

A Sea Change – The Marine Bill White Paper

On 15 March 2007, the Department for Environment, Food and Rural Affairs (DEFRA) published the Marine Bill White Paper, which proposes a framework for the planning, licensing and management of activities in marine areas and marine nature conservation. The deadline for comments is 8 June 2007.

The White Paper contains five key elements:-

- A new system of planning in the marine area to guide decisions on licence applications and other issues
- Licensing of activities in the marine area (including previously unregulated activities)
- Creation of Marine Conservation Zones
- Modernisation of inshore fisheries management (including management of recreational sea-angling through the use of permits, revenue raising provisions and additional fisheries enforcement powers)
- The creation of a new Marine Management Organisation (MMO) to deliver marine policies (including administration of the new licensing regime, provision of expert management of fisheries and marine nature conservation and enforcement of relevant legislation and by-laws)

The White Paper and accompanying Regulatory Impact Assessment can be downloaded from www.defra.gov.uk/corporate/consult/marinebill-whitepaper07.

The Bill, which was a manifesto commitment, is expected to be introduced in 2008. Some Bill provisions will be devolved to the administrations for Scotland, Wales and Northern Ireland. This briefing note addresses the impact of the Bill in England.

Sustainable development

The White Paper states that sustainable development is at the heart of its proposals, the guiding principle of which is "*to enable us to satisfy our basic needs and enjoy a better quality of life without compromising the quality of life for future generations*". Governance arrangements for the new Marine Management Organisation will recognise that it serves this government-wide agenda.

Interested parties

This White Paper will be of particular interest to local authorities which adjoin the sea, harbour and port authorities and developers involved in offshore activities. However, the provisions extend so widely that the Bill is likely to have some impact on anyone taking part in commercial or recreational activities involving UK territorial waters or coastline.

Planning in the Marine Area

The White Paper notes that our coastline is under increasing development pressure resulting from the expansion of industries, such as transportation of goods by sea, and new activities, such as

offshore wind farms. The Government considers that a flexible and robust planning system is required to respond to these pressures and to plan for the future. It proposes a two-stage approach to marine planning which will provide a framework for individual decisions regarding marine developments and other activities:-

1. The creation of a national “Marine Policy Statement” agreed by all Government departments and devolved administrative bodies, and setting out the vision and objectives for the marine environment, including European and International commitments, and
2. Creation of a series of marine plans covering the whole of UK waters from the Mean High Water Springs (MHWS) to the UK continental shelf and fisheries limits.

UK Marine Policy Statement

The policy statement will include short and long-term objectives on a range of issues relating to the marine environment (including energy, protection of biodiversity and heritage, transport, mineral extraction, major infrastructure and defence) and setting out the policies and priorities applicable to each, integrating them so far as practicable to create common objectives and providing guidance to marine regulators and users.

It will also consider terrestrial planning developments and key issues in coastal areas such as ports and economic development so as to establish an integrated approach to management of coastal areas.

All decisions by public bodies that have implications for the marine area will be made in accordance with the UK marine policy statement and any relevant marine plan, unless there are clear and convincing reasons for adopting an alternative course.

Marine Plans

These will be developed by the MMO and are expected to cover 20 to 25 years (with six yearly reviews) implementing the policy statement in specific geographical areas and taking into account the local agenda. Adjacent plans will complement one another to provide consistent guidance to users operating across planning boundaries. It is noted that marine and terrestrial planning regimes will overlap between MHWS and the Mean Low Water Mark. The White Paper states that such overlap is inevitable if marine and land planning are to address the whole of the marine and terrestrial environments effectively without an artificial boundary at the coast and that the geographic overlap will compel different organisations to work together effectively.

The plans will encompass the following:-

- Current situation
- Emerging/future marine uses and technologies
- Changing economic, commercial and social trends
- Impact of climate change
- Natural and cultural resources
- Changing eco-systems, seasonal patterns and migration routes

The White Paper proposes wide public engagement in the planning process. Plans will be subject to strategic environmental assessment and information gathered at this stage will inform future Environmental Impact Assessments for new licence applications. It is important for stakeholders

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such as harbour and port authorities and potential offshore developers to be fully engaged in the consultation process because decisions made as a result of these consultations will have significant impacts on their future schemes.

Licensing of activities in the Marine Area

The Government envisages a licensing framework that makes decisions in harmony with marine plans and will deliver them faster, and at less expense, than before. It will be based, where practicable, on the concept of “one project: one licence”. Given the complexity of existing provisions, this goal will not always be achieved, but the proposed simplifications will be an improvement on the existing system, which has developed over many years for a variety of purposes and can require multiple applications.

The White Paper proposes:-

- The creation of a reformed licensing system based on consolidation of Part 2 of the Food and Environment Protection Act 1985 (FEPA) and Part 2 of the Coast Protection Act 1949 (CPA) so that, in most cases, the MMO need grant only one licence for a project
- Licensing under the new regime of all forms of dredging, including those currently unregulated such as hydrodynamic and plough dredging
- Powers for ministers to introduce rules to regulate carbon capture and storage
- A streamlined approach to offshore renewable energy installations
- Reduction of overlapping legislation applicable to ports and harbours
- Simplification of licensing of some cable-laying operations
- Grant of powers to the MMO to deliver the above, including a wide range of enforcement powers operating in line with the “polluter pays” principle

It is expected that the reformed licensing regime will be implemented within two years of the Bill receiving Royal Assent but that current applications will continue under the current regime.

Detailed procedural rules will be created by secondary legislation, enabling ministers to set timescales for the licensing process and to issue a single licence for extended programmes of linked activities. Licence applications will be made available to the public and licensing authorities will be required to consult bodies, such as port and harbour authorities, with a particular interest in an application.

Activities will be exempt from licensing where they pose no significant risk to the marine environment, heritage or other legitimate users of the seas. This is expected to apply to minor construction projects by individuals or harbour authorities such as repair of private moorings or some harbour facilities.

The requirement to make decisions in the context of marine plans will provide more certainty for commercial organisations and, since unpredictable timescales, delays and multiple license applications have been a headache for developers, the proposed procedural rules will be welcomed, although regulators will be able to intervene during the course of long term permissions if circumstances warrant it.

What, however, the White Paper does not explain is how licensing or an exemption from licensing will address the possible need for statutory authorisation for works which interfere with public rights

of navigation. It is assumed that it would still be necessary to apply for an Order under the Transport and Works Act 1992 or the Harbours Act 1964 for this purpose.

Carbon capture and storage

The White Paper proposes controls for activities whereby carbon dioxide generated by industrial processes on land will be captured, transported and injected into marine geological formations (including saline aquifers and depleted oil and gas fields), typically 1000m below sea bed.

Construction of renewable energy installations in the sea

The Government intends that, by 2020, 20% of UK electricity should be generated by renewable resources. The Marine Bill will simplify the licensing process for offshore renewable energy developments to which section 36 of the Electricity Act 1989 applies and will remove the requirement for a separate CPA consent for laying cables to such installations.

Harbours Legislation

The Bill will not interfere with the exercise of navigational controls by local harbour authorities and will remove the need for a further CPA consent for works licensed by a harbour authority. The reformed licensing system will control the environmental impact of activities.

Whereas currently works authorised by an Order under the Harbours Act 1964 require in addition a license under FEPA, it is proposed that where an order authorises and specifies work in sufficient detail to carry out any environmental assessments required, the work should normally be exempt from the reformed licensing system. Harbour Orders will also extend to operations outside harbour areas where they are all part of the port infrastructure and operations.

The White Paper includes a proposal that the Secretary of State will be able to modernise Local Acts by secondary legislation. No indication is given of what is envisaged.

Transport and Works Act 1992 (TWA)

Orders under the TWA will be able to disapply the licensing regime if an equivalent consideration of environmental and navigational issues is made.

Small scale telecommunications development

CPA consent is normally required before a cable can be laid on or under the sea bed and for its subsequent maintenance or removal if those operations could have navigational impacts. There are exceptions. The Bill will repeal those provisions of the Telecommunications Act that allow for consent under that Act rather than under marine rules.

Marine nature conservation

By 2020, the Government aims to have established a network of marine conservation sites comprising those designated by European law and the new Marine Conservation Zones (MCZs) described in the White Paper.

MCZs will be designated and managed to protect species and habitats of national value. This would be a parallel regime to the existing protection of species and habitats considered of European importance under the Habitats and Birds Directives. There will be public consultation on the creation of such zones and, in considering whether to licence a particular activity, a full assessment on the possible impacts on MCZs will be carried out. Mitigation measures may be required as a condition of a licence. If the impacts of an activity can not be mitigated, it will not be permitted to proceed unless it is in the public interest and there are no suitable alternatives. The

Bill will create criminal offences for destroying or damaging MCZs. Again, it will be important for all stakeholders and developers to become involved in the consultations so as to influence the process that will have significant implications for their marine activities.

Currently unregulated activities considered to have adverse conservation impacts will be controlled by local by-laws implemented by the MMO. Those considered high risk include bait digging/collection, water-based recreation and unlicensed commercial fishing. Medium risk activities include unlicensed dredging, wildlife watching/ecotourism, recreational fishing and land-based recreation activities.

Modernising Marine Fisheries Management

The Bill contains four main proposals in this area:-

- Modernisation of arrangements for Sea Fisheries Committees (SFCs) to manage inshore fisheries
- Improving the operation of Several and Regulating Orders, used to establish and maintain shellfisheries
- Regulation of recreational and unregulated fishing activities, including introduction of a chargeable rod licence and powers to regulate fishing undertaken from the shore
- Enhanced enforcement powers including prosecution of UK nationals conducting illegal fishing activities on non-UK ships outside UK and European waters.

SFCs can already make by-laws applicable throughout their districts for a variety of purposes. These will be updated and strengthened to include:-

- Marking of fishing gear
- Permit schemes, which may be used to control fishing for conservation and enforcement purposes
- Regulation and management of “living aquatic resources” such as digging for bait or collecting sea weed
- Measures to support the European Union Water Framework Directive (which covers estuarine and coastal water out to one nautical mile from the land)

Their inland jurisdiction will extend beyond the high water mark throughout the area of any local council liable to pay, or contribute to, the expenses of the committee.

SFC funding will be strengthened by allowing them to keep a proportion of their income from operating permit schemes and to charge for services undertaken on behalf of other authorities.

Marine Management Organisation

As noted above, many of the Government's proposals will be delivered by the MMO. This will be a new executive non-departmental public body under DEFRA with a staff of 300 to 350. The MMO will take a risk based approach to licensing decisions in accordance with the Marine Policy Statement and any relevant marine plan.

MMO and harbours

The MMO will assume responsibility for administering the regulation of harbour developments that is currently carried out by the Department for Transport. It will administer all harbour revision orders, harbour empowerment orders, local and private harbour Acts and the adjacent territorial sea.

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This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.