

**NWIFCA Technical, Science and Byelaw
Committee**

5th February 2019: 10:00 a.m.

**AGENDA
ITEM NO.
10**

MMO REPORT: QUALITY ASSURANCE OF IFCA BYELAWS; PROCESS REVIEW

Purpose: to report outcomes of MMO review of byelaw making guidance

Recommendations:

- i) Outcomes of MMO byelaw making review are agreed,**
- ii) NWIFCA byelaw making procedure is adapted to suit.**

Background:

- 1. This report was commissioned by MMO from the consultancy firm MRAG in December 2017. IFCA Chief Officers were initially informed and consulted at COG on 10th January 2018 and via a questionnaire in February 2018. All Chief Officers responded to the questionnaire except Isles of Scilly which was undergoing major staff changes.
- 2. The final report (77 pages) published in November 2018 is at Annex A. The proposed outcomes recommended in the report were summarized by the consultants in a separate report copied below (*italics*) with comments from the CEO and discussion at Chief Officers group on 15th January 2019 in normal text.

Proposed Outcomes Report

- 3. *There were 3 principles to the review:*
 - I. IFCAs taking more ownership of their byelaws*
 - II. Streamlining processes to removal of unnecessary delays*
 - III. Continuation of targeted support from MMO and Defra*
- 4. The first 2 were welcomed by IFCA at the meeting in January 2019 although it is not yet clear how they will be delivered in practice.
- 5. The third implies some reduction in MMO and Defra support. It is not yet clear what the impact of that will be on delivery and efficiency of byelaw production.
- 6. The following are the proposed outcomes from the summary document (*italics*) with CEO comments.
 - 1. ***IFCA byelaw advertising requirements.*** *The current convention is that IFCAs advertise each byelaw in one national and two local newspapers. We are pleased that it is recognised that this may not be the most effective way of consulting stakeholders on new byelaws and support the proposal for IFCAs to use more innovative methods of connecting with the people likely to be affected by the byelaw.*

IFCAs agree it should be IFCAs' responsibility to demonstrate that their byelaw consultations have been brought to the attention of relevant stakeholders. IFCAs use stakeholder meetings, website, newspaper ads, texts and social media as appropriate to ensure all interested parties are aware of new byelaws.

- 2. Streamlining the provision of legal advice to IFCAs from MMO and Defra.** *To avoid the risk of duplication and to ensure legal issues are resolved at an earlier stage, MMO Legal will be the sole source of legal advice during the quality assurance and confirmation of IFCA byelaws. Where appropriate, MMO Legal will seek input from Defra Legal, for example on complex or novel IFCA byelaw issues.*

IFCAs consider this to be a major change which implies that Defra role in byelaw making will be much reduced. It is welcome as a means to streamline and reduce time to enact byelaws but reducing legal scrutiny may have some risk.

- 3. Addressing issues earlier.** *MMO will require IFCAs to notify MMO and Defra when they first take the decision to create a byelaw. This notification will include a summary of the need for the byelaw, how the byelaw will address the issue and the proposed timescale for introducing the byelaw. This will allow potential issues to be addressed at an earlier stage in byelaw development.*

IFCAs consider this is already done. All proposed new byelaws are reported to MMO as soon as the intention is agreed by the Authority. MMO maintain a record of all IFCA byelaws in development and how far they have proceeded in a byelaw tracker document circulated monthly to all IFCA.

- 4. A 28 working day timetable for confirmation of most IFCA byelaws.** *The majority of IFCA byelaws are confirmed by a senior official within Defra acting on behalf of the Secretary of State. For these byelaws, Defra will confirm, request more information or reject an IFCA byelaw within 28 working days of receiving a submission from the MMO.*

This mirrors the 28 working day timetable in place for MMO quality assurance. However, for byelaws which require escalation to ministers for consideration, this timetable will not apply.

If applied effectively this proposal would give a guaranteed response period for byelaw decisions by Government. It would greatly enhance certainty in the byelaw making process and have a big impact on the efficiency of the process. Draft byelaws sent for confirmation may still be rejected but at least the extent of the delay would be limited and IFCA would be able to address changes needed in a timely way.

- 5. Removal of informal review of draft IFCA byelaws:** *Shortly after IFCA vesting in 2011, MMO encouraged IFCAs to seek informal advice from MMO ahead of quality assurance. This was done to help the new process bed-in, and to pre-empt issues at quality assurance stage.*

However, the MRAG review has highlighted that this stage is seen as overly onerous (for MMO (SA comment)), the source of inconsistencies and ambiguity and does not always capture issues ahead of formal quality assurance. It may have also contributed to an over-reliance on MMO to proof read and correct basic issues. MMO will therefore stop providing routine informal review of draft IFCA byelaws. MMO will continue to support IFCAs on specific policy and legal issues at the early stages of byelaw creation.

This addresses the 1st principle of the review to encourage IFCA to have greater ownership of their byelaws but it sharply changes the balance of work between IFCA and MMO. It further leads to the next point where IFCA will in future have to seek their own legal advice.

6 ***IFCA independent legal advice:** IFCA's must seek independent legal advice for complex or novel byelaw issues before approaching MMO for legal advice. We (MMO) would encourage IFCA's to consider arranging a central legal advice service to ensure that they receive consistent advice and value for money. To facilitate this we will:*

- I. Stop the routine informal review of IFCA byelaws by MMO*
- II. Require IFCA's to state whether independent legal advice has been sought for each byelaw when seeking MMO advice or submitting a byelaw for quality assurance.*

This change is expected to have the biggest impact on the way IFCA's make byelaws. We have been used to going back and forth to MMO legal advisors but have become aware that the legal resource in MMO has been heavily stretched. NWIFCA has made arrangements to seek its own legal advice. The Hull based Fisheries Lawyer Andrew Oliver has been commissioned to work on byelaws from this Authority. At present Andrew is preparing advice on the Cockle permit byelaw, together with our use of Byelaw 13A and the existing cockle permit byelaw to manage cockle fisheries in the District. He will then look at the draft potting byelaw.

7. *Assessment of byelaw impacts.* *Full impact assessments are routinely completed by central government only for decisions where the equivalent annual net direct cost to business is estimated to greater or equal to £5 million. Few IFCA byelaws create this level of cost, therefore it is not appropriate to require a full impact assessment for each IFCA byelaw. We will align IFCA byelaw requirements with those of central government so that IFCA's complete a regulatory triage assessment for measures under £5 million, and only require a full impact assessment where higher costs are imposed.*

This change in policy should significantly reduce the work required to prepare byelaws and is most welcome. RIA have long been complex and frustrating documents to prepare and have sometimes appeared to have little bearing on reality. However it is not yet clear how the threshold of £5M will be calculated so the impact on IFCA byelaws is not yet known

8 *Improved guidance and supporting documents.* *We will give the IFCA's the opportunity to submit new improved guidance for consideration by Defra to supersede existing the IFCA Byelaw Guidance:*

Guidance on the byelaw making powers and general offence under Part 6, Chapter 1, Sections 155 to 164 of the Marine and Coastal Access Act <http://www.association-ifca.org.uk/Upload/About/ifca-byelaw-guidance.pdf>

CEO
24th January 2019