



## **MARINE INFRASTRUCTURE MANAGEMENT BILL 2015**

### **EXPLANATORY NOTES**

*These notes have been produced for the assistance of Members with the approval of the Member in charge of the Bill the Hon P. A. Gawne MHK*

#### **INTRODUCTION**

1. These explanatory notes relate to the Marine Infrastructure Management Bill 2015. They have been prepared by the Department of Infrastructure in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **SUMMARY**

3. This Bill is promoted by the Department of Infrastructure and its main purpose is:

- to provide a streamlined decision-making process for consent to development proposals within the territorial seas;
- to ensure a sustainable approach to marine development within the territorial seas;
- to provide a decision making process that is clear for applicants and decision makers; and
- to provide power to adapt the law to reflect emerging technologies and developing approaches to marine activities.

#### **THE BILL**

#### **COMMENTARY ON CLAUSES**

4. The Bill contains 62 clauses.

### **Clause 1: Title**

5. This clause gives the Act resulting from the Bill its short title.

### **Clause 2: Commencement**

6. This clause sets out that the following provisions of the Bill will come into operation on such day or days as appointed by the Department of Infrastructure.

### **Clause 3: Interpretation**

7. This clause sets out various definitions for a number of terms used in the Bill.

### **Clause 4: Purpose of Act**

8. This clause sets out the purpose of the Bill. These are the purposes outlined in paragraph 3 above.

### **Clause 5: Basic principle**

9. This clause applies the Bill to controlled marine activities and associated marine activities (see Clause 6) taking place or proposed to take place in the controlled marine area (see Clause 7).

### **Clause 6: Controlled marine activities**

10. This clause sets out the various activities which are to be controlled under this Bill. There is provision within the Bill to add, remove or amend an entry in the list of controlled marine activities. The clause also makes provision to specify classes of activity that are, or are not, to be treated as associated marine activities for the purposes of this Bill. The clause also allows the Department to give guidance as to the meanings of expressions in subsection (1) ("Controlled Marine Activities") or subsection (2) ("Associated Marine Activities")

### **Clause 7: Controlled marine area**

11. This clause states that the controlled marine area will be the area between the mean high water mark and the seaward boundary of the Isle of Man territorial seas. The clause excludes the harbour limits from controlled marine area. The clause will allow the Department of Infrastructure to make an order to exclude areas from or include areas within the controlled marine area.

### **Clause 8: Nature of Consent**

12. This clause sets out that marine infrastructure consent is a consent granted for the carrying out of controlled marine activities in the controlled marine area and that the consent may be granted only in pursuance of an application. The marine infrastructure consent may include consent for the carrying out of associated activities.

### **Clause 9: Requirement for consent**

13. This clause states that controlled marine activities cannot be carried out in the controlled marine area except in accordance with a marine infrastructure consent. It will be an offence to carry out controlled marine activities without a marine infrastructure consent or to carry out activities without complying with the terms and conditions of a consent.

14. The clause also specifies that controlled marine activities or associated marine activities in the controlled marine area do not require permission, consent or approval under any of the consenting regimes listed in the Clause. The clause allows the Department, by order, to add an entry to the list or remove an entry from the list of consenting regimes.

### **Clause 10: Timetable for applications**

15. This clause sets out the steps required by the Bill in relation to the making of applications for marine infrastructure consents and provides a timetable for those steps to be undertaken.

16. The clause confers powers on the Department of Infrastructure, by order, to amend the timetable. There is also provision that such an order may enable the Council of Ministers to alter timings for specified applications or consents (which may include applications in process and consents already granted).

### **Clause 11: Consultation**

17. This clause requires a prospective applicant to consult various Government Departments and other prescribed persons before making an application for marine infrastructure consent. The clause also requires prospective applicants to analyse the responses, prepare and publish a consultation report.

18. The clause confers powers on the Department of Infrastructure to make regulations about the procedure to be followed on pre-application consultations and the form, content and publication of consultation reports.

### **Clause 12: Publication**

19. This clause requires prospective applicants to publicise their proposed application. The Department of Infrastructure must make regulations about the publication of proposed applications.

### **Clause 13: Environment Impact Assessment**

20. This clause requires prospective applicants, before making an application, to carry out an environmental impact assessment. The clause also confers powers on

the Department of Infrastructure to make regulations about the process, form, and content of environmental impact assessments.

#### **Clause 14: Guidance**

21. This clause allows the Department of Infrastructure to give guidance about pre-application consultation, publication and environmental impact assessment. Prospective applicants must have regard to the guidance given to them.

#### **Clause 15: Scoping opinions**

22. This clause requires prospective applicants to request a scoping opinion from the Department of Infrastructure before carrying out an environmental impact assessment. The clause also requires applicants seeking a scoping opinion to give notice of their intention to apply for a scoping opinion. The clause stipulates that a request for a scoping opinion must be accompanied by a fee which will be prescribed in accordance with clause 53.

23. The clause also requires that a request for a scoping opinion must be accompanied by a scoping report. Regulations will specify what information is to be included in a scoping report.

24. The clause also requires the Department of Infrastructure to consult various Government Departments, Manx National Heritage, and any other person the Department thinks appropriate.

25. The clause confers powers on the Department of Infrastructure to make regulations about the content of scoping opinions and the handling of requests for scoping opinions. The clause also stipulates that the scoping opinion has effect for the period of two years beginning with the date of issue. The scoping opinion must be included in the register of consents.

#### **Clause 16: Advice and assistance**

26. This clause confers powers on the Department of Infrastructure to make regulations about the provision of advice and assistance to actual and prospective applicants for marine infrastructure consent and persons who are or may be interested in an actual prospective application.

27. This clause also allows regulations to be made that may include provision for allowing persons to apply to the Department of Infrastructure for an opinion as to whether particular activities would require a marine infrastructure consent.

#### **Clause 17: Power to require information**

28. This clause gives powers to the Department of Infrastructure to authorise a prospective applicant to serve a notice on a person requiring the person to give

details of any interests that may be affected by the proposed controlled marine activities or to give details of a person who might be able to give details.

29. The clause also makes it an offence to fail without reasonable excuse to comply with a notice.

#### **Clause 18: Powers of entry**

30. This clause sets out the powers of entry in relation to carrying out a survey or inspection or obtaining information in connection with an actual/prospective application.

#### **Clause 19: Form of application**

31. This clause requires an application for a marine infrastructure consent to be made to the Department of Infrastructure. The clause also specifies what must accompany an application and specify the controlled marine activities and associated marine activities for which it is required.

32. The clause also allows the Department to publish guidance about compliance with this clause and the applicant must have regard to that guidance. The Department may publish technical standards for any documents or information required by order under this clause and the applicant must comply with those standards.

33. The clause also requires an applicant to give notice to the Department of Infrastructure, Department of Economic Development, and any other prescribed person that he or she will be applying for a marine infrastructure consent.

#### **Clause 20: Register of applications**

34. This clause requires the Department of Infrastructure to maintain a register of applications. The Department of Infrastructure will be required to make arrangements for access to the register by the public without charge, whether by publication or arrangements for inspection by the public.

#### **Clause 21: Confirmation of submission of information**

35. This clause requires an application for a marine infrastructure consent to be accompanied by a declaration stating that the application complies with the provisions of Clause 19. If it becomes clear the application does not comply, the Department may discard the application or vary the timetable to allow time for the completion of compliance with Clause 19.

#### **Clause 22: Acceptance of application for examination**

36. This clause requires the Department of Infrastructure to refer an application for marine infrastructure consent to the Council of Ministers without delay (subject to

Clause 21(2)) and requires the Council of Ministers to refer it for examination in accordance with Clause 25(1). The Council of Ministers must notify the applicant that the application has/has not been accepted for examination.

### **Clause 23: Notification of accepted application**

37. This clause requires the Council of Ministers to notify various Government Departments and other prescribed persons that the application has been accepted and of the date of the preliminary meeting in respect of an accepted application.

### **Clause 24: Public consultation and interested parties**

38. This clause allows regulations to be made about public consultations. The clause also requires the Council of Ministers to make arrangements for a public consultation on an application in line with any regulations made under this provision.

### **Clause 25: Reference for examination**

39. This clause requires the Council of Ministers to refer an application to an Examiner or a panel of Examiners. The clause makes provision for a single Examiner to request that an application be referred to a panel of Examiners; the Council of Ministers would be required to comply with that request.

40. The clause also makes provision for the Council of Ministers to refer an application before or during an examination of an application by a single Examiner to a panel of Examiners.

### **Clause 26: Examiners**

41. This clause defines the term "Examiner". The clause also confers powers on the Department of Infrastructure to make regulations about the resignation, removal and replacement of Examiners.

### **Clause 27: Panels**

42. This clause gives powers to the Council of Ministers to appoint Examiners to a panel and appoint one of those Examiners as Chair.

43. The clause also confers powers on the Department of Infrastructure to make regulations about the resignation, removal and replacement of Examiners, and to make provision for the consequences of changes to the panel to ensure continuity of the examination.

44. The clause makes provision to allow a panel to allocate part of its consideration of an application to one or more members. The clause also deals with how decisions of the Panel are dealt with.

### **Clause 28: Procedure for examination**

45. This clause requires an Examiner or a Panel to make an initial assessment of the principal issues arising in relation to an application and to identify the principal stakeholders for the purposes of the application in addition to persons who are registered as interested parties.

46. The clause also requires an Examiner or a Panel to determine the procedure for examining the application and set a provisional timetable for the examination. They will also be required to consider the application and any written submissions made with respect to it.

47. The clause also makes provision for any irregularity in relation to the appointment of an Examiner or Panel, or in relation to the procedure for the examining of the application, not to affect the validity of the examination proceedings.

### **Clause 29: Preliminary meeting**

48. The clause requires an Examiner or a Panel to hold a preliminary meeting and invite any person who they think likely to wish to participate. The clause requires the Examiner or Panel to explain the process determined for the examination of the application, the timetable proposed for the examination and the principal issues expected to arise in relation to the application.

49. The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of preliminary meetings.

### **Clause 30: Written representations**

50. This clause requires the examination of an application in the form of consideration of written representations unless the Examiner or Panel hold a hearing into any aspect of the application or they decide to conduct part of the examination otherwise than by considering written representations.

51. The clause also confers powers on the Council of Ministers to make regulations about which written representations are to be considered, not to be considered, or may be considered, and about the consideration of written representations.

52. The clause also gives powers to the Examiner or Panel to disregard representations which they consider to be frivolous or vexatious.

### **Clause 31: Specific-issue hearings**

53. The clause requires an Examiner or Panel to hold a hearing into a specific issue if they think it is necessary to ensure that the issue is properly examined, and the principal stakeholders have an adequate opportunity to state their case.

54. The clause also gives powers to the Examiner or Panel to disregard representations which they consider to be frivolous or vexatious.

55. The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of specific-issue hearings. The regulations may confer discretionary functions on the Examiner or Panel, make provision for the prevention of disruption, make provision about costs and expenses or make provision about information that is or may be of relevance to national security or defence.

### **Clause 32: Public meeting**

56. The clause allows an Examiner or Panel to hold a public meeting about an application. If a public meeting is held, the clause requires the Examiner or Panel to provide such opportunities as they think appropriate for anyone to speak about the application and for the applicant to make representations about the application or to respond to comments and questions from the public or stakeholders.

57. The clause also confers powers on the Department of Infrastructure to make regulations about the nature and procedure of public meetings.

### **Clause 33: Assessors**

58. This clause makes provision for the appointment of Assessors to assist in the examination of an application. The clause also makes provision for a fees order under Clause 53 to require the applicant to pay a specified fee in respect of the appointment of an assessor.

### **Clause 34: Legal advice and assistance**

59. This clause makes provision for the appointment of Assessors to advise and assist in the examination of an application. The clause also makes provision for a fees order under Clause 53 to require the applicant to pay a specified fee in respect of the appointment of a legal advisor.

### **Clause 35: Completion of examination**

60. This clause requires the Examiner or Panel, on completion of their examination, to notify the Council of Ministers without delay and submit a report to the Council of Ministers as soon as is reasonably practicable. The Council of Ministers will be required to inform the applicant as soon as is reasonably practicable that the examination has been completed.

61. The clause also requires the report to include recommendations about the determination of the application. If the report recommends that a marine infrastructure consent should be granted, it must include a draft consent.

### **Clause 36: Decision on Examiner's or Panel's recommendations**

62. This clause requires the Council of Ministers to accept the recommendations of the Examiner or Panel and, in making a decision, they must have regard to any Marine Plan, Marine Policy Statement, any prescribed matters and any other matter which they consider relevant and important.

63. The clause also gives powers to the Examiner or Panel to disregard representations which they consider to be frivolous or vexatious.

64. If the Council of Ministers accepts a recommendation to grant a marine infrastructure consent, the clause requires them to issue the consent in the form of the draft in the report of the Examiner or Panel, or with modifications. The clause also requires the Council of Ministers to publish a statement of their reasons for their decision. The clause requires the statement of reasons to be sent to the applicant and every registered interested party.

65. The clause also confers powers on the Department of Infrastructure to make regulations about the procedure to be followed in determining an application.

### **Clause 37: Content**

66. The clause allows the Department of Infrastructure to make regulations about the content of a marine infrastructure consent. The clause also sets out what can be included within a marine infrastructure consent.

### **Clause 38: Limitations**

67. This clause allows a marine infrastructure consent to include provision for removing or modifying a requirement for permission only if the person responsible for giving permission agrees to the inclusion of the provision.

68. The clause also precludes the insertion of a provision authorising the discharge of water into inland waters or underground strata unless the person authorised to make the discharge has statutory responsibility for discharges into those waters or strata.

### **Clause 39: Formalities**

69. This clause requires the Council of Ministers to publish a marine infrastructure consent.

70. If a marine infrastructure consent includes provisions made by virtue of Clause 37(5)(a) or (b), or paragraph 10 or 11 of Schedule 1, the consent must be made by order. Clause 37(5) (a) allows for a marine infrastructure consent to apply, modify or exclude a statutory provision in relation to any provision that may be made

within a consent. Clause 37(5) (b) allows for a marine infrastructure consent to make amendments, repeals or revocations of statutory provisions of local application in consequence of or in connection with the consent. Paragraph 10 of Schedule 1 allows a marine infrastructure consent to make provision for the making of byelaws by any person and their enforcement. Paragraph 11 of Schedule 1 makes provision for the creation of offences in connection with the non-payment of charges or enforcement of byelaws.

71. The clause also requires the Council of Ministers to deposit in the Office of the Clerk of Tynwald a copy of the marine infrastructure consent, the latest version of the plans supplied by the applicant in connection with the application and the statement of reasons.

#### **Clause 40: Review**

72. This clause allows a marine infrastructure consent (including a change or revocation), and any decision to an application for or in connection with a marine infrastructure consent to be challenged or questioned in court only by way of petition of dolence.

#### **Clause 41: Correction of errors**

73. This clause allows the Council of Ministers to correct an error in marine infrastructure consent, subject to agreement by the Department of Infrastructure, the Department of Environment, Food and Agriculture, and any other prescribed person.

#### **Clause 42: Non-material changes**

74. This clause allows the Council of Ministers to make a change to a marine infrastructure consent if they are satisfied that the change is not material. The change may be made on application. A change may impose new requirements and/or remove or vary existing requirements.

75. The clause requires the Department of Infrastructure to make regulations about changes. The regulations may include provision about applications, publication of requests for changes, publication of changes, about consultation and conferring discretion on the Department of Infrastructure or another specified person.

76. The clause also requires changes to be made by order, if the original consent has been made by order.

77. The clause also requires the Council of Ministers to deposit any copy of any change in the General Registry.

#### **Clause 43: Material changes and revocation**

78. This clause allows the Council of Ministers to make a material change to a marine infrastructure consent. The change may be made on application or in cases

where there is a significant error in the consent the Council of Ministers may change the consent. A change may impose new requirements and/or remove or vary existing requirements.

79. The clause also allows the Council of Ministers to revoke a marine infrastructure consent.

80. The clause confers powers on the Department of Infrastructure to make regulations about changes. The regulations may include provision about applications, revocations, publication of requests for changes and revocations, publication of changes and revocations, about consultation and conferring discretion on the Department of Infrastructure or another specified person.

81. The clause also requires changes or revocation to be made by order, if the original consent has been made by order.

82. The Council of Ministers may pay compensation to a person whom they consider to have been unfairly prejudiced by a change or a revocation under this clause.

#### **Clause 44: Register of consents**

83. This clause requires the Department of Infrastructure to maintain a register of marine infrastructure consents. The register must also include details of corrections, changes, revocations and any other prescribed matter. The register must also include details of refusals of applications for marine infrastructure consents and details of reasons given in connection with applications for or in connection with marine infrastructure consents.

#### **Clause 45: Implementation plan**

84. This clause requires a person proposing to carry out the work in reliance of a marine infrastructure consent to submit a detailed plan of the work to be carried out ("an implementation plan") to the Department of Infrastructure.

85. The clause confers powers on the Department of Infrastructure to make regulations about the form and content of implementation plans.

86. The clause also requires the Department of Infrastructure to confirm that the works described in the implementation plan complies with the marine infrastructure consent or to notify the person submitting the plan of any changes that would be required in order to bring the works within the marine infrastructure consent.

87. It will be an offence to carry out controlled marine activities within the controlled marine area without the confirmation of an implementation plan for the works.

#### **Clause 46: Duration of consent**

88. This clause requires controlled marine activities authorised by a marine infrastructure consent to be commenced before the end of a prescribed period or another period specified in the consent. The prescribed period will be set out in secondary legislation. If the controlled marine activities have not commenced before the end of the period, the consent will cease to have effect.

89. The clause also confers powers on the Department of Infrastructure to make regulations specifying what is to be treated, or not to be treated, as commencement of controlled marine activities.

#### **Clause 47: Powers of entry**

90. This clause provides powers of entry in relation to inspecting works and investigating whether an offence has been committed.

#### **Clause 48: Confirmation of compliance**

91. This clause makes provision for persons who are carrying out or have carried out or are proposing to carry out works to seek confirmation from the Department of Infrastructure that the activities are or will be in compliance with the marine infrastructure consent. The clause requires the Department of Infrastructure to respond to such requests in the form of issuing a confirmation or refuse to issue a confirmation.

92. The clause also makes provision for the Department of Infrastructure to issue a notice requiring modifications to the activities or proposed activities.

93. The clause makes provision for the Department of Infrastructure to make regulations about the exercise of the powers under this clause.

#### **Clause 49: Remedial works**

94. This clause allows the Department of Infrastructure to carry out remedial works where a non-compliance with a statutory notice is occurring. The Department may recover the cost of the remedial works as a civil debt.

95. The clause makes provision for the Department of Infrastructure to make regulations about the exercise of the powers under this clause.

#### **Clause 50: Power to exempt**

96. This clause allows the Department of Infrastructure to make regulations exempting specified activities or classes of activity from the requirement for marine infrastructure consent.

### **Clause 51: Marine Plan and Policy Statements.**

97. This clause confers powers on the Department of Infrastructure to make regulations about the preparation and adoption of Marine Policy Statements and Marine Plans.

### **Clause 52: Procedural regulations**

98. This clause confers powers on the Department of Infrastructure to make regulations about the exercise of functions under this Bill.

### **Clause 53: Fees**

99. This clause confers powers on the Department of Infrastructure to make regulations providing for the charging of fees and the recovery of costs in connection with the performance of functions under this Bill.

### **Clause 54: Disapplication of other consenting regimes.**

100. This clause states that a provision that could be made by a marine infrastructure consent may not be included in a permission, consent or approval under any of the consenting regimes. This may be dis-applied by regulations in specified cases or classes of case.

### **Clause 55: Cross-jurisdiction works**

101. This clause confers powers on the Department of Infrastructure to make regulations relating to works or proposed works which are carried out, or are proposed to be carried out, partly in the controlled marine area and partly outside it. The regulations may also provide for a provision of this Bill or another enactment to apply, with or without modifications. The regulation may also provide for a provision of this Bill or another enactment not to apply.

102. This clause confers powers on the Department of Environment, Food and Agriculture to make regulations that make provision for the application of consenting regimes to seismic survey work which will or may affect the controlled marine area.

### **Clause 56: Penalties**

103. This clause sets the maximum fine for convictions under Clause 9(2) and Clause 17. The fines must not exceed £50,000 and £5,000, respectively.

### **Clause 57: Offences by body corporate**

104. This clause applies where an offence under this Act is committed by a body corporate and it is proved that the offence —

- (a) was committed with the consent or connivance of an officer of the body; or
- (b) was attributable to neglect on the part of an officer of the body.

105. The clause states that in these circumstances that officer, as well as the body, would be guilty of the offence and would be liable to the same penalty as the body.

#### **Clause 58: Defence**

106. This clause sets out the grounds for a defence for a person charged with an offence under section 9(2), which deals with carrying out a controlled marine activity without a marine infrastructure consent.

#### **Clause 59: Crown Application**

107. This clause provides for the subsequent Act to bind the Crown.

#### **Clause 60: Orders and Regulations**

108. This clause sets out general provisions in relation to orders or regulations made under this Bill.

#### **Clause 61: Transitional provisions**

109. This clause confers powers on the Department of Infrastructure to make regulations in relation to the transitional provisions in connection with the commencement of this Bill.

#### **Clause 62: Consequential amendments**

110. This clause provides for the coming into effect of Schedule 2 (which contains amendments to legislation consequential upon the coming into operation of the subsequent Act) and confers powers upon the Department to make further provision by order in the event of subsequent alteration to the list of consenting regimes mentioned in section 9.

#### **Schedule 1**

111. This Schedule sets out the provisions that may be included in a Marine Infrastructure Consent Notice.

#### **Schedule 2**

112. This Schedule sets out the consequential amendments to the following enactments —

- Minerals Act 1986
- Petroleum Act 1986
- Wildlife Act 1990
- Water Pollution Act 1993
- Electricity Act 1996

- Town and Country Planning Act 1999
- Petroleum Act 1998 (Application) Order 2000
- Submarine Cables Act 2003
- Harbours Act 2010
- Ramsey Bay (Marine Nature Reserve) (No.2) Byelaws 2011
- Fisheries Act 2012

## **HUMAN RIGHTS**

113. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

## **FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES**

114. This Bill may result in an increase in public expenditure. The aim of the Bill is to be cost neutral to Government, as far as is possible. The Bill is not expected to reduce the income of any public body, although there will be some benefits to Government from reduced administration in the form of a single consenting regime for the Island's Territorial Sea.