



RTPI

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Marine Licensing Team
Department for Environment, Food and Rural Affairs
Area 2C Nobel House
17 Smith Square
London SW1P 3JR

Email response sent to: marinelicensing.consultation@defra.gsi.gov.uk

Dear Sir/Madam,

RESPONSE TO CONSULTATION PAPER: Consultation on secondary legislation for England and Wales under the Marine and Coastal Access Bill: Part 4 Marine Licensing

Thank you for the opportunity to respond to the above. The Royal Town Planning Institute (RTPI) is a membership organisation representing over 23,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public.

This document responds to the Consultation on secondary legislation for England and Wales under the Marine and Coastal Access Bill: Part 4 Marine Licensing.

The response has been formed drawing on the expertise of members including the RTPI Environmental Planning and Protection Network and the RTPI Marine Spatial Planning Task Group.

If you require any further assistance, please contact Nicola Gough, Network Manager on 020 7929 9494 or email network.manager@rtpi.org.uk.

Yours faithfully,

Rynd Smith
Director Policy and Partnerships

Enc.

Q1. Should we transpose the requirements of the Environmental Impact Assessment Directive into the main marine licensing process as proposed?

Yes – transpose into the main licensing process – it is a legal requirement.

Q2. Should we transpose the requirements of the Habitats and Birds Directives into the main marine licensing process or should we amend the existing conservation regulations as they apply to the marine area to cover all activities that will need a marine licence?

Yes – transpose into the main licensing process – it is a legal requirement.

Q3. Drawing on your experience of the current licensing systems, and their respective strengths which elements do you think should be transferred across into the new system? (when answering, please state in what capacity you engage in the process e.g. as an applicant or a consultee)

This answer is provided from the standpoint of a professional body that contains experts and advisors to applicants and consultees in its membership.

Taking an overview, we suggest a presumption in favour of approval, where the decision is made in the context of the marine plan (as found with the terrestrial system). We believe that to work effectively, marine decisions should also be made in the context of the plan with reference to other plans or policies; this will ensure consistency of approach.

We note that at present the legislation does not identify statutory consultees, and question the omission. We envisage that this may cause problems where there are cross-border interests (e.g. England and Wales for Severn Estuary), where applicants may need to apply to several bodies, and will also be impacted by different planning regimes. Boundary problems may also arise with the Dee, Solway Firth, Isle of Man and relationships with the Republic of Ireland.

Care will be needed to ensure that non-statutory consultations and stakeholder engagement processes are rigorous and effective.

Q4. Drawing on your experience of the current licensing systems, where do you think the weaknesses of those systems lie and how could we use secondary legislation to address them? (when answering, please state in what capacity you engage in the process e.g. as an applicant or a consultee)

As outlined above.

Q5. If you are a potential applicant, what type of engagement would you wish to see with a) the licensing authority and b) other interested parties, such as conservation bodies, before you submit your application for a marine licence?

We believe that there should be a duty of the competent authority to provide information, and would expect pre-application consultation and further engagement linked to the plan or process. We suggest that an agreed timetable is preferred by applicants in general, as it engenders clarity. A possible guide to this may be found in the terrestrial process for Planning Performance Agreements¹.

¹ More advice and guidance is available from the HCA hosted ATLAS service (advisory team for large applications): see http://www.atlasplanning.com/page/topic/index.cfm?coArticleTopic_articleId=98&coSiteNavigation_articleId=98

We believe that the consultation and engagement process needs to be better defined, clarifying the information that should be provided.

Q6. If you are a conservation body, what type of engagement would you wish to see with a) the licensing authority and b) the applicant before any application for a marine licence is made?

As outlined above. We believe there needs to be a consistent approach to engagement.

Q7. If you are another interested party, for example a local authority or other regulator, what type of involvement would you wish to have in the pre-application stage with a) the licensing authority and b) the applicant?

As outlined above.

Q8. How could regulators work more effectively together at this stage? For example, would it be beneficial to enter into a Memorandum of Understanding or Service Level Agreement with the marine licensing authority to define those cases where both regulators should undertake joint production of an Appropriate Assessment or Environmental Statement?

Yes. The RTPi believes that it is essential when developing an MMO that the licensing team consults the planning team. We believe that the legislation should have a better synergy with the terrestrial process. A process patterned on the terrestrial process for Planning Performance Agreements could include a mechanism to identify the need for regulator interface and integration.

Again, we believe that the legislation would be improved by identifying statutory consultees.

Q9. Should the licensing authority be able to require potential applicants to conduct consultation activities similar to those in sections 42 to 49 of the Planning Act 2008 prior to submission of an application for a marine licence for certain classes of development?

Yes.

Q10. Should we introduce a requirement that environmental statements must be submitted in a standard format? Should that standard format only apply to the marine elements of the project, thereby allowing land-based impacts to be submitted in a form suitable for consideration under terrestrial or other regimes?

Yes, if this includes screening and scoping, as this would then enable one environmental statement. As above, we support enhanced synergy between marine and terrestrial planning systems and linkages must be explicit.

Q11. Should we maintain this voluntary service for aggregate dredging activities?

Yes.

Q12. Should we extend this voluntary service to other types of licence applications?

Yes.

Q13. As an interested party to a potential application, would you be willing to engage in pre-application

discussions and procedures for marine developments?

Yes. Planning consultants advising parties will typically seek pre-application engagement for all but the most minor and procedural of matters.

Q14. Is the general approach to consultation outlined above for the current licensing regime a good model to adopt for the marine licence? If not, what improvements can be made?

See answers to Q5-7

Q15. Which of the following, if any, do you consider appropriate for the marine licensing system

(a) A 28 day minimum period for consultation like the Planning Act 2008; or

(b) A set period of 42, or other number of, days?

We believe that a 42 day would be more appropriate in a licensing context.

Q16. What should happen to the licence application when a key consultee does not reply within the deadline?[can we say this or do we have to wait?] Should we place a status report on the website that highlights what is outstanding and from whom?

We believe that the application should proceed towards determination on the basis that the consultee has no adverse views, unless there is a valid holding response.

Again, we query the use of 'key consultee' – clarification on who this refers to would be beneficial.

Q17. Do you agree we should leave the bodies to be consulted on any application to guidance rather than in the secondary legislation?

As above, we believe that the legislation would be improved by identifying statutory consultees.

Q18. Are there any other cases where it may be appropriate to hold an inquiry?

We suggest that it may be appropriate to hold an inquiry if The Planning Inspectorate (PINS) or other appointed body determines it to be contrary to the plan, contrary to public interest or controversial.

In addition, we query whether this is an extension of role for PINS or the Secretary of State? Further information would be useful.

Q19. Do you think the power to hold hearings be beneficial, and if so in which circumstances?

Yes, for the reasons set out above.

Q20. Do you agree with a risk-based approach to sifting objections and observations?

Yes, in principle. We suggest that the term 'risk-based approached' should be clarified.

Q21. As a consultee, would it be feasible to provide a risk assessment, even in general terms, in your response to a consultation?

We question what skills would be required for this and whether guidance will be provided.

Q22. As marine plans will apply the objectives of the marine policy statement in more detail, what should a marine plan include to help you, as a potential applicant, make better, more informed decisions?

We suggest that the marine plan should include detailed policies and proposals as a framework for decision-making.

Q23. Do you think published target timeframes would sufficiently improve transparency and certainty? Are there other measures that we should adopt that would further improve transparency and certainty?

We suggest that a mechanism such as Planning Performance Agreements could be integrated into the process.

Q24. Should we include time-limits in which applicants should respond at certain points in the process? If so, what should happen if applicants fail to submit information in this time-frame?

Yes – as with the terrestrial system. We consider that the authority should be entitled to proceed to determine the application without the requested information, noting that in a case of unresolved but potentially significant adverse impact, this would imply that the application would be refused.

Q25. Should we give appellants a right to be heard?

Yes.

Q26. Should we enable the appeals procedure to be handled through an inquiry? Are they necessary and if so under what circumstances should we allow them?

In principle yes, but we would urge caution so that inquiries as they are currently constituted do not become the automatic default. Less adversarial processes such as hearings (as currently provided by PINS) may provide a better model as may alternative means of dispute resolution including mediation. Written representation processes could also be considered.

Q27. Are these the right grounds of appeal? Should we include any other grounds of appeal?

We suggest that this should mirror the terrestrial system, to create consistency.

Q28. Do you agree we should impose time-limits at key stages of the appeals process? Do you have any thoughts on what those time-limits should be?

We believe that they should be kept as proposed.

Q29. Who should be notified of the appeal? Should it be limited to those people who were involved in the original licensing decision or should it go wider to anybody who might have an interest in the outcome of the appeal?

We suggest general notification.

Q30. How should the appeal be advertised in order to bring it to the attention of parties likely to be interested?

As outlined above.

Q31. What information should be shared with interested third parties?

At present there is no definition of an interested third party. Is this limited to those who have made representations? There is a difference between the right to access information and the right to 'be sent' information. This distinction should be made clear.

Q32. Should the applicant have to express a preference for the type of appeal (or exercise their right, depending on the answer to Q26) in the notice of appeal?

Yes.

Q33. Do you agree we should not allow new evidence or grounds for appeal once the statement of case has been submitted?

We suggest that this should mirror the terrestrial system, to create consistency.

Q34. Do the powers as outlined above look about right, including in particular the power to award costs only in the event of unreasonable behaviour by the other party? Should they have any other powers?

See comments above. We assume that 'unreasonable behaviour' will be at the discretion of the Inspector.

Q35. Do you agree the appellate body should have the same powers as the licensing authority when it made the original decision?

Yes.

Q36. Do you agree that the applicant should have the right to withdraw an appeal?

Yes.

Q37. Do you agree that the licensing authority should be able to alter its earlier decision that is subject to the appeal?

Yes, but within time limits.

Q38. Should the licensing authority's decision be upheld until the resolution of the appeal or should the appellate body have the power to suspend or vary the licensing authority's decision as it sees fit? If the latter, in what circumstances would this be appropriate?

It depends as a high proportion considered will be licensing renewals. If the action would cause harm then a mechanism such as a stop notice could be employed.

Q39. Do you agree with using existing Food and Environmental Protection Act 1985 and Coast Protection Act 1949 exemptions/exceptions as a starting point for making decisions on what should be exempt from the new marine licensing regime?

Yes.

Questions 40 to 50

The RTPI considers that concepts of permitted, discretionary and prohibited use within a policy led zone system could assist an marine spatial planning system, by ensuring that licensing controls within zone areas are carefully attuned to a balanced appraisal of potential impacts against the degree to which use and development met plan objectives. Such a system has the benefit of responding to spatial variations in the nature and intensity of marine developments and activities and the sensitivity of the marine environment. It can also be fine tuned, to ensure a proportionate and justified relationship between the scale of regulation and the potential effects of use and development.

The licensing regime applies to certain activities only to 12 nautical miles (e.g. marine cultural heritage); but the historic environment will be considered as a component of the planning system over a far greater spatial area. Parallels also need to be drawn with EU legal requirements for assessment under SEA and EIA directives and associated implications on development licensing should mitigation measures be required.

Clarification is also required as to whether this refers to Marine Conservation Zones.