

Offshore Renewable Energy

Annex 1

Guidance for the Technical Capability Assessment of Maritime Area Consent Applications (Applying to Relevant Projects)

March 2022



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1 Introduction

1.1 Purpose

The purpose of this Guidance is to outline the technical capability requirements that will apply to applicants for, and holders of, Maritime Area Consents (MAC) in respect of Offshore Renewable Energy (ORE) projects under the *Maritime Area Planning [Act] 2021* (the Act).

This document relates to the allocation of MACs to Relevant Projects only.

1.2 Interpretation

Unless specified otherwise, the capitalised terms in this Guidance have the same meanings as given to them in the Act. In the event of any inconsistency or ambiguity, the Act takes precedence over this Guidance.

Refer to section 6 for a glossary of terms used in this Guidance.

This Guidance only applies to MACs related to ORE Projects. The Guidance does not apply to licences or non-ORE maritime area uses.

The Relevant Authority may elect to depart from, or amend, the methodology in this Guidance, which is for guidance purposes only.

1.3 Statutory basis

Context

The Act is the primary legislation governing the management of development and activities in the marine space. The Act replaces existing State and development permission regimes with one State consent (MAC) to enable occupation of the maritime area and one development permission (planning permission), with a single environmental assessment to be undertaken as part of the development permission process under Part 8 of the Act.

The Act incorporates a forward planning model, with decisions to be taken in a manner that secures the objectives of the National Marine Planning Framework which provides the spatial and policy context for decisions about the maritime area.

Roles and responsibilities

Subject to S90 and in accordance with Schedule 2(2)(g) of the Act, the Relevant Authority will assess the technical capability of the MAC Applicant in connection with a MAC for an ORE project.

- Consistent with Schedule 2(1) of the Act, a MAC Applicant may be an applicant for a MAC (the Applicant) or the holder of a MAC (the Holder).
- Following its establishment, the Maritime Area Regulatory Authority (MARA)
 will be the Relevant Authority. Prior to then, and for the purposes of the
 Relevant Projects only, the Department of the Environment, Climate and
 Communications (DECC) will perform this role.

Fit and proper person test

In determining whether the MAC Applicant is a fit and proper person to be granted a MAC or to retain a MAC, Schedule 2(2)(g) of the Act specifies that the Relevant Authority shall have regard to:

whether the MAC Applicant, or a person acting for or on behalf of the MAC Applicant in the MAC Applicant's capacity as such, has (or has access to), or continues to have (or have access to), as the case may be, the requisite technical knowledge or qualifications, or both, to undertake the proposed maritime usage, or continue to undertake the maritime usage, as the case may be;

This Guidance provides further detail regarding the process that the Relevant Authority will apply to determine whether an Applicant or Holder is technically capable of delivering on its commitments or obligations with respect to a MAC.

Assessment stages

A technical capability assessment is required in respect of:

- Initial MAC applications Under Schedule 5(5) of the Act, the Relevant
 Authority will assess whether an Applicant is a fit and proper person both at the
 time the application is made and the time of the MAC application
 determination.
- Changes to a MAC The Relevant Authority will assess the Holder of a MAC against the fit and proper person test at the time of any proposed:
 - Assignment of a MAC Under s 85 of the Act, where the Holder wishes to assign the MAC to an assignee, the Holder and the Assignee must make a joint application in the specified form for the Relevant Authority's consent. In assessing the application, the Relevant Authority shall determine if it is satisfied that the proposed assignee meets all the requirements that the proposed assignor had to meet before the proposed assignor was granted the MAC (i.e. consistent with Schedule 5(5) above).
 - Material amendment to a MAC Under s 86(1), where the Holder wishes to amend the MAC in any material way, the other provisions applicable to a MAC application shall apply (i.e. including the fit and proper person test).
- Ongoing MAC conditions Schedule 6 of the Act specifies that the Relevant Authority may attach conditions to a MAC, including that the Holder must:
 - adhere to a work programme (including a schedule for completion)

- give notice of any change in circumstances
- continue to be a fit and proper person

1.4 Scope

This Guidance aims to ensure that the technical capability assessment is:

- effective to qualify only those MAC Applicants with the technical capability to deliver ORE Projects and, in so doing, to support Ireland's decarbonisation policy objectives
- **efficient** to ensure that the information requirements and process timeframes for the technical capability assessment are reasonable and rigorous
- transparent to ensure that the assessment process is fair and clearly understood by Applicants from the outset and by Holders in terms of their ongoing obligations.

It is important to note that this Guidance:

- is for guidance purposes only and the Relevant Authority may, at its absolute discretion, elect to depart from the methodology set out in this Guidance
- is supplementary to the Act, which takes precedence over this Guidance
- is not a substitute for any regulation or law and does not have binding legal effect
- is not a substitute for any other technical assessments that may be carried out by another regulator
- is made specifically and exclusively for the purposes set out within
- will be kept under review by the Relevant Authority and may be amended as deemed appropriate by the Relevant Authority
- applies to MAC Applicants and Holders and does not apply to maritime usages that do not require a MAC (such as preliminary ORE site investigation activities)

2 Assessment methodology

2.1 Assessment outcome

The technical capability of each MAC Applicant will be assessed on a case-by-case basis using the technical criteria set out within this Guidance.

A MAC Applicant that meets all the technical criteria set out in this Guidance will be deemed technically capable.

Where the Relevant Authority determines that information provided by a MAC Applicant does not demonstrate that the MAC Applicant meets all the technical criteria the Relevant Authority will have the right to request further information and undertake a more detailed review of the MAC Applicant's technical capability.

The outcome of this technical capability assessment will be considered together with other factors taken into consideration by the Relevant Authority in respect of an application for a MAC and/or conditions that may be attached to a MAC under the Act. Irrespective of the outcome of the technical capability assessment, it remains at the sole and absolute discretion of the Relevant Authority to determine whether an Applicant or Holder has the technical capability required and meets the fit and proper person test.

2.2 When this Guidance should be applied

In accordance with the requirements of the Act (as summarised at section 1.3 of this Guidance), a technical capability assessment under this Guidance is required when:

- an initial MAC application is required under the Act
- material amendment to a MAC is proposed by the Holder, including where the amendment has a significant impact on the associated technical requirements and/or risk profile of the ORE Project
- assignments or transfer of interests is proposed in respect of a MAC
- significant changes to the shareholding or control of the MAC Holder are proposed
- any other provision under the Act which would require consent of the Relevant Authority in respect of a MAC.

The circumstances highlighted above are not exhaustive and this Guidance may be applied in other cases where the technical capability of the MAC Applicant is considered relevant to the ability of a MAC Applicant to meet its commitments in respect of a MAC.

2.3 Legal entity

The Act sets out the types of corporate or other entities that may be a MAC Applicant.

Where an application is submitted on behalf of another entity, the party committed to delivering the ORE Project is deemed the MAC Applicant for the purposes of the technical capability assessment.

2.4 Self-assessment

To ensure transparency and timely processing of applications, the Relevant Authority requires all MAC Applicants to perform the technical capability tests based on a self-assessment before submitting their applications to the Relevant Authority.

Included in the Appendices of this Guidance are pro-forma templates that the MAC Applicant is required to complete and submit to the Relevant Authority. These templates include a self-assessment against the technical criteria requirements of this Guidance. This approach allows each MAC Applicant to identify where further explanation or information will be required to demonstrate its technical capability.

2.5 Assignment or Change of Control

Where a MAC Holder retains a share in an existing MAC post an assignment of interest or change of control, a technical capability assessment will be performed on all parties which retain an interest in the MAC which may include the existing MAC Holder.

2.6 Reliance on another entity

The MAC Applicant may, to prove its technical capability, rely on the resources of entities or undertakings with which it is directly or indirectly linked (the Supporting Entity). In such a scenario the Supporting Entity and not the MAC Applicant will be subject to the technical capability assessment.

Section 3.3 sets out additional requirements in relation to a Supporting Entity.

This support does not negate the need for all MAC Applicants to provide the necessary documentation upfront as part of its original application.

2.7 Consortia

Where a MAC involves a consortium, each party whose resources are being relied on will be deemed a MAC Applicant. As a result, each consortium member whose resources are being relied on will be required to provide the information outlined in Section 3 of this Guidance.

Each consortium member will be assessed based on its technical capability in relation to its role in delivering the ORE Project(s).

Where one member of the consortium may be challenged to evidence its technical capability, the Relevant Authority may request that each MAC Applicant, as part of the consortium, agrees to be joint and severally liable to deliver the ORE project(s) under the relevant MAC(s) and demonstrate how the consortium will contract joint and several liability.

2.8 Multiple MACs

Where a MAC Applicant has applied for and/or been awarded more than one MAC, the technical capability assessment will be based on the MAC Applicants ability to meet commitments individually for the maritime usage applied for under each MAC.

3 Information requirements

3.1 Source documentation

Each MAC Applicant (including each consortium member) is required to provide the information set out within this Guidance. In cases where information is missing, the Relevant Authority reserves the right not to accept the application.

Each MAC Applicant must submit a comprehensive description of its experience with regards to each of the elements required under 4.1 in the format and including the information requested in Appendix TecE. A single project may be relied upon as evidence where the MAC Applicant's role in relation to that single project satisfies all of the required criteria for the minimum required time periods described in 4.1 (a), 4.1 (b) and 4.1 (c) and where each time period includes the specific events described in Section 4.1 (a) and 4.1 (b). Where a single project is relied upon the information provided should clearly demonstrate the role of the MAC Applicant in relation to the delivery of each stage of the ORE project as described in 4.1 (a), 4.1 (b) and 4.1 (c).

Each MAC Applicant must submit the documentation requested in 4.2 with regards to Project Delivery Team members limited to the page count specified in 4.2 for each Project Delivery Team member, paying particular attention to the minimum experience of the roles specified. The documentation should clearly demonstrate how the experience for the specified Project Delivery Team members meets the minimum required experience in offshore wind delivery. Project Delivery Team members are not expected to meet all three criteria however all three criteria must be satisfied in cumulative by the Project Delivery Team.

The MAC Applicant must submit a Development Programme that satisfies the requirements of 4.3. Where the ORE Project is proposed to be delivered by a Consortium, only one Development Programme submitted jointly by all Consortium members is required.

3.2 Self-Assessment and other requirements

MAC Applicants must provide the following information:

- Evidence of experience in relation to offshore wind development, A
 description of how the MAC Applicant satisfies the required experience (refer
 section 4.1) and the project information as required in Appendix TecA.
 Evidence may include copies of press releases, newspaper articles, copies of
 grant of planning permission, copies of commercial/JV/partnership
 agreements, generation/commissioning certificate, operational agreement.
- Evidence of commitment of MAC Applicant to project through demonstrating experience of project delivery team A description of how the

project delivery team satisfies the required experience (refer section 4.2) and the information required in Appendix TecB. Evidence will include CVs (2 pages max) for each named person and contact details for companies/projects being proposed so that the periods supplied as evidence may be verified.

- Project Timelines A description of the project timelines including expected dates for the achievement of key milestones (e.g. FID, First Generation) (refer section 4.3) should be provided, refer Appendix TecC. Dates will be indicative only.
- Documentation list All MAC Applicants will be required to list the
 documentation being relied upon to demonstrate that the MAC Applicant meets
 the technical capability requirements. This documentation forms the basis for
 the technical capability assessment. Refer to Appendix TecD.
- **Self-Assessment** The provision of a self-assessment technical capability template in Appendix TecE.
- Supporting Entity Guarantees Where a MAC Applicant is relying on a Supporting Entity, the Supporting Entity must provide a statement of support, refer Appendix TecF.

3.3 Information required when relying on a Supporting Entity

A MAC Applicant may, to prove its technical capability, rely on the resources of entities or undertakings with which it is directly or indirectly linked to (the Supporting Entity). In such a scenario the Supporting Entity and not the MAC Applicant will be subject to the technical capability assessment.

MAC Applicants that are relying on a Supporting Entity are still required to provide the source documentation specified at section 3.1.

In addition to providing the information required in Appendix TecB, where a MAC Applicant is relying on a Supporting Entity, the Supporting Entity must provide a statement demonstrating how it aims to ensure that the MAC Applicant can discharge its commitments under a MAC. The statement should be no longer than 3 A4 pages. Third party consultants may not be used to satisfy the organisational or Project Delivery Team Experience.

4 Technical capability assessment criteria

The Relevant Authority will assess the MAC Applicant's technical capability to comply with the Terms and Conditions of a MAC based on set criteria considered appropriate to the delivery of an offshore wind farm. The relevant criteria are outlined below.

4.1 Corporate experience in delivering an offshore wind farm

A MAC Applicant with previous offshore wind experience is more likely to be able to deliver on commitments under a MAC. Delivery of offshore wind is critical to Ireland achieving renewable electricity and decarbonisation targets as set out in the Programme for Government 2020 and the Climate Action Plan 2021.

<u>Expectation</u>: MAC Applicants are expected to be able to demonstrate the following experience in relation to offshore wind development:

- (a) At least twelve months continuous experience at the development stage of an offshore wind farm of greater than or equal to 200MW capacity where the development stage is deemed to end at point of grant of development permission (equivalent to planning permission in an Irish context).
 - a. The experience shall be within the 10 years immediately preceding the date of submission of the application documentation under the Maritime Area Planning Act 2021 Section 75(1) (Maritime Area Consent Application Process)
 - b. The period of experience shall include the date upon which development permission was granted to the offshore wind project
- (b) At least twelve months continuous experience at the construction stage of an offshore wind farm of greater than or equal to 200MW where the construction stage is deemed to end at point of first generation of all or part of the offshore windfarm.
 - a. The experience shall be within the 10 years immediately preceding the date of submission of the application documentation under the Maritime Area Planning Act 2021 Section 75(1) Maritime Area Consent Application Process

The period of experience shall include the date upon which first generation of all of part of the windfarm was attained.

- (c) At least twelve months continuous experience at the operational stage of an offshore wind farm of greater than or equal to 200MW where the operational stage is deemed to begin at point of first generation of all or part of the offshore windfarm and to end at date of commencement of decommissioning of the offshore windfarm.
 - a. The experience shall be within the 10 years immediately preceding the date

of submission of the application documentation under the Maritime Area Planning Act 2021 Section 75(1) Maritime Area Consent Application Process

The period of experience shall include any period within the operational life of a windfarm.

The MAC Applicant should demonstrate this experience by providing a comprehensive description of the offshore wind farm project and the MAC Applicant's role in delivering the offshore wind farm. This should be provided in the template in Appendix TecA. Please see Section 3.2 for examples of how this experience may be demonstrated.

4.2 MAC Applicants Commitment to Project

The commitment of the MAC Applicant to the project shall be confirmed through demonstrating the experience of the Project Delivery Team. The objective of this criteria is to demonstrate that the proposed project team comprises the necessary breadth and depth of resources to ensure the successful delivery of the project. It is expected that the prior corporate experience demonstrated in the previous criteria shall be made available to the Relevant Project team to support the successful delivery of these Phase One Projects, through providing access to dedicated offshore wind personnel. Delivery of offshore wind is critical to Ireland achieving renewable electricity and decarbonisation targets as set out in the Programme for Government 2020 and the Climate Action Plan 2021.

Expectation: The MAC Applicant shall provide a Resource Plan which shall provide a summary of the senior project resourcing and how the senior delivery team can demonstrate the key criteria outlined below:

- A Senior Member of the Team shall be able to demonstrate at least 10 years of
 offshore wind development experience where development experience means
 the development and construction stages of an offshore wind farm up to the
 point at which first generation of all or part of the offshore wind farm is achieved
- A Senior Member of the Team shall be able to demonstrate at least 10 years of renewable energy development experience where development experience means the development and construction stages of a renewable energy development up to the point at which first generation of all or part of the renewable energy project is achieved
- 3. A Senior Member of the Team shall be able to demonstrate at least 10 years of experience of the Irish Planning system

It is not expected that all members of the team will meet all of the required criteria and therefore what shall be considered is that the team meet the criteria in aggregate.

Projects and Team Members may satisfy more than one requirement, for example an onshore wind project may also demonstrate experience with the Irish planning system.

Contact details for projects used to demonstrate this experience must be provided for each company and/or project for which the mac applicant is relying upon to demonstrate the required experience. Please use the template supplied in Appendix TecB.

4.3 Delivery Timelines

The MAC Applicant must provide an outline of delivery timelines that demonstrates how the offshore wind project will achieve first generation in advance of the 2030 target. Key delivery timelines will be expected including:

- Submission of Planning Application
- Receipt of Development Permission
- Final Investment Decision
- Main Contractor Agreements
- First Generation

The timeline is expected to be realistic, acknowledging areas of uncertainty, and demonstrate the understanding of the MAC Applicant with respect to both development of an offshore wind farm and the expected timeframes of the consenting framework in Ireland.

4.4 Innovation

The criteria will not form part of the technical assessment criteria for the relevant projects however given the nascent form of the industry in Ireland and the challenge facing Ireland to deliver on 2030 renewable electricity and decarbonisation targets novel and innovative approaches may inform development of the industry and/or future Government Policy.

Expectation: Each MAC Applicant will provide a description of any novel and innovative measures they have undertaken which they consider has led to a reduced risk, reduction in programme delivery timeline or addresses specific challenges of delivering ORE projects in Ireland.

This may include novel ideas or approaches to delivery in areas such as procurement, surveying, design, resourcing or energy offtake. This list is meant to provide suggestions and is non-exhaustive.

5 Queries and feedback

5.1 Feedback

The Relevant Authority will inform MAC Applicants in writing of the outcome of the assessment. In the case of an unsuccessful assessment, the Relevant Authority may provide feedback at its discretion.

6 Glossary

Term	Definition
The Act	The Maritime Area Planning [Act] 2021
Applicant	Entities applying to obtain a MAC under the Act
Commitments	The commitment required to complete the ORE Project.
Consortium	A group of parties submitting a combined application for a MAC or a group of parties that jointly hold a MAC
Construction Stage	Construction Stage includes all construction related activities including any site investigations undertaken as part of a pre-installation completion campaign following the grant of development permission, all installation activities related to the main wind turbine array area, inter array cabling and export cabling and associated offshore infrastructure, all onshore cabling, onshore substations and associated infrastructure. The Construction stage is deemed to finish upon first generation.
DECC	The Department of the Environment, Climate and Communications
Development Stage	Development stage includes all pre-planning activities including site investigation works, studies required for the production of documentation required to apply for a development permission, the production of documentation required to apply for development permission, the planning application process. The Development Stage is deemed to end at point of grant of development permission which is equivalent to planning permission in an Irish context.
First Generation	The date upon which electricity production is commenced on a commercial basis with export to an electricity transmission system or by alternative offtake arrangement
Guidelines	Guidelines for the Technical Capability Assessment of Maritime Area Consent Applications – Offshore Renewable Energy

Term	Definition
Holder	The holder of one or more MAC(s) under the Act
Maritime Area Consent	Maritime Area Consent, as defined under the Maritime Area Planning [Act] 2021
MARA	Maritime Area Regulatory Authority
Minister	Minister for the Environment, Climate and Communications
NMPF	The National Marine Planning Framework
Operational Stage	The operational stage includes the period following first generation up to the commencement of decommissioning or the point at which the ORE Project ceases to produce electricity under a commercial arrangement
ORE	Offshore Renewable Energy, as defined in the Act
ORE Project	The ORE project that the MAC Applicant has applied for a MAC or holds a MAC in the Republic of Ireland.
Relevant Authority	DECC (prior to the establishment of MARA) or MARA (once established).
MAC Applicant	The Applicant for, or Holder of, a MAC – as the case may be.

Appendix TecA: Description of MAC Applicant's Experience in offshore wind delivery

The following table must be used by MAC Applicants to demonstrate each MAC Applicant's experience in offshore wind delivery as required under 4.1. Please use a new table for each MAC Applicant and for each ORE Project Stage where more than one project is being relied upon to demonstrate the required experience.

For reference 4.1(a), 4.1(b) and 4.1(c) are:

- 4.1(a) Development Stage
- 4.1(b) Construction Stage
- 4..1(c) Operational Stage

Supporting documentation should be provided for each stage. A non-exhaustive list of examples of the types of documentation which may be relied upon are:

- · copies of press releases,
- · newspaper articles,
- · copies of grant of planning permission,
- copies of commercial/JV/partnership agreements,
- generation/commissioning certificate, operational agreement.

Question	Response
Which ORE Project Stage	
does experience relate to	
(4.1(a), 4.1 (b) or 4.1 (c) - if more than	
one stage please specify)	
Name of ORE Project	
Location of Project	
Period involved with	
projects (please provide year and dates)	
Overview of role of the MAC	
applicant (not the individual	
team members) in delivering	
project	
Current status of ORE	
Project	
Project Delivery team which c	rovide a detailed description of their role within the learly demonstrates the required experience. ed to 3 pages for each ORE Project Stage for each he cell below)

Appendix TecB: Description of Project Delivery Teams Experience (Senior Members)

The following tables must be used by MAC Applicants to demonstrate the experience of the senior team members (refer 4.2 (1 to 4)). Appendix TecB Table 1 will cover all Senior Team Members. Appendix TecB Table 2 refers to a single team member and must be filled in for each person that is named in Table 1. A CV (max 2 pages) shall be provided for each named team member.

Appendix TecB Table 1

Senior Team Member	Position on Team	Resource Availability for ORE Project	Number Years' Experience in Offshore Wind Development	Number Years' Experience in Renewable Energy Development	Number Years' Experience with Irish Planning System

Alternative

Appendix TecB Table 2

Senior Team Member Name:	Project Name	Contact details for confirmation of information provided	Dates of Persons Involvement in Project	Description of Role on Project

Senior Team Member Name:	Project Name	Contact details for confirmation of information	Dates of Persons Involvement in Project	Description of Role on Project
		provided	. 10,000	
Reference projects –				
Offshore Wind				
Reference projects – Renewable				
Energy Development				
Reference projects –Irish				
Planning System				

Appendix TecC: Delivery Timelines

Please provide expected dates for the ORE Project in response to the Key Milestones outlined in the below table. Dates are expected to be indicative.

Key Milestone	Expected Date
Submission of Planning Application	
Receipt of Development Permission	
FID	
Signing of Main Contractor Agreement	
Attain First Generation	

Appendix TecD: Documentation list

MAC Applicants are required to list details of all documentation in support of the technical capability assessment that they provide to the Relevant Authority. MAC Applicants should include the document title, date and a brief description of the contents or nature of the document. Please See Section 3.2, Appendices TecA, TecB and TecF for further details on document requirements

Document Title	Date	Description of document (no more than 60 words)	No Pages

Appendix TecE: Technical capability self-assessment

Each MAC Applicant is required to complete the following technical capability self-assessment. Please complete each of the three tables. Please see Section 3.2 and Appendices TecA, TecB and TecF for further information on documentation requirements.

Criteria	Period of	Project Name and	Nature of Documentary
	Experience	Location	Evidence Provided
Development			
Experience			
Construction			
Experience			
Operation			
Experience			

Project	Category	Project Team Member	Period of Experience	Project Name	Nature of Documentary Evidence Provided
Delivery Team Experience	Offshore Wind Development Experience Renewable Energy Development Experience				
	Irish Planning System Experience				

Delivery Timelines	
Submission of Planning Application	
Receipt of Development Permission	
FID	
Signing of Main Contractor Agreement	
Attain First Generation	

Appendix TecF: Supporting Entity Guarantees

Supporting documentation may include copies of JV agreements, parent company guarantees, group company guarantees, etc.

Describe the commitment that is in place between the Supporting Entity and the MAC Applicant (no more than 1,000 words).	
Provide a statement demonstrating how this commitment is sufficient to ensure that the MAC Applicant shall discharge its responsibilities under a MAC (no more than 1,000 words).	