



MARINE ENERGY WALES

MARINE ENERGY TEST AREA (META)

Environmental Impact Assessment: Appendices

Appendix 3.1 - Policy and Legislation

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A.3.1 Legislation

A.3.1.1 The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended by the 2017 amendments)

Regulation 12 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

1. Where an application is made for a regulatory approval in relation to a regulated activity to which this Part applies, neither the regulator nor the appropriate authority may deal with the application or exercise any functions under these Regulations in relation to it until the appropriate authority has received the following material from the applicant:
 - a. A chart or map (or both) sufficient to identify where the regulated activity would be carried out and the extent of any operations which it would involve;
 - b. A description (including a plan) of the nature of the project, identifying the regulated activity to be carried out in the course of that project;
 - c. A statement of the working methods to be used in the course of the project and in carrying out the regulated activity;
 - d. An environmental statement in respect of the project; and
 - e. A copy of any environmental statement in respect of the project provided or to be provided to any other consenting authority.
2. An environmental statement must:
 - a. Be in writing;
 - b. Include at least:
 - (a) A description of the project and the regulated activity, comprising information on the site, design, size and other relevant features of the project and the regulated activity;
 - (b) A description of the likely significant effects of the project and the regulated activity on the environment;
 - (c) A description of the features of the project and the regulated activity or the measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
 - (d) A description of the reasonable alternatives studied by the applicant which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
 - (e) A non-technical summary of the information referred to in Paragraphs (i) to (iv); and
 - (f) Any additional information specified in Schedule 3 relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.
 - c. Where a scoping opinion has been given in accordance with Regulation 13 and Schedule 4, be based on the most recent scoping opinion given (so far as the project remains materially the same as the project which was subject to that opinion);
- d. Include the information reasonably required for reaching a conclusion about the significant effects of the project on the environment, taking into account current knowledge and methods of assessment;
- e. (with a view to avoiding duplication of assessments), be prepared taking into account the results of any relevant UK environmental assessment which are reasonably available to the applicant;
- f. be prepared by competent persons; and
- g. be accompanied by a statement from the applicant outlining the relevant experience or qualifications of such persons.
- h. The appropriate authority may specify:
 - i. The format in which the applicant must provide the material referred to in Paragraph (1); and
 - j. The number of copies of the material in that format that the applicant must provide to it and to the regulator (if the regulator is not also the appropriate authority).
3. The applicant must comply with any reasonable requirement made in accordance with Paragraph (3) and, until this has been done:
 - a. The appropriate authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement;
 - b. Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application; and
 - c. The regulator must not reach its regulatory decision.
4. Where an applicant has failed to comply with the requirements of Paragraphs (1) and (2), or any requirements of the appropriate authority under Paragraph (3), within such reasonable period as the appropriate authority has specified or such longer period as the appropriate authority may reasonably allow:
 - a. The regulator may treat the application as having been withdrawn; and
 - b. The appropriate authority (if the regulator is not also the appropriate authority) may direct the regulator to do so.

Schedule 3 of The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)

1. A description of the project and of the regulated activity, including in particular:
 - a. A description of the location of the project and the regulated activity;
 - b. A description of the physical characteristics of the whole project and regulated activity, including where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - c. A description of the main characteristics of the operational phase of the project and the regulated activity (in particular any production process): for instance, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - d. An estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of

- waste produced during the construction and operation phases) resulting from the operation of the proposed project and the regulated activity.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed project, the regulated activity and their specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
 3. A description of the relevant aspects of the current state of the environment (baseline scenario), and an outline of the likely evolution thereof without implementation of the project, as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
 4. A description of the factors specified in regulation 21A(2)(a) to (e) likely to be significantly affected by the project and the regulated activity: population, human health, biodiversity (for example, fauna and flora), land (for example, land take), soil (for example, organic matter, erosion, compaction, sealing), water (for example, hydromorphological changes, quantity and quality), air, climate (for example, greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
 5. A description of the likely significant effects of the project and the regulated activity on the environment resulting from, inter alia:
 - a. The construction and existence of the project and the regulated activity, including, where relevant, demolition works;
 - b. The use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - c. The emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
 - d. The risks to human health, cultural heritage or the environment (for example, due to accidents or disasters);
 - e. The cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
 - f. The impact of the project on climate (for example, the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change; and
 - g. The technologies and the substances used.
 6. The description of the likely significant effects on the factors specified in regulation 21A(2)(a) to (e) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project and the regulated activity. This description must take into account the environmental protection objectives established at Union or member State level which are relevant to the project and the regulated activity.
 7. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment including details of difficulties (for example, technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.
 8. A description of the measures envisaged to avoid, prevent, reduce or if possible offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example, the preparation of a post-project analysis).

That description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the project and the regulated activity on the environment deriving from the vulnerability of the project and the regulated activity to risks of major accidents or disasters which are relevant to the project and the regulated activity concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations or UK environmental assessments may be used for this purpose provided that the requirements of the EIA Directive are met. Where appropriate, this description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.
10. A non-technical summary of the information provided under Paragraphs 1 to 9.
11. A reference list detailing the sources used for the descriptions and assessments included in the report.

A.3.1.2 The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

Schedule 4 of Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

1. Description of the development, including in particular—
 - (a) a description of the location of the development;
 - (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, oil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operational phases.
2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant or appellant which are relevant to the proposed development and its specific characteristics and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example

land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia—

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances and the disposal and recovery of waste,
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(1) and Directive 2009/147/EC(2).

6. A description of the forecasting methods or evidence used to identify and assess the effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

A.3.1.3 Energy Act 2004¹

Schedule 16 of the Energy Act 2004

1 In this Schedule references to a safety zone notice are references to a notice under section 95.

2 In this Schedule “relevant renewable energy installation”, in relation to an application for a safety zone notice or a proposal by the appropriate Minister to issue such a notice, means the renewable energy installation by reference to which the notice applied for or proposed would fall to be issued.

3(1) An application for a safety zone notice must describe, by way of a map—

- (a) the place where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; and
- (b) the waters in relation to which any declaration applied for will establish a safety zone.

(2) The application must also—

- (a) describe the other provisions the application asks to be included in the notice applied for; and
- (b) include such other information as may be prescribed by regulations made by the appropriate Minister.

(3) An application is not allowed to be made orally.

4(1) The appropriate Minister may by regulations make provision for securing—

- (a) that, in the prescribed circumstances, notice of an application is published in the prescribed manner;
- (b) that, in the prescribed circumstances and in any other case where the appropriate Minister so directs, notice of an application is served on the persons who are prescribed or are specified in the direction;
- (c) that every notice published or served in pursuance of the regulations states the period within which objections to the application may be made, and the manner in which any objections are to be made;
- (d) that the period so stated is not less than the prescribed period after the publication or service of the notice;
- (e) that, where such a notice requires objections to be sent to a person other than the appropriate Minister, the recipient of the objections is required to send copies of them to the appropriate Minister.

(2) The regulations may provide that the appropriate Minister may give such directions dispensing with the requirements of the regulations as he considers appropriate.

(3) Where objections, or copies of objections, to an application have been sent to the appropriate Minister in compliance with the regulations, the appropriate Minister—

- (a) must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application; and
- (b) if he thinks it appropriate to do so, must cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.

(4) In this paragraph “prescribed” means prescribed by regulations under this paragraph.

5(1) This paragraph applies where—

¹ Applies to England, Wales, Scotland and Northern Ireland.

- (a) the appropriate Minister is proposing to issue a safety zone notice without an application having been made; or
 - (b) the appropriate Minister, in response to an application but without the holding of a public inquiry, is proposing to issue a safety zone notice in terms that are materially different from those applied for.
 - (2) The appropriate Minister must—
 - (a) publish notice of the proposal in such manner as he considers appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; and
 - (b) serve notice of the proposal on such persons as he considers appropriate.
 - (3) The notice that is published or served must describe, by way of a map—
 - (a) the place where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; and
 - (b) the waters in relation to which any declaration proposed will establish a safety zone; and it must also describe the other provisions that the appropriate Minister proposes to include in the safety zone notice.
 - (4) That notice must also—
 - (a) state the period within which objections to the proposal may be made; and
 - (b) the manner in which any objections are to be made.
 - (5) The period for making objections must not be shorter than the minimum period which would be applicable, in accordance with regulations under paragraph 4, if the notice were being published in respect of an application for a safety zone notice.
 - (6) Where objections or copies of objections to the proposal have been sent to the appropriate Minister, he—
 - (a) must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the proposal; and
 - (b) if he thinks it appropriate to do so, must cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the proposal.
- 8 A notice required by or under this Schedule may be combined with a notice required by or under Schedule 8 to the 1989 Act (procedure on application for a consent in respect of a generating station) in any case involving the same installation or proposed installation.
- 9 Regulations under this Schedule—
- (a) if made by the Secretary of State, are subject to the negative resolution procedure;
 - (b) if made by the Welsh Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Wales) Act 2010).

Section 95 of the Energy Act 2004

95 Safety zones around renewable energy installations

- (1) This section applies where—
 - (a) there is a proposal to construct a renewable energy installation in waters subject to regulation under this section, or to extend or to decommission a renewable energy installation situated in such waters;
 - (b) there is a proposal to operate a renewable energy installation on completion of its construction in such waters, or of any extension of it in such waters; or
 - (c) a renewable energy installation is being constructed, extended, operated or decommissioned in such waters.

- (1A) In this section and section 96 the “appropriate Minister” means the Scottish Ministers, in relation to a renewable energy installation—
 - (a) which is to be or is wholly in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas,
 - (b) to which paragraph (a) has ceased to apply because of an extension or proposed extension, if subsection (1B) applies, or
 - (c) to the extent that it is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, if paragraph (a) has ceased to apply because of an extension or proposed extension, and subsection (1B) does not apply,
 and otherwise means the Secretary of State (subject to section 13 of the Marine and Coastal Access Act 2009, which transfers certain functions of the Secretary of State to the Marine Management Organisation).
- (1B) This subsection applies if there is an agreement in force between the Secretary of State and the Scottish Ministers providing for the Scottish Ministers to be the appropriate Minister in relation to the whole of the installation.
- (1C) Where subsection (1B) applies, the Scottish Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.
- (2) If the appropriate Minister considers it appropriate to do so for the purpose of securing the safety of—
 - (a) the renewable energy installation or its construction, extension or decommissioning,
 - (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
 - (c) individuals in or on the installation or other installations in that vicinity, or
 - (d) vessels in that vicinity or individuals on such vessels,
 he may issue a notice declaring that such areas as are specified or described in the notice are to be safety zones for the purposes of this Chapter.
- (3) The power of the appropriate Minister to issue a notice under this section shall be exercisable by him either—
 - (a) on an application made to him for the purpose by any person; or
 - (b) where no such application is made, on his own initiative.
- (4) Before issuing a notice under this section which relates, wholly or partly, to—
 - (a) an area of Scottish waters, or
 - (b) an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (4A) Before issuing a notice under this section which relates, wholly or partly, to an area outside the areas mentioned in subsection (4), the Scottish Ministers must consult the Secretary of State.
- (5) An area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.
- (6) A notice under this section—
 - (a) must identify the renewable energy installation, or proposed renewable energy installation, by reference to which it is issued;
 - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;

- (c) may contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice;
 - (d) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions;
 - (e) may contain provision granting permission for vessels to enter or remain in a safety zone or for persons to carry on prohibited activities, or for the grant of such permissions;
 - (f) may confer discretions, with respect to the making of determinations for the purposes of such a notice, on such persons as may be specified or described in the notice;
 - (g) may modify or revoke a previous notice; and
 - (h) may make different provision in relation to different cases.
- (7) Where a notice is issued under this section or a determination is made for the purposes of such a notice, the appropriate Minister must either—
- (a) himself publish the notice or determination in such manner as he considers appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
 - (b) secure that it is published in that manner—
 - (i) by the applicant for the notice; or
 - (ii) in the case of a determination made by a person other than the appropriate Minister, by the applicant for the notice or by the person who made the determination.
- (8) References in this section to a determination for the purposes of a notice include references to a determination made for those purposes in accordance with the notice, or with regulations under section 96—
- (a) to impose a prohibition;
 - (b) to grant a permission; or
 - (c) to impose conditions in relation to a permission.
- (9) Schedule 16 (which makes provision about the procedure for the declaration of safety zones) has effect.
- (10) The waters subject to regulation under this section are—
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
 - (b) waters within a Renewable Energy Zone.

Sections 105 to 114 of the Energy Act 2004

105 Requirement to prepare decommissioning programmes

- (1) This section applies where—
- (a) there is a proposal by a person to construct a relevant object in waters regulated under this Chapter, or to extend a relevant object in such waters;
 - (b) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
 - (c) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission such an object.
- (1A) In this Chapter “appropriate Minister”—
- (a) in relation to a renewable energy installation, means the Welsh Ministers—

- (i) if the installation is to be or is wholly in an area of Welsh waters or an area of waters in a Welsh part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas,
 - (ii) if sub-paragraph (i) has ceased to apply to the installation because of an extension or proposed extension, and subsection (1B) applies, or
 - (iii) to the extent that the installation is to be or is in an area of Welsh waters or an area of waters in a Welsh part of a Renewable Energy Zone, if sub-paragraph (i) has ceased to apply because of an extension or proposed extension, and subsection (1B) does not apply;
- and otherwise means the Secretary of State;
- (b) in relation to an electric line which is or has been a related line, means—
- (i) the Welsh Ministers, to the extent that the line is to be or is in an area of Welsh waters or an area of waters in a Welsh part of a Renewable Energy Zone;
 - (ii) otherwise, the Secretary of State.
- (1B) This subsection applies to an installation if there is an agreement in force between the Secretary of State and the Welsh Ministers providing for the Welsh Ministers to be the appropriate Minister in relation to the whole of the installation.
- (1C) Where subsection (1B) applies, the Welsh Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.
- (2) The appropriate Minister may by notice require—
- (a) a person falling within subsection (1)(a), (b) or (c), or
 - (b) if a person to whom paragraph (a) applies is a body corporate, a body corporate associated with that person (subject to section 105A), to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) Before requiring a person to submit a decommissioning programme in respect of proposals made by a person within paragraph (a) or (b) of subsection (1), the appropriate Minister must be satisfied that at least one of the statutory consents required for giving effect to those proposals—
- (a) has been given; or
 - (b) has been applied for and is likely to be given; but for this purpose it is immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied.
- (4) Where there is more than one person to whom a notice under this section may be given—
- (a) it may be given to any one or more of them; and
 - (b) where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly.
- (5) Before giving a notice under this section in relation to a relevant object which is to be or is partly—
- (a) in an area of Welsh waters; or
 - (b) in an area of waters in a Welsh part of a Renewable Energy Zone,
- the Secretary of State must consult the Welsh Ministers.
- (6) A notice under this section must either—
- (a) specify the date by which the decommissioning programme is to be submitted; or
 - (b) require it to be submitted on or before such date as the [appropriate Minister] may direct.
- (7) A notice under this section may require the recipient of the notice to carry out the consultations specified in the notice before submitting the programme required of him.
- (8) A decommissioning programme—
- (a) must set out measures to be taken for decommissioning the relevant object;

- (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
- (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
- (d) if it proposes that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
- (e) if it proposes that the relevant object will be left in position at a place in waters regulated under this Chapter or will not be wholly removed from a place in such waters, must include provision about whatever continuing monitoring and maintenance of the object will be necessary.

(10) In this Chapter—

“relevant object” means the whole or any part of—

- (a) a renewable energy installation; or
- (b) an electric line that is or has been a related line;

“waters regulated under this Chapter” means—

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters in a Renewable Energy Zone.

(11) In this section—

“related line” means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act); and

“statutory consent” means a consent, licence or approval required by or under any enactment.

Section 105 notices: supplemental

(1) The appropriate Minister may not give a notice under section 105(2)(b) to a body corporate associated with a person (“the responsible person”) within section 105(1)(a), (b) or (c) unless the appropriate Minister—

- (a) has given a notice to the responsible person under section 105(2)(a), and
- (b) is not satisfied that adequate arrangements (including financial arrangements) have been made by the responsible person to ensure that a satisfactory decommissioning programme will be carried out.

(2) Subsection (1) does not apply if—

- (a) there has been a failure to comply with a notice under section 105(2), or
- (b) the [appropriate Minister] has rejected a programme submitted in compliance with such a notice.

(3) For the purposes of this section and section 105, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and subsections (4) to (8) set out the circumstances in which one body corporate (“A”) controls another (“B”).

(4) Where B is a company, A controls B if A possesses or is entitled to acquire—

- (a) one half or more of the issued share capital of B,
- (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
- (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

(5) Where B is a limited liability partnership, A controls B if A—

- (a) holds a majority of the voting rights in B,
- (b) is a member of B and has a right to appoint or remove a majority of other members, or
- (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(6) In subsection (5)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(7) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.

(8) In determining whether, by virtue of subsections (4) to (7), A controls B, A is to be taken to possess—

- (a) any rights and powers possessed by a person as nominee for it, and
- (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

106 Approval of decommissioning programmes.

(1) The appropriate Minister may either approve or reject a programme submitted to him under section 105.

(2) Before approving or rejecting a decommissioning programme relating to a relevant object which is to be or is, partly—

- (a) in an area of Welsh waters, or
- (b) in an area of waters in a Welsh part of a Renewable Energy Zone,

the Secretary of State must consult the Welsh Ministers.

(3) If the appropriate Minister approves a programme, he may do so—

- (a) with or without modifications; and
- (b) either subject to conditions or unconditionally.

(4) His power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme—

- (a) provides such security in relation to the carrying out of the programme, and for his compliance with the conditions (if any) of its approval, as may be specified by the appropriate Minister; and
- (b) provides that security at such time, and in accordance with such requirements, as may be specified by the appropriate Minister.

(5) Before approving a programme with modifications or subject to conditions, the appropriate Minister must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.

(6) The power of the appropriate Minister to approve a programme subject to conditions includes power, where more than one person submitted it, to impose different conditions in relation to different persons.

(7) If he rejects a programme, the appropriate Minister—

- (a) must inform the person who submitted it of his reasons for doing so; and
- (b) may exercise his power under section 105 to require the submission of a new one.

(8) The appropriate Minister must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

107 Failure to submit or rejection of decommissioning programmes

- (1) Where—
 - (a) a notice given under section 105 is not complied with, or
 - (b) the appropriate Minister rejects a programme submitted to him,
 the appropriate Minister may himself prepare a decommissioning programme in relation to the relevant object in question.
- (2) Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, partly—
 - (a) in an area of Welsh waters, or
 - (b) in an area of waters in a Welsh part of a Renewable Energy Zone,
 the Secretary of State must consult the Welsh Ministers.
- (3) Where the appropriate Minister prepares a decommissioning programme under this section—
 - (a) he must give notice informing the recipient of the notice given under section 105 that he has done so; and
 - (b) this Chapter shall have effect subsequently as if the appropriate Minister's programme were a programme submitted to him by the person informed and had been approved by the appropriate Minister subject to the conditions specified by the appropriate Minister.
- (4) Where the appropriate Minister informs a person under subsection (3) that he has prepared his own decommissioning programme, he may by notice to that person require him—
 - (a) to provide such security in relation to the carrying out of the programme, and for his compliance with its conditions (if any), as may be specified by the appropriate Minister; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the appropriate Minister;
 and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.
- (8) The power of the appropriate Minister to impose requirements under this section includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons.
- (9) Where, having given a notice under section 105, the appropriate Minister prepares his own decommissioning programme, he may recover expenditure incurred by him in, or in connection with, the exercise of his powers under this section from the recipient of the notice.
- (10) A person liable to pay a sum to the appropriate Minister by virtue of subsection (9) must also pay interest on that sum for the period which—
 - (a) begins with the day on which the appropriate Minister notified him of the sum payable; and
 - (b) ends with the date of payment.
- (11) The rate of interest shall be a rate determined by the appropriate Minister to be comparable with commercial rates.

108 Reviews and revisions of decommissioning programmes

- (1) The appropriate Minister must, from time to time, conduct such reviews of a decommissioning programme approved by him as he considers appropriate.
- (2) A proposal—
 - (a) to modify a decommissioning programme approved by the appropriate Minister, or
 - (b) to modify a condition to which such a programme is subject,
 may be made by the appropriate Minister, or by the person who submitted the programme or (if there is more than one of them) by all of them acting jointly.

- (3) A proposal—
 - (a) to relieve a person of his duty under section 109(1) in relation to a decommissioning programme approved by the appropriate Minister, or
 - (b) as respects such a programme, to impose that duty upon a person not previously subject to it (whether in addition to or in substitution for another person),
 may be made by the appropriate Minister or by the person for the time being subject to that duty or (if there is more than one person subject to that duty) by any one or more of them.
- (3A) A proposal under subsection (3)(b) may, in particular, be made in relation to a body corporate associated with a person who has a duty under section 109(1) (and for this purpose “associated” is to be construed in accordance with section 105A (3) to (8)).
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
 - (a) if the proposal is the appropriate Minister's, to every person whose duty under section 109(1) in relation to the programme would be affected or relieved under the proposal or who would become subject to such a duty; and
 - (b) in any other case, to the appropriate Minister.
- (5) An opportunity of making representations to the appropriate Minister about a proposal of his under this section must be given by him to every person to whom notice of the proposal is required to have been given.
- (6) It is to be for the appropriate Minister, after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under this section.
- (7) Before making a determination under subsection (6) with respect to a proposal in relation to a decommissioning programme relating to a relevant object which is to be or is, partly—
 - (a) in an area of Welsh waters, or
 - (b) in an area of waters in a Welsh part of a Renewable Energy Zone,
 the Secretary of State must consult the Welsh Ministers.
- (8) Where the appropriate Minister makes a determination under subsection (6), he must give notice of his determination, and of his reasons for it, to—
 - (a) every person who, before the determination, had a duty under section 109(1) in relation to the programme; and
 - (b) every person who will become subject to such a duty as a result of the determination.
- (9) Where the appropriate Minister gives notice under subsection (8) in respect of a proposal, this Chapter shall have effect after the giving of that notice—
 - (a) in the case of a proposal under subsection (2), as if the programme in question had been approved subject to the modifications specified in the determination; and
 - (b) in the case of a proposal under subsection (3), as if that programme had been submitted to the appropriate Minister by the person or persons so specified.
- (10) Where the appropriate Minister gives notice under subsection (8) to a person that he is to become subject to a duty under section 109(1) in relation to a programme, the appropriate Minister may by notice to that person require him—
 - (a) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the appropriate Minister; and
 - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the appropriate Minister;
 and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

109 Carrying out of decommissioning programmes

- (1) Where a decommissioning programme is approved by the [appropriate Minister], it shall be the duty of the person who submitted the programme to secure—
- (a) that it is carried out in every respect; and
 - (b) that all the conditions to which the approval is subject are complied with.
- (2) Where a relevant object is subject to a decommissioning programme approved by the appropriate Minister, it is an offence for a person to take any measures for decommissioning that object unless he does so—
- (a) in accordance with the programme; or
 - (b) with the agreement of the appropriate Minister.

110 Default in carrying out decommissioning programmes.

- (1) Where—
- (a) a decommissioning programme approved by the [appropriate Minister] is not carried out in a particular respect, or
 - (b) a condition to which the approval is subject is contravened,
- the appropriate Minister may, by notice, require a person subject to the duty under section 109(1) in relation to the programme to take such remedial action as may be specified in the notice.
- (2) Remedial action required by a notice under this section must be taken within such period as may be specified in the notice.
- (3) A person who fails to comply with a notice given to him under this section is guilty of an offence.
- (4) In proceedings against a person for an offence under this section it is a defence for him to show that he exercised due diligence to avoid the contravention in question.
- (5) If a notice under this section is not complied with, the [appropriate Minister] may—
- (a) himself secure the carrying out of the remedial action required by the notice; and
 - (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given.
- (6) A person liable to pay a sum to the appropriate Minister by virtue of subsection (5) must also pay interest on that sum for the period which—
- (a) begins with the day on which the appropriate Minister notified him of the sum payable; and
 - (b) ends with the date of payment.
- (7) The rate of interest shall be a rate determined by the appropriate Minister to be comparable with commercial rates.

110A Protection of funds held for purposes of decommissioning

- (1) This section applies where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (3) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider’s insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.

- (4) For the purposes of subsection (3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (5) In subsection (4) “enactment” includes an instrument made under an enactment.

110B Section 110A: supplemental

- (1) The appropriate Minister may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
- (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the [appropriate Minister] or a creditor of the security provider may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
- “the protected assets” has the same meaning as in section 110A;
- “security provider” means a person who has provided security in relation to which that section applies.
- (6) In subsections (3) and (4) references to “the court” are references—
- (a) to the High Court, in relation to an application in England and Wales or Northern Ireland, or
 - (b) to the Court of Session, in relation to an application in Scotland.

111 Regulations about decommissioning

- (1) The appropriate Minister may make regulations relating to the decommissioning of relevant objects in waters regulated under this Chapter.
- (2) The provision that may be contained in regulations under this section includes, in particular—
- (a) provision prescribing standards in respect of decommissioning;
 - (b) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
 - (c) provision about the security that a person may be required to provide under this Chapter;
 - (d) provision for the prevention of pollution;
 - (e) provision for inspections, including provision as to the payment of the costs of inspections.
- (3) Regulations under this section may include provision making it an offence to contravene provisions of the regulations.
- (4) Where the regulations under this section create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for regulations under this section—
- (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum; or
 - (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (5) Before making regulations under this section, the appropriate Minister must consult—

- (a) organisations appearing to him to be representative of persons who will be affected by the regulations; and
- (b) any other persons he considers appropriate.
- (6) Before making regulations under this section containing provision that relates to the decommissioning of relevant objects which are to be or are, partly—
 - (a) in Welsh waters, or
 - (b) in waters in a Welsh part of a Renewable Energy Zone,
 the Secretary of State must consult the Welsh Ministers.
- (7) Regulations under this section—
 - (a) if made by the Secretary of State, are subject to the negative resolution procedure;
 - (b) if made by the Welsh Ministers, are subject to the negative procedure.

112 Duty to inform appropriate Minister

- (1) A person who becomes responsible for a relevant object must notify the appropriate Minister that he has become so responsible.
- (2) For the purposes of this section a person becomes responsible for a relevant object if—
 - (a) he makes a proposal to construct the object in waters regulated under this Chapter;
 - (b) he makes a proposal for the extension or decommissioning in such waters of the object;
 - (c) he makes a proposal to operate or use the object on completion of its construction in such waters;
 - (d) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
 - (e) he becomes a party to a proposal mentioned in paragraphs (a) to (d);
 - (f) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
 - (g) he begins to participate in any of the following activities carried on in such waters, the construction, extension, operation or use or decommissioning of the object.
- (3) A person is not required to notify the appropriate Minister that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents required for enabling effect to be given to the proposal has been given or applied for.
- (4) A person who notifies the appropriate Minister under this section that he has made a proposal, or has become a party to a proposal—
 - (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and
 - (b) must notify him subsequently whenever such a consent or application is given or made.
- (5) A notification under this section must be given within such period after the obligation to give the notification arises as may be prescribed by regulations made by the [appropriate Minister].
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section—
 - (a) if made by the Secretary of State, are subject to the negative resolution procedure;
 - (b) if made by the Welsh Ministers, are subject to the negative procedure.
- (8) A reference in this section to participation in activities does not include a reference—
 - (a) to participation on behalf of another person; or
 - (b) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities.
- (9) In this section “statutory consent” has the same meaning as in section 105.

112A Power of appropriate Minister to require information and documents

- (1) The appropriate Minister may by notice require a person within subsection (2) to provide the appropriate Minister with such relevant information or documents as the appropriate Minister may require in connection with the exercise of functions under this Chapter.
- (2) Those persons are—
 - (a) a person who has been, or may be, given a notice under section 105(2)(a) in relation to a relevant object,
 - (b) where a person falling within paragraph (a) is a body corporate, a body corporate associated with that person,
 - (c) a person not within paragraph (a) or (b) who by virtue of provision made under section 108(3)(b) is subject to the duty under section 109(1) in relation to a decommissioning programme relating to a relevant object.
- (3) Information or a document is “relevant” if it relates to—
 - (a) the place where the relevant object is or is to be situated,
 - (b) the relevant object,
 - (c) where the recipient of the notice is a body corporate falling within subsection (2)(c) or section 105(2)(a), details of an associated body corporate,
 - (d) the financial affairs of the recipient of the notice or, where the recipient is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), an associated body corporate,
 - (e) the security that the recipient proposes to provide in relation to the carrying out of a decommissioning programme relating to the relevant object or for the recipient's compliance with any conditions of the programme's approval, or
 - (f) where the recipient of the notice (“R”) is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), the name or address of any person whom R believes to be an associated body corporate.
- (4) But if a notice under subsection (1) requires information in connection with a function of the appropriate Minister under section 107(1) or (4), the notice may require the provision of information or documents which the appropriate Minister considers are necessary or expedient for the purpose of exercising those functions (whether or not they are of a kind specified in subsection (3)).
- (5) A notice under subsection (1) must specify the documents or information, or the description of documents or information, to which it relates.
- (6) Information or documents required to be provided under this section must be provided within such period as is specified in the notice under subsection (1).
- (7) In this section, “associated”, in relation to a body corporate, is to be construed in accordance with section 105A(3) to (8).
- (8) A person who fails, without reasonable excuse, to comply with a notice under subsection (1) is guilty of an offence.
- (9) A person who discloses information obtained by virtue of a notice under this section is guilty of an offence unless the disclosure—
 - (a) is made with the consent of the person by or on behalf of whom the information was provided,
 - (b) is for the purpose of the exercise of the appropriate Minister's functions under this Chapter, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998, or
 - (c) is required by or under an enactment.

113 Offences relating to decommissioning programmes

- (1) A person guilty of an offence under a provision of this Chapter is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) No proceedings for a decommissioning offence shall be instituted in England and Wales or Northern Ireland except—
 - (a) by the Secretary of State;
 - (b) by a person authorised in that behalf by the Secretary of State; or
 - (c) by or with the consent of the Director of Public Prosecutions or (as the case may be) the Director of Public Prosecutions for Northern Ireland.
- (3) Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person who was purporting to act in any such capacity,
 he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where such an offence—
 - (a) is committed by a Welsh firm, and
 - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
 he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (5) Where a decommissioning offence is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for a decommissioning offence.
- (7) In this section—

“decommissioning offence” means an offence under—

 - (a) a provision of this Chapter; or
 - (b) regulations made under section 111;

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

114 Interpretation of Chapter 3 of Part 2

- (1) Expressions used in this Chapter and in Chapter 2 of this Part have the same meanings in this Chapter as in that Chapter.
- (2) In this Chapter—

“appropriate Minister” has the meaning given by section 105(1A);

“decommissioning programme” has the meaning given by section 105(2);

“extend” and “extension”, in relation to an electric line, have the same meanings as they have in Chapter 2 of this Part and this Chapter in relation to a renewable energy installation;

- “recipient”, in relation to a notice under section 105, means the person or any one or more of the persons to whom that notice was given;
- “relevant object” has the meaning given by section 105(10);
- “security” includes—
- (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (ca) an insurance policy;
 - (d) a letter of credit; and
 - (e) a letter of comfort; “waters regulated under this Chapter” has the meaning given by section 105(10).
- (3) References in this Chapter to providing a security include references—
 - (a) to securing its maintenance or renewal; and
 - (b) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given.
 - (4) References in this Chapter to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them.
 - (5) Provision made by or under this Chapter in relation to places outside the United Kingdom—
 - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
 - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom.

A.3.2 Policy Context

UK Marine Policy Statement

- A.3.2.1.1. This Marine Policy Statement (MPS) is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It will contribute to the achievement of sustainable development in the United Kingdom marine area. It has been prepared and adopted for the purposes of Section 44 of the Marine and Coastal Access Act 2009.
- A.3.2.1.2. The Secretary of State, Scottish Ministers, Welsh Ministers and the Department of the Environment in Northern Ireland are jointly adopting the MPS. This is a key step towards achieving the vision shared by the UK Administrations (UK Government, Scottish Government, Welsh Government and Northern Ireland Executive) of having ‘clean, healthy, safe, productive and biologically diverse oceans and seas’.
- A.3.2.1.3. The MPS will facilitate and support the formulation of Marine Plans, ensuring that marine resources are used in a sustainable way in line with the high-level marine objectives and thereby:
 - Promote sustainable economic development;
 - Enable the UK’s move towards a low-carbon economy, to mitigate the causes of climate change and ocean acidification and adapt to their effects;
 - Ensure a sustainable marine environment which promotes healthy, functioning marine ecosystems and protects marine habitats, species and our heritage assets; and

- Contribute to the societal benefits of the marine area, including the sustainable use of marine resources to address local social and economic issues.

A.3.2.1.4. These objectives will be achieved by:

1. Achieving a sustainable marine economy
 - a. Infrastructure is in place to support and promote safe, profitable and efficient marine businesses.
 - b. The marine environment and its resources are used to maximise sustainable activity, prosperity and opportunities for all, now and in the future.
 - c. Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
 - d. Marine businesses are acting in a way which respects environmental limits and is socially responsible. This is rewarded in the marketplace.
 - e. Ensuring a strong, healthy and just society
 - f. People appreciate the diversity of the marine environment, its seascapes, its natural and cultural heritage and its resources and act responsibly.
 - g. The use of the marine environment is benefiting society as a whole, and contributing to resilient and cohesive communities that can adapt to coastal erosion and flood risk, as well as contributing to physical and mental wellbeing.
 - h. The coast, seas, oceans and their resources are safe to use.
 - i. The marine environment plays an important role in mitigating climate change.
 - j. There is equitable access for those who want to use and enjoy the coast, seas and their wide range of resources and assets and recognition that for some island and peripheral communities the sea plays a significant role in their community.
 - k. Use of the marine environment will recognise, and integrate with, defence priorities, including the strengthening of international peace and stability and the defence of the UK and its interests.
2. Living within environmental limits
 - a. Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.
 - b. Healthy marine and coastal habitats occur across their natural range and are able to support strong, biodiverse biological communities and the functioning of healthy, resilient and adaptable marine ecosystems.
 - c. Our oceans support viable populations of representative, rare, vulnerable, and valued species.
3. Promoting good governance
 - a. All those who have a stake in the marine environment have an input into associated decision-making.
 - b. Marine, land and water management mechanisms are responsive and work effectively together, for example through integrated coastal zone management and river basin management plans.
 - c. Marine management in the UK takes account of different management systems that are in place because of administrative, political or international boundaries. Marine businesses are subject to clear, timely, proportionate and, where appropriate, planned regulation.

- d. The use of the marine environment is spatially planned where appropriate and based on an ecosystems approach which takes account of climate change and recognises the protection and management needs of marine cultural heritage according to its significance.
4. Using sound science responsibly
 - a. Our understanding of the marine environment continues to develop through new scientific and socio-economic research and data collection.
 - b. Sound evidence and monitoring underpins effective marine management and policy development.
 - c. The precautionary principle is applied consistently in accordance with the UK Government and Devolved Administrations' sustainable development policy.

Draft Welsh National Marine Plan

A.3.2.1.5. The draft Welsh National Marine Plan introduces a framework to support sustainable decision-making for the marine environment and includes policies specific to the ports and renewables sectors. Welsh Government are currently reviewing responses to the consultation on the draft Welsh National Marine Plan which ended 29 March 2018. In July 2018 Welsh Government produced a *Consultation - Summary of Response* document (Welsh Government, 2018) which outlines the *Next Steps* that will be taken, namely:

1. The Welsh Government would like to thank all of those who provided feedback and who responded to the consultation for their time and contributions during the consultation period;
2. The Summary of Responses document provides a high-level overview of the responses received and our initial views on the response;
3. Policy officials will consider the responses and discuss options to address any concerns that have been raised. We will also work with the Marine Planning Stakeholder Reference Group to consider how best to develop the final plan;
4. The Cabinet Secretary will publish a statement in the Autumn 2018 detailing how they intend to proceed with the WNMP; and
5. The WNMP will be adopted when Welsh Ministers (with the agreement of the Secretary of State with regard to retained functions) decide to publish the plan.

Well Being and Future Generations Act 2015

A.3.2.1.6. The Well-being and Future Generations (Wales) Act 2015 (WBFGA, 2015) places a duty on public bodies to place the principles of sustainability and sustainable development at the heart of its decision-making processes. The objectives of the WBFGA 2015 are set out as follows:

A Prosperous Wales

A.3.2.1.1 An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.

A Resilient Wales

A.3.2.1.2 A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

A Healthier Wales

A.3.2.1.3 A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.

A More Equal Wales

A.3.2.1.4 A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances).

A Wales of Cohesive Communities

A.3.2.1.5 Attractive, viable, safe and well-connected communities.

A Wales of Vibrant Culture and Thriving Welsh Language

A.3.2.1.6 A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.

A Globally Responsive Wales

A.3.2.1.7 A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

Environment (Wales) Act 2016

A.3.2.1.7. The Environment (Wales) Act puts in place the legislation needed to plan and manage Wales' natural resources in a more proactive, sustainable and joined-up way.

A.3.2.1.8. The key parts of the act are:

- Part 1: Sustainable management of natural resources – enables Wales' resources to be managed in a more proactive, sustainable and joined-up way. It also helps to tackle the challenges faced and is focused on the opportunities the resources provide;
- Part 2: Climate change – provides the Welsh Ministers with powers to put in place statutory emission reduction targets, including at least an 80% reduction in emissions by 2050 and carbon budgeting to support their delivery. This is vital within the context of the existing UK and EU obligations and sets a clear pathway for decarbonisation. It also provides certainty and clarity for business and investment;
- Part 3: Charges for carrier bags – extends the Welsh Ministers' powers so that they may set a charge for other types of carrier bags such as bags for life. It also places a duty on retailers to donate the net proceeds from the sale of carrier bags to good causes;
- Part 4: Collection and disposal of waste – improves waste management processes by helping to achieve higher levels of business waste recycling, better food waste treatment and increased energy recovery. This will help to decrease pressure on natural resources while also contributing towards positive results for both the economy and the environment;
- Parts 5 & 6: Fisheries for shellfish and marine licensing – clarifies the law in relation to shellfisheries management and marine licensing; and
- Part 7: Flood & Coastal Erosion Committee and land drainage – clarifies the law for other environmental regulatory regimes including flood risk management and land drainage.

Natural Resources Policy

A.3.2.1.9. The Natural Resources Policy (NRP) is the second statutory product of the Environment (Wales) Act.

A.3.2.1.10. The focus of the NRP is the sustainable management of Wales' natural resources, to maximise their contribution to achieving goals within the Well-being of Future Generations Act (discussed above). The policy sets out three National Priorities. These are:

- Delivering nature-based solutions;
- Increasing renewable energy and resource efficiency; and
- Taking a place-based approach.

Wales Spatial Plan Update 2008

A.3.2.1.11. The Wales Spatial Plan identifies 'Pembrokeshire - The Haven', comprising the 'Haven Towns' of Haverfordwest (including Merlin's Bridge) Milford Haven, Neyland, Pembroke and Pembroke Dock, as a strategic Hub that perform an important regional role and should be a focus for future investment.

Planning Policy Wales Edition 9 (November 2016)

- A.3.2.1.12. Planning Policy Wales (PPW) Edition 9, Paragraph 7.1.1 defines economic development as development of land and buildings for activities that generate wealth, jobs and incomes. Economic land uses include the traditional employment land uses (offices, research and development, industry and warehousing), as well as uses such as retail, tourism, and public services.
- A.3.2.1.13. Paragraph 7.1.3 states the planning system should support economic and employment growth alongside social and environmental considerations within the context of sustainable development.
- A.3.2.1.14. Paragraph 7.2.2 states local planning authorities (LPAs) are required to ensure that the economic benefits associated with a proposed development are understood and that these are given equal consideration with social and environmental issues in the decision-making process and should recognise that there will be occasions when the economic benefits will outweigh social and environmental considerations.
- A.3.2.1.15. Paragraph 7.6.1 states LPAs should adopt a positive and constructive approach to applications for economic development.

Technical Advice Note 5: Nature Conservation and Planning (2009)

- A.3.2.1.16. Technical Advice Note (TAN) 5 Paragraph 1.4.1 states that nature conservation as referred to in statute² means the conservation of flora, fauna, geological and physiographical (also called geomorphological) features. Nature conservation, as referred to throughout this TAN, includes the conservation of biodiversity and geodiversity including the natural systems and processes that continue to change the land form, rivers and coasts of Wales.
- A.3.2.1.17. Paragraph 1.4.3 states that “Conservation” in the context of this TAN, involves preservation, protection, wise use, sustainable management and restoration of the natural heritage. ‘Conserving biodiversity’ is also defined in statute as including, in relation to a living organism or type of habitat, the restoration or enhancement of a population or habitat.
- A.3.2.1.18. Paragraph 1.4.4 states that Section 40(1)) of Natural Environment and Rural Communities (NERC) Act 2006 places a duty on every public authority, in exercising its functions, to “*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*”. This TAN sets out the manner in which planning authorities should comply with this duty.
- A.3.2.1.19. Paragraph 1.6.1 states that biodiversity conservation and enhancement is an integral part of planning for sustainable development.
- A.3.2.1.20. Paragraph 2.1 states that the town and country planning system in Wales should:

- Integrate nature conservation into all planning decisions looking for development to deliver social, economic and environmental objectives together over time; and
- Ensure that the UK’s international and national obligations for site, species and habitat protection are fully met in all planning decisions.

- A.3.2.1.21. Paragraph 2.3 states that development policies and, where appropriate, supplementary planning guidance, should promote opportunities for the incorporation of wildlife and geological features within the design of development and green infrastructure.

Technical Advice Note 14: Coastal Planning (1998)

- A.3.2.1.22. TAN 14 Paragraph 3 states that generally the coastal zone is an area of land and adjacent sea that are considered to be mutually independent. It is a complex and dynamic zone. The physical processes which together produce the beaches, sand dunes, mudflats, cliffs and rocky shores can be defined as land, intertidal and subtidal, whilst littoral and sublittoral zones are categorisations of biological criteria relating to the influence of maritime conditions. Legal criteria such as land, foreshore and seabed definitions reflect man’s use of the coastal zone.
- A.3.2.1.23. Paragraph 4 states that it is for each LPA to consider and define the most appropriate coastal zone in its area. Because the boundaries of local authorities may not equate with coastal features and processes, this should be done in consultation with neighbouring authorities and in the knowledge that the overall limits of the coastal zone are determined by the geographical extent of coastal physical processes and human activities related to the coast. For land-use planning purposes the seaward limit of the coastal zone is generally mean low water mark, but between high and low water mark the planning system usually needs to operate in tandem with a range of sectoral controls over coastal and marine development.
- A.3.2.1.24. Paragraph 5 states that decision on development proposals below low water mark are generally outside the scope of the planning system and are instead regulated according to the type of activity.
- A.3.2.1.25. Paragraph 8 states that planning consideration will vary depending on the nature of the coastline, but there are a number of specific issues in relation to the coastal zone that the planning system should address. These are, in terms of:
- 1) Proposals for Development:
 - a) The nature of the conditions and physical processes and the potential need for remedial and defence work;
 - b) Likely effects on physical and biological processes along the coast;
 - c) The potential effects on mineral, water and conservation resources; as well as high-quality agricultural; and
 - d) Any potential visual impact from both land and sea.
 - 2) Nature and Landscape Conservation:

² Section 39 Natural Environmental and Rural Communities Act 2006.

- a) The role of physical and biological processes in creating, maintaining and altering features of nature and landscape conservation value;
- b) The effects of statutory and other nature and landscape conservation policies in the coastal zone, which may not always be contiguous with the low water mark; and
- c) The importance of the integrity and special features of Marine Nature Reserves, candidate SACs and coastal SACs, SPAs and Ramsar sites. EC Directives relevant to planning in the coastal zone should always be borne in mind.

Technical Advice Note 18: Renewable Energy (2005)

A.3.2.1.26. TAN 18 Paragraph 1.3 states that energy policy is a reserved function that is not devolved to the Welsh Government. Nevertheless, all decisions relating to renewable energy in Wales must take account of the Welsh Government's policy.

A.3.2.1.27. Paragraph 1.6 states that as well as developing new sources of renewable energy which are essential to meeting the targets set by energy policy, the Welsh Government is fully committed to promoting energy efficiency and energy conservation. The land use planning system is one of a number of mechanisms which can help deliver improved energy efficiency and LPAs are expected to consider matters of energy efficiency when considering planning policy and applications.

A.3.2.1.28. Paragraph 3.2 states that other onshore technologies provide energy in the form of electricity and heat. Some of the 2010 renewable electricity target will be met from these technologies, but the likelihood is that it will only be a small proportion. This is, however, neither to underestimate their value nor a sign of any lack of the Welsh Government's commitment to their implementation.

Technical Advice Note 23: Economic Development (October 2014)

A.3.2.1.29. TAN 23 Paragraph 1.1.1 states economic development can include any form of development that generates wealth, jobs and income. It is important that the planning system recognises the economic aspects of all development and that planning decisions are made in a sustainable way which balance social, environmental and economic considerations.

A.3.2.1.30. Paragraph 1.1.5 states economic land uses also include construction.

A.3.2.1.31. Paragraph 1.2.1 states the economic benefits associated with development may be geographically spread out far beyond the area where the development is located. Consequently, it is essential that the planning system recognises, and gives due weight to, the economic benefits associated with new development.

A.3.2.1.32. Paragraph 1.2.2 advises that planning for economic land uses should aim to provide the land that the market requires, unless there are good reasons to the contrary. Where markets work well, this will help maximise economic efficiency and growth.

A.3.2.1.33. Paragraph 1.2.5 states LPAs should recognise market signals and have regard to the need to guide economic development to the most appropriate locations, rather than prevent or discourage such development.

A.3.2.1.34. Paragraph 2.1.2 states economic development would cause environmental or social harm which cannot be fully mitigated, careful consideration of the economic benefits will be necessary.

A.3.2.1.35. Paragraph 2.1.5 states that where an LPA is considering a planning application that could cause harm to the environment or social cohesion the following three questions should be asked to help clarity and balance the economic, social and environmental issues:

- Alternatives: if the land is not made available (the site is not allocated, or the application is refused), is it likely that the demand could be met on a site where development would cause less harm, and if so where?
- Jobs accommodated: how many direct jobs will be based at the site?
- Special merit: would the development make any special contribution to policy objectives?

A.3.2.1.36. Paragraph 2.1.13 advises that the planning system should support, in particular, the low-carbon economy, innovative business or technology clusters and social enterprises which are defined as businesses that are particularly important in providing opportunities for social groups disadvantaged in the labour market. Developments that will provide space for these categories of businesses count as making special policy contributions.

Pembrokeshire Local Development Plan (February 2013)

A.3.2.1.37. The Pembrokeshire Local Development Plan (LDP), adopted February 2013, Proposals Map identifies the Warrior Way site as within the settlement boundary of Pembroke Dock (Policy SP 13) and within a Conservation Area (Policy GN 38). The Milford Haven is designated as a SAC (Policy GN 37).

A.3.2.1.38. The LDP states that strategic priorities included in the Rural Development Plan include energy (including renewables) and that the energy sector (renewable energy technology in particular) is important as a potential growth sector in the Waterway area. Policies under the LDP, relevant to this project include:

A.3.2.1.39. Policy SP1 'Sustainable Development' states all development proposals must demonstrate how positive economic, social and environmental impacts will be achieved and adverse impacts minimised.

A.3.2.1.40. Policy SP 2 'Port and Energy Related Development' states development at the Port of Milford Haven, which includes the dock area at Pembroke Dock, will be permitted for port related facilities and infrastructure, including energy related development.

A.3.2.1.41. Policy SP 13 'Settlement Boundaries' states Settlement Boundaries define the areas within which development opportunities may be appropriate.

A.3.2.1.42. Policy GN 1 'General Development Policy' states development will be permitted where the following criteria are met:

- The nature, location, siting and scale of the proposed development is compatible with the capacity and character of the site and the area within which it is located;
- It would not result in a significant detrimental impact on local amenity in terms of visual impact, loss of light or privacy, odours, smoke, fumes, dust, air quality or an increase in noise or vibration levels;
- It would not adversely affect landscape character, quality or diversity, including the special qualities of the Pembrokeshire Coast National Park and neighbouring authorities;
- It respects and protects the natural environment including protected habitats and species;
- It would take place in an accessible location, would incorporate sustainable transport and accessibility principles and would not result in a detrimental impact on highway safety or in traffic exceeding the capacity of the highway network;
- Necessary and appropriate service infrastructure, access and parking can be provided;
- It would not cause or result in unacceptable harm to Health and Safety;
- It would not have a significant adverse impact on water quality; and
- It would neither contribute to the coalescence of distinct settlements nor create or consolidate ribbon development.

A.3.2.1.43. Policy GN.2 'Sustainable Design' states development will be permitted where relevant criteria are met:

- It is of a good design which pays due regard to local distinctiveness and contributes positively to the local context;
- It is appropriate to the local character and landscape/townscape context in terms of layout, scale, form, siting, massing, height, density, mix, detailing, use of materials, landscaping and access arrangements / layout;
- It incorporates a resource efficient and climate responsive design through location, orientation, density, layout, land use, materials, water conservation and the use of sustainable drainage systems and waste management solutions; and
- It achieves a flexible and adaptable design.

A.3.2.1.44. Policy GN 4 'Resource Efficiency and Renewable and Low-carbon Energy Proposals' states that development proposals should seek to minimise resource demand, improve resource efficiency and seek power generated from renewable resources, where appropriate. They will be expected to be well designed in terms of energy use. Developments which enable the supply of renewable energy through environmentally acceptable solutions will be supported.

A.3.2.1.45. Policy GN 35 'Protection of Open Spaces with Amenity Value' states development that would adversely affect the appearance, character or local amenity value of areas of public and private open space will not normally be permitted. In exceptional circumstances, where the proposal will bring clear social and/or economic benefits to the local community and make a positive contribution to the built environment, development may be permitted where it can be demonstrated that no suitable alternative site is available.

A.3.2.1.46. Policy GN 37 'Protection and Enhancement of Biodiversity' states all development should demonstrate a positive approach to maintaining and, wherever possible, enhancing biodiversity. Development that would disturb or otherwise harm protected species or their habitats, or the integrity of other habitats, sites or features of importance to wildlife and individual species, will only be permitted in exceptional circumstances where the effects are minimised or mitigated through careful design, work scheduling or other appropriate measures.

Registered Historic Landscapes

A.3.2.1.47. The META Project includes two sites - Dale Roads and Warrior Way - that lie wholly within the non-statutory 'Milford Haven Waterway Landscape of Outstanding Historic Interest in Wales' area. The East Pickard Bay site overlap along its eastern edge with the non-statutory 'Milford Haven Waterway Landscape of Outstanding Historic Interest in Wales' (

A.3.2.1.48.).

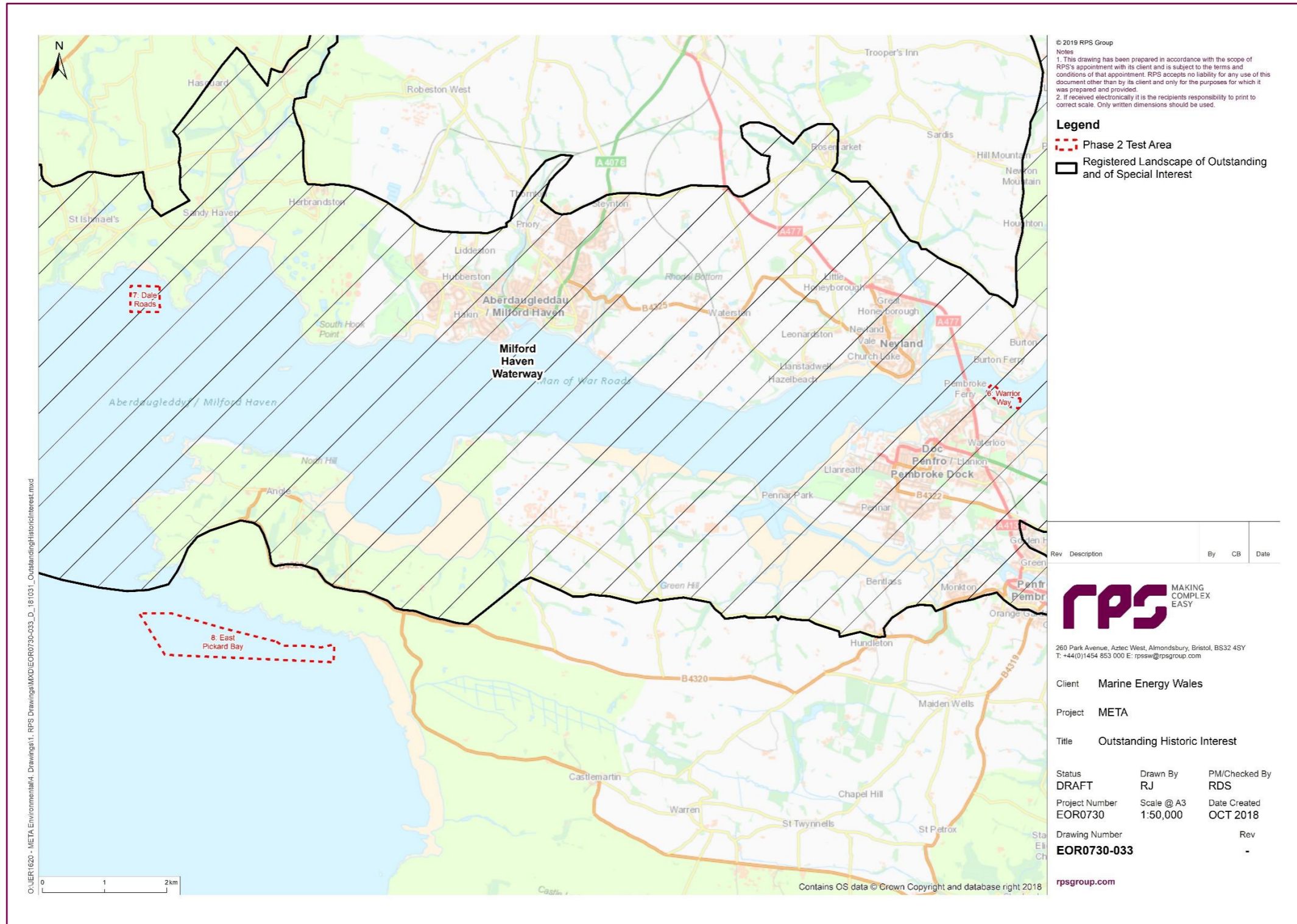


Figure A1: Milford Haven Waterway Landscape of Outstanding Historic Interest in Wales