

Appendix A

DEFRA Consultation on Secondary Legislation for England and Wales under the Marine and Coastal Access Bill: Part 4 Marine Licensing

UKBCSE & Industry Detailed Commentary

1.0 Introduction to UKBCSE / Industry Detailed Commentary

The UK Business Council for Sustainable Energy (UKBCSE) and the UK's major energy trade associations are pleased to provide this detailed commentary on the DEFRA Consultation on Part 4 of the Marine and Coastal Access Bill: Marine Licensing. This response has been developed with the Association of Electricity Producers, the British Wind Energy Association, the Energy Networks Association, the Gas Forum and the Renewable Energy Association, with whom we have been working in providing assistance to DEFRA in the development and refinement of the Marine and Coastal Access Bill provisions.

UKBCSE and the UK's major energy trade associations support the principle of a streamlined marine management regime, which balances marine conservation and sustainable development, giving equal weight to environmental, social and economic factors within all the Bill's provisions. It is therefore within this context that this detailed commentary is provided.

For ease of reference the format of this commentary follows the headings within the Consultation.

2.0 Executive Summary

2.1 *Marine Licensing Applications & Decision Making*

The Council / industry supports, and is committed to, the overall objective of the new marine licensing regime, which is to regulate sustainable development in the marine environment in a way that minimises adverse impacts on the environment, human health and legitimate uses of the sea.

Additionally, we welcome the commitment to make systems more effective, transparent and efficient, and in particular through use of advice at a pre-application stage and setting timeframes for certain parts of the process. Both of these proposals are helpful in providing certainty to all parties and we have supported their implementation for the onshore process being implemented through the provisions of the Planning Act 2008.

2.2 *Appeals Against Licensing Decisions*

We also welcome the principle of introducing a new appeals process for licensing decisions, statutory notices and monetary penalties so that applicants can appeal decisions made by the licensing authority.

2.3 *Exemptions*

3.0 Purpose of the Document

Whilst we obviously welcome the opportunity to comment on this Consultation, we are particularly pleased that DEFRA intend to consult further on the detailed text of all the statutory instruments and assessment of the costs and benefits of any proposed options, and would be delighted to provide additional technical and cost information to assist this process.

3.1 *Coverage*

We note the proposed coverage of the licensing regime and welcome the joint consultation with the Welsh Assembly Government, and the sharing of the results with the Scottish Government and Department of Environment, Northern Ireland, both of which are helpful.

However, we note that the Scottish and Northern Ireland Governments will be consulting separately in the implementation of their own Regulations, and we would stress the importance of achieving maximum alignment of the marine licensing regime and all the various Regulations which implement it, in order to achieve the greatest possible consistency. This will benefit all stakeholders engaged in the marine licensing process – public and licensing authorities, statutory consultees, developers and interested parties, and ensure greater understanding and compliance with the proposed processes.

4.0 Introduction

4.1 *The Marine and Coastal Access Bill*

We welcome the specific reference to the Government's 2005 election manifesto commitment to the Marine Act, which highlights the commitment to balance 'conservation, energy and resource needs', and that 'to obtain best value from different uses of our valuable marine resources, we must maintain and protect the ecosystems on which they depend.'

4.2 *Marine Licensing Proposals in the Marine and Coastal Access Bill*

We also find the statement in the first sentence of this section helpful, which states that Government "seek to promote economically and socially beneficial activity while minimising any adverse impact on the environment, human health and uses of the sea.'

We also strongly support the streamlining and consolidation of Part ii of the Food and Environment Protection Act 1985 (FEPA) and Part II of the Coast Protection Act 1949 (CPA), which we concur with DEFRA, will remove some of the complexity and overlap.

We also welcome the intention that the marine licence will also replace requirements under the Marine Works Environment Impact Assessment Regulations 2007, the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) Regulations 2007 and remove the need for separate approval under the Electronic Communications Code for cable in tidal waters.

4.3 Aims of New System

4.3.1 Overall Aim - We support the overall objective of the new marine licensing system – namely ‘to regulate development in the marine environment, to make a positive contribution to the sustainable development of that environment.’

We note that the second sentence states that “it should allow sensible and necessary development to go ahead but in a manner that minimises its adverse impacts on the environment, human health and other legitimate uses of the sea.

Whilst, we support this statement, we urge Government to make it clear beyond doubt, that “necessary development” includes a range of sustainable energy infrastructure, essential to both addressing climate change and ensuring continued security of the UK’s energy supplies.

4.3.2 Operational Aims - We also support the operational aims of reviewing the FEPA licensing process and seeking to ensure the new system will be transparent, efficient, fair and effective, but it should also provide certainty for all.

5 Marine Licence Applications and Decision-Making

5.1 *Interaction between the Consenting and Licensing Regimes for Offshore Energy Projects*

We note that that it is intended that the Secretary of State will delegate the majority of his licensing functions under Part 4 of the Bill to the Marine Management Organisation (MMO), with certain exceptions. These exceptions include the issuing and enforcement of marine licences for oil, gas, gas unloading and storage, and carbon capture and storage activities and related pipelines that require a marine licence, where they will be issued by the Secretary of State under a complementary regime to that undertaken by DECC.

We are unsure as to how these processes interact with the provisions to streamline the planning process currently being implemented by the provisions of the Planning Act 2008, and in particular the streamlined consenting process for nationally significant infrastructure projects (NSIPs) which are to be consented by the Infrastructure Planning Commission (IPC). We would therefore welcome clarity over how the licensing regime for those NSIPs being proposed within the marine environment, will dovetail in with the ‘holistic’ planning process being implemented by the IPC. We also believe that the licensing and consenting processes for onshore and offshore projects should be aligned, but for smaller-scale less complex offshore projects the consultation and application processes should follow a simpler form.

5.2 *Transitional Arrangements*

We would like to stress the importance of achieving a workable and efficient transition from the old to the new licensing regime, with appropriate time periods to allow developers to a) adhere to all elements of the system without having to re-undertake major elements of the process, particularly given the long timescales from commencement of design through to construction of major energy projects and b) ensure all stakeholders properly understand and therefore can contribute effectively to the new process.

The approach taken to implement the new provisions of the Planning Act 2008 are an exemplar of how this might best be achieved and we urge DEFRA to consider similar transitional arrangements.

5.3 *What the Marine Licence will Replace*

We support the aim that the marine licence and its associated application and decision-making process should accommodate the needs of each of these regimes, combining them into a single process and licence.

5.3.1 Environmental Impact Assessment (EIA) Directive - We understand the intention to include within the marine licence the regulatory requirements under the EIA Directive, and thereby allow the revoking of the Marine Works (Environmental Impact Assessment) Regulations 2007 and the Marine Minerals Regulations. However, care must be taken to ensure alignment of the onshore and offshore regimes to provide consistency and therefore our initial preference would be to amend the existing Regulations.

5.3.2 Habitats and Birds Directives - We note the intention to include within the main marine licence process the regulatory requirements under the Habitats and Birds Directives, however care must be taken to ensure consistency of the onshore and offshore regimes, and therefore alignment in the application of the Habitats and Birds Directives and therefore our initial preference would be to amend the existing Regulations.

5.4 *The Current Licence Application Processes*

We support the aims of ‘a more efficient and transparent system that maintains fairness to all parties during decision-making.’

5.5 *What should the New Process Look Like?*

5.5.1 Annex 1 - Is a helpful diagram providing a useful overview of the proposed Marine Licensing Process, which clearly outlines the different entities’ responsibilities at the different stages of the process.

5.5.2 Annex 2 - We do not support standardisation of the Environmental Statement via a uniform template as this will impede the flexibility necessary to provide the range of information that might be required for differing types of projects. However, guidance, including possibly a ticklist might be helpful.

5.5.3 Public Consultation - For those projects within the marine area which are deemed to be nationally significant infrastructure projects, the Planning Act 2008 provisions lay out appropriate pre-application consultation procedures which the energy industry has supported from the beginning.

For smaller, less significant projects in the marine area we do not believe that such comprehensive consultation will be necessary, however appropriate and early engagement with the consenting / licensing authority, any relevant local planning authority, statutory consultees and other affected parties will definitely be vital for developers. In the vast majority of cases which are subject to EIA, the EIA scoping

process will require the applicant to consult key statutory parties and this will probably be adequate for most non-NSIP developments.

A requirement for more extensive pre-application consultation exercises, including public consultation exercises for non-NSIP projects, is therefore unlikely to be necessary and indeed would be over-burdensome for both developers and the public, provided that appropriate early engagement with key stakeholders takes place as described above.

5.5.4 Challenges Facing the New System - We are pleased that DEFRA have acknowledged the importance of providing a marine licensing system that addresses the needs of a wide range of activities, whilst protecting to the environment, human health, other uses of the sea in a manner consistent with long term Government policy – which of course is particularly important in terms of successfully delivering the Government’s energy goals.

5.5.5 Impact of Marine Planning - We support the proposal for Marine Plans, which holistically consider a geographical area, and which will be “consulted upon widely”. The second paragraph confirms that marine plans will be prepared based on the “best available science and data on sensitivity”.

As previously raised with DEFRA, given the threat of climate change, we would urge the Government to widen its definition of science to include global environmental evidence. Additionally, we strongly believe that “best available science” should be defined as that which is acceptable to Government, and approved by the MMO’s Chief Scientific Adviser and the independent Science Advisory Panel to ensure that only science and data which is both robust and generally accepted is used in the development of marine plans.

Additionally, the last sentence of the second paragraph states that DEFRA will add its own obligations and objectives to show how the Department wants to work with and influence those changes. We would welcome an early understanding of what these obligations and objectives will be.

Paragraph 3 provides the helpful confirmation that marine plans “will, as far as possible, will aim for consensus when putting plans together and to ensure that people feel their voices have been heard and given real consideration.” It also states that this will “give developers the confidence that, if their application is in accordance with the plan, there should not be further significant community objection to the principle of that kind of development in that area.”

Whilst we support the consultative approach outlined for the development of marine plans, we would like to stress the importance of ensuring that sufficient areas are identified for the development of sustainable energy projects, particularly given the geographical and technical constraints of some technologies (such as underground gas, and carbon capture, storage which can only be constructed in areas of certain geological types, offshore wind energy developments which are constrained by wind speed, proximity to defence flight paths and grid connections).

We do, however, welcome the recognition that by giving the opportunity for people to raise issues of principle, or specific considerations in relation to particular locations, if they are raised a second time, it will be easier for the licensing authority to show that

it has already consulted on and considered them during the preparation of the plan (although some consideration of the issues in relation to a specific licensing application will be necessary).

5.6 Pre-application Advice

The industry has consistently supported pre-application consultation, including the making the requirement for pre-application statutory as part of the onshore planning reforms being implemented under the Planning Act 2008. However, whilst we fully support the need for developers to seek to resolve issues up front as part of the pre-application process, we are pleased that DEFRA realise that the NSIP / IPC process will not be suitable for all types of projects.

We believe that a similar approach to pre-application consultation may be appropriate for certain developments (e.g. those that require an environmental statement) that need a marine licence, but, as per our representations to DCLG on the IPC process, and recognised in the “pre-application for a marine licence” certain less complex, smaller types of projects may require a simpler less time-consuming pre-application process.

5.6.1 Pre-application Under the Current Marine Regimes - No comment to make.

5.6.2 Pre-application for a Marine Licence - We welcome the statements in the first paragraph of this section, which recognise that the same pre-application procedure is not going to be applicable to all applications, and that relatively small, simple and routine work that does not need an EIA or Appropriate Assessment (AA) may not need any pre-application discussions or indeed notification of other bodies, and should simply be processed by the licensing authority.

However, we anticipate that the many of the energy developments in the marine area would benefit from some pre-application consultation, albeit as above, not necessarily as onerous as the pre-application consultation process requirements for applications considered by the IPC, and we therefore welcome the process outlined in Annex 2, but also confirmation that a “quicker route is also available for those applications that would not benefit from such engagement.” We are keen to work with DEFRA to work out a simpler process that would enable suitable pre-application consultation for those smaller, less complex energy developments.

5.6.3 Routes Through Pre-application - The various options outlined within this section largely mirror the onshore provisions of the Planning Act 2008, and give sufficient flexibility for differing types of developments, ranging from those of a smaller simpler nature through to those requiring either an EIA or Appropriate Assessment, and including the options of Screening and Scoping Opinions where appropriate.

We concur with the four benefits identified for a clearly identified pre-application procedure, and that the risk of an unforeseen EIA is significantly reduced by the combination of effective pre-application consultation and the marine plan process.

5.6.4 Role of Marine Planning in Pre-application - The second paragraph states that the licensing authority is under a statutory duty to publish its reasons for

licensing for licensing a development that is not in accordance with the marine plan, and that such licensing would only happen in exceptional circumstances.

Whilst we fully understand this approach, as above, we are concerned that sufficient suitable areas are identified for the development of sustainable energy projects, particularly given the geographical and technical constraints of some technologies (such as underground gas, and carbon capture, storage which can only be constructed in areas of certain geological types, offshore wind energy developments which are constrained by wind speed, proximity to defence flight paths and grid connections).

Whilst we understand that the licensing authority may ask a series of question to identify whether a development will make best use of the resources available, the UK energy regime places great emphasis on the importance of the market, and so in choosing locations developers assess a great number of issues, which will also need to be understood by the licensing authority before suggesting alternative locations without very good reasons.

As above, we support in general the pre-application procedures outlined in the proposed Planning Act 2008 provisions, and agree that they should apply to NSIP projects in the marine area.

With respect to the question of whether environmental statements should be put in a standard template, we would not support this proposal and suggest that rather than a standard template, perhaps either a) requiring the applicant to fill in an application form template for EIA applications or applications requiring Appropriate Assessment, designed for the type of application in question, and / or b) a ticklist which allows developers to consider whether the environmental statement for a specific project should include individual elements, and which could be submitted to the licensing authority identifying relevant information and confirming that other elements are not applicable.

5.7 Public Consultation

5.7.1 Interaction with the IPC Process - We would welcome clarity around how the proposed approach in Annex 3 and the pre-application process being introduced under the Planning Act 2008 will work, and urge Government to ensure that for NSIPs the processes or not only aligned but also undertaken as a single holistic process by the IPC (or Welsh Assembly Government for projects in Wales).

5.7.2 Timeframes - We strongly urge Government to adopt the same approach as the Planning Act 2008 in terms of establishing firm timescales for all key stages of the marine consenting and licensing processes. We have consistently called for these to be established on the face of the Marine and Coastal Access Bill, however if this is not done, at the very least agreed timescales should be established through statutory instrument, and not left to Guidance or Memorandums of Understanding or Service Level Agreements.

5.7.3 Which Bodies Should We Formally Consult? - We support the production of Guidance identifying who should be consulted for which types of consultation, subject to draft Guidance being consulted upon before finalisation. We agree with the examples given of likely consultees, but suggest that rather than just citing

“power station owners” this is widened to “sustainable energy infrastructure owners and / or developers” as these could include gas infrastructure providers (LNG / Import Terminals, underground gas storage etc), gas and electricity network providers (with operations or developments both offshore and in the coastal area), carbon capture and storage, wind energy developments.

5.7.4 Inquiries - We welcome the statement that inquiries are only expected to be held in connection with developments that are particularly complex or for developments of sufficiently wide public interest, as our view is that are generally not relevant for sustainable energy projects. However, we would welcome an understanding of a) what Government defines as “particularly complex” or “of sufficiently wide public interest” i.e. what will be the threshold or criteria that determines whether a project needs an inquiry and b) how this approach interacts / aligns with the IPC process being implemented under the Planning Act 2008.

5.7.5 Impact of Marine Planning on Public Consultation - We support the proposed approach that the extensive consultation process for the development of marine plans will raise many of the issues that would normally arise during individual licence applications, and that only new or unexpected issues brought up in the public consultation will be considered and addressed by the licensing authority.

5.8 Analysis, Resolution and Decision-Making

5.8.1 Risk-based Analysis of Objections and Decision-Making - As previously highlighted, we would welcome clarity as to how the consultation on a marine licence for those applications being determined by the IPC will be undertaken, and how the process aligns with the proposed pre-application and application processes being introduced under the Planning Act 2008.

The last paragraph of this section states that “in order to help the licensing authority make a risk-based assessment of any observations received during the consultation, it may be helpful if the consulting bodies provided their own assessment of the likelihood and impact of any concerns when submitting the consultation responses.”

We think this is helpful, however it is important that (as indicated) applicants are able to provide supplementary information identifying ways of mitigating any concerns or providing evidence that may assist understanding or counter views expressed.

5.8.2 Impact of Marine Planning on Decision-Making - We particularly welcome the confirmation that ‘licensing authorities will have to make their decisions in accordance with the relevant marine plans or policy statement.’

We also note that the licensing authority will consider the consultation of an individual licence application in terms of whether any relevant objections raised at planning stage are now more serious or whether anything has come up to suggest that things should not proceed in accordance with the plan.

The statement that “even when applications are in accordance with the marine plan there will be considerations that pertain to the precise location, scale and nature of the development which will need to be factored in to any licensing decision” is both realistic and balanced.

5.9 Transparency and Certainty

UKBCSE / Industry supports the establishment of timeframes for all key stages of the licensing process for NSIPs being determined by the IPV (or Welsh Assembly Government for NSIPs in Wales). With respect to these projects we believe that every effort should be made to align the licensing process and associated pre-agreed timeframes to those already agreed under the Planning Act. This would allow holistic presentation by developers and consideration by the consenting / licensing authority.

We would strongly suggest that such timeframes should be established through regulation and not left to Guidance of Memorandums of Understanding or Service Level Agreements.

For all other licence applications, we support the suggestion that a notice of an application could include published timeframes on public consultation and the deadlines for response; a target timeframe from the close of the consultation to a completed analysis of the representation received and identification of the issues that the applicant will have to resolve before a licence can be granted; and a target timeframe from the completion of the analysis of representations to resolution and licence decision.

However, we would not generally support the suggestion that once the consultation has finished, a further, possibly revised timescale will be issued to the applicant containing timescales for a target timeframe from the close of consultation to a completed analysis of the representation received and objections that the applicant will have to resolve before a licence can be granted, or a target timeframe from the completion of the analysis of representations to resolution and licence decision. We would strongly suggest that any extension of timeframes should be in extremis and only by agreement with the applicant.

Whilst we understand the discipline of including time-limits in which applicants should reply, we suggest that for the same reasons DEFRA indicate that smaller-scale differing individual projects may need different timescales, responses to various objections / concerns raised may vary and ideally should be agreed with applicants before publishing.

6.0 Appeals Against Licensing Decisions

We support the objective of resolving all outstanding issues or differences of opinion on an application to be resolved during the application process, however we recognise that this may not always be possible and so therefore agree with the requirement for each licensing authority to establish an appeal mechanism.

The proposed appeals mechanisms to implement Clause 108 and Schedule 7 are to be consulted upon separately and we would welcome early sight of these proposals.

6.1 *Who Can Appeal*

We welcome confirmation that only an applicant for a licence can appeal the decisions of a licensing authority.

6.2 What Decisions Can Be Appealed

We support the scope of appeals, which includes the ability to appeal against both a decision to award / not to award a licence, and the imposition of conditions attached to a licence.

6.3 Identifying Elements of the Process

We [comment on Annex 4]

6.3.1 Types of Appeal - We welcome the view that it is envisaged to have at least procedures for allowing appeals through written representations or via an oral hearing. The ability to present concerns in person could enhance the understanding of the licensing authority, and so we would encourage the licensing authority to hold an oral hearing with the appellant if it is minded to refuse an appeal.

6.3.2 Appellate Body - We note that it is intended to consult on the likely appellate bodies for the various licensing authorities, and we would welcome early sight of DEFRA's proposals.

6.3.3 Grounds for Appeal - We support the grounds for appeal as drafted, but would also suggest that the third ground "the decision made is inconsistent with relevant policies, including the marine plan" is extended to also include the Marine Policy Statement and relevant National Policy Statements.

6.3.4 Time-Limits - We believe that reasonable time-limits for all stages of the appeal process would be a welcome aid to certainty, however, without any limit on the appellate body to make a decision, this could render some developments in limbo for months, even years, and so we believe all stages of the process should be subject to time-limits.

For NSIP projects being considered by the IPC (or Welsh Assembly Government for projects in Wales) alignment of timescales and processes for both consent and licence applications, would be helpful in enabling holistic consideration.

We support the suggested flexibility to extend time-limits in exceptional circumstances, but to avoid appeals continuing for unnecessarily extended periods of time, we suggest a cap on extensions is established in regulation.

We support the view that time-limits should be clear and unambiguous, however if this is to include the date when a decision is made, there needs to be appropriate safeguards in place to ensure that the appellate body is required to notify the appellant using methods that will in all likely circumstances ensure that such notification is undertaken within the shortest possible timescale and is backed up by publication of that decision on the licensing authority's website (as suggested under the "Obligations to keep parties informed" section by email).

6.3.5 Obligations to Keep Parties Informed - As above, we support the use of email and the licensing authority's website rather than written publications.

6.3.6 Notification of Appeal - Whilst we understand the value in the appellate body to reject invalid appeals, and feel that a statutory basis for which such appeals

can be rejected is might be useful, we would suggest that any standard list of contents for any notice of appeal, should be developed in conjunction with a range of applicants, and subject to full consultation before implementation.

6.3.7 Evidence (“Statement of Case”) - We recognise the proposal that no new evidence or new grounds for appeal once the formal statement of case has been submitted. However, we would suggest that in extremis, additional information that comes to an appellant’s attention and may have a material impact on an appeal, should be allowed, but only in extremis.

6.3.8 Conducting Appeals - We are generally supportive of the examples provided:

- The option of a hearing or inquiry, or whether a process of written representations will suffice, and the ability to alter the type of proceedings – whilst we support the options proposed, varying them half way through an appeal could lead to uncertainty and unforeseen costs for developers
- The ability to hear two appeals relating to the same operation in parallel
- The ability to employ the services of an independent specialist to give advice – we would stress that such specialists should be acceptable to the appellants i.e. they should be appointed through robust and transparent procurement procedures, and should avoid specialists with strong ‘anti’ views of certain types of developments

6.3.9 Outcomes of Appeal - We support the proposal that the appellate body has the same powers as the licensing authority.

6.3.10 Withdrawing an Appeal - We support the proposal that an appellant may withdraw an appeal at any time up to the notification of the decision, and that if an appellant notifies of their wish to withdraw, the appellate body must give notice of that withdrawal of an appeal to every person notified of the statement of case.

6.3.11 Licensing Authority Altering its Decision - We support the suggestion that a licensing authority should be able to alter its earlier decision that is subject to the appeal, and then if the appellant is satisfied he / she can withdraw their appeal.

6.3.12 Licence Decisions Until the Appeal is Determined - We generally believe that any decision made by a licensing authority must continue in force until an appeal determination is made to the contrary. However, we could foresee a case where the Secretary of State may need to intervene, for instance in the case of national security.

7.0 Exemptions

We support the principle of establishing provisions to enable exemptions of certain low risk activities, and make the following comments in the context of the impact on sustainable energy developments.

7.1 Exemptions on the Face of the Bill

The Bill includes a general exemption for certain activities licensable under the Energy Act 2008, the laying or maintenance of “exempt” cables in the UK sector of the continental shelf as well as a general exemption for dredging operations and associated deposits carried out under any local Acts or other legislation.

7.2 Exemptions Made by Order

The Bill also includes the power for each licensing authority by Order to exempt activities (with or without conditions) from the need for a marine licence, which replicates the existing power within FEPA 1985. The exemptions include day-to-day activities such as anchoring a vessel (which could be necessary during the planning or construction of a sustainable energy development). We would expect for most of the sustainable energy development projects in the marine area, that an Order, either exempting or placing conditions on an activity associated with a sustainable energy development to be captured during the holistic consenting and licensing process undertaken for NSIPs by the ICP (or Welsh Assembly Government for projects in Wales).

We note, and support the proposal the Exemptions Order, and modifications to it through subsequent legislation, will be subject to Parliamentary scrutiny, as under FEPA 1985. This will ensure appropriate stability and certainty for developers, who need a stable policy framework within which to develop all sustainable energy projects.

7.3 Public and Stakeholder Feedback

7.3.1 Response to the White Paper - we agree with the principle of being able to exempt by Order certain low risk activities, and in particular with the ability to use conditions to minimise that risk further, as a proportionate and light-touch approach. However, like others, we would welcome clarity over how these arrangements would work in practice, given the potential need for “robust detail” to grant exemptions.

7.3.2 Response to Consultation on a Marine Bill - We agree that a small size of business does not necessarily equate to a small environmental risk, and risk should be judged based on the activity being undertaken, regardless of by whom

7.3.3 Responses to Consultation on Draft Marine Bill - Whilst we have consistently supported the exemption of certain activities, we recognise the need to ensure appropriate control and minimise the impact of any activity that has the potential to damage the environment, and to agree reasonable measures with developers to minimise any impact on the environment, human health or on legitimate uses of the sea.

7.4 Food and Environmental Protection 1985 (FEPA) and Coastal Protection Act 1949 (CPA) Exemptions

DEFRA makes the assumption that the existing FEPA and CPA exemptions work well and has therefore used them as a starting point for what activities it may be appropriate to exempt under the new marine licensing regime.

We support the general principle that the decision on whether to exempt certain activities from the need for a marine licence will have regard to the need to protect the environment, human health and prevent interference with legitimate uses of the seas, while taking into account other relevant factors.

The list of these ‘other relevant factors’ includes:

- **Available evidence base** – we refer to our previously made concerns that any evidence base for decision-making should be robust and transparent, and should be widely recognised and agreed by Government, and in the case of science, should be approved by the MMO’s Chief Scientific Adviser and the independent Science Advisory Panel.
- **Risks to Businesses / others** – we would welcome clarity on how this might easily be identified, and the mechanism for existing businesses to feed in their concerns
- **Sustainable Developments Aims** – we assume this in particular includes the Government’s energy policy goals of security of supply and mitigating climate change – and would welcome confirmation of this point.

We note the Government’s intention to carry out more detailed analysis and further discussion on what activities should be exempted with key groups in the coming months, and we would very much welcome the opportunity to feed into both these processes.

7.5 Existing Exemptions

[Comments on Table 1]

7.5.1 Modifications To Exemptions in Table 1 - we agree with DEFRA’s acknowledgement that there are a range of gas (and oil) activities not captured by the exemption in clause 77 which are currently exempted from FEPA, which would need to be covered by the Exemptions Order.

7.5.2 Electricity Works Consented under Section 36 of the Electricity Act 1989 and Interaction with Clause 79 - We continue to support the holistic consideration of both consent and licence applications, and therefore the proposal for these to be considered together.

7.6 What else should be Exempt

Use of conditions would seem a sensible and proportionate way to manage maintenance or replacement of sustainable energy developments, provided that significant damage to the environment, human health or interference with other legitimate uses of the sea is not envisaged to occur.

Any additional exemptions / conditional exemptions?

7.7 Registration of Exempt Activities

We support the maintenance of a Register on licensable activities but would not include exempt activities.

**FOR SPECIFIC RESPONSES TO THE CONSULTATION QUESTIONS PLEASE
SEE UKBCSE / INDUSTRY APPENDIX B**