

Department of Infrastructure

A Consultation Document on New Primary Legislation for the Isle of Man Territorial Seas

Response Form - Consultation Questions



Isle of Man
Government

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Closing Date: Friday 24th April 2015 4pm

New Primary Marine Legislation Scoping - Principles

Introduction

The Department of Infrastructure (DOI) 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. References to this new primary marine legislation within this Consultation will be as the "new Act".

The Department has worked with various Government Departments to best understand what they wish to see included within this legislation, to be in line with their Departmental responsibilities and considering existing legislation which currently applies to the territorial seas.

The Department of Infrastructure owns the sea-bed to the extent of the Isle of Man territorial waters (defined in Section 2 of the Consultation Document), 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.

Most of the 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 administers the process and issues the appropriate consents, while responsibility for other pieces of legislation lie with different Government Departments which follow their own procedures for consenting under that 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.

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. Information on these Acts has been included within Appendix 2 of the Consultation Document.

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

Purpose of the new primary marine legislation

The main purpose of this new primary marine legislation (the new Act) 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 when appropriate.

It is the intention of the Department that this new Act 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 new Act comes into operation.

The Consultation Document for the Scoping for new Primary Legislation for the Isle of Man Territorial Seas sets out the overarching principles the Department is proposing which will form the basis of this new Act for the marine environment. The consultation will run for 6 weeks, commencing on Friday 13th March 2015 and ending on Friday 24th April 2015 at 4pm.

There are a number of questions set out below to be completed as appropriate.

If you require further space for your answers, please continue on a separate sheet and clearly indicate which question your additional text relates to.

Please provide the following details

Q1 What is your name?

Q2 What is your full address?

Q3 What is your email address?

Q4 What is your preferred telephone number?

Q5 Are you an Agent acting on behalf of a private individual or Company?

Yes

No

Q6 Please state which individual or Company you are representing?

Consideration of Issues to be included within the new Act

Extent of the new Act

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 of the Consultation Document) and will exclude identified Harbour Areas. 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 an identified Harbour Area.

Implications for the Town and Country Planning Act 1999

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 Act 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.

The Department is proposing that the area covered by the new Act is to be referred to as the "marine environment" as it goes beyond the widely accepted definition of the territorial seas.

What overarching powers will the new Act have?

Please refer to Pages 8-9 of the Consultation Document for a full list of overarching powers the Department is proposing to include within this new Act.

Q7 Do you agree with what the Department is proposing this new legislation should include?

Yes

No

Please add any comments you wish

What will the new Act consent for?

The Department is proposing that this new Act 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.

The main type of activity being proposed to be exempt from the new Act is that of survey work. See Section 12 of the Consultation Document for further information relating to this.

Q8 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)?

Yes

No

Please add any comments you wish

The Decision Making Process in the new Act

The Department is proposing that the decision making process in the new Act will likely include the following principles:

An application is to be considered by an Independent Inspector, as appointed by the Council of Ministers.

The means by which an application 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 new Act which will give the Department some degree of control over appeals against the decision issued.

There will be a role for the Territorial Seas Committee and the Environment and Infrastructure Committee but this role will not be legislated for.

There will be public participation in the process.

Q9 Do you agree with the Department’s intention to proceed with this proposed decision making process in the new Act?

Yes

No

Please add any comments you wish

The Land-Sea Interface

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 (as set out above and included within Section 11 of the Consultation Document).

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 the new Act may be extended to such applications.

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 marine environment, 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.

Q10 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?

Yes
No

Please add any comments you wish

Q11 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)?

Yes
No

Please add any comments you wish

Environmental Impact Assessments

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 which are submitted without an EIA or if the 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 to an appropriately accepted standard.

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 which seek to permit approvals granted 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 relevant legislation and the applicant will be advised accordingly.

Q12 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?

Yes

No

Please add any comments you wish

Q13 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?

Yes

No

Please add any comments you wish

Public Participation in the Process in the new Act

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.

The Department is proposing that the following will be automatically identified as "Interested Parties" and will be involved within the process - the Department of Infrastructure (DOI), the Department of Environment, Food and Agriculture (DEFA) and the Department of Economic Development (DED).

Q14 Do you agree with the Department’s intention that there will be public participation in the process?

Yes

No

Please add any comments you wish

Q15 Do you agree with the Department’s intention to identify “Interested Parties” within the new Act as being DOI, DEFA, and DED?

Yes

No

Please add any comments you wish

Q16 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?

Yes

No

Please add any comments you wish

The Department welcomes representations by anyone who wishes to comment on this consultation document. We would encourage the submission of clear and concise responses. It should be noted that a response does not guarantee that changes proposed in a response will be implemented.

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

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