



## InFocus - October 2009

# Environmental Highlights for Life Sciences and Healthcare Companies (October 2009)

### REACH – Action Required

The pre-registration phase under the EC Regulation for the **Registration, Evaluation, Authorisation and restriction of Chemical substances**<sup>1</sup> had to be completed by 1 December 2008, in order that companies could benefit from the staggered approach to 'phasing substances'. With the pre-registration deadline now past, the first registration deadline is looming. As a consequence, those companies that are subject to regulation will need to ensure that they have a structured approach towards REACH and registration, particularly if they wish to continue trading activities, production and have access to the market. Registration of pre-registered substances is to be staggered over three key deadlines, namely 2010, 2013 and, finally, 2018, depending upon the classification of the substance in question, production and import volumes. The registration dossier that is to be submitted will require technical details on the chemical substances that are the subject of the registration process and a chemical safety report, together with the relevant fee.

Recently, the European Chemicals Agency (ECHA), administrators of the REACH regime, published an updated list of pre-registered substances<sup>2</sup> based upon the details provided by chemical companies prior to 1 December 2008. Companies that did pre-register prior to the deadline should now be taking steps towards establishing 'Substance Information Exchange Forums' (SIEFs) for the purposes of data sharing and joint working. The revised list produced by the ECHA will provide a starting point for companies tasked with identifying potential working partners to form SIEFs.

In the UK, 'REACH Ready' (a UK chemical industry body) recently launched a new business continuity planning service<sup>3</sup>, which is aimed at helping companies navigate the technical requirements of the REACH regime, so that they may deal with the reality of compliance.

Further guidance on the registration process, information requirements and chemical safety assessments is available from the ECHA.

### Corporate Manslaughter and Corporate Homicide Act 2007– First prosecution

#### Will the Act make the prosecution of large organisations easier and secure a conviction?

The Corporate Manslaughter and Corporate Homicide Act 2007 has now been in place for 12 months. By way of a reminder, the 2007 Act, which came into force on 6 April 2008, was intended to make it easier for the regulator to prosecute 'organisations' for manslaughter in relation to fatalities arising out of workplace activities. Under the 2007 Act, an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised by its senior management is a substantial element in the circumstances causing a person's death and amounts to a gross breach of the duty of care to the person who died.

Prior to the Act coming into force, if a prosecution were to be brought it would have been necessary for the prosecution first to identify an individual who represented the 'controlling mind' of the organisation who was himself guilty of gross negligence manslaughter in order for the organisation to be convicted of manslaughter as well. This proved to be a significant hurdle for the prosecutors to overcome. Only a handful of companies were convicted of corporate manslaughter in the 20 or so years before the 2007 Act and all of those were small companies where there was an obvious and direct link between the activities of those representing the 'controlling mind' (essentially the board of directors) and the operational activities of the organisation leading to the fatality.

The 2007 Act is intended to make it easier to prosecute larger organisations by dispensing with the need to identify an individual guilty of gross negligence manslaughter and focusing instead on the failings of senior management.

<sup>1</sup> EC Regulation 1907/2006(EC).

<sup>2</sup> March 2009 [http://echa.europa.eu/home\\_en.asp](http://echa.europa.eu/home_en.asp)

<sup>3</sup> <http://www.reachready.co.uk>

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Unlike health and safety charges, where liability is strict, all elements of the corporate manslaughter offence must be proved by the prosecution in order to secure a conviction. This is a brand new statutory offence and there is no case law yet providing any guidance or clarification on how the provisions of the 2007 Act are to be interpreted and what evidence needs to be gathered to prove the elements of the offence. However, whilst prosecuting larger organisations may be easier than it was previously, it will still prove difficult in large organisations with complex management structures to establish a sufficient causative link between 'senior management' and the circumstances giving rise to a fatality. As before, this link will be much easier to establish in smaller organisations.

In terms of penalties, in addition to being able to fine a convicted organisation, with no maximum limit on the amount that can be imposed, a court can also impose a publicity order requiring the convicted organisation to publicise, in a manner specified by the court, information relating to the conviction, the particulars of the offence, the amount of any fine and the terms of any remedial order made. In 2007, the Sentencing Advisory Panel proposed that, instead of being assessed on the basis of the individual circumstances of each case, fines for corporate manslaughter should, instead, be calculated on the basis of a percentage of the annual turnover of an organisation. That proposal has not yet, however, emerged as formal sentencing guidelines.

## Environmental Reporting

With the evolution of voluntary reporting mechanisms for greenhouse gas emissions and corporate performance, mandatory schemes will no doubt be a likely future progression but will there be consistency of approach? In May 2009, the CBI<sup>4</sup> published its report 'All Together Now – A Common Business Approach for Reporting Greenhouse Gas Emissions'<sup>5</sup> calling on Government to formulate a single framework for the public reporting of greenhouse gas emissions. The report follows the Climate Change Act 2008 and the commitment made by the Government therein either to make reporting mandatory by April 2012 or to explain to Parliament the decision not to do so and the pledge to produce voluntary reporting guidelines by October 2009.

The CBI's recommendations comprise a single system for reporting, as it is the business watchdog's view that reporting will only work in practice if there is a common methodology for all and that reporting will be a catalyst in moving towards a low carbon economy – measuring and managing emissions being one of the first steps towards identifying inefficiencies with subsequent reporting facilitating new processes and procedures in terms of economics and sustainability. The CBI advocates that such a transition from voluntary based reporting to mandatory requirements should be clear, as it believes that size and specific operations of companies should be considered in this context, recommending in the first instance that only those companies that fall within the scope of the EU ETS or the anticipated 'Carbon Reduction Commitment' should have to report on emissions on a mandatory basis. Such companies will pave the way, and be better equipped to lead, together with the Government on a common approach towards emissions reporting. Support for this approach, in the CBI's view, should come from the development of new reporting software and Government resources to help small and medium sized enterprises.

At present, considerable time and resources are dedicated towards analysing and reporting on greenhouse gas emissions. Reporting, however, is of less value than it could be owing to inconsistencies in the scope of corporate reporting behaviour, which in turn has implications not only on stakeholders and the public but also for potential investors. In view of this, the CBI report recommends:

- the creation of a voluntary reporting framework based upon the Greenhouse Gas Protocol<sup>6</sup> and a single, common methodology;
- that reporting requirements should be consistent with current mandatory reporting requirements such as the EU ETS and the anticipated Carbon Reduction Commitment;
- that consistency and transparency in greenhouse gas emissions reporting should be paramount;
- that businesses with international operations should also be encouraged to report on greenhouse gas emissions from overseas operations, in addition to UK reporting requirements; and
- that businesses should be able to verify internally reported emissions – Defra should not mandate business to verify or assure the emissions through a third party.

Reporting measures are likely to become increasingly important as both the Government and business look to incorporate emissions requirements and disclosure into business decisions, with consumers increasingly seeking environmentally responsible products and services, thus pushing forward the social agenda on the environment. Whilst reporting will make an important contribution towards achieving a low carbon economy, it should also be borne in mind that it is not a solution in its own right, rather reporting is part of wider package of policy measures, incentives and actions. That said, reporting will give investors, policy-makers and stakeholders the ability to compare and contrast reported data between and within sectors. The CBI's proposals have gained support across its membership and are also the subject of discussions with other organisations involved in this area, including the Climate Disclosure Standards Board, the Carbon Trust and Business in the Community.

4 Confederation of British Industry.

5 <http://www.cbi.org.uk> – the CBI Carbon Reporting Working Group formed in 2008 to take forward the commitment made in the CBI climate change taskforce report and to develop a position on emissions reporting.

6 Launched in 2001, the Protocol provides a guide for companies and organisations on the measurement and disclosure of greenhouse gas emissions.

## Consultation on draft guidance for how to measure and report your greenhouse gas emissions<sup>7</sup>

More recently, the Department for Environment, Food and Rural Affairs (Defra) issued a consultation on draft guidance on how to measure and report upon greenhouse gas emissions, which is a joint consultation exercise with the Department for Energy and Climate Change. The non-statutory guidance is aimed at making voluntary corporate carbon accounting and reporting more consistent and will form the basis of possible mandatory reporting pursuant to the Climate Change Act 2008, illustrating how UK organisations should measure and report upon their greenhouse gas emissions.

The final guidance was published on 1 October<sup>8</sup>, together with a small business user guide. The guidance sets out 'standard reporting requirements' that all UK companies should follow and it is based on the Greenhouse Gas Protocol in line with the CBI's recommendations. The guidance advises that companies take responsibility for reporting on emissions in those areas where they have financial control either based on an "equity share" or "control" approach. Furthermore, it calls on companies to include emissions in their reporting data from overseas operations.

## EC Adopts Climate/Energy Legislative Package

In April 2009, the EU approved a new package of measures, incorporating new climate change and energy legislation to achieve two primary goals, namely a reduction in greenhouse gas emissions by 20% and 20% of the EU's overall energy consumption from renewable sources by 2020 previously agreed by ministers in December 2008 – the so-called '20-20 package'. In summary, the package includes a number of new legislative measures comprising the Renewable Energy Directive, a revised EU Emissions Trading Directive (EU ETS), an Effort Sharing Decision, a new Regulation Limiting CO<sub>2</sub> Emissions from Cars, a Biofuels (Fuel Quality) Directive and, finally, a Carbon Capture and Storage (CCS) Directive.

### The Renewable Energy Directive

The new Directive 2009/25/EC requires 20% of the EU's overall energy consumption to come from renewable sources by 2020, with 10% of each Member State's transport consumption to be met by renewable sources by 2020. Mandatory national targets are to be put in place for renewable energy use across the EU, promoting the use of renewable energy, including guarantees of origin, all underpinned by a new system of streamlined administrative procedures, information and training, access to the grid and National Renewable Energy Action Plans (NREAP's). In these plans each Member State will be required to adopt and publish a national plan that states how each Government intends to reach its renewable energy targets (a requirement of the Directive) and to notify the EC of such plans by 30 June 2010. It should be borne in mind that, if the EC considers a plan to be inadequate, it will have the capacity to issue recommendations for revision. More recently, the EC published a template for such plans, adopted in June 2009<sup>9</sup>. The template reflects Member States' national targets for the share of energy from renewable sources, detailed national policies on biomass resources and the implementation of biofuels sustainability schemes, whilst simultaneously taking into account other policy measures related to energy efficiency. In addition, the template specifies national policies on enabling measures and includes details on administrative procedures, building codes, information and training, as well as energy infrastructure development.

### Extension of EU ETS

The extended EU ETS Directive (2009/29/EC) revises the former EU ETS Directive (2003/87/EC) in order to achieve maximum emissions reductions of greenhouse gases in energy intensive sectors. The new Directive will be a key tool in the EU's armoury for achieving the 20% reduction in greenhouse gas emissions compared with 1990 levels by 2020. From 2013 onwards, heavy industry (eg. electricity generation, oil refineries, cement and paper) will be compelled to make a marked contribution towards reaching the EU's overall target for reducing greenhouse gas emissions. Greenhouse gas emissions permits will no longer be allocated free of charge; rather, they will be auctioned, with purchases set to start at 20% of emissions permits in 2013, rising to 70% in 2020. Power generators, unlike other sectors, will be required to purchase all their allowances at auction in order to prevent any potential windfall profits. The aim is to reach a 100% target for the purchase of emissions permits in 2027. A derogation will be available in order to facilitate the transition for those countries with a high dependence on fossil fuels or insufficient connection to the European electricity network. In addition, the Directive also provides for a solidarity mechanism in order to help less affluent EU Member States with the transition to a low-carbon economy with such Member States receiving an increase in the amount of emissions permits to auction (12% more than their actual share in the overall EU greenhouse gas emissions), thus providing them with an opportunity to generate revenues from the sale of allowances.

The revised EU ETS will apply from the start of the third trading period (ie. 1 January 2013) and Member States will be required to transpose the requirements of the Directive into national legislation, thereby ensuring compliance by 31 December 2012.

<sup>8</sup> "Guidance on how to measure and report your greenhouse gas emissions (Defra)"

<sup>9</sup> EC adopted a decision (2009/548/EC) establishing a new template for NREAP's on 30 June 2009 – see <http://ec.durope-eu>

### **Effort Sharing Decision**

In terms of recognition of Member States' efforts to make carbon emissions reductions, the Decision (406/2009/EC), which was adopted in December 2008, sets Member States binding targets for the reduction of greenhouse gas emissions in sectors that do not fall under the umbrella of the EU ETS (eg. housing, transport and agriculture). Relevant sectors will be required to reduce emissions compared with 2005 levels by 20% by 2020, thereby contributing to the EU's overall goal of a 20% reduction in CO<sub>2</sub> emissions across the economy. In the UK, the target is a 16% reduction in emissions and the recent policy measures are governed by the Climate Change Act 2008, the Energy Act 2008 and the Renewable Energy Strategy.

The Decision is binding upon Member States and will be enforceable through the infringement proceedings. Those countries that exceed their annual objective must implement corrective measures and excess emissions will be multiplied by an abatement factor of 1.08 and deducted from the following year's CO<sub>2</sub> allowances. In order to make the scheme practicable, the EU has introduced several flexibility mechanisms which include the possibility of trading emissions among Member States and carrying forward excess reductions to future years. Furthermore, countries can also use a limited amount of carbon credits from developing countries through the clean development mechanism.

### **Regulation on car emissions**

The new EC Regulation (443/2009) sets legally binding standards for CO<sub>2</sub> emissions from new passenger cars, which will apply from 2012. The Regulation will give legal effect to the EU's existing goal of reducing the level of average emissions from new cars, whilst at the same time contributing towards the reduction of road transport emissions to global warming, thereby helping the EU achieve its objective of 20% reduction in greenhouse gas emissions by 2020. Practically speaking, new thresholds will apply to engine technology and more efficient vehicle features (eg. air conditioning systems and tyres). The new targets are to be binding, with manufacturers implementing them in successive stages: in 2012 – 65% of the current fleet must meet the target; in 2013 – 75%; and in 2014 – 80%. Failure to comply will result in car manufacturers facing penalties. Emissions performances can be improved by including new technologies or producing low emissions cars which emit less than the average CO<sub>2</sub> emissions.

### **Biofuels (Fuel Quality) Directive**

The new Directive (2009/30/EC) introduces new sustainability criteria for biofuels and provides details on how hydrocarbon supplies can achieve a 10% reduction of transport energy consumption for renewable sources. In addition, the Directive revises environmental quality standards, with the new standards to apply from 2011. The Directive enables greater blending of biofuels into petrol and diesel and for the first time, introduces a reduction target for greenhouse gas emissions from such fuels. The stringent environmental and social sustainability criteria for biofuels, which also corresponds to those set out in a Renewable Energy Directive, will help to achieve the targets in a socially responsible manner. Limits on the contents of sulphur and metallic additives in engine fuel will also be imposed and, in addition, the maximum vapour pressure of fuel is also prescribed.

The Directive is to be transposed by Member States into national laws by 31 October 2010.

### **Carbon Capture and Storage (CCS) Directive**

The Directive (2009/31/EC) establishes a new regulatory framework for the geological storage of carbon dioxide which is intended to make the technology feasible in the EU.

By way of background, CCS is a process whereby carbon dioxide, emitted when fossil fuels are burned, typically as part of an industrial combustion process, is captured and stored in secure underground spaces such as geological formations, strata and natural reservoirs. Technically, the process involves the capture of carbon dioxide during combustion, and its compression into a suitable form of transport to a secure storage site. The Government's aim is to explore a range of CCS technologies.

Member States will still have to decide whether or not CCS should be adopted in their country. Notwithstanding the requirement on member states to transpose the Directive into national laws by 25 June 2011, if States do decide not to adopt CCS Technology; the Directive will consequently, not have such a direct impact, and CO<sub>2</sub> reductions targets will have to be met in other ways. For those countries that wish to do so, however, the directive sets out the conditions for the assessment of storage sites, authorisation procedures and requirements in respect of closure, thereby ensuring a degree of consistency throughout Europe. In practice, the EC will review draft storage permits and draft decisions on closure prepared by national authorities prior to approval for those countries which adopt CCS technology. Operators will be obliged to monitor storage sites and report to the Member State's competent authority both whilst storing carbon dioxide and after decommission. Responsibility of a site will revert to the public authority when sufficient proof is obtained that the carbon dioxide will be completely and permanently contained.

Essentially, the CCS Directive establishes a framework for the adoption of new CCS technology, and provides for the regulation of CCS, incorporating provisions into existing environmental control regimes such as the pollution prevention and control regime, but excludes it from others, such as waste. It will be the responsibility of Member States to determine the location of territorial sites suitable for the geological storage of carbon. Ultimately, liability for CCS sites, once operational, will rest with operators, responsibility transferring back to the Member State after closure. A competent authority in each Member State will need to be established in order to regulate the new regime, maintaining a registry of closed sites and permits and enforcing the new CCS regime where appropriate. Penalties for breach of the regime are to be set independently by Member States.

In terms of practical implementation, there will be a number of permits required for its exploration and storage, with strict rules on monitoring, reporting and inspection accompanying the grant of such permits. A minimum storage period is to be determined by Member

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States in conjunction with the competent authority, although in any event it should be no shorter than 20 years. Finally, operators will have to make financial provision in two phases: (1) from the grant of a storage permit to transfer to the competent authority; and (2) post transfer obligations up to a minimum of 30 years' monitoring. Permits will only be granted once the competent authority has been assured about financial security, which is to be adapted over the course of the storage period in order to take account of the risk of leaks and of meeting further obligations.

With regard to existing environmental EU legislation, the Large Combustion Plants (LCPs) Directive<sup>10</sup> has been revised in order to ensure that operators of all combustion plants over 300mw or more of electricity after the CCS Directive entered into force must assess whether their plants are 'CCS ready'. If so, and the relevant conditions are met, such as suitable storage sites being available and transport facilities being technically and economically feasible, the LCP competent authority must ensure that space is set aside at the installation for the retrofit of CCS technology. Similarly, the Environmental Impact Assessment Directive<sup>11</sup> has been revised in order to ensure that CCS storage sites and pipelines are subject to EIA. The Water Framework Directive<sup>12</sup> has been amended in order to authorise CO<sub>2</sub> injection for CCS purposes, making it an exception to the general prohibition of direct discharges of pollutants into groundwater. The Environmental Liability Directive<sup>13</sup> now includes CCS as one of the activities set out in Annex 3 of the Directive that is subject to remediation and compensation. The Waste Framework Directive<sup>14</sup> excludes the storage of CO<sub>2</sub> under CCS from the definition of waste. The Pollution Prevention and Control Directive<sup>15</sup> adds CCS to the list of installations subject to the Pollution Prevention and Control Regime.

At an international level, the EC has issued draft proposals to amend the OSPAR Convention<sup>16</sup> in respect of CCS. OSPAR aims to prevent and eliminate pollution, whilst protecting marine areas against harmful effects of human activities. At present, there is a prohibition on the storage of carbon dioxide under the sea bed or in water columns in that area. In order to provide a regulatory framework to enable CCS operations to take place in the OSPAR maritime area, revisions will need to be made to the Convention. The proposed changes to OSPAR are limited to the disposal and capture of carbon dioxide in geological formations, provided the disposal is intended to be maintained in these formations permanently and does not lead to adverse consequences for the real environment.

## Government Moves Towards a Low Carbon Economy

UK measures for achieving a reduction in carbon emissions and renewable energy targets have been set out in new Government policy and strategy, together with the potential for 'feed-in' tariffs (outlined in the Energy Act 2008) and measures to introduce CCS technologies for the production of clean coal.

### UK Low Carbon Transition Plan

Ed Miliband, Secretary of State for Energy and Climate Change, announced the plan on 15 July 2009, which sets out a number of initiatives and strategies for achieving a low carbon economy in the UK. As noted above, the EU's '20-20' package sets a 20% increase in energy efficiency measures and emissions reductions by 2020. The UK has set a national target of reducing greenhouse gas emissions by 34% compared with 1990 levels by 2020, in addition to the legally binding target prescribed in the Climate Change Act 2008, which requires a cut of 80% in emissions by 2050. The 'UK Low Carbon Industrial Strategy', published alongside the plan sets out a series of government actions for supporting change, together with the 'Renewable Energy Strategy', which details how the UK will deliver 15% of all energy from renewable sources by 2020, with low carbon transport initiatives set out in the 'Low Carbon Transport Plan'.

### 'Feed-in' tariffs

Prior to the Energy Act 2008 coming into force, the former Secretary of State for the Environment (Ed Miliband) announced last October that the Government intended to introduce 'feed-in' tariffs for small scale renewable energy schemes and projects in the UK. The intention was that the tariffs would work alongside the existing framework for renewable electricity incentives and the Renewables Obligation<sup>17</sup>, which is more applicable to larger energy projects. Consequently, powers enabling the Government to introduce such tariffs for smaller schemes below a proposed 5MW threshold were introduced to the Energy Bill whilst it was making its way through the parliamentary process. Chapter 4, Part 2 of the Energy Act provides for 'feed-in' tariffs for small scale generation of electricity and, potentially, may apply to renewable sources including biomass, biofuels, fuel cells, photovoltaics, water, wind, solar, geothermal and combined heat and power systems.

So what are 'feed-in' tariffs? Essentially, these are long-term contracts whereby electricity undertakings agree to purchase renewable energy that is generated, which is subsequently fed in to the national grid at a fixed price. The Government has stated that it is committed to having feed-in tariffs in place by April 2010. More recently, the Renewable Energy Association (REA) presented its detailed 'blueprint' for tariffs to the Energy Minister, Mike O'Brien, which sets out a fixed payment for every unit of renewable energy that is generated, an initiative which has been adopted by many countries to date, the first projects being pioneered in Germany.

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<sup>10</sup> 2001/80/EC.

<sup>11</sup> 85/337/EC as amended.

<sup>12</sup> 2000/60/EC.

<sup>13</sup> 2004/35/EC.

<sup>14</sup> 2006/12/EC.

<sup>15</sup> 2008/1/EC.

<sup>16</sup> OSPAR convention – Convention for the Protection of the Marine Environment of the North East Atlantic.

<sup>17</sup> The Renewables Obligation (RO) was introduced in 2002 and is one of the government's key mechanisms for supporting the generation of renewable electricity. A draft Renewables Obligation Order 2009 has been published.

## Clean coal

The Department for Energy and Climate Change recently published a consultation on new proposals that will reconcile the need to curb carbon dioxide emissions from future coal power stations with security of energy supply being key. The consultation was published alongside an industry report entitled 'Future Value of Coal Carbon Abatement Technologies to UK Industry published by the AEA Groups December 2008'<sup>18</sup>, which sets out a framework for the future development of clean coal.

The consultation, outlined by Ed Miliband<sup>19</sup> on 23 April this year, essentially proposes that new coal fired power stations should only be given consent in the UK if they can demonstrate carbon capture and storage (CCS) on a specified and defined part of capacity from day one of operations. The demonstration project would have to store 20 million tonnes of CO<sub>2</sub> over a period of 10–15 years. The draft framework does recognise, however, that CCS demonstration would only proceed with government intervention. Consequently, the intention is to give financial support to up to four CCS demonstrations, including the CCS demonstration project launched in 2007. Furthermore, new stations would have to retrofit CCS to full capacity within five years of such being proven by an independent source, at the same time illustrating economic viability. The timeframe is to be based on power stations introducing retrofit CCS technology by 2020 and the independent review, potentially led by the Environment Agency, to report on the status of technology within that period. The consultation document also explores whether or not this requirement should apply to existing coal-fired power stations, in addition to the proposals for retrofit. The Government would seek primary legislation to implement the framework at the earliest opportunity.

In Europe, the EU has adopted a new CCS Directive (see above), whilst in the UK a consultation<sup>20</sup> paper was issued last year, seeking views on a draft directive and practical suggestions as to how the UK may in the future implement such a regime. It examined issues relevant to 'carbon capture readiness', questioning whether or not the UK should make it a requirement for new combustion plants to be constructed with CCS technology in place from the outset, whilst scrutinising the implications for retrospective fit out of such technology. The Government's response to the consultation was published on 23 April 2009 alongside draft guidance for applicants seeking Section 36 consent to operate new power stations over 300mw – the draft guidance reflects "carbon catcher readiness" (CCR) policy to be consulted upon.

## Marine legislation – Update

The Marine Strategy Framework Directive<sup>21</sup> came into force in June 2008 and established a framework for European community action with the objective of updating and clarifying marine environmental policy, bringing into effect the EU's Thematic Strategy on the marine environment. In terms of implementation, following the establishment of the Marine Strategy Committee under the Directive and its inaugural meeting, which took place in February 2009, Marine Directors<sup>22</sup> have agreed upon a new working structure for a Common Implementation Strategy of the Directive at an EU level, bringing together functions of Marine Directors, the Marine Strategy Co-ordinating Group, the Marine Strategy Committee, working groups and other links to integrated marine policy.

The Marine Strategy Co-ordination Group will prepare and educate the Marine Directors, ensuring execution of the Marine Strategy Framework Directive through co-ordination of different working groups and activities under a common strategy. The group will be open to Member States and a range of stakeholders to join, a similar situation to the Water Framework Directive and Water Directors. The Marine Strategy Co-ordination Group is tasked with steering preparation for, and acclimatising the group for agreement on, the technical contents of the decisions required to be adopted pursuant to the Marine Strategy Framework Directive. At present, there are only two working groups reporting to the Marine Strategy Co-ordination Group planned and they consist of a 'working group on good environmental status' and 'a working group on data, information and knowledge exchange'. It will be key to ensure that the Marine Strategy Framework Directive, as the environmental pillar of integrated marine policy, feeds into other water management and biodiversity legislation.

## Marine and Coastal Access Bill

In the UK, the Marine and Coastal Access Bill is currently making its way through the parliamentary process. To date, the Government has publicly consulted on marine conservation zones and the draft strategy framework for developing a network of marine protected areas, including marine conservation zones proposed under the Bill. In addition, the Government has consulted on the marine licensing provisions under Part 4 of the Bill and published high level marine objectives for the anticipated Marine Policy Statement (MPS) entitled 'Our Seas – A Shared Resource: High Level Marine Objectives'. The objectives will underpin the development of an integrated MPS, a cornerstone of the Marine Management Organisation (MMO), which is to be established when the Bill is enacted together with and other marine delivery organisations framed under the Bill. A UK-wide MPS, together with a series of marine plans, will be used to guide licensing decisions and developers will look to these plans to interpret policy on licensing decisions. Marine licensing is to be streamlined and a 'one stop shop' incorporating provisions currently comprised in the Food and Environmental Protection Act 1985 (FEPA 1985) and the Coast Protection Act 1949 (CPA 1949). The Harbours Act 1964 is also to be revised. There will be a civil sanctions scheme for breaches of licensing based upon the Regulatory Enforcement and Sanctions Act 2008.

Pursuant to the Bill, the MMO will encompass functions including marine planning, licensing, fisheries management, nature conservation, enforcement and coastal access. It will be a non-governmental public body based in Tyneside with a series of coastal offices. It is anticipated that the MMO will commence operation in April 2010; however, this depends upon passage of the Bill through Parliament.

<sup>18</sup> AEA is a leading international energy and environmental company.

<sup>19</sup> Secretary of State for Environment and Climate Change.

<sup>20</sup> BERR 'Towards Carbon Capture & Storage – A Consultation Document BERR 2008'.

<sup>21</sup> Directive 2008/56/EC.

<sup>22</sup> Directors will provide overall guidance for work on implementing the directive.

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In terms of the inter-relationship with the new Infrastructure Planning Commission (IPC) (to be established under the Planning Act 2008), the MMO is to work alongside the IPC. Nationally Significant Infrastructure Projects (NSIPs) will remain under the remit of the IPC, whilst other marine projects will be determined by the MMO. For large scale ports and renewable energy developments, the MMO will act as a centre for expertise for the IPC to call upon.

Marine Conservation Zones (MCZs) are a key component. MCZs are site based conservation tools which will complement European Marine Sites, with a coherent network of marine protected areas by 2010. Different levels of protections will apply depending upon the site in question. Ministers are to designate MCZs and set conservation objectives for each of the zones.

If you have any queries on the issues raised in this environmental briefing, or if you would like a fuller explanation on the topics, please contact a member of Taylor Wessing's Environmental Law Group.



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