

General Scheme
of
Maritime Area and
Foreshore (Amendment) Bill 2013

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PART 1

PRELIMINARY AND GENERAL

This Part contains provisions normally included in legislation in relation to short title, collective citation, construction of enactments and commencement.

Head 1 Short title, construction, collective citation and commencement

Provide that:

- (1) The Bill may be cited as the Maritime Area and Foreshore (Amendment) Bill 2013;
- (2) This Bill will come into operation on such day or days as the Minister for the Environment, Community and Local Government may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions;
- (3) The Planning and Development Acts 2000 to 2012 and part 2 may be cited together as the Planning and Development Acts 2000 to 2013 and shall be read together as one;
- (4) The Foreshore Acts 1933 to 2012, part 3 and part 4 may be cited together as the Foreshore Acts 1933 to 2013 and shall be read together as one;
- (5) The Dumping at Sea Acts 1996 to 2012 and part 5 may be cited together as the Dumping at Sea Acts 1996 to 2013 and shall be read together as one;
- (6) Other collective citations as appropriate shall be included.

Notes

This Head contains the standard provisions about short title and collective citation for a listing of acts included or previously included in the collective citation.

It also provides for the coming into operation of the provisions of the Act. It will allow different provisions to be brought into operation on different days.

PART 2

PLANNING AND DEVELOPMENT

This Part provides for the definition of Ireland's maritime area as comprising the foreshore, the exclusive economic zone (EEZ) of the State and any areas that are designated under the Continental Shelf Act 1968. The definition of the maritime area relies upon the existing definitions of the foreshore, EEZ and continental shelf provided in various enactments, which are not being altered in this Bill.

The maritime area is being established for assessment, licensing and, ultimately, forward planning purposes. Insofar as is possible under international law this facilitates the application of a development consent regime to the maritime area similar to that which operates in the onland planning system.

For the first time, development in the EEZ and on the continental shelf will require consent from An Bord Pleanála (see Head 3). For the purposes of ensuring that development applications are considered in a streamlined way and subject to a single environmental impact assessment, the role of development consent authority is being assigned to An Bord Pleanála for certain classes of development (see Head 3) and to planning authorities for the remainder (see Head 4).

Developments will continue to be subject to consents from the State in accordance with existing legislative requirements e.g. Petroleum and Other Minerals Development Act, Gas Act etc.

CHAPTER 1
Definitions/Interpretation (Part 2)

Head 2 Definitions/Interpretation

Provide that:

(1) In this Act -

“the Act of 1933” means the Foreshore Act 1933;

“the Act of 2000” means the Planning and Development Act 2000;

“Minister” means the Minister for the Environment, Community and Local Government, unless otherwise specified;

“Board” means An Bord Pleanála.

(2) The Act of 2000 is amended:

(a) at Section 2 by inserting:

“maritime area” means the area of sea comprising the foreshore, the exclusive economic zone of the State and any area for the time being standing designated by order under section 2 of the Continental Shelf Act 1968;

“maritime option” has the meaning assigned to it by Head 15;

“foreshore” has the meaning given to it by section 1 of the Foreshore Act 1933;

“outer limit of the foreshore” has the meaning given to it by Section 1A of the Foreshore Act 1933;

“exclusive economic zone” has the meaning given to it by Section 87 of the Sea-Fisheries and Maritime Jurisdiction Act 2006;

“coastal planning authorities” means the planning authorities of:

- (i) the counties of Louth, Meath, Fingal, Dun Laoghaire-Rathdown, South Dublin, Wicklow, Wexford, Carlow, Kilkenny, Cork, Kerry, Clare, Galway, Mayo, Sligo, Leitrim and Donegal;
- (ii) the cities of Dublin, Cork and Galway; and
- (iii) Waterford City and County and Limerick City and County;¹

“coastal local authorities” means the local authorities of:

- (i) the counties of Louth, Meath, Fingal, Dun Laoghaire-Rathdown, South Dublin, Wicklow, Wexford, Carlow, Kilkenny, Cork, Kerry, Clare, Galway, Mayo, Sligo, Leitrim and Donegal;
- (ii) the cities of Dublin, Cork and Galway; and
- (iii) Waterford City and County and Limerick City and County;

“nearshore area” has the meaning given to it by Section 1 of the Foreshore Act 1933;

“outer limit of the nearshore area” has the meaning given to it by Section 1 of the Foreshore Act 1933.

- (b) at Section 3 by inserting “, or the carrying out of any works on, in, over or under the maritime area or the making of any material change in the use of any structures on, in, over or under the maritime area” after “or other land”;

¹ This is based on the Local Government Areas defined at Head 9 of the Local Government Bill 2013, which will dissolve all other town, borough and urban district councils and borough corporations.

Notes

Head 2 defines various words and expressions used in the Bill and inserts new definitions into the Planning and Development Act 2000. As per the definitions, the maritime area includes the foreshore and should be construed as such, and the foreshore includes the nearshore area and should be construed as such.

CHAPTER 2

Amendments to Planning and Development Acts 2000 – 2012

Head 3 Requirement to apply to An Bord Pleanála for approval

Provide that:

(1) It shall be necessary to apply to the Board for consent in respect of certain classes of proposed development which are located entirely in the maritime area, or which comprise contiguous elements located partially on land and partially in the maritime area, including:

- (a) identified strategic infrastructure projects;
- (b) all developments of a class requiring environmental impact assessment or appropriate assessment, with the exception of developments related to exploration or prospecting for petroleum;
- (c) all other developments of any class or type which are located entirely or partially beyond the outer limit of the foreshore, and which may or may not be connected to land by a cable;
- (d) all other developments of any class or type which are located entirely beyond the nearshore area, and which may or may not be connected to land by a cable, save for the exceptions provided for in Head 19.

Notes

This head provides that An Bord Pleanála (the Board) is assigned responsibility for the development consent of developments in the nearshore area, on the foreshore or in the wider maritime area which are deemed to be strategic infrastructure or which are of a class that require environmental impact assessment or appropriate assessment. In addition, the Board is also assigned responsibility for consenting to developments which are beyond the nearshore area. In considering such applications, the Board will be obliged to carry out an environmental impact assessment and/or appropriate assessment of the proposals, as appropriate.

Responsibility for consenting to strategic infrastructure developments related to the production of petroleum is being assigned to the Board. Responsibility for consenting to developments related to exploration or prospecting for petroleum is not being assigned to the Board and will remain the responsibility of the Minister for Communications, Energy and Natural Resources (Part 6).

Complementary amendments to the Foreshore Act (see [Head 18](#)) will provide that in considering applications for a foreshore lease or licence in respect of a development for which consent has been granted by the Board, the Minister will not be obliged to carry out an environmental impact assessment and/or appropriate assessment, and will only be obliged to consider the property conveyancing aspects of the proposal. This will eliminate duplication of the EIA and AA processes.

Complementary amendments to the Petroleum and Other Minerals Development Act (see Part 7) will provide that in considering applications for a petroleum production lease in respect of a development for which consent has been granted by the Board, the Minister for Communications, Energy and Natural Resources will not be obliged to carry out environmental impact assessment and/or appropriate assessment of the proposal. This will eliminate duplication of the EIA and AA processes.

The projects which will require the approval of the Board include:

- (a) large scale projects located anywhere in the maritime area which may or may not be connected to land and may or may not also involve onland components; examples would include extractive industry projects (e.g. Corrib Gas Pipeline), new port developments, international energy interconnectors, or renewable energy projects;
- (b) with the exception of petroleum exploration or prospecting, projects located anywhere in the maritime area which are not designated as strategic infrastructure but which require environmental impact assessment or appropriate assessment e.g. marina developments; and
- (c) smaller scale projects which do not require environmental impact assessment or appropriate assessment that are located wholly beyond the outer limit of the nearshore area.

Applications to the Board in respect of such developments will be subject to procedural provisions similar to those in the Planning and Development (Strategic Infrastructure) Act 2006 and associated Regulations that currently apply to the equivalent projects on land. For instance, the following provisions, which apply to strategic infrastructure projects on land, will apply to strategic infrastructure projects in the maritime area:

- **Section 37B:** prospective applicants will be obliged to enter into pre-application consultations with the Board in relation to the proposed development, as to whether it constitutes strategic infrastructure, the procedures involved in making the application, and the considerations that may have a bearing on the Board's decision;
- **Section 37B:** following pre-application consultations the Board will be obliged to give a written opinion as to whether the proposed development is or is not strategic infrastructure;
- **Section 37D:** if so requested by a prospective applicant the Board will be obliged to provide a written opinion on the scope and content of the EIS to be submitted in relation to the development;
- **Section 37E:** prospective applicants will be obliged to make arrangements for publication of the application and the procedures by which the public may make submissions to the Board during a period of public consultation of at least 6 weeks;
- **Section 37F:** the Board may, at its absolute discretion, require the applicant to provide such additional information in support of its application as the Board deems necessary for it to fully consider the proposal;
- **Section 37H:** the Board will be obliged to publish the outcome of its decision, the main reasons and considerations on which the decision is based, and the procedures by which the procedural or substantive legality of the decision may be challenged in the courts;
- **Sections 134, 134A and 135:** the Board may, at its absolute discretion, convene oral hearings on applications;
- **Section 37J:** it will be the objective of the Board to make a decision on applications within 18 weeks of the closing date of the public consultation period for an application.

Head 4 Requirement to apply to planning authorities for planning permission

Provide that:

(1) It shall be necessary to apply to the relevant planning authority for planning permission in respect of all proposed developments which are located either entirely within the nearshore area, or partially on land and partially within the nearshore area, and which are not strategic infrastructure or do not require the carrying out of an environmental impact assessment or an appropriate assessment.

As well as applications relevant to subhead 4(1), it shall also be necessary to apply to the relevant planning authority for planning permission in respect of those classes of development currently subject to section 225 of the Planning and Development Act, such as pier and marina developments. Such developments, which exclude cables and pipelines, are generally adjacent to land and extend beyond the outer limit of the nearshore area.

(2) Subhead 4(1) shall not apply to developments related to exploration or prospecting for petroleum.

(3) The Minister may make regulations to assign responsibility for consenting to certain minor developments beyond the nearshore area but within the foreshore, such as the deployment of navigational aids, to planning authorities.

Notes

Currently only developments on the foreshore which are connected to land (with certain exceptions) come within the remit of planning authorities. It is intended to widen the role of planning authorities by:

(1) assigning them responsibility for the development consent of all developments within the newly defined nearshore area, other than those that are strategic infrastructure, or requiring EIA or AA;

- (2) assigning them, through regulations, responsibility for the development consent of certain developments beyond the nearshore area, but within outer limit of the foreshore, of deployment of buoys and other navigation aids; and
- (3) assigning them with responsibility for the permitting of certain activities in both the nearshore area and on the foreshore.

This Head provides that it will be necessary to apply to the relevant planning authority for permission in respect of the majority of all proposed developments which are located either entirely within the nearshore area, or partially on land and partially within the nearshore area, and which are not strategic infrastructure or do not require the carrying out of an environmental impact assessment or an appropriate assessment. Complementary amendments to the Foreshore Act set out at Head 18 will clarify that in considering lease/licence applications for such projects the Minister will only be obliged to consider the property conveyancing aspects of the proposal.

In conjunction with Head 3 above, this head will have the effect of making planning authorities responsible for granting consent for all development which is (1) wholly within the outer limit of the nearshore area and (2) is not strategic infrastructure or does not require environmental impact assessment (EIA) or appropriate assessment (AA). Development of any class which straddles the outer limit of the foreshore, i.e. which is partially on the foreshore and partially in the exclusive economic zone, will be the responsibility of the Board. Certain classes of development which straddle the outer limit of the nearshore area, i.e. which are partially in the nearshore area and partially on the foreshore, will be the responsibility of planning authorities.

Head 5

Local authority development on the foreshore

Provide that:

(1) Consequential amendments are made to Part XV of the Act of 2000.

Notes

Section 226 provides that development on the foreshore proposed by or on behalf of a local authority and which requires EIA is submitted to the Board for approval. Section 227(8) provides that it is not necessary for the local authority to submit an EIS with its application for a lease or licence, and that it is not necessary for the Minister to consider the likely effects on the environment of such a proposal. These sections may now be superfluous since all development on the foreshore (including the nearshore area) which requires EIA will be submitted to the Board for development consent and the Minister will only be obliged to consider the property conveyancing aspects of the proposal.

Issues to be considered:

Section 227 provides that the powers of a local authority to compulsorily purchase land extends to the foreshore which adjoins its functional area.

Section 228 provides that, upon notification to the Minister, a local authority may enter upon the foreshore to carry out site investigations without being obliged to apply for a foreshore licence for that purpose.

To be considered if these provisions should remain under the new regime.

Head 6

Requirement for a maritime option

Provide that:

- (1) An application to the Board or planning authority for approval/permission for development in the maritime area shall only be deemed to be a valid application if it is accompanied by documentary evidence that the appropriate Minister has granted to the applicant a maritime option for the part of the maritime area concerned.

Notes

This head provides that the Board or planning authority, as the case may be, shall only deem an application to be valid if the applicant can provide documentary evidence that a maritime option for the part of the maritime area concerned has been granted by either the Minister for the Environment, Community and Local Government or the Minister for Communications, Energy and Natural Resources.

As provided at Head 15, the grant of a maritime option by a Minister confers on the applicant an interest in that part of the maritime area, sufficient to seek consent from the Board or a planning authority for proposed development in that area.

Developments that require a maritime option will be specified in regulations. Certain minor activities may not require a maritime option.

Head 7 Content of development plans

Provide that the Act of 2000 is amended in Section 9 to specify that:

- (1) Mandatory objectives shall be included in development plans for ‘development in the nearshore area’.
- (2) The obligation to include mandatory objectives for ‘development in the nearshore area’ is restricted to coastal planning authorities as defined at Head 2.
- (3) The part of the nearshore area that each coastal planning authority is obliged to include in its development plan is defined in a map to be included as a schedule to the Act of 2000.

Notes

This head provides for the inclusion of mandatory objectives related to ‘development in the nearshore area’ in the development plans of coastal planning authorities. This will ensure that regard is had to these matters by planning authorities in the preparation of development plans.

The provisions of Part II of the Planning and Development Act 2000 concerning the procedures for the making of plans will apply to the inclusion of these objectives.

Objectives specifically related to ‘development in the nearshore area’ might include:

- (a) support the objectives of government strategies, policies and plans such as Harnessing Our Ocean Wealth, the Offshore Renewable Energy Development Plan, the National Ports Policy, the Action Plan for Jobs, the National Biodiversity Plan, and Our Sustainable Future;
- (b) other plans which may be prescribed in future, such as a National Maritime Spatial Plan;
- (c) promotion of marine and coastal tourism;
- (d) coastal protection and flood risk management;
- (e) protection of the marine environment;
- (f) navigational safety; and
- (g) protection of fisheries resources.

Head 8 Outline planning permission to be disapplied

Provide that:

- (1) The provisions of the Act of 2000 concerning outline planning permission shall not apply to development in the nearshore area, on the foreshore or in the wider maritime area.

Notes

The provisions of Section 36 of the Planning and Development Act 2000 concerning outline planning permission for the development of land will be disapplied in respect of applications for consent for development in the nearshore area, on the foreshore or in the wider maritime area. Similar procedures will instead be implemented by virtue of the new provisions to be made for maritime options at Heads 6 and 15.

Head 9 Powers to make regulations concerning procedural matters

Provide that:

- (1) The Minister has powers to make regulations concerning the detail of procedural matters which will apply to applications to the Board or planning authorities for development consent in the maritime area.

Notes

Such procedural matters might include a process in relation to determination by the Board as to whether environmental impact assessment or appropriate assessment is required in a particular case, or the setting out of the relevant statutory consultees for development in the maritime area. It may also be necessary to make amendments to existing Regulations which will be specific to applications for development in the maritime area e.g. no need to erect a site notice as part of the public consultation arrangements.

Head 10 Exempted development or activities

Provide that:

- (1) The Minister has powers to make regulations concerning the exemption of certain development or activities in the maritime area from the requirement to obtain planning permission.

Notes

This head provides the Minister with powers to make regulations to exempt certain development or activities from the requirement to obtain planning permission. For example, it is intended that certain small scale activities will be made subject to regulatory controls by local authorities outside of the planning system, perhaps under bye-laws. Such activities will be specifically exempted from the requirement to obtain planning permission. Such activities may include one-day leisure events in the nearshore area or on the foreshore and use of the area for filming etc.

Head 11 Disapplication of compensation provisions

Provide that:

- (1) The provisions of Part XII of the Act of 2000 concerning compensation which may be payable to applicants who have been refused permission, in certain circumstances, are dis-applied with regard to development in the nearshore area, on the foreshore or in the maritime area.

Notes

This head provides that the provisions of the Planning and Development Act 2000 concerning compensation which may be payable to applicants, consequent upon certain decisions by planning authorities, will be dis-applied with regard to development in the maritime area. This is because, in the maritime area, the applicant does not own or have property rights to the area in question, so compensation would not be appropriate.

Head 12 Partial Disapplication of enforcement provisions

Provide that:

- (1) The provisions of Part VIII of the Act of 2000 concerning enforcement are dis-applied in respect of development that is entirely beyond the outer limit of the nearshore area and are replaced by other enforcement measures as appropriate.

Notes

This head will provide that the provisions of the Planning and Development Act 2000 concerning enforcement will be dis-applied for development that is entirely beyond the outer limit if the nearshore area. The enforcement measures to be applied to in respect of development on the foreshore or in the maritime area remain to be clarified.

Head 13 Partial Disapplication of development levies provisions

Provide that:

- (1) Sections 48 and 49 of the Act of 2000 do not apply to developments wholly beyond the nearshore area.

Notes

Sections 48 and 49 of the Planning and Development Act 2000 provide that the successful recipients of planning permission should pay a contribution “in respect of public infrastructure and facilities benefitting development in the area”. This is clearly inapplicable in the case of development wholly beyond the outer limit of the nearshore area and accordingly it is necessary to partially dis-apply these provisions. Further consideration will be given to whether the current provisions in relation to fees for licenses/leases are adequate to ensure an appropriate contribution from the developers of particular projects, or whether any further provisions in relation to contributions are required.

PART 3
FORESHORE

This part amends the powers of the Minister with regard to regulation of development and activities on the foreshore. It also creates in law a new nearshore area, which extends from the High Water Mark to the Low Water Mark. Although separately defined, the nearshore area forms part of the foreshore.

This part also creates new powers for a Minister to grant a maritime option for a specified development in a specified part of the maritime area, including the foreshore and nearshore area. It provides that a Minister may grant a lease or licence only if s/he has previously granted a maritime option, where such an option is required, in respect of the proposed development and the applicant has been granted development consent for the proposal by the planning authority or the Board, as appropriate.

It also provides that the Minister is not obliged to carry out environmental impact assessment or appropriate assessment of a proposal which has been granted development consent by the Board or planning authority, when considering an application for a foreshore lease or licence.

It creates powers for the Minister to exempt certain activities from the requirement to obtain a foreshore licence, and repeals certain sections of the Foreshore Act 1933.

CHAPTER 1
Definitions/Interpretation (Part 3)

Head 14 Definitions/Interpretation

Provide that:

The Act of 1933 is amended as follows:

(1) At section 1 by the insertion of:

“maritime area” has the meaning assigned to it by Section 2 of the Planning and Development Act 2000;

“maritime option” means a time-bound and conditional interest in the maritime area, as provided for in Head 15;

“coastal planning authorities” has the meaning assigned to it by section 2 of the Act of 2000 (see Head 2);

“coastal local authorities” has the meaning assigned to it by section 2 of the Act of 2000 (see Head 2);

“nearshore area” means the bed and the shore, below the line of high water of ordinary or medium tides and above the line of low water of ordinary or medium tides, of every tidal river and tidal estuary and of every channel, creek and bay of the sea and of any such river or estuary.

“outer limit of the nearshore area” means the line of low water of ordinary or medium tides;

“maintenance dredging” has the meaning assigned to it by section 1 of the Dumping at Sea Act 1996;

“loading” has the meaning assigned to it by section 1 of the Dumping at Sea Act 1996;

“dumping” has the meaning assigned to it by section 1 of the Dumping at Sea Act 1996.

(2) At section 1B by the substitution of the following for (c):

“(c) in relation to:

- (i) the granting of maritime options for projects related to prospecting for, exploration for, or extraction of petroleum and natural gas, or
- (ii) the granting of maritime options for renewable energy projects or the designation of renewable energy zones, or
- (iii) the granting of maritime options for offshore gas storage projects,

in the maritime area, the Minister for Communications, Energy and Natural Resources,”

(3) At section 1B by the insertion of sub-section (d):

“(d) in relation to any other function exercisable under this Act, the Minister for the Environment, Community and Local Government.”.

Notes

This head inserts new definitions into the Foreshore Act 1933.

CHAPTER 2
Amendments to Foreshore Acts 1933 – 2012

Head 15 Maritime option

Provide that:

- (1) The appropriate Minister has powers to grant a time-bound and provisional interest, for a specified development in a specified part of the maritime area, to be known as a maritime option.
- (2) An applicant is eligible to be granted a maritime option only if qualifying criteria are satisfied, including:
 - (a) Provision of a valid and up to date tax clearance certificate;
 - (b) Demonstration of their financial, managerial or technical capabilities as may be deemed appropriate by the appropriate Minister; and
 - (c) Such other criteria as may be determined by the appropriate Minister from time to time.
- (3) Where more than one application is made to the appropriate Minister for a maritime option in respect of the same part of the maritime area, that Minister may, at his absolute discretion, either:
 - (a) refuse any of the applications concerned; or
 - (b) require any of the applicants to alter their applications to ensure that there is no conflict between the applications or between the areas concerned; or
 - (c) arrange for the maritime option in the area for which there are competing applications to be auctioned among the applicants concerned by way of a closed tender process.
- (4) At the appropriate Minister's absolute discretion, a maritime option may provide the holder with exclusive or non-exclusive rights over the area concerned, and will expire after a fixed period of time (which can be extended by that Minister) unless certain contractual obligations, to be specified in the maritime option, are met. These contractual obligations will include applying for and securing development consent from the planning authority or Board, as appropriate.

- (5) The appropriate Minister may charge fees for the grant of a maritime option and may make regulations in this regard and in relation to any other procedural matter, including the specification of qualifying criteria which may apply, concerned with the grant of maritime options.
- (6) The appropriate Minister may put up for auction by way of an open tender process maritime options for specified types of development in specified parts of the maritime area.
- (7) The Minister for the Environment, Community and Local Government may only grant a foreshore lease or licence, or the Minister for Communications, Energy and Natural Resources may only grant a licence for which he has responsibility (oil/gas, renewable energy or gas storage) if the applicant has first been granted,
- (a) a maritime option, and
 - (b) development consent for the proposal by the planning authority or Board, as appropriate.
- (8) An applicant may neither:
- (a) significantly alter the characteristics of a proposal that has been granted a maritime option when applying to a planning authority or the Board for development consent, nor
 - (b) in any way alter the characteristics of a proposal that has been granted development consent by a planning authority or the Board when applying,
 - (i) to the Minister for the Environment, Community and Local Government for a foreshore lease or licence, or
 - (ii) to the Minister for Communications, Energy and Natural Resources for any of the licences that he may grant.
- (9) A maritime option that is granted in respect of an area of the exclusive economic zone or of the continental shelf confers an interest in respect of exploration and exploitation of natural resources located there and not to the seabed itself.

Notes

Subhead 15(1) provides new powers under the Foreshore Act 1933 for a Minister to grant a time-bound and provisional interest or option, for a specified development in a specified part of the maritime area, to be known as a maritime option.

Subhead 15(2) provides that an applicant is eligible to be granted a maritime option only if qualifying criteria to be determined by the Minister are satisfied. The precise criteria to be applied will be developed in consultation with the Attorney General's Office and other Departments during drafting of the Bill. The requirement to put some or all qualifying criteria on a statutory footing will also be further considered.

In conjunction with the definition at Subhead 14(2), the reference to the 'appropriate Minister' is intended to ensure that both the Minister for the Environment, Community and Local Government and the Minister for Communications, Energy and Natural Resources have the necessary legal powers to grant maritime options for projects under their respective responsibilities.

Subhead 15(3) provides that where multiple applications for maritime options are received for the same area, the appropriate Minister may, at his absolute discretion, either:

- (a) refuse any of the applications concerned, or
- (b) require any of the applicants to alter their applications to ensure that there is no conflict between the applications or between the areas concerned, or
- (c) arrange for rights to the area for which there are competing applications to be auctioned among the applicants concerned by way of a closed tender process.

Subhead 15(4) provides that, at the appropriate Minister's discretion, a maritime option may provide the holder with an interest over the area concerned which will expire after a fixed period of time (which can be extended by that Minister) unless certain contractual obligations are met. These contractual obligations will include applying for and securing development consent. Other appropriate contractual obligations will be identified in consultation with the Attorney General's Office and other Departments during drafting of the Bill.

Subhead 15(5) provides that the appropriate Minister may make regulations concerning the charging of a fee for a maritime option and for other procedural matters related to the granting of maritime options.

Subhead 15(6) provides that the appropriate Minister may auction, by way of an open tender process, maritime options for specified types of development in specified areas. The intention is to provide a framework for the State to conduct plan-led leasing rounds for specified types of development in specified parts of the maritime area.

Subhead 15(7) provides that the appropriate Minister may only grant a lease or licence if the applicant has first been granted (i) a maritime option and (ii) development consent for the proposal by the planning authority or Board, as appropriate.

In the interest of coherence between the planning system and the foreshore regulatory system, and to control development, Subhead 15(8) makes explicit provision that an applicant may neither:

- (1) significantly alter the characteristics of a proposal that has been granted a maritime option when applying to a planning authority or the Board for development consent, nor
- (2) in any way alter the characteristics of a proposal that has been granted development consent when seeking a lease or licence from the appropriate Minister.

Subhead 15(9) makes it clear that a maritime option that is granted in respect of an area of the exclusive economic zone or of the continental shelf confers an interest only to the extent permitted by international law.

Developments that require a maritime option will be specified in regulations. Certain developments and minor activities will not require a maritime option.

Head 16 Low water mark

Provide that:

- (1) For the purpose of this Bill, the low water mark may be established by reference to the charts prescribed in accordance with section 92 of the Sea Fisheries and Maritime Jurisdiction Act 2006.

Notes

Low water mark is the seaward boundary of the nearshore area and the outer limit of the jurisdiction of coastal planning authorities. This head provides that low water mark may be established by reference to the charts that are prescribed for that purpose under section 92 of the Sea Fisheries and Maritime Jurisdiction Act 2006.

Head 17 Exemption for maintenance dredging, loading and dumping

Provide that:

- (1) Section 3 of the Act of 1933 is amended to specify that maintenance dredging, loading and dumping activities which are permitted by the Environmental Protection Agency (EPA) under the Dumping at Sea Act are exempted from the requirement to obtain a licence under that section.

Notes

In conjunction with Head 26 this head aims to end the dual consent system that applies to maintenance dredging operations. Currently the dredging activity is licensed by the Minister under the Foreshore Act and the loading of the dredge spoil on vessels and its dumping at sea is licensed by the EPA under the Dumping at Sea Act. Head 27 provides that the EPA will license the dredging, loading and dumping under the Dumping at Sea Act. This head amends Section 3 of the Foreshore Act to provide that the activities which are permitted by the EPA under the Dumping at Sea Act are exempted from the requirement to obtain a licence under the Foreshore Act.

Head 18 Environmental impact assessment and appropriate assessment

Provide that:

- (1) An applicant is not obliged to submit an environmental impact statement or a natura impact statement to the Minister with an application for a maritime option, a foreshore lease, or a foreshore licence.
- (2) The Minister is not obliged to carry out an environmental impact assessment or appropriate assessment of a proposal when considering applications for a maritime option, a foreshore lease, or a foreshore licence.

Notes

Subhead 18(1) provides that the applicant is not obliged to submit an environmental impact statement (EIS) or a Natura Impact Statement (NIS) to the Minister when applying for a maritime option, a foreshore lease, or a foreshore licence.

Subhead 18(2) provides that the Minister is not obliged to carry out an environmental impact assessment (EIA) or appropriate assessment (AA) of a proposal when considering applications for a maritime option, a foreshore lease, or a foreshore licence. EIA and AA, where required, will be carried out by the Board and the Minister will only be required to consider the property conveyancing aspects of applications.

Head 19 Licensing exemptions for certain activities

Provide that:

(1) The Minister has powers to make regulations for the purpose of exempting, subject to thresholds where deemed appropriate, certain activities from the requirement to obtain consent under the Foreshore Act 1933.

Notes

This head provides the Minister with powers to make regulations to exempt, subject to thresholds where appropriate, certain activities from the requirement to obtain consent from the Minister. Examples of the types of activities concerned could include:

- (a) filming, tag rugby, horse races etc.;
- (b) deployment of boat moorings; and
- (c) emergency works related to sea defences.

The regulation-making powers to be given to the MECLG will be framed in a broad manner to give wide discretion with regard to procedural matters².

² Similar to the provisions of section 177AD of the Planning and Development Act 2000-2012

Head 20 Local authority regulation of certain activities in the nearshore area and on the foreshore

Provide that:

- (1) It is necessary to apply to the relevant coastal local authority for a permit in respect of certain proposed activities in the nearshore area or on the foreshore which:
 - (a) are not regarded as ‘development’ in the planning code and,
 - (b) currently only require the consent of the Minister under the Foreshore Act.

- (2) The Minister has powers to make regulations in relation to such a permitting system including prescribing such matters as manner of application, fee payable, time limits for decision-making by planning authorities etc.

Notes

This head provides coastal local authorities with powers to regulate, through a permitting system, certain activities in the nearshore area or on the foreshore. Working in conjunction with Head 19 the effect of this head is to transfer responsibility for regulating such activities from the Minister to coastal local authorities.

Examples of the works and activities could include:

- (a) deployment of boat moorings;
- (b) activities such as filming, tag rugby, horse races etc.;
- (c) deployment of small scale scientific research devices.

Head 21 Foreshore responsibilities for coastal local authorities

Provide that:

(1) The Act of 1933 is amended:

- (a) at Section 6, in relation to prohibiting by order the removal of beach material from seashore;
- (b) at Section 7, in relation to prohibiting by notice the removal of beach material from foreshore;
- (c) at Section 8, in relation to making regulations in respect of the public use of foreshore;
- (d) at Section 9, in relation to the authorisation of sea defence works on seashore not belonging to the State;
- (e) at Section 10, in relation to the erection of structures on tidal lands not belonging to the State;
- (f) at Section 11, in relation to the removal of dilapidated structures from foreshore, whether belonging to the State or not;
- (g) at Section 12, in relation to the removal of structures unlawfully erected on foreshore belonging to the State;
- (h) at Section 13, in relation to the prohibition of the deposit of material on seashore or foreshore; and
- (i) at Section 14, in relation to the prohibition of the deposit of noxious articles on tidal lands or into the sea;

to specify that coastal local authorities are responsible for these functions.

Notes

This head transfers responsibility for a range of miscellaneous functions in relation to the foreshore, including the nearshore area, currently performed by the Minister to coastal local authorities.

The functions concerned align closely with the new planning and development consenting functions to be assigned to coastal planning authorities. Transferring

these functions to coastal local authorities will provide for clarity of responsibility and a more coherent and holistic approach to the control of development and other activities in the nearshore area and for certain minor activities and developments on the wider foreshore.

It will also be necessary to create new enforcement powers for local authorities in relation to these matters including e.g. issuing of enforcement notices, prosecution of offences, penalties, payment of fines, injunctions and offences by bodies corporate will apply in respect of the new functions.

Head 22 Repeal of certain sections of the Act

Provide that:

(1) Sections of the Act of 1933 (yet to be determined) are repealed in whole or in part.

Notes

This head provides for the repeal of certain sections of the Foreshore Act (as yet to be determined).

PART 4
OTHER MISCELLANEOUS AMENDMENTS

Responsibility for the development consent role in respect of aquaculture, sea fisheries and developments within fishery harbour centres will remain with the Minister for Agriculture, Food and the Marine. Provision therefore is being made to preserve the current legislative framework and exclude these types of development from those for which responsibility is transferring to An Bord Pleanála and planning authorities.

New sections are being inserted in the Foreshore Act to create powers for the Minister to make regulations in relation to:

- (a) designating shellfish waters as required by the Shellfish Waters Directive; and
- (b) designating marine protected areas as required by the Marine Strategy Framework Directive.

CHAPTER 1

Consequential amendments related to aquaculture, sea fisheries and fishery harbour centre developments

Head 23 Aquaculture, sea fisheries and fishery harbour centre developments

Provide that:

- (1) The amendments being made to the Planning and Development Act and the Foreshore Act do not apply to applications for consent in respect of aquaculture, sea fisheries and fishery harbour centre developments.

Notes

Responsibility for the development consent role in respect of aquaculture, sea fisheries and fishery harbour centre developments is remaining with the Minister for Agriculture, Food and the Marine. Provision is therefore being made to preserve the current legislative framework and to exclude these types of development from those for which responsibility is transferring to An Bord Pleanála and planning authorities.

CHAPTER 2
Designation of shellfish waters

Head 24 Designation of shellfish waters

Provide that:

(1) For the purposes of this Head:

‘shellfish’ means a bivalve or gastropod mollusc;

‘shellfish waters’ means an area of water specified and delineated on the appropriate map;

‘prescribed public authority’ means a person or body specified.

(2) The Minister may make regulations in relation to the designation of shellfish waters.

(3) Regulations made under this Head may make provision in relation to designation and de-designation of shellfish water areas, the roles and responsibilities of various public bodies, the setting or amending of water quality standards to include the parameters of Statutory Instrument 268 of 2006 as necessary and related enforcement matters.

(4) Every regulation made under this Head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling such regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Notes

The Shellfish Waters Directive will be repealed on 22 December 2013. SI 268 of 06 gives effect to the provisions of the Directive, sets water quality standards, prescribes public bodies and designates a number of shellfish water areas. A number of subsequent SI’s designated further shellfish waters, totalling 64 to date. The Department of the Environment, Community & Local Government continues to be responsible for the function.

Whereas it is considered that the existing 64 designated areas will continue to be prescribed as protected areas, this head is considered necessary to enable the Minister to further designate areas, de-designate or amend designation as appropriate. Powers to amend water quality standards and related matters are also required.

Specifically, the Regulations will contain provisions in relation to the shellfish water designation process, including:

- The designation of shellfish water areas;
- The de-designation of shellfish water areas;
- The amending or altering of existing shellfish water areas or related matters such as sampling points;
- Prescribing public bodies;
- Trans-boundary provisions;
- Defining the responsibilities of local authorities and prescribed public bodies;
- Defining the role and responsibilities of the Minister;
- The setting or amending of water quality mandatory and guide standards;
- Compliance provisions:
 - Provide for the establishment, implementation, review, amending, updating and publication of action programmes, in association with public authorities;
 - Provide for the Minister to be able to give general directions in writing to a prescribed public authority in relation to the performance of its functions prescribed in an action programme established and, in performing these functions, the prescribed public authority shall have regard to those directions (Source: SI 464 of 2009, the provisions of which fall when the Directive is repealed);
- Public information requirements;
- Other related matters.

CHAPTER 3

Designation of marine protected areas

Head 25 Designation of marine protected areas

Provide that:

- (1) The appropriate Minister may make regulations to:
 - (a) designate marine protected areas within the meaning of the Marine Strategy Framework Directive and
 - (b) prescribe the measures to be implemented in relation to the management and protection of marine protected areas.

Notes

The establishment of marine protected areas, including areas already designated or to be designated under the Habitats Directive and the Birds Directive, and under international or regional agreements to which the European Community or Member States concerned are Parties, is an important contribution to the achievement of good environmental status under the Marine Strategy Framework Directive.

PART 5

AMENDMENTS TO DUMPING AT SEA ACTS 1996 – 2012

This Part creates new powers for the Environmental Protection Agency (EPA) to assess and permit maintenance dredging and loading operations where the spoil is to be dumped at sea. It exempts maintenance dredging, loading and dumping operations which are permitted by the EPA under the Dumping at Sea Act from the requirement to obtain a foreshore licence from the Minister.

It also makes a number of other technical amendments to the Act of 1996.

Head 26 Amendment of section 1

Provide that:

(1) Section 1 of the Act of 1996 is amended:

(a) by inserting the following after the definition of “Dumping”:

‘disused offshore installation’ means an offshore installation, which is neither:

- (i) serving the purpose of offshore activities for which it was originally placed within the maritime area, nor
- (ii) serving another legitimate purpose in the maritime area authorised or regulated by the competent authority of the relevant Contracting Party;

but does not include:

- (iii) any part of an offshore installation which is located below the surface of the sea-bed, or
- (iv) any concrete anchor-base associated with a floating installation which does not, and is not likely to, result in interference with other legitimate uses of the sea.

(b) by inserting the following after the definition of “Irish vessel”:

‘Loading’ means the emplacement onto a vessel or aircraft of a substance or material which is intended to be dumped from the vessel or aircraft concerned. Where loading is associated with maintenance dredging as defined in this Act, the word “loading” shall be construed and have effect as including the dredging activity.

(c) by inserting the following after the definition of “the London Convention”:

‘maintenance dredging’ means the removal of accumulated sediments to maintain access channels to design depths as shown on navigational charts, and provide turning basins for ships and maintain adequate water depth along waterside facilities where required.

(d) by an amendment to include bed levelling in the definition of dumping; and

(e) by the deletion of the definition of “offshore activities” and its replacement by the following:

‘offshore activities’ means activities carried out in the maritime area for the purpose of the exploration, appraisal or exploitation of liquid and gaseous hydrocarbons, or renewable energy.

Notes

Subhead 26(1)(a): The definition of “disused offshore installation” is considered desirable, in accordance with Part 2 of the Second Schedule it is specifically disused offshore installations that may be dumped at sea. The definition provided above is the definition used in OPSAR Decision 98/3 on the disposal of disused offshore installations.

Subhead 26(1)(b): The definition of “loading” is required in order to define where the EPA’s remit commences in the Dumping at Sea process. In conjunction with Head 18 this head ends the dual consent system which is currently in place for Dumping at Sea . It will mean that EPA will become the authorising authority for maintenance dredging when the spoil is to be dumped at sea. Previously a foreshore licence would have been necessary for the removal of the foreshore and this will still be the case for capital dredging projects.

Subhead 26(1)(c): As mentioned in the previous subhead it is necessary to make EPA responsible for the dredging part of the dumping at sea operation when the operation involved is maintenance dredging.

Subhead 26(1)(e): This amendment is necessary to update the definition to include additional activities associated with the assessment and exploitation of renewable

energy including tidal, wave and offshore wind generation which were not included in the principal Act.

The approach to the limited number of applications which include beneficial reuse of dredged material is subject to further consideration.

Head 27 References to “Authorised Officer” replaced by “Authorised Person”

Provide that:

(1) Throughout the Act of 1996 references to “Authorised Officer” are replaced by “Authorised Person”.

Notes

This is a technical amendment. The Acts provide for the Agency to appoint as authorised officers “an officer or a member of staff of the Agency”. However, the EPA is of the view that what “an officer” means in this context is not clear, particularly as to how an officer of the EPA differs from a member of its staff. While the term “officer” in this context might be viewed as referring to a third party – an engineering or ecological consultant for example – there is at least some doubt whether this is correct. This doubt arises both contextually and from other statutes which instead often refer to third parties in this context simply as “persons” not officers. This amendment should provide clarity and consistency in the term used to refer to designated authorised officers/persons.

Head 28 Amendment of section 5(1)

Provide that:

(1) Section 5(1)(b)(iii) of the Act of 1996 is amended at by replacing “Section 5A” with “regulations made under Section XX of this Act”.

Notes

This amendment is necessary in view of the fact that we are suggesting that Section 5A of the 1996 Act be deleted (see Head 30) and its provisions be replaced by regulations.

Head 29 Repeal of subsections (2), (4), (5), (6), (7A), (8), (9), (10), (12) and (13) of section 5 and of section 5A

Provide that:

(1) Subsections (2), (4), (5), (6), (7A), (8), (9), (10), (12) and (13) of section 5 and section 5A of the Act of 1996 are repealed.

Notes

These sections contain details for making a valid application for a Dumping at Sea (DAS) permit. Many of these details are outdated and need to be updated to bring them into line with other applications procedures. The amendment of primary legislation every time the administration of permitting functions needs to be updated is not practical. Consequently, the ability for flexibility by regulations is required. The detail contained in the Sections mentioned above will be provided for by Regulations made under Head 32.

Head 30 Transitional measures

Provide that:

(1) Section 5 of the Act of 1996 is amended by the insertion of two new subsections providing that:

(a) A licence application received by the Agency prior to the passing of this Act shall be processed in accordance the procedures extant under the 1996 Act, irrespective of any regulations made under Head 32.

(b) A licence application fee paid in respect of an application made prior to the making of this Act shall be deemed to have been paid irrespective of any regulations made under Head 32.

Notes

These are transitional measures to ensure that DAS applications in the pipeline prior to the passing of the Act are completed in a consistent manner.

Head 31 Powers for the Minister to make regulations regarding permitting procedures

Provide that:

- (1) The Minister may, upon application from the Agency, make regulations in relation to the permitting function prescribed by Section 5 of the Act.
- (2) Regulations made under this Section may make different provision in relation to different areas, different circumstances and different classes of cases.
- (3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling such regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Notes

In February 2010, the permitting function of the Dumping at Sea legislation was transferred from the Department of Agriculture to the EPA. This Department continues to be responsible for Dumping at Sea policy.

The above head is considered necessary to enable the Minister to put in place a framework within which the EPA can administer the Dumping at Sea permitting system in a manner which is consistent with their other environmental permitting systems.

Regulations made under this section will provide for administrative measures which the Agency has requested of the Minister. The provision will be similar to other environmental enforcement regulations such as the Waste Management (Licensing) Regulations 2004.

Specifically, the regulations will contain provisions in relation to the application process, including:

- The information necessary for a valid application;

- The conditions which may be attached to a permit;
- The manner in which consultation should be carried out;
- The setting of application, monitoring and enforcement fees;
- Publication of an application;
- Publication of the granting of an application;
- Review, amendment and revocation of an application;
- Provision for an objection period for a permit application or review application;
- Provision for Oral Hearings;
- Provision for further information requests;
- Provision for how to deal with abandoned applications;
- Provision for the withdrawal of applications; and
- Provide for defined timeframes for judicial review.

Head 32 Offence of not complying with a permit

Provide that:

(1) Section 5 of the Act of 1996 is amended by the insertion of a new subsection providing that:

“A person who does not comply with a permit granted in accordance with this section and any conditions contained therein shall be guilty of an offence.”

Notes

The Acts do not currently specify that non-compliance with a permit is an offence. It is considered prudent to include such a provision. This is a common provision an example of which is Section 86(6) of EPA Act 1992.

Head 33 Transboundary consultation on applications for permits

Provide that:

- (1) Where the Agency receives an application and it appears to the Agency that the activity, the subject of the application, would or is likely to have a significant impact on the environment in another Member State, the Agency shall, as soon as may be after receipt of the said application, notify the appropriate competent authority in the Member State concerned.
- (2) A notice given in accordance with subhead (1) shall be accompanied by a copy of the relevant application and of all accompanying documents.
- (3) The competent authority concerned may, within a period of six weeks from the date of such notice, make a written submission to the Agency or request consultations with the Agency in relation to the proposed activity.
- (4) The Agency, before it gives notice of a proposed decision under section 5 of the Act in respect of an application to which subhead (1) applies:
 - (a) shall comply with any reasonable request for consultations in relation to the said application which is received from a relevant competent authority within the period specified in sub-article (3); and
 - (b) shall have regard to any written submission from the competent authority concerned arising directly from such consultations.

Notes

This provision is standard in all water legislation in which transboundary issues may arise (including Water Framework and Marine Strategy Framework related legislation). The above provision is based on section 17 of the Waste Management (Licensing) Regulations 2004. The Department of Foreign Affairs has been consulted and has advised that such a provision should be inserted as a matter of course.

Head 34 Environmental impact assessment of applications for permits

Provide that:

- (1) Section 5A of the Act of 1996 is amended by the insertion of a new subsection after subsection (7) providing that an environmental impact assessment must be carried out in respect of an application for a dumping at sea permit.

Notes

The Environmental Impact Assessment (EIA) Directive requires that an Environmental Impact Statement (EIS) be drawn up for a variety of specified types of marine projects; it does not explicitly include references to disposal at sea activities. European case law indicates that the key objective of the EIA Directive is to ensure that all major projects are subject to the EIA process and that no gaps or anomalies exist. Subject to interpretation of case law it may well be that the Dumping at Sea Act does not effectively transpose the EIA Directive into Irish law. In the absence of legislation third parties may look to the Irish Courts if an EIS is not completed for certain dumping at sea projects.

Head 35 References to “installation” replaced by “offshore installation”

Provide that:

(1) Section 6 of the Act of 1996 is amended so that all references to “installation” are replaced by “offshore installation”.

Notes

Section 6 contains several references to “installation” – a term which is not defined. This amendment provides that this is changed to “offshore installation”, a term that is used elsewhere in the legislation.

Head 36 Powers for the Minister to make regulations under section 6

Provide that:

(1) Section 6 of the Act of 1996 is amended by the insertion of new subsections providing that:

- (a) The Minister may make regulations for the purposes of this section.
- (b) Without prejudice to the generality of subsection (a), regulations under this section may provide for all or any of the following matters:
 - (i) the taking of samples and the carrying out of tests, examinations and analyses;
 - (ii) the specification of the classes of persons to be responsible to taking such samples and for the carrying out of such tests, examinations and analyses;
 - (iii) the specification of the certificate or other evidence to be given of the result of any such test, examination or analysis and the class or classes of person by whom such certificate or evidence is to be given.
- (c) Any certificate or other evidence given or to be given in respect of any prescribed test, examination or analysis of any sample shall in relation to that sample be evidence without further proof, of the result of the test, examination or analysis unless the contrary is shown.

Notes

This Head is based on similar provisions in the EPA Act (Section 13) and the Waste Management Act (Section 14) and is considered useful, particularly in the event of the Agency hiring a third party to carry out survey work on their behalf.

Head 37 **Authorised persons**

Provide that:

(1) Section 6(1) of the Act of 1996 is amended by the insertion of a new paragraph providing that:

“An authorised person appointed in accordance with section 14 of the Waste Management Act, 1996 and section 13 of the Environmental Protection Agency Acts 1992 -2003 is also an authorised person under the Dumping at Sea Acts.”

Notes

This Head provides that Agency staff who are authorised persons under the Waste Management Act and EPA Acts are considered to also be authorised officers/persons under the DAS Acts.

Head 38 Officers of the Sea Fisheries Protection Authority

Provide that:

(1) Section 6(1) of the Act of 1996 is amended by the insertion of a new paragraph providing that:

“A Sea Fisheries Protection Officer, as defined by Section 16 of the Sea Fisheries and Maritime Jurisdiction Act 2006, is also an authorised person for the purposes of this Act.”

Notes

This Head appoints Sea Fisheries Protection Officers, as defined in Section 16 Sea Fisheries and Maritime Jurisdiction Act 2006, as authorised officers in respect of dumping at sea.

Head 39 Memoranda of understanding with other agencies

Provide that:

(1) Section 6(1)(d) of the Act of 1996 is amended:

- (a) by the replacement of “paragraph (a), (b) or (c)” with “paragraph (a), (b), (c), (placeholder) or (placeholder)” and
- (b) by the insertion after “may direct” of “, and shall, at the request of the Agency, enter into a Memorandum of Understanding with the Agency in relation to the discharge of their functions under this section”.

Notes

It is important that the EPA, as the competent authority for DAS permitting and enforcement, must be able to direct and coordinate the actions of the other bodies with enforcement powers. This head will ensure that all agencies with enforcement powers under the Act operate in a manner consistent with the EPA’s standards. The agencies in questions are the Marine Institute, Inland Fisheries Ireland and the Sea Fisheries Protection Agency.

The placeholder numbering is consequent on Heads 37 and 38.

Head 40 Authorised persons to have regard to Agency policy regarding enforcement

Provide that:

(1) Section 6(1) of the Act of 1996 is amended by the insertion of a new paragraph (i) providing that:

“A duly authorised person under paragraphs (e), (f), (g) and (h) of this subsection shall, in the discharge of his functions under this section, have regard to such considerations of policy as the Agency may direct.”

Notes

The previous head refers. This is to ensure that people who are automatically, or appointed by another agency as, authorised persons for the enforcement of the DAS legislation (Garda Síochana, Permanent Defence Forces, Radiological Protection Institute of Ireland and harbour authorities) operate in manner consistent with the EPA's standards.

Head 41 Definition of ‘a dwelling’

Provide that:

(1) Section 6(8A) of the Act of 1996 is amended by the insertion of a new paragraph providing that:

“For the purposes of this section “a dwelling” excludes any offshore installation or vessel, irrespective of the designation of any parts of these for the purposes of accommodation.”

Notes

In the context of sea-based disposal activities, the nature of a “dwelling” is not clear, nor defined. This may be problematic in relation to ships and offshore installations which inevitably provide overnight facilities for crew, and must be clearly set out. This amendment clarifies the position by stating that “a dwelling’ excludes any offshore installation or vessel, irrespective of the designation of parts of these for the purposes of accommodation.

Head 42 Powers for the Agency to enter a dwelling

Provide that:

(1) Section 6(8A) of the Act of 1996 is amended by the insertion of a new paragraph providing that:

“the Agency may enter a dwelling having given 24 hours written notice.”

Notes

This amendment brings Dumping at Sea legislation in line with the similar provisions of Section 14(7) of the Waste Management Acts.

Head 43 Powers of authorised persons to remove and retain original documents

Provide that:

(1) Section 6(2)(h) of the Act of 1996 is replaced by:

“require the production of and inspect such records and documents, and take copies of or extracts from, or take away if considered necessary for the purposes of inspection, examination or as evidence in a prosecution, any such records or documents, as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her by or under this Act.”

Notes

The EPA’s experience in court is that copies, however certified by Authorised Persons, the operator or third parties, do not carry the evidential weight of originals. Therefore, it is proposed to amend the legislation to enable authorised persons to take original documents from premises where s/he considers it necessary.

Head 44 Repeal of Section 6(2)(i)

Provide that:

(1) Section 6(2)(i) of the Act of 1996 is repealed.

Notes

The purpose of this deletion, coupled with the previous amendment to Section 6(2)(h), is to facilitate the retention of original documentation by an Authorised Person. As the Acts are currently designed an Authorised Officer may only take original documentation in limited circumstances.

Head 45 Powers of an authorised officer to direct a person to take measures to avoid environmental pollution

Provide that:

(1) Section 6(2) of the Act of 1996 is amended by the insertion of a new paragraph providing that:

- (a) An authorised officer under the DAS Acts may direct any person in charge of a vessel, vehicle, place or premises, to take such measures as are considered by that authorised person to be necessary to reduce the risk of environmental pollution, and failure to comply with such a direction shall be an offence under this Act.
- (b) An offshore installation to be included as a place or premises.

Notes

The purpose of this head is to empower an authorised officer to direct a person whose activities may result in environmental pollution to refrain from such activities. This is consistent with Section 14(5) of the Waste Management Act which similarly empowers an authorised officer.

Head 46 Deletion of sections 2(2)(a) and 2(3)(b)

Provide that:

(1) Sections 2(2)(a) and 2(3)(b) of the Act of 1996 are repealed.

Notes

DAS legislation allows a defendant to show that s/he took “all reasonable precautions and exercised all due diligence to avoid the commission of such an offence”. In addition, DAS also allows a defendant to show that s/he took “all reasonable precautions and exercised all due diligence to avoid the commission of such an offence”. In addition, DAS allows the defence that whatever dumping took place was necessary to ensure the safety of a vessel, aircraft or for saving a life. DAS provides it an offence to “deliberately” dispose of substances or materials (etc.) into the maritime area.

These provisions as they currently stand allows room for argument about whether a discharge was done by mistake or “deliberately”. This contrasts with prohibitions in other environmental law – including that relating to inland water pollution – which criminalises accidental or inadvertent discharges. The question of intent is something that would more appropriately be considered as part of a criminal trial to be dealt with at sentencing stage.

It is considered that the statutory defences relating to mistakes, or acts or defaults of third parties, as well as accidents and other causes beyond the defendant’s control, should be deleted as it is believed that this provision is inappropriate and may fetter the discretion of both the Agency (as the enforcement agency) and the courts. Deletion of the provision would ensure that the legal process would run its normal course in respect of such events, and issues concerning mistakes and taking all reasonable precautions are then to be considered as mitigation by the courts in the context of sentencing after an offender has been found guilty of the unauthorised act itself.

Equally, the word “deliberately” should be removed from the relevant provision such that the matter can be considered on its merits before a court.

Head 47 Allow for prosecutions to be taken within 12 months of evidence being obtained

Provide that:

(1) Section 7(3) of the Act of 1996 is replaced by:

“Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings in relation to an offence under this Act may be commenced—

(a) at any time within 24 months from the date on which the offence was committed, or

(b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State, or

(c) at any time within 12 months from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings, comes to such person's knowledge, whichever is the later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was committed.”

Notes

Currently the Acts prescribe a two year cut-off for the taking of summary prosecutions. This period commences on the date of the offence. In many instances the Agency may not know the exact date of an offence, particularly in relation to a marine pollutant discharge. The above suggested amendment allows for prosecutions to be taken within 12 months of evidence being obtained which is sufficient to justify the bringing of legal proceedings and is based on Section 11(3) of the Waste Management Acts.

Head 48 Summary trial of offences

Provide that:

- (1) Provide for the inclusion of the Agency in the consent process to allow for offences to be tried summarily.
- (2) Section 10(2)(b) of the Act of 1996 is amended by inserting the word “Prosecutor” after the words “Director of Public Prosecutions”.
- (3) A definition of “Prosecutor” as including the AG, DPP and EPA is inserted.

Explanatory note

All offences under the Dumping at Sea Acts are indictable; there is no provision for summary offences. The legislation allows the offences to be dealt with in a summary manner and has given power to the agency to prosecute for such offences in the District Court but as each offence is indictable the consent of the AG or the DPP is needed in order to proceed with the prosecution in a summary manner in the District Court.

Head 49 Serving of injunctions

Provide that:

(1) Provide for the insertion of new sections in the Act of 1996 providing that:

“**X**(1) Where, on application by any person to the High Court, that Court is satisfied that substances prohibited by this Act are being disposed of in the maritime area, it may by order—

a) require the person holding or disposing of such material to carry out specified measures to prevent or limit, or prevent a recurrence of, such disposal, within a specified period;

(b) require the person holding, or disposing of such substances to refrain from or cease doing any specified act;

(c) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this section shall be by motion and the High Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this section may be made whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.

(4) Without prejudice to the powers of the High Court to enforce an order under this section, a person who fails to comply with an order under this section shall be guilty of an offence.

Y.—(1) (a) Where, on application by any person to the appropriate court, that court is satisfied that another person is disposing of, or has disposed of

substances prohibited by this Act, that court may make an order requiring that other person to do one or more of the following, that is to say:

- i) to discontinue the said disposal of substances within a specified period, or
- (ii) to mitigate or remedy any effects of the said disposal in a specified manner and within a specified period.

(b) In this subsection, “**appropriate court**”, in relation to an application under *paragraph (a)* means—

- (i) in case the estimated cost of complying with the order to which the application relates does not exceed €6,348.69, the District Court,
- (ii) in case the estimated cost aforesaid does not exceed €38,092.14, the Circuit Court, and
- (iii) in any case, the High Court.

(c) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed €6,348.69, it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated cost aforesaid.

(ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that the estimated cost aforesaid will exceed €38,092.14, it may, if it so thinks fit, transfer the application to the High Court.

(iii) This paragraph is without prejudice to the jurisdiction of a court (being either the District Court or the Circuit Court) to determine an application under this section in relation to which it was, at the time of the making of the application, the appropriate court.

(2) (a) An application for an order under this section shall be brought in a summary manner and the court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(b) Where an application is transferred under *paragraph (c)* of *subsection (1)*, the court to which it was transferred shall be deemed to have made any order made under this subsection by the court from which it is so transferred in the proceedings in relation to the application.

(3) (a) An order shall not be made by a court under this section unless the person named in the order has been given an opportunity of being heard by the court in the proceedings relating to the application for the order.

(b) The court concerned may make such order as to the costs of the parties to or persons heard by the court in proceedings relating to an application for an order under this section as it considers appropriate.

(4) (a) Where a person does not comply with an order under *subsection (1)*, the Agency, may take any steps specified in the order to mitigate or remedy any effects of the activity concerned.

(b) The amount of any expenditure incurred by the Agency in relation to steps taken by it under subparagraph (a) shall be a simple contract debt owed by the person in respect of whom the order under subsection (1) was made to the authority or the Agency, as the case may be, and may be recovered by it from the person as a simple contract debt in any court of competent jurisdiction.

(5) (a) An application under *subsection (1)* to the District Court shall be made to the judge of the District Court for the District Court district in which the activity concerned takes place.

(b) An application under *subsection (1)* to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the activity concerned takes place.

(6) An application under *subsection (1)* may be made whether or not there has been a prosecution for an offence under this Act in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under this Act in relation to the activity concerned.

(7) Without prejudice to any powers of the court concerned to enforce an order under *subsection (1)*, a person who fails to comply with an order under that subsection shall be guilty of an offence.”

Notes

This head provides for the serving of injunctions on persons engaged in dumping at sea, following application to the court by any person, and is based on Sections 57 and 58 of the Waste Management Acts.

Head 50 Serving of statutory notices on permit holders

Provide that:

(1) Provide for the insertion of a new section in the Act of 1996 providing that:

~~“X—(1) The Agency may, by the service of a notice in writing on the person, require—~~

~~(a) any permit holder, or~~

~~(b) any person, engaged in a dumping at sea activity, to maintain such records and to furnish in writing to the Agency, within such period (being not less than 14 days after the date of the service of the notice) and, if appropriate, thereafter at such frequency as may be specified in the notice, such particulars, as to—~~

~~(i) any activity or process in the operation of a dumping at sea permit~~

~~(ii) any other related or ancillary matter, as may be so specified.~~

(2) A person who fails to comply with a notice under this section or who furnishes any information in reply to such a notice which he or she knows to be false or misleading in a material respect shall be guilty of an offence.

Notes

This Head provides a requirement for permit holders or persons engaged in Dumping at Sea activity to maintain records and furnish details of the activity to the Agency on serving of a notice. It also creates a new offence for failure to comply with such a notice.

Head 51 Serving of statutory notices on permit holders

Provide that:

(1) In Line 7 of Part A of the First Schedule to the Act of 1996 the word “waste” is replaced by the phrase “substance or material”.

Notes

The only reference to waste is in the First Schedule, which refers to “chemical and physical changes of waste after release, including possible formation of new compounds”. The First Schedule is adapted from the London Convention 1972 (Annex III), which refers to matter as opposed to waste. This reference to “waste” should be replaced with “substance or material” to make it consistent with the wording used throughout the rest of the DAS Acts.

PART 6

OFFSHORE NATURAL GAS STORAGE

The absence of legislation means that the State has no mechanism to legally underpin stand-alone offshore natural gas storage facilities. This Part contains provisions to provide for a regulatory framework for offshore gas storage. It will allow the Minister for Communications, Energy and Natural Resources to publicly seek expressions of interest in offshore gas storage beyond the foreshore limits. A positive assessment of initial applications decisions will allow the Minister for Communications, Energy and Natural Resources to grant short term maritime options to successful applicants.

Offshore gas storage will be classified as strategic infrastructure. As strategic infrastructure, the development of offshore gas storage in the maritime area will require consent from An Bord Pleanála.

The grant of a maritime option will allow developers to proceed to Stage 2 of the application process and to make application to An Bord Pleanála for authorisation of gas storage activities. Amendments to planning legislation are proposed to provide for classification of offshore gas storage facilities as strategic infrastructure.

Gas storage activities will be regulated under licence issued by the Minister for Communications, Energy and Natural Resources.

CHAPTER 1
Preliminary and General

Head 52 Definitions/Interpretation

Provide that:

(1) In this Act –

“Act of 1933” means the Foreshore Act 1933;

“Act of 1960” means the Petroleum and Other Minerals Development Act 1960;

“Act of 1968” means the Continental Shelf Act 1968;

“Act of 1976” means the Gas Act 1976;

“Act of 1987” means the Safety, Health and Welfare (Offshore Installations) Act, 1987;

“Act of 1999” means the Electricity Regulation Act 1999;

“Act of 2002” means the Gas (Interim) Regulation Act 2002;

“Act of 2010” means the Petroleum (Exploration and Extraction) Act 2010.

(2) In this Part—

“the Commission” means the Commission for Energy Regulation;

“decommissioning” in relation to offshore gas storage infrastructure, means taking the facility, structure or installation or any part of such facility, structure or installation permanently out of use with a view to its abandonment in situ or removal;

“designated area” means an area standing designated for the time being by order under Head 6 of this Act;

“exclusive economic zone” has the same meaning as in section 87 of the Sea Fisheries and Maritime Jurisdiction Act 2006;

“exclusive storage right” means a right to store gas that is vested in any person exclusive of any other person;

“land” has the meaning assigned to it by section 2 of the Gas Act;

“the Minister” means the Minister for Communications, Energy and Natural Resources;

“natural gas” has the meaning assigned to it by the Gas Act, 1976 as amended;

“natural gas infrastructure” means any pipeline, facility, structure or installation which is or has been established, maintained or operated, for the purpose of the supply, storage, transmission, distribution and use of natural gas under a natural gas licence;

“natural gas undertaking” has the meaning assigned to it by (Directive 2009/73/EC);

“natural gas system” means the system of pipelines and liquefied natural gas and storage facilities, excluding upstream pipelines, used for the transmission, distribution, storage and supply of natural gas to, from or within the State;

“offshore natural gas” storage means the stocking, injection or recovery of natural gas by an undertaking into or from an offshore gas storage facility;

“offshore natural gas storage licence” means an authorisation issued under Head X of this Act;

“offshore gas storage area” means an area within the marine area that has been designated for offshore gas activities of offshore gas storage facilities;

“offshore gas storage facility” means a boring or other excavation in the earth's crust made or adapted for the purpose of storing natural gas or any offshore natural gas storage facility or installation which is built or has been maintained, operated or is intended to be established, for the storage of natural gas;

“offshore gas storage activities” means any activity which is carried out for the purpose of exploring or evaluating an offshore site for its potential for offshore gas storage or any activities in relation to the development, operation, maintenance or storage of natural gas in an offshore location;

“pipeline” has the meaning assigned to it by section 2 of the Gas Act 1976;

“prescribed” means prescribed by regulations;

“record” means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“regulations” means regulations made by the Minister;

“storage” in relation to gas has the meaning assigned to it by section 2 of the Gas (Interim) Regulation Act 2002;

“the storage of natural gas” means the stocking or storage of natural gas as defined by the Gas Act 1976;

“surface” when used in relation to land, includes any buildings, works, or thing erected, constructed or growing on such land;

“the territorial seas of the State” has the same meaning as in section 82 of the Sea Fisheries and Maritime Jurisdiction Act 2006;

“upstream pipeline” has the meaning assigned to it by section 2 of the Gas (Interim) (Regulation) Act, 2002;

“working” when used in relation to gas storage and natural gas includes digging, searching for, boring for, getting, raising, taking, carrying away, storing and treating of gas, and cognate words shall be construed accordingly.

Notes

This Head provides for definitions of certain Acts and Regulation referred to in this Bill. The terms are proposed only and are not intended to be exhaustive.

CHAPTER 3

Amendments to Planning and Development Acts 2000 – 2012

Head 53 Amendment of certain definitions in section 2 of the Act of 2000 to include gas storage activities

Provide that:

(1) The definition of “strategic gas infrastructure development” in section 2 is amended by substituting the following-

“strategic gas infrastructure development” means

- (i) proposed development comprising a strategic downstream gas pipeline or a strategic upstream gas pipeline, and associated terminals, buildings and installations, whether above or below ground, including any associated discharge pipe; and
- (ii) proposed offshore natural gas storage facility comprising any associated downstream gas pipeline (whether strategic or non-strategic), or upstream gas pipeline (whether strategic or non-strategic), associated terminals, buildings and installations, whether above or below ground, including any associated discharge pipe;”

(2) The definitions of “strategic upstream gas pipeline” in section 2 is amended by substituting the following-

“strategic upstream gas pipeline” means so much of any gas pipeline (including the subsea and onshore sections) proposed to be operated or constructed-

- (a) as part of a gas production project, or
- (b) as part of an offshore natural gas storage project, or
- (c) for the purpose of conveying unprocessed natural gas from one or more than one natural gas production project or offshore natural gas storage project to a processing plant or terminal or final coastal landing terminal,

as will be situate in the functional area or areas of a planning authority or planning authorities;”

(3) The definitions of “structure” in section 2 is amended as follows-

“structure” means any building, structure, excavation, installation or other thing constructed or made on, in or under any land, or the substratum of land, or in the maritime area or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

as will be situated in the functional area or areas of a planning authority or planning authorities;

(4) The definition of “substratum of land” in section 2 is amended as follows-

“substratum of land” means any subsoil or anything beneath the surface of land or of the seabed required—

(a) for the purposes of a tunnel or tunnelling or anything connected therewith, or

(b) for the purpose of the offshore storage of natural gas, or

(c) for any other purpose connected with a scheme within the meaning of the Roads Act, 1993;

Notes

The definition of “strategic gas infrastructure development” is amended to include a reference to offshore natural gas storage. This definition affects section 182C of the Act.

The definition of “strategic upstream gas pipeline” brings the definition in line with the Petroleum (Exploration and Extraction) Safety Act 2010.

The definition of “structure” is amended to include a reference to “substratum of land” to reflect that a structure may incorporate a depleted natural gas well or a converted geological feature located within the substratum of the land or subsoil of the seabed. It also inserts the term “installations”.

The definition of “substratum of land” is amended to include a reference to “seabed of the maritime area”. Gas storage activities may be carried out in depleted gas wells or converted geological feature located within the substratum of the land or subsoil of the seabed.

A reference to gas storage is also included.

Head 54 Amendment of the Seventh Schedule of the Act of 2000

Provide that:

(1) The Seventh Schedule to the Strategic Infrastructure Act 2006 is amended as follows-

“SEVENTH SCHEDULE

Infrastructure Developments for the purposes of sections 37A and 37B

Energy Infrastructure

1.— Development comprising or for the purposes of any of the following:

—An installation for the onshore extraction of petroleum or natural gas.

—A crude oil refinery (excluding an undertaking manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

—A thermal power station or other combustion installation with a total energy output of 300 megawatts or more.

—An industrial installation for the production of electricity, steam or hot water with a heat output of 300 megawatts or more.

—An industrial installation for carrying gas, steam or hot water with a potential heat output of 300 megawatts or more, or transmission of electrical energy by overhead cables, where the voltage would be 220 kilovolts or more, but excluding any proposed development referred to in section 182A(1).

—An oil pipeline and any associated terminals, buildings and installations, where the length of the pipeline (whether as originally provided or as extended) would exceed 20 kilometres.

—An onshore installation for surface storage of natural gas, where the storage capacity would exceed 200 tonnes.

—An onshore or offshore installation for underground storage of combustible gases, where the storage capacity would exceed 200 tonnes.

—An installation for the surface storage of oil or coal, where the storage capacity would exceed 100,000 tonnes.

—An installation for hydroelectric energy production with an output of 300 megawatts or more, or where the new or extended superficial area of water impounded would be 30 hectares or more, or where there would be a 30 per cent change in the maximum, minimum or mean flows in the main river channel.

—An installation for the harnessing of wind power for energy production (a wind farm) with more than 50 turbines or having a total output greater than 100 megawatts.

—An onshore or offshore terminal, building or installation, whether above or below ground, the seabed or in the subsoil associated with a natural gas storage facility, where the storage capacity would exceed 1 mscm.

—An onshore terminal, building or installation, whether above or below ground, associated with an LNG facility and, for the purpose of this provision, ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading and re-gasification of liquefied natural gas, including ancillary services.”

Notes

The Seventh Schedule of the Planning and Development Acts refers to infrastructure developments for the purposes of sections 37A and 37B. The Schedule lists various Energy Infrastructure developments which require the developer enter discussions with ABP and if ABP so requires that an EIS is prepared.

The purpose of this Head is to amend the existing text of the Seventh Schedule to incorporate references to offshore natural gas storage. The amendment clarifies that references to gas storage installations incorporate both onshore and offshore facilities.

Offshore gas storage projects will be subject to section 182C of the Planning and Development Act 2000.

CHAPTER 4

Regulation of initial applications for offshore gas storage

Head 55 Initial applications for maritime option in respect of offshore gas storage activities

Provide that:

- (1) The Minister for Communications, Energy and Natural Resources may seek applications to explore areas within the maritime area for the purposes of -
 - (i) assessment of the potential of areas under the seabed for offshore gas storage activities, or
 - (ii) the development and undertaking of offshore gas storage facilities.

- (2) An application under this Head:
 - (i) may be in such form and under such terms and conditions as the Minister may determine;
 - (ii) may be subject to time limits;
 - (iii) may be subject to application fees of an amount as prescribed by regulation;
 - (iv) may prescribe criteria to assist the Minister in determining whether an applicant is a fit and proper person to undertake gas storage activities;
 - (v) may be restricted to persons or classes of persons prescribed by regulation, by whom an application may be made; and
 - (vi) shall be subject to criteria and process set out in this Act;

- (3) The Minister for Communications, Energy and Natural Resources may, following assessment of information received and in consultation with the Minister for Environment, Community and Local Government, decide to grant or refuse a maritime option.

- (4) Every maritime option shall be granted under such terms and conditions as the relevant Minister or Ministers deem fit and shall not confer any rights to place

structures within the licensed area, to develop gas storage facilities or to store gas within the licensed area.

Notes

It is envisaged that the Minister for Communications, Energy and Natural Resources will publicly seek expressions of interest in offshore gas storage. Following receipt and assessment of applications decisions will be made by the Minister. It is proposed that short term maritime options be granted to successful applicants. The grant of a maritime option will allow developers to proceed to Stage 2 of the application process i.e. to make application to An Bord Pleanála to investigate the suitability of offshore sites for gas storage and to undertake gas storage activities. The maritime option will not allow the licensee to undertake activities relating to gas storage. The grant of a maritime option will also ensure that other potential users of the maritime area may not make application to carry out an activity within the area covered by the maritime option.

Head 56 Applications to An Bord Pleanála for authorisation to carry out gas storage activities

Provide that:

- (1) Every application to An Bord Pleanála to carry out gas storage activities within the maritime area shall be accompanied by a maritime option(s) in respect of the area.
- (2) The authorisation of gas storage activities by the Board does not exempt a person from the requirement to obtain a Licence (hereinafter called an Exclusive Economic Zone Licence), or a Gas Storage licence or any other requirement to obtain appropriate development consent.

Notes

This Head provides that applications to An Bord Pleanála to explore sites for gas storage and to carry out gas storage activities must be accompanied by a maritime option(s).

Head 57 Restrictions on gas storage activities

Provide that:

(1) No person may explore the maritime area for the purpose of natural gas storage, or develop, construct or operate an offshore gas storage facility or carry out offshore gas storage activities in any part of the maritime area unless he or she is the holder of –

- (i) a planning authorisation issued by An Bord Pleanála, and
- (ii) a gas storage licence, or
- (iii) a petroleum authorisation in respect of an area that has been granted by the Minister under the Act of 1960 by means of an addendum or otherwise to an existing petroleum licence or lease and which is in force at the time at the commencement of this Act, and
- (iv) a foreshore licence and/or
- (v) an exclusive economic zone Licence under Head X as appropriate,
- (vi) a permit under section 39A of the Gas (Interim) (Regulation) Act 2002, and
- (vii) a safety permit issued by the Commission for Energy Regulation under section 13P of the Electricity Regulation Act 1999.

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding (X), together with, in the case of a continuing offence, a further fine not exceeding (XX) for every day on which the offence is continued, or in the discretion of the Court, to imprisonment for a term not exceeding (XXX) or to both such fine and such imprisonment.

(3) In a prosecution for an offence under this section, a certificate purporting to be signed by an officer of the Minister and to certify that the person charged was not on a specified day the holder of a licence or authorisation which was then in force and included a specified area, shall, without proof of the signature of the person purporting to sign such certificate or that he was an officer of the Minister, be

evidence until the contrary is proved of such of those matters as are purported to be certified in and by such certificate.

Notes

This section is modelled on section 6 of the 1960 Act (No. 7 of 1960). The purpose of this Head is to provide, that notwithstanding any additional permissions that may be required by any other body/authority before offshore gas storage activities are carried out, that no person has the right to undertake any activity in relation to offshore gas storage in the maritime area without specific authorisations / permissions.

All offshore storage facilities will be subject to the granting of an economic consent to construct a pipeline under Section 39A of the Gas (Interim) (Regulation) Act 2002 and a safety permit, both of which are matters for the Commission for Energy Regulation (CER). Other consenting requirements may be required by agencies outside the remit of the Department of Communications, Energy and Natural Resources. The latter two permissions will not be encompassed in An Bord Pleanála's application process. Rather, applicants authorised by An Bord Pleanála, will make application to the CER following the issue of the relevant planning authorisation.

Head 58 Evaluation of initial applications for a maritime option

Provide that:

(1) In considering an application the Minister will take the following into account:

- (i) the work programme proposed by the applicant;
- (ii) the technical competence and offshore experience of the applicant;
- (iii) the financial resources available to the applicant;
- (iv) where relevant, previous performance by the applicant under any licences granted by the Minister to which the applicant was a party, and
- (v) whether an applicant is a fit and proper person.

Notes

This Head sets out the criteria that will be taken into account in the evaluation of applications for maritime options in regard to carrying out gas storage activities.

Head 59 Right of Minister to refuse an initial application

Provide for:

- (1) The Minister may refuse to grant an application under Subhead 59(1) where –
 - (i) the Minister is not satisfied that the applicant has the financial resources to undertake, develop and maintain the activities applied for;
 - (ii) the application is incomplete
 - (iii) the applicant failed to give any additional information, particulars or documentation or evidence within the period specified in a request;
 - (iv) the Minister is of the opinion that any of the information, particulars or documentation given in the application or any additional information, particulars or documentation or evidence given under this section is incorrect.

- (2) If the Minister proposes to refuse an application under subsection (1), he or she shall give the applicant a notice—
 - (a) specifying the grounds on which it is proposed to refuse the application, and
 - (b) informing the applicant that he or she may, within 21 days from the date of the notice, make representations in writing to the Minister—
 - (i) showing why the application should be granted, or
 - (ii) rectifying the information, particulars or documentation given in the application or any additional information, particulars or documentation or evidence given under this section,or both.

- (3) The Minister may refuse an application only after having considered any representations made by the applicant in accordance with subhead (3) of this section.

(4) If the Minister refuses an application under subhead (3) of this section, he shall, as soon as is reasonably practicable, give to the applicant notice of the refusal in such form as the Minister determines and the notice shall include a statement setting out the reasons for the refusal.

Notes

This Head provides that the Minister may refuse an application and sets out the grounds on which the Minister's decision must be made. It also sets out a requirement to notify the applicant of the Minister's decision and right of reply by the applicant.

Head 60 Incumbent gas producers and competing applications

Provide that -

- (1) Where an applicant is a gas producer that proposes to develop a depleted natural gas well located within an area in respect of which a petroleum authorisation has been granted by the Minister for Communications, Energy and Natural Resources under the Act of 1960, the Minister shall give the incumbent gas producer the first option to develop the facility for gas storage purposes.

- (2) In the case of a proposal to develop a gas storage facility at a depleted gas well where the incumbent gas producer has either not submitted an application, or has declined the option to develop a gas storage facility, and where more than one application for a maritime option for the same maritime area has been received, the Minister shall in assessing the applications take into account the following factors:
 - (a) the applicant's previous performance in regard to natural gas storage activities at offshore locations in the State or elsewhere,

 - (b) the applicant's previous performance in regard to petroleum or natural gas exploration and extraction in the State or elsewhere,

 - (c) the technical capability of an applicant to carry out the proposed offshore gas activities,

 - (d) whether an applicant is a fit and proper person,

 - (e) whether the applicant has complied with terms or conditions specified by the Minister under the application process.

(3) The procedure under (2) (a) to (e) of this subhead shall also apply in regard to applications to explore areas with a view to assessing the potential for the development of a natural gas storage facility.

Notes

This Head allows the Minister in the case of a depleted gas well, to give the incumbent gas producer the option of first refusal. It also sets out the criteria that will be applied by the Minister in assessing and evaluating competing applications for same maritime area.

CHAPTER 5

Licensing Requirements following Authorisation by An Bord Pleanála

Head 61 Gas storage licence

Provide that:

(1) The Minister may, subject to subhead (2) of this head, grant to a person a Gas Storage Licence in respect of one or more of the following activities —

- (i) to explore and evaluate a site for the purpose of establishing its potential for the carrying out of the activities of natural gas storage,
- (ii) to convert a natural feature or a depleted or partially depleted natural gas or petroleum well for the purpose of the storage of natural gas, and
- (iii) to inject natural gas into a gas storage facility in the maritime area, to store natural gas and to re-inject natural gas into the natural gas transmission system.

(2) The grant of a Gas Storage Licence for specified purposes at subhead (1) shall be subject to the issue of a planning authorisation for the specified activity by An Bord Pleanála.

(3) Every Gas Storage Licence shall be granted upon such terms and conditions as the Minister deems fits or desirable in the public interest and specifies therein and shall be granted subject to the following conditions:

- (i) the grant of exclusive rights for a fixed duration to the licensee to explore, develop and operate gas storage activities in the maritime area to which the licence extends,
- (ii) the payment to the Minister of such fees, rents or royalties as the Minister may prescribe by regulations,

- (iii) the inclusion of conditions relating to the renewal or successive renewal of a licence subject to such conditions as the Minister may determine,
- (iv) the inclusion of an indemnity clause whereby the licensee indemnifies the Minister against any claim arising out of the exercise by the licensee of his rights under the licence,
- (v) terms and conditions concerning the assignment of the licence,
- (vi) that the licence remains valid only as long as the safety permit granted by the CER remains in force,
- (vii) the commencement of specified gas activities within a stated or fixed period, and
- (viii) such other conditions as the Minister may deem appropriate from time to time.

(4) The Minister shall not grant a gas storage licence unless, at least twenty-one days before doing so, he or she has—

- (a) deposited in the office of the Geological Survey, Dublin and in one or more places in the locality, a map showing the boundaries of such area, and
- (b) published a notice at least on the Department's website advising of his or her intention to do so.

(5) The Minister shall monitor and inspect licensees to ensure that they continue to conform to all the conditions and requirements therein.

(6) In this section “to explore and evaluate a site for its potential for offshore gas storage” means the doing by the licensee under licence of all such things as are in his or her opinion necessary or desirable for the purpose of carrying out feasibility studies or the examination of a site for its potential for gas storage by using geological, geophysical, geochemical and topographic examination, making borings, sinking pits, removing water from old workings and taking and removing reasonable quantities of subsoil or other minerals for the purpose of analysis, test, trial or experiment.

Notes

The purpose of this Head is to provide, following the grant of planning authorisation by An Bord Pleanála, for the issue of Gas Storage Licences by the Minister for offshore gas storage projects. This section is modelled on sections 7(1), 8(7) and 10(1) of the Petroleum and Other Minerals Development Act 1960 as amended by section 17(1) of No. 35/1995.

The activities covered under licence may include the exploration of virgin sites and natural features to determine their potential for offshore gas storage, the development of a natural feature or an existing depleted well for gas storage and the commercial storage of gas.

Subject to the enactment of separate legislative proposals by the Minister for Communications, Energy and Natural Resources, it is proposed that the CER's remit will be extended to offshore gas storage safety aspects.

Head 62 Continental shelf licence

Provide that:

- (1) The Minister may, for the purposes of activities at subhead (1) of Head 62, and subject to subhead (2) of that subhead, grant to a person a licence to explore and evaluate a site for its potential for offshore gas storage and to establish and maintain for gas storage purposes, pipelines, structures and installations on the continental shelf (a continental shelf licence).

- (2) Every continental shelf licence shall be granted upon such terms and conditions as the Minister deems fits or desirable in the public interest and specifies therein and shall be granted subject to the following conditions -
 - (i) the grant of exclusive rights for a fixed duration to the licensee to establish and maintain structures and installations in the area of the continental shelf to which the licence extends,
 - (ii) the payment to the Minister of such fees or rents as the Minister may prescribe by regulations,
 - (iii) the inclusion of conditions relating to the renewal or successive renewal of a licence subject to such conditions as the Minister may determine,
 - (iv) the inclusion of an indemnity clause whereby the licensee indemnifies the Minister against any claim arising out of the exercise by the licensee of his rights under the licence,
 - (v) terms and conditions concerning the assignment of the licence,
 - (vi) that the licence remains valid only as long as the safety permit granted by the CER remains in force,
 - (vii) the commencement of specified activities within a stated or fixed period, and
 - (viii) such other conditions as the Minister may deem appropriate from time to time.

- (3) The Minister shall not grant a continental shelf licence unless, at least twenty-one days before doing so, he or she has—

- (a) deposited in the office of the Geological Survey, Dublin and in one or more places in the locality, a map showing the boundaries of such area, and
- (b) published a notice at least on the Department's website advising of his or her intention to do so.

(4) The Minister shall monitor and inspect licensees to ensure that they continue to conform to all the conditions and requirements therein.

(5) In this section "to explore and evaluate a site for its potential for offshore gas storage" means the doing by the licensee under licence of all such things as are in his or her opinion necessary or desirable for the purpose of carrying out feasibility studies or the examination of a site for its potential for gas storage by using geological, geophysical, geochemical and topographic examination, making borings, sinking pits, removing water from old workings and taking and removing reasonable quantities of subsoil or other minerals for the purpose of analysis, test, trial or experiment.

Notes

The only offshore gas storage facility in Ireland, off Kinsale, is located within the EEZ. While platforms, equipment and structures will be located at a storage facility gas will flow to and from the facility via pipelines to a land based terminal.

It is proposed that all structures placed on the continental shelf (which will include pipelines, platforms and equipment) will be licensed by the Minister in a similar way as the placement of structures on the foreshore is licensed by the Minister for the Environment, Community and Local Government.

Head 63 Modification of gas storage licence and continental shelf licence

Provide that:

- (1) Where the holder of a licence under either Head 62 or Head 63 so requests the Minister may modify the conditions or requirements of such licences.
- (2) The amendment may be made subject to such modification of the terms and conditions of the licence as the Minister considers appropriate.
- (3) Where the Minister is of the opinion that a licence should be amended he or she may do so with or without the consent of the licensee.
- (4) Where an application is made to the Minister not later than three months before the expiry of the licence period, the Minister may extend the licence period for such further period as the Minister may agree provided such extension does not run contrary to the authorisation granted by An Bord Pleanala for the project.
- (5) A licence may, subject to the prior consent of the Minister, be assigned either in whole or in part to a third party, subject to that third party meeting the requirements of a fit and proper person.

Procedures to be followed before modifying licences

- (6) Before modifying a licence, including the amendment or transfer thereof, the Minister shall issue a notice—
 - (a) stating that he or she proposes to make such modification,
 - (b) stating the nature of such modification and the reasons thereof, and
 - (c) specifying the period (being not less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modification may be made.
- (7) A notice under *subhead (6)* shall be given—
 - (a) by publishing the notice on the Department's website, and
 - (b) by serving a copy of the notice on the holder of the licence.

- (8) Where, within the period specified in *subsection (6)(c)*, no objections or representations are made or such objections or representations as are made in that period are subsequently withdrawn, the modification of the licence concerned shall have effect accordingly.
- (9) Where objections or representations made within the period specified in *subhead (6)(c)* are not withdrawn the Minister may either accept or reject such objections or representations, in whole or in part, and the modification shall have effect accordingly.
- (10) Where the Minister rejects any objections or representations made under this section the reasons for the rejection shall be notified to the persons who made those objections or representations and the proposed modification shall be effected.

Notes

This section sets out the process by which either a gas storage licence or a continental shelf licence may be modified, either at the request of the applicant or unilaterally by the Minister. The modification of licences may involve the alteration of the terms and conditions attached to a licence, the extension of period of validity of a licence or assignment in whole or in part of the ownership or rights conferred by a licence to a third party.

The head provides that any such changes to a lease or licence require public notification.

Head 64 Termination of a gas storage licence or a continental shelf licence

Provide that:

1. (a) The licensee may at any time, by giving to the Minister not less than 12 months' notice in writing to that effect, terminate a licence granted by the minister under Head 62 or 63.
(b) Such termination does not affect any obligation imposed upon, or liability incurred by, the licensee prior to termination.

- (2) (a) The Minister may revoke a licence if he is satisfied that the licensed activities are not being carried out by the licensee, or are carried out by a person who is not the licensee or any of the conditions attached to the licence has been contravened or that a valid safety permit is no longer in place.
(b) A licence shall terminate, if the licensee is an individual, on his or her bankruptcy or, if the licensee is a body corporate, on its dissolution.
(c) On the revocation or termination of a licence under this Head—
 - (i) all rights and powers exercisable by the licensee shall cease and determine but without prejudice to any obligation or liability imposed on the licensee by this Part or by the licence;
 - (ii) where the licensee paid any consideration for the grant of the licence, he or she shall not be entitled to be repaid such consideration or any part thereof.

- (3) The licensee shall not commence or recommence works at any gas storage facility in the absence of approval in writing of the Minister of the development plan.

Notes

This section sets out procedures whereby a licence can be terminated and requirements on licence holder in regard to the abandonment of defunct wells.

Head 65 Keeping of records

Provide that:

- (1) The holder of a licence granted under Head 62 or Head 63 shall keep accurate records in a form approved by the Minister as he or she may prescribe by regulation. Regulations may specify the following matters—
 - (i) the site of and identification assigned to every facility;
 - (ii) the subsoil and strata through which the facility was drilled;
 - (iii) the casing inserted in any facility and any alteration to such casing;
 - (iv) any petroleum, hydrocarbons, ores or minerals encountered in the course of such activities;
 - (v) details concerning gas injected and stored; and
 - (vi) such other matters as the Minister may from time to time direct.

- (2) The licensee shall keep accurate geological plans and maps relating to the licensed area and such other records in relation thereto as may be necessary to preserve all information which the Licensee has about the geology of the licensed area.

- (3) The licensee shall provide copies of the said records, plans and maps referred to in paragraphs (1) and (2) to the Minister when requested to do so either within any time limit specified in the request, or if there is no time limit specified, within four weeks of the request.

- (4) All records, returns, plans, maps, samples, accounts and information (in this clause referred to as “the specified data”) which the licensee is or may from time to time be required to furnish under the provisions of this licence shall be supplied at the expense of the licensee and shall not (except with the consent in writing of the licensee which shall not be unreasonably withheld) be disclosed to any person not in the service or employment of the Minister.

- (5) The Minister shall be entitled at any time to make use of any of the specified data for the purpose of preparing and publishing such returns and reports as may be required of the Minister by law.

Notes

The purpose of this Head is to impose obligations on gas storage operators to maintain records as the Minister may prescribe and to provide that those records must be made available for inspection by persons authorised by the Minister.

Head 66 Authorised officers

Provide that:

- (1) The Minister may appoint, subject to subhead (2) of this Head, a person to be an authorised officer of the purposes of this Head.
- (2) A person appointed under subhead (1) shall, on his or her appointment, be furnished with a certificate of his or her appointment and when exercising a power conferred by this section shall, if requested by any person thereby affected, produce such certificate to that person for inspection.
- (3) Subject to subsection (4), an authorised officer who suspects with reasonable cause that an offence has been or is being committed on or in any facility, land, premises or vehicle (being an offence that concerns the body referred to in subsection (1) which appointed the particular authorised officer) as may be situated either on land or in the maritime area may –
 - (a) enter the land, premises or storage facility, as the case may be, stop (if necessary) and board the vehicle or boat and require the driver (if any) of the vehicle or boat to take it to a place designated by the authorised officer, and such a vehicle or boat may be detained at that place by the authorised officer for such period as he or she may consider necessary for the purposes of this subsection,
 - (b) search the land, premises, facility, vehicle or boat and there –
 - (i) make such inspections and carry out such tests as he or she thinks fit,
 - (ii) take any measurement or photograph or make any electrical or electronic recording which he or she considers necessary,
 - (iii) require any relevant person in authority to produce to him or her such documents, records or materials as are in that person's possession or control and to give to him or her such information as he or she may reasonably require in regard to such documents, records or materials,

- (iv) inspect and copy or extract information from documents, records or materials produced to him or her under subparagraph (iii) or which he or she finds, and
- (v) seize anything he or she finds, on or within the land, premises or vehicle, for the purpose of determining whether or not an offence has taken place, where he or she is of the opinion that there is a potential danger to any person or property resulting from damage caused to any article in connection with the commission of an offence, obtain the assistance (as appropriate) of the Commission for Energy Regulation. with a view to securing the protection from the potential damage of a person or property concerned.

(4) (a) The powers of an authorised officer under subsection (3) may not be exercised in respect of any premises used as a dwelling, or so much of a vehicle or premises as constitutes a dwelling, except where the authorised officer has reasonable cause to suspect that, before a warrant could be sought in relation to the dwelling under subsection (5), any thing referred to in subsection (3)(–) -

- (i) is being destroyed, disposed of or removed from the premises, facility, vehicle or boat, or
- (ii) is likely to be destroyed, disposed of or removed from the premises, facility, vehicle or boat,

or where permission has been given to the authorised officer to enter the premises or dwelling in accordance with subsection(c).

(b) (i) Notwithstanding paragraph (a) or subsection (3), an authorised officer may request access to any land, premises or vehicle for the purpose of inspecting any article thereon or therein, and shall not be refused access by the owner or occupier of that land, premises or vehicle without legitimate excuse.

(ii) For the purpose of this paragraph, the use of the premises or vehicle concerned as a dwelling shall be regarded as a legitimate excuse.

(5) (a) Where an authorised officer in the exercise of his or her powers under this section is prevented from entering any land, facility or premises or if an authorised officer has reason to believe that evidence of or related to a

suspected offence may be present on or in any land, facility or premises and that the evidence may be removed from it or destroyed or disposed of, the authorised officer or the body by whom he or she was appointed may apply to a judge of the District Court for a warrant under this subsection authorising the entry by the authorised officer onto or into the land or premises.

(b) If on application being made to him or her under this subsection, a judge of the District Court is satisfied, on information on oath of the applicant, that the authorised officer concerned has been prevented from entering such land or premises or that the authorised officer has reasonable grounds for believing the other matters referred to in paragraph (a), the judge may issue a warrant under his or her hand authorising that officer, accompanied, if the judge deems it appropriate so to provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time or times within one month from the date of the issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, the land or premises concerned and exercise the powers referred to in subsection (3)(b).

(6) A person who -

(a) refuses to allow an authorised officer to enter any land , premises or facility or board any vehicle in the exercise of his or her powers under this section, or

(b) obstructs or impedes an authorised officer in the exercise of his or her powers under this section,

commits an offence and is liable, on summary conviction, to a class A fine.

(7) The powers conferred by the preceding provisions of this section are not in substitution for any other powers standing conferred on an officer or employee of a body referred to in subsection (1), a member of the Garda Síochána or any other enactment in force immediately before the passing of this Act, or of any rule of law.

(8) (a) Any thing seized by an authorised officer under subsection (3)(b)(v) or by a person under subsection (8)(b) may, subject to the provisions of this subsection, be detained by that officer or the person by whom he or she is

employed and either destroyed or disposed of in such manner as he or she thinks appropriate.

- (b) A thing detained pursuant to paragraph (a) shall not be destroyed or disposed of under this subsection
 - (i) in case an application is made under paragraph (c) in relation to the thing, save under and in accordance with an order of a judge of the District Court under that paragraph, or
 - (ii) in case no such application is made or such an application is made but is withdrawn, before the expiration of 3 months from the date on which the thing was seized.
- (c) A person who claims an interest in a thing referred to in paragraph (a) may, not later than 3 months after the date on which the thing was seized, apply to a judge of the District Court for the District Court district in which the seizure was effected for an order directing the return to that person of the thing or, as the case may be, enabling that person to exercise the rights in or over the thing which he or she was entitled to exercise immediately before the seizure and the said judge of the District Court shall, on the hearing of the application -
 - (i) determine whether the thing is, in fact, a thing which is evidence of, or evidence related to, the commission of an offence under subhead (10), and
 - (ii) having regard to that determination and any other relevant matters, make such order in relation to the application as he or she considers just and equitable.
- (d) A judge of the District Court may adjourn the hearing of an application made to him or her under paragraph (c) until after the conclusion of any proceedings brought for an offence under Head (X) in relation to the matter concerned.

Notes

The purpose of this Head is to provide for the appointment of, and assign powers to authorised officers to inspect offshore gas storage facilities as may be required. This Head provides standard powers to officers to enter any part of the facility or installations associated with the facility, to carry out inspections and to gather evidence.

Head 67 Offences

Provide that:

- (1) (a) It shall be an offence for any person or company to engage in any offshore gas activities, without having secured the necessary licence from the Minister.
(b) It shall be an offence for any person to contravene any of the provisions of a licence issued by the Minister.

- (2) A person who commits an offence under this Part is liable-
 - (a) on summary conviction to a (Class A) fine or to imprisonment for a term not exceeding 6 months, or both, or
 - (b) on conviction on indictment, to a fine up to €xx for each day for as long as the offence continues or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding 5 years, or both.

- (3) Summary proceedings for offences under this Act may be brought and prosecuted by the Minister.

- (4) Proceedings for an offence under this Act may be taken, and the offence may for all incidental purposes be treated, as having been committed in any place of the State.

Notes

This Head provides that it is an offence for any person to carry out any offshore gas storage or extraction activities in the absence of the required licences from the Minister for Communications, energy and Natural Resources. It provides that summary offences under this Bill may be prosecuted and sets out the penalties involved for both summary convictions and convictions on indictment.

CHAPTER 6

Amendment of the Electricity Act 1999

Head 68 Amendment of section 13 of the Electricity Regulation Act 1999

Provide that:

(1) Section 13A of the Act of 1999 (as inserted by section 3 of the Petroleum (Exploration & Extraction) Safety Act 2010) is amended -

(a) In subsection (1), by inserting in the definition of “petroleum authorisation” after subparagraph (g) the following :

“(h) a consent given under section 39A of the Act of 1976,

(i) a licence granted under Head x of this Act for the purposes of the injection of natural gas into a gas storage facility, the storage of same and the reinjection of natural gas into the natural gas transmission system ;”

(b) In subsection (1), by substituting for the definition of “processing” the following:

“‘processing’, in relation to petroleum, means the treatment of unprocessed or partially processed petroleum at a processing plant or terminal or offshore processing installation and in relation to the offshore storage of natural gas means the injection of natural gas into a gas storage facility, the storage of same and its reinjection into the natural gas transmission system;”

(c) In section 13A(1) by substituting for the definition of ‘upstream pipeline’ the following:

“ ‘upstream pipeline’ means so much of any pipeline (including the subsea and onshore sections) operated or constructed—

(a) as part of a petroleum production project, or

(b) as part of an offshore natural gas storage project, or

(c) for the purpose of conveying unprocessed petroleum from one or more than one such project to a processing plant or terminal or final coastal landing terminal.”

(d) In subsection (2)(b) by deleting subparagraph (v) and by inserting the following:

“(v) activities relating to the storage of natural gas carried on under the terms and conditions of an authorisation referred to in paragraph (i) of the definition of ‘petroleum authorisation’ in section 13A,

(vi) investigation and exploration activities carried on under (i) of the definition of ‘petroleum authorisation’ in section 13A and in respect of which petroleum infrastructure for the exploration of areas for the storage of natural gas in the seabed or subsoil is intended to be established, maintained or operated,

(vii) activities relating to the storage of natural gas under the seabed or subsoil carried on under the terms and conditions of a licence referred to in paragraph (i) of the definition of ‘petroleum authorisation’ in section 13A and in respect of which petroleum infrastructure is intended to be established, maintained or operated,

(viii) activities relating to the decommissioning of petroleum infrastructure.”

Notes

Separate legislative proposals are being progressed by the Minister for Communications, Energy and Natural Resources to provide that the CER’s safety remit be extended to include offshore gas storage. It is anticipated that DCENR legislation will precede enactment of the Maritime Area and Foreshore (Amendment) Bill.

This Head provides for consequential amendments to section 13A of the Electricity Regulation Act 1999 to take account of the proposed expansion of the CER’s safety remit. The insertion includes a reference to gas storage licences which are

proposed under Head 62 of this Bill. Consequently, inclusion of this Head is appropriate.

PART 7
Amendment of the Gas Act 1976 and
Petroleum and Other Minerals Development Act 1960

This part provides for consequential amendments similar to those being made to the Foreshore Act to be made to the Gas Act and to the Petroleum and Other Minerals Development Act.

It is likely that the amendments would at least include:

- recognition of the maritime area as defined in the Planning and Development Acts;
- creation of powers for the MCENR to grant Maritime Options for oil/gas projects in the maritime area; and
- explicit provision that the MCENR shall not be obliged to carry out Environmental Impact Assessment or Appropriate Assessment of proposals which have been granted development consent by the Board when considering applications under these Acts.

**Head 69 Consequential amendments to the Gas Act 1976 and Petroleum
and Other Minerals Development Act 1960**

Text to be provided by DCENR.

PART 8

Amendment of the Energy (Miscellaneous Provisions) Act 1995

This part provides for consequential amendments similar to those being made to the Foreshore Act to be made to the Energy (Miscellaneous Provisions) Act 1995.

It is likely that the amendments would at least include:

- recognition of the maritime area as defined in the Planning and Development Acts;
- provision for the creation by the MCENR of renewable energy zones in the maritime area where the primary objective will be the production of renewable energy;
- creation of powers for the MCENR to grant Maritime Options for renewable energy projects in the maritime area;
- provision for engagement by developers with the energy regulatory authorities concerning a form of “Licence to Use the Resource”; and
- explicit provision that the MCENR shall not be obliged to carry out Environmental Impact Assessment or Appropriate Assessment of proposals which have been granted development consent by the Board when considering applications under this Act.

Head 70 Consequential amendments to the Energy (Miscellaneous Provisions) Act 1995

Text to be provided by DCENR.