



January 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

The role of the MMO vs. the IPC; and the relationship between Marine and National Policy Statements

The organisations listed above are closely engaged in the Marine and Coastal Access Bill and several have also engaged in the Planning Act 2008. We are also members of Wildlife and Countryside Link's Marine Task Force¹, which has been campaigning for several years for improvements in marine conservation.

Background

1A. Option 1: Licensing of nationally significant infrastructure projects in the marine environment – MMO or IPC?

The Planning Act 2008 gives the Infrastructure Planning Commission (IPC), also established under that Act, the power to determine nationally significant infrastructure projects proposals 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 this is inappropriate in the light of the publication of the Marine & Coastal Access Bill, which proposes a marine (spatial) planning system and a specialised Marine Management Organisation (MMO) to simplify the plethora of regulatory regimes in the marine environment. Therefore, giving the IPC a 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.

We believe that in the marine environment, all planning and licensing (permitting) decisions where the Secretary of State is the planning and licensing authority, should be made by the MMO rather than the IPC.

Therefore, a new subsection added to clause 56 of the Marine & Coastal Access Bill would have the effect of amending clause 15 of the Planning Act 2008 to remove the power of the IPC to determine offshore generating stations. Similar amendments would also be required to transfer decision-making powers to the MMO for other types of marine development, e.g. to clause 24 of the Planning Act 2008 for larger harbours. This would ensure that the MMO would be the body licensing the majority of marine projects, irrespective of size.

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.

1B. Option 2: If the IPC retains a marine role – a stronger relationship with the MMO

However, if the IPC must retain jurisdiction in the marine environment, it is crucial that the expertise of the MMO is used to provide advice and direction on both marine (offshore) and coastal applications that impact on the marine environment. During pre-legislative scrutiny of the draft Marine Bill and the debates on the Planning Bill, there was some progress on this point:

- The report of the Joint Committee on the Draft Marine Bill (July 2008) stated that the Government intends that the IPC's decisions on marine and coastal projects "*will be informed by the MMO (which is expected to be a statutory advisor)*" to the IPC on marine considerations (paragraph 99).
- Planning Bill Committee Stage in the House of Lords (Oct 2008) – The Government stated that the nature of the advice that the MMO will need to give the IPC will be detailed in Planning Guidance and that will be a memorandum of understanding (MOU) to formalise the arrangement.
- Planning Bill Committee Stage in the House of Lords (Nov 2008) – The Government stated that additionally the MMO (currently the Marine & Fisheries Agency) will be a statutory consultee in the regulations on the Planning Act 2008.

However, none of the detail of this has been published to date, so we are still unsure as to the precise status of the MMO with regards to nationally significant infrastructure projects at sea. In addition, we believe that the opportunity should be taken to formalise MMO's role through the Marine & Coastal Access Bill, and make the MMO a statutory advisor to the IPC on all marine and coastal projects, rather than just another consultee to applicants.

Therefore, the proposed amendment to clause 24 is intended to make the Marine Management Organisation a statutory advisor on all marine (inshore and offshore) and coastal applications that are likely to have an impact on the UK marine area.

2. The influence of Marine Policy Statement and Marine Plans on IPC decisions

The Marine & Coastal Access Bill proposes a new planning system for the marine area, including an overarching Marine Policy Statement (MPS) and regional/local marine plans. Decisions taken on marine projects, e.g. licensing and enforcement decisions are to be in accordance with the MPS and marine plans. However, new sub-clauses (clause 56(4)&(5)) added to the Bill exempt decisions on nationally significant infrastructure projects at sea, such as those on the larger electricity generating stations and harbours, taken by the IPC who instead, is only required to have regard to these documents. Under the Planning Act 2008 (clause 104(3)), the IPC must decide applications in accordance with the relevant National Policy Statements (NPSs) except in limited circumstances, such as where the decision would be in breach of international obligations, or where the "*adverse impact of the proposed development would outweigh its benefits*". We believe that now that we have a Marine & Coastal Access Bill, marine projects should be considered within the framework of the marine planning process.

Where a Marine Policy Statement (MPS) exists, all marine projects should be made in accordance with it and the associated marine plans. Therefore, clause 56 of the Marine & Coastal Access Bill must be amended to remove the derogations on IPC

decisions for marine projects. Then a further amendment is required to amend clause 104 of the Planning Act 2008 to ensure that decisions on nationally significant infrastructure projects in the marine area are made in accordance with the MPS or at the very least, that the MPS has the same status as the NPSs.

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Annex – Amendments

Marine & Coastal Access Bill House of Lords Committee Stage, January 2009

1(a) Option 1: Making the MMO the decision-making body

Clause	Clause 56 Decisions affected by marine policy documents
Amendment	Page 29, line 19: leave out lines 19-21 Page 29, line 22: leave out subsection (5) and insert: “(5) In section 15 of the Planning Act 2008 (Generating stations) leave out “or (3)” after “subsection 2” in subsection 15(1) and leave out subsection 15(3).”
Clause	Clause 12 Certain consents under Electricity Act 1989 (MMO Part)
Amendment	Page 6, line 34: leave out subsection (3)(b)
Clause	Clause 13 Safety zones: functions under section 95 of the Energy Act 2004 (MMO Part)
Amendment	Page 7, line 31: leave out subsection (4)

1(b) Option 2: If the MMO is not the decision-maker, strengthening its role

Clause	Clause 24 Advice, assistance and training facilities – new subsections 24(2A)&(2AA)
Amendment	Page 13, line 21: insert new subsections – “(2A) The MMO must advise the Infrastructure Planning Commission on all nationally significant infrastructure projects that are in or impact upon the UK marine area as defined in section 40” “(2AA) In section 104 of the Planning Act 2008 (Decisions of Panel and Council) after subsection 2 insert— “(2A) the IPC must seek and take account of advice from the Marine Management Organisation on all applications which are in or are likely to impact on the UK marine area.”

2. Strengthening the influence of the MPS and marine plans on the IPC's decisions

Clause	Clause 56 Decisions affected by marine policy documents
Amendment	<p>Page 29, line 19: leave out lines 19 to 21 and insert -- “(f) any decision on an application for an order granting development consent under the Planning Act 2008 (c. 29).”</p> <p>Page 29, line 22: leave out subsection 5 and insert: “(5) In section 104(3) of the Planning Act 2008 (deciding an application in accordance with any relevant national policy statement) after “any relevant national policy statement,” insert— “or in the case of applications for projects that are in or are likely to impact on the UK marine area (as defined in section 40 Marine and Coastal Access Act 2009), in accordance with the Marine Policy Statement and any relevant marine plans,” ”</p>
Clause	Clause 12 Certain consents under Electricity Act 1989 (MMO Part)
Amendment	Page 6, line 34: leave out subsection (3)(b)
Clause	Clause 13 Safety zones: functions under section 95 of the Energy Act 2004 (MMO Part)
Amendment	Page 7, line 31: leave out subsection (4)