



June 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Development Consent for nationally significant infrastructure projects in the marine environment by the IPC – strengthening the role of the MMO (Clauses 23 & 25)

The organisations listed above have been closely engaged in the Marine & Coastal Access Bill process from the outset. We are members of Wildlife and Countryside Link's Marine Task Force¹, which has been campaigning for many years for the legislative tools to deliver improvements in marine conservation and management.

Action

The MMO should have an advisory role in the decisions of the Infrastructure Planning Commission (IPC) on nationally significant infrastructure projects (NSIPs) that are in or affect the marine area that is specified within primary legislation. To that end, the advisory role of the MMO should be given clear and specific recognition within the Planning Act 2008, similar to the way in which the role of Local Authorities is clearly distinguished from other parties, because both are the usual or regular decision-maker on development decisions in their areas.

Background

We support the rationale behind the Marine & Coastal Access Bill, which proposes a new marine planning system, reformed marine licensing and a new marine body, the MMO, to simplify the plethora of regulatory regimes in the marine environment. However, the Planning Act 2008 gives the IPC, established under that Act, the power to determine applications for NSIPs in the marine environment, notably offshore generating stations of more than 100MW (clause 15 of the Planning Act 2008) and larger harbours (clause 24 of the Planning Act 2008). We believe that giving the IPC a decision-making role in the marine environment runs counter to the Government's stated aim of generating a strategic overview and reducing complexity at sea through marine planning and reformed marine licensing.

However, despite our preferred view that the MMO should be the licensing body for all marine projects irrespective of size, the Government has been reluctant to change its position. Therefore, if the IPC retains specific decision-making responsibilities for the development of major infrastructure projects in the marine environment, it is crucial that the MMO's marine expertise is used to give advice and direction on

¹ Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife, the countryside and the marine environment.

projects that are in the marine area as well as land-based projects that are likely to impact on the marine environment.

The report of the Joint Committee on the Draft Marine Bill (July 2008) stated that the Government intended that the IPC's decisions on marine and coastal projects "*will be informed by the MMO (which is expected to be a statutory advisor)*" (emphasis added) to the IPC on marine considerations (paragraph 99). Therefore, we believe that the MMO should have a formal advisory role with regard to IPC decisions on all marine and coastal projects.

Government has consulted on the list of statutory consultees for the National Policy Statements (NPSs). We welcome the statement within this consultation that the MMO (once it is established) will be included as a statutory consultee to the Secretary of State on NPSs. However, a statutory consultee for an NPS is different to a consultee/advisor to the IPC on individual projects.

Government also stated that additional regulations to be made under the Planning Act would list the MMO as a statutory consultee for pre-application consultation undertaken by a proponent of an NSIP and as an interested party for examination of accepted applications by the IPC.

To date, there have been some concessions made in the House of Lords to clarify the role of the MMO in IPC decisions on NSIPs specifically within the provisions of the Planning Act. At Third Reading, Government's amendments to the Planning Act were agreed, which specifically identified the MMO has having a role in the process within the primary legislation rather than secondary legislation. The new clause 23:

- places a requirement on applicants to consult the MMO at the pre-application stage of NSIPs;
- requires the MMO to be notified that an application has been accepted by the IPC; and
- lists the MMO as an "interested party" in the examinations procedure carried out by the IPC.

However, while this is all very welcome, we believe that further amendments can be made to strengthen the role of the MMO and truly categorise it as a statutory advisor to the IPC on all marine and coastal projects, rather than just one of a number of parties consulted or engaged in examination of applications by the IPC. The Government amendments do not provide a requirement in the Planning Act for the IPC to have regard to or take into account the advice of the MMO and to report on how such advice was considered and the impact it may have had on the final decision.

In the Planning Act, Local Authorities are given specific recognition of their planning expertise and local knowledge and are invited by the IPC to submit a "local impact report" outlining the likely impacts of a proposed development on the relevant Local Authority's area. Local Authorities have been given this role because they are the body that normally makes planning decisions at the local level – i.e. granting planning permission. Within the marine environment, the main decision-maker on licensing issues will be the MMO and consequently, it too should be invited to provide advice to the IPC on the likely impacts that NSIPs will have on the local and wider marine environment and other marine users. For this reason, we believe that the MMO's role as an advisor to the IPC should be given the similar recognition to that of Local Authorities and clearly outlined on the face of the Planning Act.

The proposed amendment to clauses 23 and 25 are intended to make the MMO a statutory advisor to the IPC on all marine and terrestrial NSIP applications that are in or are likely to have an impact on the marine area. The amendment has four parts:

1. the IPC is required to invite the MMO to provide advice on NSIP applications that are in or impact on the marine area;
2. the MMO provides advice on the likely impacts of the proposed NSIP;
3. in determining the application, the IPC must take the MMO's advice into account; and
4. in the statement of reasons published on the application decision, the IPC must set out how it took the MMO's advice into account in reaching that decision.

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Annex – Amendments

Marine & Coastal Access Bill

House of Commons Committee Stage, June 2009

Strengthening the MMO's role with regard to IPC decisions on marine projects

Amendments in the Marine & Coastal Access Bill	Explanation
Amend Clause 23 MMO's role in relation to applications for development consent as follows:	
Page 15, line 14, subsection (1): after "subsections (2) to" leave out "(6)" and insert "(11)"	Consequential amendment to correctly identify new subsections proposed below
<p>Page 16, line 26: at the end insert new subsection:</p> <p>"(6) Insert new section 60A: Advice from the Marine Management Organisation</p> <p>(1) Subsection (2) applies where the Commission:</p> <p>(a) has accepted an application for an order granting development consent, and</p> <p>(b) has received –</p> <p>(i) a certificate under section 58(2) in relation to the application, and</p> <p>(ii) where section 59 applies, a notice under that section in relation to the application, and</p> <p>(c) the development for which the application seeks development consent would affect, or would be likely to affect, any of the areas specified in subsection (2).</p> <p>(2) The areas are-</p> <p>(a) waters in or adjacent to England up to the seaward limits of the territorial sea;</p> <p>(b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;</p> <p>(c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which Scottish Ministers have functions;</p> <p>(d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in</p>	<p>Stage 1 – the IPC requests advice from the MMO</p> <p>This new clause is located within Part 6 of the Planning Act 2008 which deals with deciding applications and Chapter 1: Handling Applications by Commission. It is to be inserted just after Section 60, which is the provision for the IPC to request a local impact report from local authorities. This is at the stage when an application has been accepted by the IPC and the applicant has sent notice of this to all persons required, including the MMO. This seems the opportune time for the IPC to request advice from the MMO on the principal issues that may effect the marine environment, before making an initial assessment of issues and holding a preliminary meeting between relevant parties under section 88. The wording uses s60 and the Government amendments as basis for this new clause.</p> <p>Clause 23 currently lists the MMO as a recipient of the notice to be issued by the applicant advising that the application was accepted by the IPC. In this notice, the applicant must advise that persons can make representations to the IPC "<i>giving notice of that person's interest in, or objection to, the application</i>".</p> <p>It goes on to list the MMO as an "<i>interested person</i>". This allows the MMO to be involved in the examination proceedings for the application, meaning the MMO will be invited to attend a preliminary meeting to make representations on how the application should be examined and will be able to submit written</p>

<p>relation to which the Scottish Ministers have functions.</p> <p>(3) The Commission must give notice in writing to the Marine Management Organisation, inviting it to submit to the Commission advice on the principal issues arising on the application which would affect, or would be likely to affect, any of the areas specified in subsection (2).</p> <p>(4) A notice under subsection (3) must specify the deadline for receipt by the Commission of the advice.</p>	<p>or oral representations to the IPC throughout the examination process.</p> <p>These additions to the Bill in the House of Lords are welcome, but the role of the MMO can be strengthened by this provision (left) specifically allowing the IPC to invite advice at the beginning of the examination process and is additional and complementary to the role of the MMO as participant in the examination proceedings. Ideally, this provision would allow the MMO to give advice to the IPC <u>before</u> the preliminary meeting is conducted between the relevant parties, to assist the IPC in identifying the principal issues for consideration and framing the manner in which the application should be examined. The continued involvement of the MMO in the examination process will enable it to continue to advise the IPC and respond to evidence/representations submitted by other parties to the proceedings.</p>
<p>Page 16, line 27: leave out (6) and insert (7)</p> <p>Page 17, line 1: leave out (7) and insert (8)</p>	<p>Consequential amendments to correct numbering</p>
<p>Page 17, line 6 at the end insert new subsections:</p> <p>“(9) In section 104 (Decisions of Panel and Council) after subsection (2), insert –</p> <p>“(2A) The Panel or Council shall take any advice or representations received from the Marine Management Organisation into account—</p> <p>(a) in deciding whether or not to make an order granting development consent, and</p> <p>(b) if it does decide to do so, in deciding what (if any) requirements are to be imposed in connection with the development for which consent is granted.”</p> <p>(10) In section 105 (Decisions of Secretary of State) in subsection (2), after paragraph (c) insert –</p> <p>“(3) The Secretary of State shall take any advice or representations received from the Marine Management Organisation into account—</p> <p>(a) in deciding whether or not to make an order granting development consent, and</p>	<p>Stage 3 – the IPC takes advice into account</p> <p>Section 104 of the Planning Act 2008 is the section which sets out the matters to which the Panel or Council deciding an application must have regard. One of the matters listed is the local impact reports prepared by Local Authorities. It is appropriate to also mention here the advice and representations given to the IPC from the MMO, so that it is clear that the IPC must specifically take these into account in making its decision. The Wildlife and Countryside Act (s28I) is used as an example, allowing the MMO’s advice to be considered not only in deciding whether or not to grant consent, but also in deciding if and what conditions should be attached to the consent (under section 120). This is another useful way in which the IPC can demonstrate how it has taken the MMO’s advice into account. Also it is common practice for a statutory agency (e.g. the Environment Agency or English Heritage) to suggest conditions through consultation under the Town & Country Planning (T&CP) Act 1990. A Local Planning Authority is required to take into account representations from consultees in making a decision and give reasons and the policy basis for its decision (see Articles 10, 19 and 22 of the T&CP (General Development Procedure) Order 1995).</p> <p>Section 105 relates to decisions made by the</p>

<p>(b) if it does decide to do so, in deciding what (if any) requirements are to be imposed in connection with the development for which consent is granted.”</p>	<p>Secretary of State and sets out those matters to be taken into account when deciding an application. Not all decisions of the IPC will be made by the Panel or Council, some will fall to the Secretary of State. For this reason, the amendment to s104 should also be made to s105 to require the Secretary of State to take into account advice and representations from the MMO.</p>
<p>Page 17, line 6 at the end insert new subsections (cont'd):</p> <p>(11) In section 116 (reasons for decision to grant or refuse development consent) after subsection (1) insert -</p> <p>“(1A) Where the Commission has received advice from the Marine Management Organisation, the reasons for decision to grant or refuse development consent must include a statement of how (if at all) the Commission has taken account of the Marine Management Organisation’s advice.”</p>	<p>Stage 4 – IPC gives statement of how advice considered</p> <p>Section 116 sets out the requirement for the IPC to prepare and publish a statement of reasons for its decision to grant or refuse consent. It is appropriate to include a provision here which requires that statement of reasons to address how the advice received by the MMO was taken into account by the IPC in making its decision. This provides for the final stage of interaction between the IPC and MMO, with MMO as formal or statutory adviser. This requires the IPC to justify to the MMO whether it took its advice on board and how it affected the decision, if at all.</p>

<p>Amend Clause 25 Advice, assistance and training facilities as follows:</p>	
<p>Page 17, line 25: insert new subsection:</p> <p>“(1A) The MMO must provide the Infrastructure Planning Commission with such advice and assistance as the Commission may request.”</p>	<p>Stage 2 –MMO gives advice</p> <p>This proposed amendment provides a general power for the MMO to provide advice and assistance to the IPC when requested. It is the same as the provision for advice/assistance to be given to the Secretary of State and it is quite general. However, it could be refined further if desired, e.g. subsection (2).</p>