

Draft of

Regulations

entitled

**EUROPEAN UNION (FRAMEWORK FOR MARITIME SPATIAL PLANNING)
REGULATIONS 2016**

To be made by the Minister for the Environment,
Community and Local Government

**EUROPEAN UNION (FRAMEWORK FOR MARITIME SPATIAL PLANNING)
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I, _____, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive No. 2014/89/EU of the European Parliament and of the Council of 23 July 2014¹ establishing a framework for maritime spatial planning, hereby make the following regulations:

Citation and commencement

1. These Regulations may be cited as the European Union (Framework for Maritime Spatial Planning) Regulations 2016.

Interpretation

2. (1) In these Regulations—

“baseline” has the meaning it has in section 85 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006);

“coastal waters”, in relation to the State, means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial seas is measured, extending where appropriate up to the outer limit of transitional waters;

“competent authority” shall be read in accordance with Regulation 4;

“foreshore” has the meaning it has in the Foreshore Act 1933 (No. 12 of 1933);

¹ OJ No. L 257, 28.8.2014, p.135

“Framework Directive for Maritime Spatial Planning” means Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning²;

“Marine Strategy Framework Directive” means Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy³;

“maritime area” means, subject to Regulation 3(2), the area of sea comprising—

- (a) the foreshore,
- (b) the exclusive economic zone of the State, and
- (c) any area for the time being standing designated by order under section 2 of the Continental Shelf Act 1968 (No. 14 of 1968);

“maritime spatial planning” means the process by which the competent authorities within the State duly analyse and organise human activities in marine areas to achieve ecological, economic and social objectives;

“maritime spatial plan” means a plan or plans prepared and published as a result of a maritime spatial planning process or processes;

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

“North-East Atlantic marine region” means the marine region to which the Convention for the Protection of the Marine Environment of the North-East Atlantic, done at Paris on 22 September 1992, relates;

² OJ No. L 257 of 28 August 2014, p. 135

³ OJ No. L 164 of 17 June 2008, p. 19

“public body” means—

- (a) except in paragraph (2) of Regulation 10, a Minister of the Government other than the Minister and, in that paragraph, a Minister of the Government,
- (b) a local authority, within the meaning of the Local Government Act 2001 (No. 37 of 2001), as amended by the Local Government Reform Act 2014 (No. 1 of 2014),
- (c) a body established by any enactment other than—
 - (i) under the Companies Act 2014 (No. 38 of 2014),
 - (ii) an existing company (within the meaning given by section 2(1) of that Act), or
 - (iii) under the Joint Stock Companies Acts (within the meaning so given),

or

- (d) a body established under any provision of an Act to which paragraph (c) relates in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

but does not apply to a public body to the extent of any matter that paragraph (2) or (3) of Regulation 3 relates;

“territorial seas” has the meaning it has in section 82 of the Sea-Fisheries and Maritime Jurisdiction Act 2006;

“transitional waters” means those bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

- (2) For the purposes of these Regulations, and having regard to the definition of “marine waters” in Article 3(4) of the Framework Directive for Maritime Spatial Planning, the marine waters to which these Regulations apply are—
 - (a) the waters referred to in subparagraph (a) of the definition of “marine waters” in Article 3(1) of the Marine Strategy Framework Directive in respect of which the State has jurisdiction, and
 - (b) the coastal waters of the State.
- (3) A word or expression that is used in these Regulations and is also used in the Framework Directive for Maritime Spatial Planning has, unless the contrary intention appears, the same meaning in these Regulations as it has in that Directive.

Extent of maritime spatial planning

3. (1) Subject to paragraphs (2) and (3), maritime spatial planning and maritime spatial plans apply to the maritime area.
- (2) Nothing in these Regulations applies to or affects so much of the coastal waters that are subject to and within the scope of the planning provisions of Part II of the Planning and Development Act 2000 (No. 30 of 2000).
- (3) These Regulations do not apply to activities, the sole purpose of which is defence or national security.

Designation of competent authority

4. (1) The Minister is the competent authority for the purposes of the Framework Directive for Maritime Spatial Planning.
- (2) Without prejudice to paragraph (1) but subject to paragraphs (4) to (6), the Minister may designate one or more than one public body to be a competent authority for the purposes of the Framework Directive for Maritime Spatial Planning and any such designation may be in respect of one or more of the following:
- (a) all or specified activities of a competent authority for the purposes of that Directive;
 - (b) acting as a coordinating body for some or all of the competent authorities or for some of their activities;
 - (c) one or more designated geographical areas.
- (3) A public body designated as a competent authority shall be deemed to have all the functions necessary to perform functions for the purposes of the designation concerned.
- (4) Where the Minister proposes to designate a public body as a competent authority and the body is—
- (a) a Minister of the Government, or
 - (b) any other public body that, in the opinion of the Minister, is a body directly or indirectly responsible to a Minister of the Government,
- then the Minister shall not so designate the public body without the consent of the Minister of the Government concerned.

- (5) Where the Minister proposes to designate a public body as a competent authority then, without prejudice to paragraph (4) where applicable, the Minister shall consult with that body before so designating it.
- (6) The Minister may—
 - (a) amend the terms of a designation made under this Regulation or revoke a designation so made, and
 - (b) provide for any matters consequential to such amendment or revocation.
- (7) Where a designation under this Regulation has been made in respect of a public body by the Minister, or such a designation is amended or revoked, the Minister shall cause to be published in *Iris Oifigúil* a notice to that effect and the notice shall include information as to the public body concerned and the activities under paragraph (2) to which the notice relates.

Competent authorities, government policy and directions

5. (1) A competent authority shall have regard to Government policy to the extent that it may affect or relate to the exercise by the competent authority of its functions to which these Regulations relate.
- (2) The Minister may from time to time issue in writing policy directions to one or more than one competent authority that is a body to which paragraph (b) or (c) of the definition of public body in Regulation 2 relates and a competent authority shall comply with any such policy direction so issued to it.

Preparation of maritime spatial plan

6. (1) A maritime spatial plan shall be duly prepared either as a single maritime spatial plan for the maritime area or as separate maritime spatial plans in respect of different constituent parts of the maritime area.

- (2) Maritime spatial plans shall identify the spatial and temporal distribution of relevant existing and future activities and uses in the part of the maritime area to which they refer.
- (3) Every maritime spatial plan shall be reviewed by the competent authorities concerned at least once in every period of every 10 years after the plan has been established.

Objectives of maritime spatial planning and procedures

7. (1) When establishing and implementing maritime spatial planning, the competent authority concerned shall—
 - (a) for the purposes set out in paragraph (2) and having determined how different objectives of the State are to be reflected and weighted in each maritime spatial plan, have regard to the following objectives:
 - (i) the economic, social and environmental aspects to support sustainable development and growth in the maritime sector;
 - (ii) applying an ecosystem based approach;
 - (iii) promoting the coexistence of relevant activities and uses,and
 - (b) in order to contribute to the objectives set out in paragraph (a), establish and implement maritime spatial plans that identify the spatial and temporal distribution of relevant existing and future activities concerned.
- (2) The purposes referred to in paragraph (1) are, through the maritime spatial plan concerned —
 - (a) contributing to the sustainable development of—

- (i) energy sectors at sea,
 - (ii) maritime transport, and
 - (iii) the fisheries and aquaculture sectors,
 - and
 - (b) preserving, protecting and improving the environment, including resilience to climate change impacts.
- (3) For the purpose of contributing to the objectives set out in paragraph (1), a competent authority shall have due regard to relevant existing and future activities and uses and their impacts on the environment, as well as to natural resources, and shall also take into account the following:
- (a) the particularities of the North-East Atlantic marine region;
 - (b) any relevant interactions between existing and future activities and to which this paragraph relates;
 - (c) relevant land-sea interactions;
 - (d) environmental, economic and social aspects, as well as safety aspects;
 - (e) promoting coherence between—
 - (i) maritime spatial planning,
 - (ii) resulting maritime spatial plan or plans, and
 - (iii) Government policy referred to in Regulation 5 and policy directions issued for the purposes of that Regulation;

- (f) relevant observations duly made pursuant to Regulation 8;
- (g) organising the use of the best available data in accordance with Regulation 9(1);
- (h) in such manner as the Minister may direct under Regulation 5, facilitating for the purposes set out in Regulation 11 —
 - (i) trans-boundary cooperation between Member States in accordance with Article 11 of the Framework Directive for Maritime Spatial Planning, and
 - (ii) the cooperation by the State with states that are not Member States in accordance with Article 12 of that Directive.

Public participation

- 8.** (1) For the purposes of the Framework Directive for Maritime Spatial Planning, the Minister shall, in accordance with Article 9 of that Directive —
- (a) establish or cause to be established means of public participation for the purposes of—
 - (i) informing all interested parties, and
 - (ii) making provision for consultation with the relevant stakeholders and authorities, and the public concerned,at an early stage in the development of maritime spatial plans, and shall do so in accordance with relevant provisions established in European Union legislation,
 - (b) cause such procedures to be made publically available, and

- (c) ensure that the relevant stakeholders and authorities, and the public concerned, have access to the maritime spatial plans as and when each such plan is finalised.
- (2) Without prejudice to any other means of making publically available the procedures referred to in subparagraph (b) of paragraph (1) and the maritime spatial plans referred to in subparagraph (c) of that paragraph, the requirement to make those procedures and plans publically available are complied with if they are published and maintained on either—
- (a) the website of the Department for the Environment, Community and local Government, or
 - (b) in so far as relates to functions under these Regulations of a competent authority other than the Minister, on the website of the competent authority.

Data use and sharing

9. (1) Each competent authority shall take all reasonable steps to ensure that the best available data necessary for maritime spatial plans are used and, where necessary for the maritime spatial plans, organise (subject to paragraph (2)) the sharing of such data.
- (2) The Minister may decide how to organise the sharing of information necessary for maritime spatial plans and, where appropriate, issue directions under Regulation 5 to other competent authorities to so organise its information or to share it in a manner as so directed.
- (3) For the purposes of paragraphs (1) and (2), regard shall be had to the matters referred to in paragraphs (2) and (3) of Article 10 of the Framework Directive for Maritime Spatial Planning.

Compliance, etc., by public bodies

10. (1) For the purposes of these Regulations, the Minister may issue directions in writing to a public body, or generally to all public bodies or a class or classes of public bodies, to take specified measures in relation to—

- (a) implementing maritime spatial planning,
- (b) complying with a maritime spatial plan, or
- (c) the State's obligation to give effect to the Framework Directive for Maritime Spatial Planning,

and, except to the extent that paragraph (3) may apply, each public body concerned shall comply with such a direction.

(2) Where in the performance of functions, a public body does or proposes to do anything that relates to any development or activity or proposed development or activity in the maritime area including, but not limited to, any of the following:

- (a) the making of a policy, programme or plan;
- (b) the granting or issuing of a licence, certificate or other document under any enactment;
- (c) the giving of a consent or approval, by whatever name called;
- (d) the regulation otherwise of such development or activity;

then, in performing those functions the public body shall comply with any relevant maritime spatial plan.

- (3) Nothing in this Regulation shall be read as relating to the exercise by a public body of functions exercisable by it as a constituent part of an institution of the European Union or for or on behalf of such an institution.

International cooperation

- 11.** (1) The Minister shall cooperate with those Member States whose waters border Irish marine waters with the aim of ensuring that maritime spatial plans are coherent and coordinated across the North-East Atlantic marine region, taking into account, in particular, issues of a transnational nature.
- (2) For the purpose of achieving the cooperation referred to at paragraph (1), the Minister shall, where he or she considers it is practical and appropriate, use any one or more of the following—
- (a) the existing regional institutional cooperation structures that apply to the North-East Atlantic marine region;
 - (b) any networks or structures of Member States' competent authorities;
 - (c) any other method that meets that purpose.
- (3) The Minister shall endeavour, where possible—
- (a) to cooperate with states that are not Member States in respect of their actions with regard to maritime spatial planning in the North-East Atlantic marine region, and
 - (b) to so cooperate in accordance with international law and conventions, including, where appropriate, by using existing international fora or regional institutional cooperation structures.

GIVEN under my Official Seal

— _____ 2016.

Minister for the Environment,
Community and Local
Government.