



Marine
Conservation
Society



January 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Removing duplication in overlapping licensing regimes – seeking an alternative solution (Clauses 75 & 76)

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

Removing duplication where the Marine Act overlaps with the Harbours Act or Electricity Act

This amendment is proposing the removal of clause 75 'Special procedure for applications relating to harbour works' and clause 76 'Special procedure for applications relating to certain electricity works' because we do not agree with the mechanism that is proposed for meeting the Government's aims. We would like to use this amendment to ask the Government to rethink and redraft its proposals, while offering some suggestions towards a better solution to achieving those aims.

As not all marine licensing regimes have been subsumed into the Marine & Coastal Access Act regime, the situation will still arise where more than one licence is required. Clauses 75 and 76 deal specifically with situations where licences are required under the Marine & Coastal Access Act and the Harbours Act or Electricity Act respectively. According to Defra's report, "*Managing our marine resources – licensing under the Marine Bill*" (page 7), the Government's proposal is intended to "enable consents to be put through one simplified process" and allow applicants to submit only one application to get both consents from the MMO. We agree with the Government's rationale that such an approach should ensure that all the sometimes competing factors in an application for harbour works or offshore renewable energy projects are considered and assessed together, allowing the MMO to come to an informed decision. We would also agree that it is duplication of effort for an applicant to have to go through two similar procedural processes for one project. However, we object to the mechanism the Government is proposing to deliver this outcome – we consider it inappropriate. Therefore, we would like Government to redraft these clauses taking into account our suggestions on how to achieve the same aims but through a different mechanism.

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.

Clauses 75 and 76 of the Marine & Coastal Access Act propose that where there is procedural overlap between it and the Harbours Act or Electricity Act respectively, the intention is to disapply the Marine & Coastal Access Act procedures in favour of those in the other existing Acts. To achieve this, the Secretary of State has been given an Order making power. Our concern is that the Bill's proposals to remove duplication are so flexible as to create a loophole where critical Marine & Coastal Access Act procedures (i.e. environmental safeguards or stakeholder consultation, etc) could be downgraded, ignored or even omitted which could result in prejudice for third parties. The provisions have the effect of leaving open the legislative procedure to be adopted for making marine licensing decisions regarding harbour works and electricity generation works, creating potential uncertainty for applicants and interested stakeholders.

Furthermore, the proposals in the Bill appear to permit the Secretary of State to make Orders modifying the Harbours Act or Electricity Act procedures. The result being that every application could be different, increasing rather than reducing complexity regarding application procedures. While it is stated in the Government's associated "*Marine and Coastal Access Bill – Policy Document*", it is not actually specified in the Bill, that the procedures modified through such Orders should be of the same standard as those under the Marine & Coastal Access Act. Therefore, this has the potential to leave the process even further open to departure from the Government's proclaimed aim of a more consistent, coherent and transparent marine licensing regime.

Therefore, one solution is that it would be more logical and acceptable for the Marine & Coastal Access Act, as the more recent legislation, procedures to be applied where there is overlap. We would suggest that the Orders made by the Secretary of State should disapply the Harbours or Electricity Acts procedures where there is procedural overlap or duplicate provisions, thereby applying the Marine & Coastal Act procedures in all cases. The only time that the existing Harbours or Electricity Acts procedures should be used in favour of the Marine & Coastal Act procedures is if/where they had stricter provisions. This would achieve the same desired outcome as detailed in Defra's associated report on licensing, to have just one application per project, as well as ensuring greater consistency across marine licensing regimes and ensure that all licensing safeguards are retained at a standard level.

Despite the fact that these clauses have been redrafted since the scrutiny of the draft Marine Bill, our concerns regarding the above issues have not been addressed.

For further information please contact Danny Stone, Parliamentary Officer, RSPB, on 07989 502004 or danny.stone@rspb.org.uk, or Hazel Phillips, Head of Public Affairs, The Wildlife Trusts on 020 7803 4293 or hphillips@wildlifetrusts.org, or Melissa Moore, Senior Policy Officer, Marine Conservation Society on 07793 118386 or melissa.moore@mcsuk.org

Annex – Amendments

Marine & Coastal Access Bill

House of Lords Committee Stage, January 2009

Clause	Clause 75 Special procedure for applications relating to harbour works
Amendment	The above-named Lords give notice of their intention to oppose the Question that Clause 75 stand as part of the Bill

Clause	Clause 76 Special procedure for applications relating to certain electricity works
Amendment	The above-named Lords give notice of their intention to oppose the Question that Clause 76 stand as part of the Bill