generally apply within the Harbour Areas, will not in these instances. For applications proposed to be located within identified Harbour Areas, developers will be expected to discuss their proposal at length with DOI Ports.

14.10 Applications where an element is proposed within a defined Harbour Area

14.11 For applications proposing works to be located within the identified Harbour Areas, consent will be required under the extant legislation as these areas are proposed to be

¹⁰ The provisions of the new Marine legislation will only be applied to certain applications which have a small component part (or associated works) proposed to be located above the mean high water mark. The new Act will further outline what will be considered to be a "component" part or associated works to the large scale marine development for which approval is being sought. Only on the occasions when an application complies with the legislation relating to the component part of the application will the provisions of the new Act apply. For applications which are proposing a component part not identified by the legislation as an acceptable component part, the provisions of the Town and Country Planning Act 1999 will continue to apply and a separate application will be required to be submitted for the land element of the overall development scheme.

excluded from this Act (for example, the Harbours Act 2010, the Water Pollution Act 1993, and the Submarine Cables Act 2003).

CONSULTATION QUESTION 4

Do you agree with the Department's intention to provide one consenting system which will consider all components of an application for large scale marine developments and associated works at once (when appropriate) resulting in one overall approval for the project?

CONSULTATION QUESTION 5

Do you agree with the Department's intention to facilitate the consideration of any components of an application which fall above mean high water mark to be considered as being a component part (providing that the component part is identified by the Department as being appropriate to be taken as such) of a marine application which will be assessed under the provisions of this new Act rather than under the Town and Country Planning Act 1999 (this assumes this new Act will apply from mean high water mark and the Town and Country Planning Act 1999 will be amended to run to mean high water mark rather than mean low water mark as it does currently)?

15. Particulars to be submitted with an application for consent

15.1 The Department is intending that there will be appropriate powers within the new Act which will permit the formulation of appropriate secondary legislation which will set out what will be required to be submitted for each application for consideration. 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 be to an appropriately accepted standard.

15.2 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.

CONSULTATION QUESTION 6

Do you agree with the Department's intention that an appropriate and proportionate EIA must accompany all new applications for large scale marine developments and associated works?

CONSULTATION QUESTION 7

Do you agree with the Department's intention to consider the requirement to submit an EIA with an application to vary an approval on a case by case basis?

16. Public Participation in the process under the new Act

16.1 The Department is proposing that there will be public participation within the process. The general public will be invited to contribute to the proposal at the pre application stage, whereby the applicant will be required to undertake appropriate public consultation prior to the submission of their application. 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.

16.2 The Department is proposing that the following will be automatically identified as "Interested Parties" and will be involved within the process – DOI, DEFA, DED.

16.3 To register as an “Interested party”, an application form must be completed along with an initial written summary of what they agree or disagree with in the application and this is known as a representation. Representations should relate specifically to the project and its impacts. As an interested party, they will be invited to take part in relevant stages of the examination. They will be informed of the progress of the examination and at the end of the process, they will be notified of the decision.

16.4 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. No representations will be accepted by the Department unless prior registration as an “Interested Party” has been completed within the identified time limits as set out by the Department. The Independent Inspector will disregard representations which are vexatious or frivolous.

CONSULTATION QUESTION 8

Do you agree with the Department’s intention that there will be public participation in the process?

CONSULTATION QUESTION 9

Do you agree with the Department’s intention to identify “Interested Parties” within the new Act as being DEFA, DED and DOI?

CONSULTATION QUESTION 10

Do you agree with the Department’s intention to require anyone wishing to, to register their interest in the application as an “Interested Party” within an identified time period as advised by the Department in order for them to be involved throughout the process?

18. How to Respond

18.1 The Department welcomes representations by anyone who wishes to comment on this Consultation Document. We would encourage the submission of clear and concise responses using the online survey at <https://www.snapsurveys.com/wh/s.asp?k=142600084872>

18.2 It should be noted that a response does not guarantee that changes proposed in a response will be implemented.

18.3 Arrangements will be put in place for those who do not have access to the internet to submit paper copies of their responses to the address given below. Submissions should be marked clearly 'Consultation on the Marine Primary Legislation'.

18.4 Comments can be either sent electronically to PlanningPolicy.DOI@gov.im or by post to:

Planning Policy Team
Department of Infrastructure
Strategy, Policy and Performance
Sea Terminal Building
Douglas
Isle of Man
IM1 2RF

18.5 An electronic version of this consultation can be found at <http://www.gov.im/Consultations.gov>. The online questionnaire can be found at the following web address <https://www.snapsurveys.com/wh/s.asp?k=142600084872>

18.6 It should be noted that all comments and information will be made available for public viewing.

18.7 Information provided in response will be dealt with in accordance with access to information regimes – 'Guidance on the Code of Practice on Consultation' and 'Code of Practice on Access to Information'

This consultation begins on Friday 13th March 2015, lasting for 6 weeks and will close on Friday 24th April at 4pm.

If you require any further information please contact:

Dr Emma Rowan,

Planning Policy Officer

Department of Infrastructure

Sea Terminal Building

Douglas

Isle of Man

IM1 2RF

Email: Emma.Rowan@gov.im

Tel. 01624 685163

Thank you for taking the time to read this Consultation Document.

Appendix 1 Consultation Questions

This Consultation Document has provided an overview of what the Department is proposing for inclusion within the bespoke primary legislation for the territorial seas. The consultation questions are set out again below for your consideration.

1. Do you agree with what the Department is proposing this new legislation should include?
2. Do you agree with the Department's intention that this new Act should have the powers to consent for the projects listed above within the area the Act applies to (i.e. from mean high water mark to the full extent of the Island's territorial seas excluding identified Harbour Areas)?
3. Do you agree with the Department's intention to proceed with this proposed decision making process?
4. Do you agree with the Department's intention to provide one consenting system which will consider all components of an application for large scale marine developments and associated works at once (when appropriate) resulting in one overall approval for the project?
5. Do you agree with the Department's intention to facilitate the consideration of any components of an application which fall above mean high water mark to be considered as being a component part (providing that the component part is identified by the Department as being appropriate to be taken as such) of a marine application which will be assessed under the provisions of this new Act rather than under the Town and Country Planning Act 1999 (this assumes this new Act will apply from mean high water mark and the Town and Country Planning Act 1999 will be amended to run to mean high water mark rather than mean low water mark as it does currently)?
6. Do you agree with the Department's intention that an appropriate and proportionate EIA must accompany all new applications for large scale marine developments and associated works?

7. Do you agree with the Department's intention to consider the requirement to submit an EIA with an application to vary an approval on a case by case basis?
8. Do you agree with the Department's intention that there will be public participation in the process?
9. Do you agree with the Department's intention to identify "Interested Parties" within the new Act as being DEFA, DED and DOI?
10. Do you agree with the Department's intention to require anyone wishing to, to register their interest in the application as an "Interested Party" within an identified time period as advised by the Department in order for them to be involved throughout the process?

Appendix 2 Legislative Framework – Acts under Department of Infrastructure

There is currently no one bespoke piece of legislation covering marine developments in the territorial seas. At present there are various pieces of legislation across Government, each of which cover different aspects. Any one development proposal may require consideration under one or more pieces of legislation. The Department of Infrastructure is committed to preparing primary legislation for the marine area but until such a time that this is in place, the extant legislation will remain in force.

This following section gives initial guidance on an Act by Act basis. It is intended to give a succinct overview on how the Acts operate.

What is given below is a summary of the process as set out in each of the Acts. In order to ensure greater co-ordination across Government, the Territorial Seas Committee (“**TSC**”) will be used in an advisory capacity to support the process and the final Ministerial decision until the primary legislation is in place.

There are a number of different Acts which have consenting processes under the responsibility of the Department of Infrastructure – the Harbours Act 2010, the Submarine Cables Act 2003 and, parts of the Water Pollution Act 1993 and the Petroleum Act 1986 are the main Acts which govern activities within the Isle of Man territorial seas. In addition to these Acts, the Wreck and Salvage (Ships and Aircraft) Act 1979 and the Town and Country Planning Act 1999 are also the responsibility of the Department of Infrastructure. All of these will be discussed and a short narrative will outline what the Act covers, the extent of these Acts and the process for consideration of any application.

Harbours Act 2010

This Act relates to the control, operation and maintenance of harbours and the restriction of certain works, particularly those affecting navigation¹¹. In essence this Act covers most forms of major development activity in the sea.

¹¹ Section 26 - Construction, alteration or improvement of any works on, under or over any part of the foreshore or seabed; deposition of any objects or materials in Manx waters or on any

Extent of the Act

Although this Act is primarily concerned with the workings of the Isle of Man Harbours, it also controls activities which have the potential to be detrimental to navigation or the use of a vessel. This is covered in Section 26 of the Act which applies to the foreshore, sea-bed and Manx territorial waters.

Section 26 Restriction of works

Section 26 of this Act relates to "Restriction of works" (works detrimental to navigation or use of vessels). This section sets out that none of the following can be done without the consent of the Department if an obstruction or danger to navigation or to the lawful use of vessels is caused or is likely to result:

- (a) construct, alter or improve any works on, under or over any part of the foreshore or sea-bed;
- (b) deposit any object or materials in Manx waters or on any part of the foreshore or sea-bed; or
- (c) remove any object or materials from any part of the foreshore or sea-bed.

The Department shall have regard to the nature and extent of the obstruction or danger to navigation and the lawful use of vessels and it may, grant consent either unconditionally or subject to such considerations as it considers appropriate; or refuse consent.

Discharge of Conditions

There is provision within the Act to enable a person who has a legal or equitable interest in the sea-bed, foreshore or Manx waters in respect of which consent has been granted under this Act to apply to the Department for the variation or discharge of the conditions. Following consideration, the Department may then vary or discharge the conditions and add new conditions on the basis of the variation or discharge.

Council of Ministers call in applications

This Act also provides the Council of Ministers with the ability to have the application referred to them for their determination (see section 2.2.6). This can happen either if it appears to Council that the proposal raises considerations of general importance to the

part of the foreshore or seabed; or the removal of objects or materials from any part of the foreshore or seabed.

Island or for some other reason ought not to be determined by the Department, for example if the Department is itself proposing to undertake the works. If this occurs, their decision shall be laid before Tynwald. Tynwald may resolve that the decision be annulled, whereupon the application shall be deemed to have been refused¹².

Appeal to a Tribunal

There is the ability for a person who is aggrieved by a decision of the Department to appeal to a Tribunal¹³. This decision can either be to grant or to refuse permission, or to grant or refuse to vary, discharge or add new conditions. The Tribunal shall confirm, vary or revoke the decision in question. A decision made by a Tribunal on an appeal is binding on the Department and the applicant. An appeal from a decision of the Tribunal lies to the High Court on a question of law¹⁴.

Further provisions

There are further provisions within the Act which relate to unauthorised works or failure to comply with a condition of a consent. A person guilty of an offence is liable on conviction to custody or a fine or both. The Department may also serve a notice on a person requiring that they take remedial action within a specified time period¹⁵.

¹² Section 27

¹³ See Section 28; and as Under section 8 of the Tribunals Act 2006

¹⁴ Section 28

¹⁵ Section 29

Submarine Cables Act 2003

Including:

The Submarine Cables (Application for Authorisation) Regulations 2004

The Submarine Cables (Fees) Regulations 2012

The Submarine Cables (Authorised Persons) Regulations 2004

The Submarine Cables (Safety) Regulations 2004

This Act also falls under the responsibility of the Department of Infrastructure, and it seeks to control the placing of cables in the territorial waters of the Isle of Man.

The Submarine Cables (Application for Authorisation) Regulations 2004 sets out how an application for authorisation to the Department should be made and what it should contain. This is very useful for potential applicants to read and understand as it will assist with the preparation of an application for works. There is a requirement on the applicant to advise at this stage whether an application has been made for a licence under section 19 of the Water Pollution Act 1993 to deposit any such rock or spoil in the sea, and the result of the application (if any), and whether any application has been made for consent under section 26 of the Harbours Act 2010. It is possible that an application for development which requires more than one statutory consent may be capable of being processed and ultimately assessed together. However, if any consents already exists, the applicant should disclose this at the time of application.

Extent of the Act

This Act relates to the laying of a cable in, under or over territorial waters¹⁶.

Exemptions (works not requiring authorisation)

The Act states that the following are not works for the laying of a cable-

- (a) Works at any place in, under or over territorial waters for the purpose of determining whether the place is suitable as part of the site of a proposed cable; and
- (b) The carrying out of surveying operations for the purpose of settling the route of a proposed cable¹⁷.

¹⁶ See appendix 2 for glossary of terms

¹⁷ Section 11

Application for Authorisation

The Submarine Cables (Application for Authorisation) Regulations 2004 (“**the Application regulations**”) usefully sets out how an application for *authorisation* should be provided to the Department, outlines the information and appropriate fee¹⁸ which must accompany it.

Requirement for an Environmental Impact Assessment

The Application Regulations sets out that an application shall be accompanied by an Environmental Impact Assessment of the effects of the construction works and the future operation of the cable. The Regulations further set out that the content of the Environmental Impact Assessment shall reflect the requirements of Council Directive 85/337/EEC¹⁹ on the assessment of the effects of certain public and private projects on the environment in so far as it relates to the effects on the environment of certain offshore submarine cable projects. Potential applicants should review Schedule 1 of the Regulations for further clarification (summarised below).

Schedule 1 Contents of an Environmental Impact Assessment

An Environmental Impact Assessment shall contain the following information. The detailed content will be determined in liaison with the relevant statutory authorities at the scoping stage.

A description of the works comprising information on the site, design and size of the works.

1. A description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects on the environment.
2. The data required to identify and assess the main effects which the project is likely to have on the environment.
3. Where relevant to the particular characteristics of the works or the environmental features likely to be affected and to the extent that the application might reasonably be required to compile the data having regard to current knowledge and methods of assessment –
 - a. particulars of the land and sea-bed use requirements during the works and the operation of the cable;

¹⁸ As set out in the Submarine Cables (Fees) Regulations 2012

¹⁹ The Isle of Man is not a member state of the European Union and is not bound by its Regulations or Directives. Nevertheless, it does, as a matter of good practice and taking account of the membership of the European Union of the jurisdictions surrounding the Island’s territorial sea, has some regard to European Union Directives.

- b. a description of specific aspects of the environment likely to be significantly affected (review Schedule 1 for further information);
 - c. a description of the likely significant effects on the environment arising from the existence of the works (review Schedule 1 for further information) and;
 - d. an indication of any difficulties (technical difficulties or lack of know-how) encountered by the applicant in compiling the required information.
4. An outline of the main alternatives (if any) studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effect.
5. A non-technical summary of the information provided under the above headings.

Determination of an application (Schedule 1 of the Submarine Cables Act 2003)

Once the Department has received an application for authorisation, it will determine whether or not it will consider the application and will advise the applicant of this initial decision. If the Department is to consider it further, it shall set out what it will require the applicant to comply with before a final decision on authorisation will be issued. The advisory views of the Territorial Seas Committee will be sought to assist the Department of Infrastructure Minister in reaching an informed preliminary view before the matter is referred to the Environment & infrastructure Committee and the Council of Ministers before the Minister comes to a final decision regarding the application.

The Department has the ability to request that a proposed route of the cable be amended (see Schedule 1 which sets out the purposes for which the route of the cable could be amended). If the Department issues a notification for an amendment to the applicant, it must also serve this notice on people other than the applicant²⁰ which will advise that representations can be made to the Department within an identified time period.

Having advised the applicant to amend the proposed cable route, the Department will give the applicant and any others previously notified of their determination in respect of the proposed route, the ability to be heard at a hearing²¹. Again, representations are welcomed at this stage within an identified time period.

²⁰ The Act specifies that the Department will serve notice of its opinion on the applicant, any persons whom the Department considers are likely to be affected by the alteration; or any person appearing to the Department to represent such persons [Schedule 1; 4(2)(a-c)].

²¹ The ability to be heard will be on the basis that the Department does not cause an Inquiry to be held under paragraph 6.

Should the Department consider it necessary, it can cause an Inquiry to be heard where the applicant and any other people, who have been identified by the Department as having an interest, will have the opportunity to be heard. The appointed person will consider all representations made during the Inquiry, and formulate a report to the Department. This report will then be circulated to the applicant and those identified by the Department²².

Following from this, the Department will then decide whether to grant or refuse an authorisation. If a refusal is issued, the Department will serve a notice on the applicant and those previously identified, and outline the reasons for refusal. If an authorisation is granted, the Department shall lay this before Tynwald, serve notice on the applicant and those previously identified, and it shall contain such particulars as set out in paragraph 9, Schedule 1. An authorisation in respect of a cable may contain such terms as the Department thinks appropriate, including particular terms as to the matters specified in Schedule 2.

Duration of authorisations

An authorisation under the Submarine Cables Act 2003 is time limited and this authorisation can;

- cease to be in force at the earliest of the time at which that duration expires as specified under the terms of authorisation,
- at a time agreed in writing by the holder and the Department as the time at which the authorisation is to cease to be in force and,
- if it appears to the Department that the execution of works authorised has not begun at the expiry of the period set out in the authorisation, it shall serve on the holder a notice stating that the authorisation is to cease to be in force at a time specified in the notice.

An authorisation granted under this Act is generally for a period of three years unless an alternative time period has been agreed between the applicant and the Department²³.

²² See Schedule 1, Paragraph 6 of the Submarine Cables Act 2013

²³ See Section 2 Duration of Authorisations

Water Pollution Act 1993

This Act falls under the responsibility of both the Department of Environment, Food and Agriculture (Part 1) and the Department of Infrastructure (Part 2) and controls deposits in the sea. This includes the introduction of material to the sea bed such as concrete to form the foundations of other structures (it also covers more minor, in terms of impact, forms of activity such as the scattering of ashes at sea).

Extent of the Act

This Act applies to the deposit of any substance or article within Manx waters, either in the sea or under the sea-bed²⁴.

Part 1 Inland and Coastal Waters

This Part of the Act relates to controlled waters (these being Inland Waters, Coastal Waters and relevant Territorial Waters out to 3 nautical miles from coastal baselines). Part 1 of this Act falls under the responsibility of the Department of Environment, Food and Agriculture. Further details on this can be found later in this Guide, section 3.2.

Part 2 Deposits in the Sea

This section provides guidance and information on Part 2 as it relates to Deposits in the Sea. Section 17 of the Act sets out the Prohibition of deposits etc at sea, whereby “no person shall cause or permit the deposit of any substance or article within Manx waters, either in the sea or under the sea-bed”.

A licence is required to be issued by the Department of Infrastructure for any activities identified in 17 (1) and (2)²⁵.

Exemptions

Nothing in this Part of the Act shall apply to anything done for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning

²⁴ See Appendix 2 for glossary of terms but it should be noted that for the purposes of Part 2 of the Act “sea” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river’. (section 26).

²⁵ Section 18 “Authority for deposits etc” – unless these operations are specified in an order made by the Department of Infrastructure as operations not needing a licence. Section 19 Licences for deposits etc.

of Part III of the Petroleum Act 1998 an Act of Parliament as it has effect in the Island) is in force or for the purpose of establishing or maintaining an offshore installation within the meaning of Part IV of that Act²⁶.

The Department of Infrastructure can request an applicant to supply information it requires in order to determine whether a licence should be issued, and also enables a determination as to what, if any, conditions it ought to include. The Department of Infrastructure is then able to include appropriate licence conditions it sees fit in order to protect the marine environment and to prevent legitimate uses of the sea. Additional conditions may be included should the Department deem it necessary²⁷.

Variation or revocation of licences

The Department of Infrastructure has the power to vary or revoke a licence if it appears that there has been a breach of any of its conditions.

Schedule 1 "Right to make representations" sets the process for an applicant to seek from the Department reasons for the inclusion of conditions within a licence and provides the ability to make representations when an application has been refused or a licence varied or revoked without their consent. Where representations have been made to the Department, it shall appoint a person who will consider these. The appointed person shall offer the person making the representations the ability to make oral representations, and will provide details of where and when this will take place.

The appointed person shall consider all representations made in respect of this application, and shall make a report to the Department who will then reconsider the initial decision. The Department will notify the person who made representations of the outcome of their reconsideration and provide its reasons for this.

²⁶ Section 18A "Application of Part 2: Further Provisions".

²⁷ Further information on conditions and what they can require an applicant to undertake can be found in Section 19(7)

The Petroleum Act 1986

The Petroleum Act 1986 (“**the 1986 Act**”) vests, in the Department of Economic Development, the property in petroleum and natural gas within the Island and controls for the searching and boring for, and getting of, petroleum and natural gas. It also provides for the application to the Island of certain pieces of legislation of Parliament relating to petroleum and pipelines.

The Petroleum Act 1998 (an Act of Parliament) (“**the 1998 Act**”) is extended to the Isle of Man subject to certain exceptions, adaptations and modifications by an Order in Council (the Petroleum Act 1998 (Application) Order 2000). The 1998 Act as it applies to the Isle of Man controls enactments about petroleum, offshore installations and submarine pipelines.

Extent of the Act

The 1986 Act extends to the Island, whereby the “island” is defined as including the sea-bed and subsoil under the territorial waters of the Island and the word “land” shall be construed accordingly²⁸.

The 1998 Act (as extended to the Isle of Man) sets out the relevant legislation relating to submarine pipelines (section 14 onwards) and Schedule 2 outlines the process for authorisations under section 14.

Requirement for an Environmental Impact Assessment

The Submarine Pipelines (Assessment of Environmental Effects) Regulations 2001 made under the 1998 Act as it extends to the Isle of Man sets out that if an application is made to the Department [of Infrastructure] under paragraph 14 for a works authorisation in connection with the construction of a submarine pipeline, the undertaker²⁹ shall submit an Environmental Impact Assessment of the pipeline works to the Department. The Environmental Impact Assessment shall contain the information specified in the Schedule of the Regulations³⁰. The content will reflect the requirements of Council Directive 85/337/EEC

²⁸ Section 9

²⁹ “undertaker” means any person who carries out, or may reasonably be taken to propose carrying out of the construction of a submarine pipeline in the territorial sea adjacent to the Isle of Man.

³⁰ As previously set out, The Isle of Man is not a member state of the European Union and is not bound by its Regulations or Directives. Nevertheless, it does, as a matter of good practice

as amended by Council Directive 97/11/EC on the assessment of the effects of certain public and private projects on the environment in so far as it relates to the effects on the environment of certain offshore oil and gas projects.

Schedule - Contents of Environmental Impact Assessment

An Environmental Impact Assessment shall contain the following information. The detailed content will be determined in liaison with the relevant statutory authorities at the scoping stage.

1. A description of the project comprising information on the site, design and size of the project, and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the information having regard to current knowledge and methods of assessment, such a description shall include –
 - a. the land and sea-bed use requirements during the construction and operational phases;
 - b. a description of the main characteristics of the production processes including the nature and quantity of the materials used; and
 - c. an estimate by type and quantity of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed project.
2. A description of the measures envisaged in order to avoid, reduce and, if possible remedy significant adverse effects on the environment.
3. The data required to identify and assess the main effects which the project is likely to have on the environment and where relevant to the particular characteristics of the project or the environmental features likely to be affected and to the extent that the undertaker might reasonably be required to compile the data having regard to current knowledge and methods of assessment such data shall include-
 - a. a description of specific aspects of the environment likely to be significantly affected including in particular human population, fauna, flora, soil including the sea-bed and its subsoil, water including the sea and any aquifers under the sea-bed, air, climatic factors, the landscape or the seascape, tangible

and taking account of the membership of the European Union of the jurisdictions surrounding the Island's territorial sea, has some regard to European Union Directives.

- property, architectural and archaeological heritage and the interaction between any of the foregoing; and
- b. a description of the likely significant effects on the environment arising from the existence of the project, the use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste together with details of the forecasting methods used to assess the effects on the environment;
4. An outline of the main alternatives (if any) studied by the undertaker and an indication of the main reasons for his choice, taking into account the environmental effects.
 5. A non-technical summary of the information provided under the above headings; and
 6. Where relevant to the particular characteristics of the project and the environmental features likely to be affected and to the extent that the undertaken might reasonably be required to compile the information having regard to current knowledge and methods of assessment, an indication of any difficulties (technical difficulties or lack of know-how) encountered by the undertaker in compiling the required information.

Application process

Schedule 1 of the 1998 Act (as extended to the Isle of Man) sets out the process for works authorisation.

Wreck and Salvage (Ships and Aircraft) Act 1979

This Act relates to wreck and salvage³¹ in the case of ships and aircraft, and for other connected purposes.

Extent of this Act

Provisions within this Act which are of most interest to potential developments, are contained within Part III "Protection of Certain Wrecks". Section 28 "Protection of sites of historic wrecks" provides that (1) "If the Department of Infrastructure is satisfied with respect to any site in Manx Waters that-

- (a) it is or may prove to be, the site of a vessel lying wrecked on or in the sea bed; and
- (b) on account of the historical, archaeological or artistic importance of the vessel, or of any objects contained or formerly contained in it which may be lying on the sea bed in or near the wreck, the site ought to be protected from unauthorised interference, the Department may by Order designate an area round the site as a restricted area".

An Order under this section shall identify the site of the vessel (where it currently lies or where it formerly lay or where it is supposed to lie) and identify the restricted area within such distance (as specified) of the site (excluding any area above high water mark of ordinary spring tides). The Protection of Wrecks (Designation) Order 1982 is the only order made by the Department under this Act and it is the site of what is, or may prove to be, the wreck of HMS 'Racehorse' which is of historical and archaeological importance³².

An offence is committed if, within the identified restricted area, a person tampers with, damages or removes any part of a vessel lying wrecked on or in the sea-bed, they carry out diving or salvage operations directed to the exploration of any wreck or removes objects from it or from the sea bed, or they deposit anything which if it fell, could wholly or partly obliterate the site or obstruct access to it, or damage any part of the wreck. Before making an Order under this Act, the Department shall consult with the Manx Museum and National Trust and such other persons the Department considers appropriate. Further information

³¹ See Glossary in Appendix 2

³² The site to which this Order applies is Latitude 54°03'.12 North, Longitude 04°37'.73 West. There is a restricted area around the site, and is described as the area within a distance of 350 metres of Latitude 54°03'.12 North, Longitude 04°37'.73 West but excluding any part of that area which lies above high water mark of ordinary spring tides (Off Langness).

relating to the granting of licences can be found in Section 28 of the Act. This Act also applies to aircraft (Section 37).

The Town and Country Planning Act 1999

This Act falls under the responsibility of the Department of Infrastructure and deals with town and country planning which includes the protection of buildings and areas of archaeological or historic interest.

Extent of this Act

The primary legislation is contained within the Town and Country Planning Act 1999 which extends to the whole of the Island, and does not currently extend to the territorial seas. This Act is applied for any developments on land specifically up to mean low water mark.

If applicants require further information on this, they are encouraged to contact Planning and Building Control (details provided below). It may be the case that applications for consent within the territorial seas may require additional approval under this Act if part of that application crosses the mean low water mark.

Meaning of development

Part 2 of the Act explains what is meant by "development", and states that in this Act, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land³³. This is subject to provisions outlined within section 6 of the Act. Planning approval is required for the carrying out of any development of land (based on the above description of development). The Town and Country Planning (Development Procedure) (No 2) Order 2013 sets out the process for the consideration and determination of planning applications. It also outlines the particulars to be included with applications for planning permission as well as setting out the appeal process following the issue of a decision notice.

Further Information

Further information can be obtained from <http://www.gov.im/categories/planning-and-building-control/> , by emailing planning@gov.im, or by telephone +44 1624 685950:

Michael Gallagher,

Director, Planning and Building Control

Department of Infrastructure

First Floor, Murray House

³³ Section 6

Mount Havelock, Douglas
IM1 2SF

Acts under other Government Departments - Department of Environment, Food and Agriculture

There are also a number of Acts which fall under the responsibility of other Departments, including Department of Environment, Food and Agriculture and Department of Economic Development. These Acts will be discussed by Department below.

Wildlife Act 1990

This Act controls the impacts of any development on identified species and habitats. Whether a development activity would require consideration under this legislation would depend not only on what was being proposed but also the siting and timing of any development works.

Extent of this Act

This Act extends to the Isle of Man and its territorial waters.

Provisions under this Act

Specific areas have been designated with special measures under this Act. It provides for the designation of Marine Nature Reserves under section 32 and for the formulation of byelaws for their protection (section 33). "Where, in the case of any land covered (continuously or intermittently) by tidal waters or parts of the sea in or adjacent to the Island up to the seaward limits of territorial waters it appears to the Department expedient, on an application made by the Wildlife Committee that the land and waters covering it should be managed by the Department for the purpose of-

- (a) conserving marine flora or fauna or geological or physiographical features of special interest in the area; or
- (b) providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to marine flora and fauna and the physical conditions in which they live, or for the study of geological and physiographical features of special interest in the area,

the Department may, subject to section 37(3), by order designate the area comprising that land and those waters as a marine nature reserve; and the Department shall manage any area so designated for either or both of those purposes".

The Ramsey Bay (Marine Nature Reserve³⁴) (No2) Byelaws 2011 came into operation on 1st January 2012 and set out the General restrictions within the Reserve (Part 2 section 4). Part 2 sets out that there is a prohibition of aggregate extraction, of dumping of dredged material, of netting, of long-lining, of dredging, of littering and of construction. With regards to construction, it states that “no person shall construct any pipeline or other structure within the Reserve except under the authority of a licence issued by the Department”³⁵. Further provisions are included in Part 3 “Research and Investigations” for additional restrictions within specified zones in Part 3 for Scientific Research. Section 14 “Permit to undertake scientific research” sets out that the Department may, if it considers it necessary, issue a permit to any person to undertake research or investigations within the Reserve and attach conditions and limitations to that permit.

The Act also provides for Areas of Special Scientific Interest under section 27 and though not a specifically marine designation they include coastal areas and may extend down to the level of astronomical low water. Sites are still being designated. The current list, maps and citations are available on the www.gov.im website. Coastal and landfall areas will therefore require ASSI consent from the DEFA where these include operations that are listed for a particular site.

Species protection measures are provided in Part 1 and Schedules 1 (birds), 5 (other animals) and 7 (plants) and offences include the reckless disturbance of protected wild animals. The animal species protected under schedule 5 include basking sharks, all species of marine mammals (seals and cetaceans) and all species of turtles. Only one marine plant is listed in Schedule 7, eelgrass (*Zostera marina*). The introduction of species is covered in section 14 and Schedule 8. Licensing is provided for in section 16, for purposes including public health and public safety but not for the purpose of development, for which species protection is covered under consent procedures in other legislation but subject to Wildlife Act section 36.

³⁴ The Ramsey Bay Nature Reserve means the area indicated on the map in the Schedule and designated by the Department under the Ramsey Bay (Marine Nature Reserve) (Designation) Order 2011, and referred to in these Byelaws as “the Reserve”

³⁵ Section 10

Section 36, on the 'duty to have regard for the environment etc' states:

'Section 36 (1) In regard to any functions of the Department which may affect the physical environment, the Department shall, so far as may be consistent with the proper discharge of such functions, endeavour to secure a reasonable balance between-

(a) the promotion and maintenance of a stable and efficient agricultural industry;
and

(b) the conservation and enhancement of the natural beauty and amenity of the countryside, the protection of wildlife habitat, and the conservation of flora and fauna and geological or physiographical features of interest.

(2) Without prejudice to subsection (1), in the exercise of any functions which may affect the physical environment, a department, statutory board or local authority shall, so far as may be consistent with the proper discharge of those functions, have regard to the matters specified in subsection (1)(b).'

Therefore wildlife conservation issues on prospective development sites will be considered via section 36 in the consenting regimes under other legislation, and operations that may be required, have been given consent, but might remain damaging to some extent after mitigation, might be accepted as an 'incidental result of a lawful operation that could not reasonably have been avoided'. Applicants will therefore be required to provide information on the likely wildlife impacts, sufficient for a regulator to determine what is reasonable in the circumstances.

Under this Act, if applicants consider that the proposed development may have an impact on the marine environment, they should contact:

Dr Fiona Gell
Senior Marine Biodiversity Officer
Department of Environment, Food and Agriculture,
Thie Slieau Whallian,
Foxdale Road,
St John's,
Isle of Man,
IM4 3AS
Telephone - +44 1624 685835

Water Pollution Act 1993

This Act makes provision for the protection of inland and coastal waters from pollution.

Extent of this Act

This Act sets out that two Departments are responsible for ensuring its provisions are adhered to. The Department of Environment, Food and Agriculture is responsible for Part 1 of this Act, and the Department of Infrastructure is responsible for Part 2 (which has been detailed in Section 2.3).

Part 1 of this Act relates to Inland and Coastal Waters (Controlled Waters) which includes

- (a) the waters which extend seaward for 3 miles from the baselines from which the breadth of the territorial sea adjacent to the Island is measured ('relevant territorial waters');
- (b) any waters which are within the area which extends landward from those baselines as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the fresh-water limit of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area ('coastal waters'); inland waters and ground waters.

This Part of the Act enables the issuing of licences for discharges of trade and sewage effluent, the taking of legal proceedings for discharging effluent without or in breach of the conditions of a licence, and the provision for setting regulations for preventing pollution.

If applicants consider that the proposed development may result in pollution under this Act within the controlled waters described above, they must contact:

Dr Calum McNeil, Environment Protection Officer
Environment, Safety and Health Directorate,
Department of Environment, Food and Agriculture,
Thie Slieau Whallian,
Foxdale Road,
St John's,
Isle of Man,
IM4 3AS
Telephone: +44 1624 685856

Fisheries Act 2012

This Act controls the inland and sea fisheries of the Isle of Man. The Act allows for the supervision and protection, establishment and development of inland and sea fisheries.

Extent of this Act

This Act can, with the consent of the Department of Infrastructure and the Water Authority (now the Manx Utilities Authority) define (by order) any area of the sea³⁶ (which is defined, subject to subsection (2) includes the coast up to the mean high water mark of ordinary spring tides³⁷).

For the purposes of this Act, "(a) waters on the seaward side of the mouth of a river defined under section 4(1) shall be treated as part of the sea and not as part of the river, and (b) waters on the landward side of a mouth so defined shall be treated as part of the river and not as part of the sea"³⁸.

The Act provides that, with the approval of the Treasury that the Department³⁹ "may conduct, or assist (by grants or otherwise) any person in conducting, research or investigation into any matter relating to fish or any inland fishery or sea fishery" (section 7). The Department has the ability to grant a licence, permit or authorisation (other than a sea fishing licence) as well as the power to modify, withdraw, a general licence, permit or authorisation to all persons or to persons of a specified description⁴⁰. The Act provides that if the holder of a licence is convicted of an offence under this Act, a licence may be cancelled or suspended and provides for further conviction (section 82).

The Department may authorise a person to do such things as are so specified for some scientific purpose in or in relation to such inland waters, or such part of the sea as may be so specified (section 75). In addition, in "exercise of its functions under this Act, the Department shall have regard to the need to conserve marine flora and fauna and the marine environment, to conserve features of geological or geomorphological interest and to

³⁶ Section 3

³⁷ Section 4

³⁸ Section 3(2)

³⁹ Department of Environment, Food and Agriculture

⁴⁰ Section 8(1)

protect buildings and other objects of architectural or historic interest, so far as those matters are capable of being affected by that exercise"⁴¹.

If applicants consider that the proposed development may have an impact on sea fisheries in the Isle of Man territorial seas, they should contact:

Karen McHarg, Director of Fisheries
Fisheries Directorate
Department of Environment, Food and Agriculture
Thie Slieau Whallian
Foxdale Road, St. Johns
IM4 3AS
Telephone – 01624 685857, email – karen.mcharg@gov.im

⁴¹ Section 5(2)(c, d, e)

Acts under other Government Departments - Department for Economic Development

The following Acts are the responsibility of the Department of Economic Development (DED) and will be discussed below.

Minerals Act 1986

This Act, which was amended by the Minerals (Amendment) Act 2006 introduces controls for the discovery and working of minerals. With the exceptions outlined in Schedule 1, the property in all minerals existing in a natural condition on the Island, and in all mines for the working of such minerals, is hereby vested in the DED.

Extent of the Act

The Act gives the DED certain powers in relation to mines and minerals. For example, Section 2 enables the DED to prospect or grant prospecting licences to search for mines and minerals vested in the DED. Section 5 allows the DED rights to work mines and minerals themselves. Section 7 allows the DED to sell any estates of mines and minerals provided it has the approval of Tynwald. Section 8 permits the DED to grant a Mining Lease for the working of mines and minerals up to a maximum of 21 years. Although Section 9 enables the DED to grant a Mining Licence for the extraction of minerals, it is considered that a Mining Lease would be the appropriate Mining Agreement for the extraction of minerals from the sea-bed.

The DED has had more experience with the application of this Act for land won minerals rather than within the marine environment and it has worked within the well-established planning process⁴². For its application within the territorial seas, a lease of the sea-bed

⁴² Planning Permission is required on land before any extraction of minerals etc can take place. As part of this process, there is a requirement for an Environmental Impact Assessment to be submitted along with any applications for extraction, as set out within the Isle of Man Strategic Plan 2007. A decision on planning would then be given prior to a licence being issued by Department of Economic Development.

However, given that this requirement does not apply within the marine environment, an appropriately scoped Environmental Impact Assessment could be requested either as a

(issued by the Department of Infrastructure) would also be required to be acquired by the applicant prior to any works being permitted to be undertaken.

Granting prospecting licences

The Act sets out that four weeks prior to a licence being issued, the DED serve notice of its intention to do so on:

- “(a) every local authority within whose area the land, or any part of the land in relation to which the right or power is proposed to be exercised is situated;
- (b) every Department, Statutory Board or other public body which, in the opinion of the Department, will be materially affected by, or interested in, any activity likely to be carried on in the exercise of the right or in consequence of the exercise of the power; and,
- (c) the owners and occupiers of the land in which the mines and minerals to be affected by the exercise of the power are situated” [Section 2(3)].

Following service of this notice, the DED shall take into account any representations which are made to it by the person by whom such a notice was served, before the expiration of a period of 4 weeks from the date of the service of the notice on him [Section 2(4)].

Prior to the grant of a Prospecting Licence, the DED will need to be satisfied that adequate arrangements have been made by the Prospecting Licensee to pay every owner of an estate affected by the Prospecting Licence a reasonable sum allowing the Licensee rights to enter onto the land for the purpose of searching for mines and minerals [Section 2(5)].

The Licensee shall only work the mines and minerals to such an extent as reasonable necessary to ascertain the existence, character and value of the mines and minerals, and shall not sell such minerals except to establish their character and value [Section 4(1)]. The Licensee shall provide to the DED copies of all information obtained on such mines and minerals.

Granting Mining Leases

Section 11 of the Act requires the DED not less than four weeks prior to a Mining Lease being issued, to serve notice of its intention to do so on:

condition of an exploratory / extractive mineral licence or as a condition precedent prior to grant of the seabed lease.

- (a) every local authority within whose area of land, or any part of the land in relation to which the right or power is proposed to be exercised is situated;
- (b) Every Department, Statutory Board or other public body which, in the opinion of the DED, will be materially affected by, or interested in, any activity likely to be carried out in the exercise of the right or in consequence of the exercise of the power; and,
- (c) The owners and occupiers of the land in which the mines and minerals to be affected by the exercise of the powers are situated [Section 11(1)].

Following service of this notice, the DED shall take into account any representations which are made to it by the person by whom such notice was served, before the expiration of a period of 4 weeks from the date of the service of the notice [Section 11(2)].

Where royalties are to be payable for the disposal of minerals worked under a Mining Lease, the level of such royalties shall be agreed between the DED and Treasury [Section 11(3C)].

Prior to the grant of a Mining Lease, the DED will need to be satisfied that adequate arrangements have been made by the Lessee to pay to every owner of an estate affected by the Mining Lease a reasonable sum for the working of such mines and minerals [Section 11(4)].

Mineral Workings (Offshore Installations) (Isle of Man) Act 1974

This Act provides for the safety, health and welfare of persons on installations concerned with the underwater exploitation and exploration of mineral resources in the waters in or surrounding the Isle of Man.

Extent of the Act

The Act applies to any activity which includes (a) the exploitation or exploration of mineral resources in or under the shore or bed of controlled waters; (b) the storage of gas in or under the shore or bed of controlled waters or the recovery of gas so stored; (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of controlled waters; and (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within paragraph (a), (b) or (c) of this paragraph⁴³.

⁴³ Section 1