
CONTENTS

1.	PURPOSE.....	2
2.	BACKGROUND TO THE AUTHORITY	2
3.	BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT	2
4.	DEFINITIONS AND ACRONYMS.....	4
5.	THE REQUIREMENT.....	4
6.	KEY MILESTONES	6
7.	AUTHORITY'S RESPONSIBILITIES	8
8.	REPORTING	8
9.	CONTINUOUS IMPROVEMENT	8
10.	SUSTAINABILITY	8
11.	ACCREDITATION	8
12.	STAFF AND CUSTOMER SERVIC.....	8
13.	SERVICE LEVELS AND PERFORMANCE	8
14.	SECURITY REQUIREMENTS.....	8
15.	PAYMENT.....	8
16.	BASE LOCATION	9

1. PURPOSE

- 1.1 The Ministry of Housing Communities and Local Government (MHCLG) require legal services from a Supplier to draft a piece of secondary legislation, to deliver a Development Order under sections 59 and 60 of the Town and Country Planning Act 1990. This will grant temporary planning permission to specific land to be developed and used for border control infrastructure provided by Government's Border Infrastructure departments¹.
- 1.2 The sites to which the permission will apply need to be operational for up to five years. The sites being considered vary in size and complexity. These sites are required to be operational in time for when the UK leaves the EU on 1 January 2021.
- 1.3 Additionally, we will require the Supplier to be the lead planning lawyer for this policy area for the department as required and in accordance with policy instructions provided to the Supplier by the planning policy team at MHCLG. The nature of the advice will depend upon the planning proposals submitted by border department. Based on previous experience, however, this is likely to include advise on the environmental regulations as they apply to specific proposals.

2. BACKGROUND TO THE AUTHORITY

- 2.1 MHCLG is the government department responsible for the planning system. It is responsible for making planning decisions respect of urgent Government's Border infrastructure. These decisions include potential legislation (Development Order), related planning decisions (prior approvals) and compliance monitoring.

3. BACKGROUND TO REQUIREMENT / OVERVIEW OF REQUIREMENT

- 3.1 When the EU Transition period ends on 1 January 2021, goods movement with the EU will be treated equally to movement with the rest of the world (RoW), meaning HM Government will operationalise full import and export controls on EU goods.
- 3.2 The reason why the Government is implementing full border controls on imports coming into Great Britain from the EU is to:
 - a. to keep borders safe and secure

¹ This phrase is used throughout to collectively refer to Defra, BEIS, DfT, and HMRC

- b. to ensure we treat all partners equally as we begin to negotiate our own trading arrangements with countries around the world. i.e. as part of international trade negotiations
 - c. to treat EU goods in the same way the EU will treat UK goods
 - d. to collect the right customs, VAT and excise duties.
- 3.3 Ensuring an orderly transition to this new system of controls is a matter of national importance in respect of security and the trade of goods, including essential goods (medicines and food).
- 3.4 Delivering border controls like those in place for Rest of World (RoW) goods at ports that largely serve EU trade will require additional infrastructure and process to control the border and facilitate checks and compliance activities. The changes may involve border control posts (for biosecurity), additional HGV holding spaces (for checks on the border readiness of traders and hauliers) and changes to the road network.
- 3.5 While the infrastructure would normally be provided on-port by port operators, some ports operators may be unwilling or unable to provide the necessary facilities by 1st January 2021. This may be a short-term delay while the commercial market adjusts to the new requirements, or a longer-term requirement where there are physical constraints to providing 'on-port' facilities. The impact of Covid-19 on business and others has also been significant. While it is still the intention for full controls to be introduced at the UK border, they will now be phased-in from January 2021 onwards.
- 3.6 Border departments are planning for a scenario where HMG directly provides several inland "off-port" facilities for border control infrastructure.
- 3.7 Ministers have recently confirmed this intention; however, border departments have not yet agreed the precise number and location of these facilities as this is subject to further consultation with ports across the UK. Consequently, border departments have not yet finalised their requirements making the timescales for constructing and testing new facilities extremely challenging. Covid 19 is likely to further challenge the operational delivery deadlines for any HMG provided facilities because of the necessary precautions around social distancing during the construction phase, and bring additional infrastructure requirements to address social distancing, biosecurity and quarantine while the facilities are in operation.
- 3.8 Normally where planning permission is needed applications would be made to the relevant local planning authority who would then have at least 13 weeks to determine these (the nature of the facilities means they are unlikely to be minor applications). As part of No Deal preparations MHCLG granted temporary planning permission for three sites [REDACTED] to be used for the processing of goods vehicles to relieve pressure on priority ports. Time pressures from border departments led to permission being granted through Special Development Orders (SDO) made under sections 59 and 60 of the Town and Country Planning Act 1990.

- 3.9 Given the approaching 1st January 2021 deadline for the phased introduction of new border controls, and the national significance of having border infrastructure in place, we believe decisions on planning proposals will need to be taken by Ministers again i.e. using SDOs to grant planning permission, subject to decisions on the planning merits of individual planning proposals. We intend to ask Ministers to make a Development Order that would grant planning permission for multiple sites and we require the services of an external law firm to draft the legislation and provide the necessary legal advice surrounding the draft legislation.

4. DEFINITIONS AND ACRONYMS

Expression or Acronym	Meaning
S.I.	Statutory Instrument for the Development Order
MHCLG	Ministry of Housing Communities and Local Government
SSHCLG	Secretary of State for Housing, Communities and Local Government
Second Lawyer	Lawyer in the Government Legal Department who will review the draft S.I and draft Explanatory Memorandum to ensure that it meets the legal requirements to lay
Third Lawyer	A further lawyer (other than the Second Lawyer) in the Government Legal Department who will review the draft S.I after the Second Lawyer to ensure that it meets the legal requirement to lay.
Development Order	A development order under section 59 of the Town and Country Planning Act 1990.

5. THE REQUIREMENT

- 5.1 There are three distinct phases to the requirement. Before work on the next Phase in the sequence begins; the Authority will issue instructions/ further information relating to that Phase via a formal variation in accordance with Clause 4 (Variation and Extension). Only once this has been formally accepted by the Supplier shall work begin under that Phase. The Authority does not guarantee any work in relation to Phase 2 and Phase 3.
- 5.2 The Supplier is required to:
- **Phase 1 – Statutory instrument in place - urgent.**
Draft secondary legislation (Development Order to be made under sections 59 and 60 of the Town and Country Planning Act 1990) and Explanatory Notes and advise on the Explanatory Memorandum Expected (targeting laying date early August 2020.)
 - **Phase 2 – Subsequent planning decisions** (If enacted via a variation in accordance with Clause 4 (Variation and Extension))

Provide legal advice to support Ministers' decisions on individual planning proposals for an estimated **[REDACTED]** sites. These will be submitted by a border department or consultants on their behalf, for MHCLG consideration and decision.

- **Phase 3 –Legal challenges to SSHCLG decisions.** (If enacted via a variation in accordance with Clause 4 (Variation and Extension))
- Provide the necessary legal advice for any challenge and instruct external legal Counsel on SSHCLG behalf. The extent to which this is likely is not known at this stage as it is in large part dependent on action in phases 1 and 2. Any advice ought to be in line with the Government Legal Department's Guidance on Legal Risk- see <https://www.gov.uk/government/publications/guidance-note-on-legal-risk>

Phase 1 detailed requirement

5.2.1 Draft the S.I. and provide legal advice to support MHCLG in the making of the proposed Development Order under sections 59 and 60 of the Town and Country Planning Act 1990. Including-

- work with and advise officials in MHCLG and the border departments during the drafting and preparation of the relevant documentation to support the making of the Development Order.
- where necessary, to instruct and liaise with external legal Counsel as advised by the MHCLG policy team. External legal Counsel is expected to advise on the vires for the making of the Development Order.

5.2.2 Draft the statutory instrument (S.I.) required to implement the Development Order under sections 59 and 60 of the Town and Country Planning Act 1990 in time for the Secretary of State to sign and to lay the instrument before Parliament. In particular-

- To draft the S.I. in accordance with the Government Legal Profession's guidance on drafting Statutory Instruments dated August 2018 (included in Annex C - Drafting and Guidance Documentation - Appendix 2) and the National Archives Statutory Instrument Practice (5th Edition August 2017) (included in Annex C Drafting and Guidance Documentation - Appendix 3) to the satisfaction of officials in MHCLG.

Ways of working and General Tasks:

5.3 Working with policy officials in MHCLG and the border departments to draft the S.I. including:

- providing advice in writing and via video/telephone meetings as necessary,

- liaising with border departments' legal team as necessary,
- providing legal advice in accordance with the Government Legal Department's Legal Risk Matrix (included in Annex C Drafting and Guidance Documentation - Appendix 1)
- responding to and incorporating changes to the draft S.I. based on comments from officials in MHCLG,
- and providing legal advice to the Department on the contents of the Explanatory Memorandum accompanying the S.I.
- Instructing external legal Counsel, liaising with Counsel's clerk on availability, communication approach and timing of advice.

Phase 2 requirements (subject to confirmation)

5.3.1 Direct legal advice and support –

- working with and advising officials in MHCLG and, where appropriate, the border departments during the preparation of the relevant planning documentation to support the making of the Development Order,
- Assisting officials in MHCLG with advice to ministers, including the legal risks involved in the proposed planning decisions. It is anticipated [REDACTED]. The key milestones for these decisions are not known at this point as they will follow the SDO being made and to a large extent will be dictated by the timing of individual planning proposals being submitted by other departments for MHCLG consideration. However, it is anticipated that they will cover the period from August 2020 to July 2021.

6. KEY MILESTONES

No	Milestone	Description	Date
Phase 1			
1	Policy Instructions	Review the drafting instructions prepared by policy officials	Within 1 day
2	Drafting	Submit first draft of the S.I. Submit revised draft of SI (based on discussions with MHCLG policy officials and feedback from necessary stakeholders, including external legal Counsel to MHCLG).	First draft within 5 days of receiving the instructions.

		<p>Full checks and necessary revises to accompanying documents.</p> <p>Allow sufficient time for the document to be converted to the Government's preferred legal template (an example of formatting is at included in Annex C Drafting and Guidance Documentation - Appendix 4</p>	Completed product within 10 days of receiving instructions.
3	Final approval and clearances	Checks of S.I as detailed in clause 6.1 below resulting in S.I validation by MHCLG	Within 1 day
Phase 2 (subject to confirmation)			
4	Planning decisions	Legal advice and support with drafting decision related documents and advice to SSHCLG	Within 1 day of request
Phase 3 (subject to confirmation)			
	Legal challenge	Provide the necessary legal advice for any challenge and instruct external legal Counsel on SSMHCLG behalf	Within 1 day of request

6.1 Final approval and clearances - these can happen in agile ways and not sequentially.

- Second lawyer at MHCLG checks draft S.I
- Third lawyer at MHCLG checks draft S.I
- Lawyer at the Potential Provider and policy official check and proofread S.I
- Policy official and Lawyer at the Potential Provider check Explanatory Memorandum, drafted by MHCLG policy officials, and makes any necessary drafting changes / guidance for the last time before publication
- Policy official manages ministerial write-round seeking final Cabinet clearances
- Lawyer and Policy official at MHCLG seeks ministerial approval to make S.I
- MHCLG arranges S.I validation

7. PARLIAMENTARY PROCESS FOR NEGATIVE SI

- 7.1 Legal team and Policy official at MHCLG puts a submission to the minister, asking them to make/sign the SI
- 7.2 SI validation i.e. registration, publication, printing and laying will be undertaken by MHCLG
- 7.3 Period before SI comes into force.

8. AUTHORITY'S RESPONSIBILITIES

- 8.1 As explained above the project has uncertainty regarding the timing of requests for planning decisions and Parliamentary timing. MHCLG responsibilities are to provide policy instructions, review SI drafts and ensure the S.I logistics as set out above are delivered.

9. REPORTING

- 9.1 Not applicable

10. CONTINUOUS IMPROVEMENT

- 10.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 10.2 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

11. SUSTAINABILITY

- 11.1 Not applicable.

12. ACCREDITATION

- 12.1 On the Roll of Solicitors and / or a Member of the Bar.
- 12.2 Direct experience of drafting secondary legislation and associated products (e.g. explanatory memorandum).
- 12.3 Knowledge and recent direct experience of using and interpreting the town and country planning acts, associated secondary legislation, and environmental regulations as they relate to the planning system.

13. SERVICE LEVELS AND PERFORMANCE

- 13.1 The Authority will measure the quality of the Supplier's delivery by:

13.1.1

KPI/SLA	Service Area	KPI/SLA description	Target
1	Delivery timescales	Advice and drafting changes within 24 hours of client instructions	100%
2	Quality	Client feedback: Advice is proactive, risk based and focus on supporting decision making.	90%
3	Quality	Legal competence: advice is legally sound and reasonable.	100%

14. SECURITY REQUIREMENTS

- 14.1 Client privilege will be in force.

15. PAYMENT

- 15.1 Payments will be monthly for work completed.

- 15.2 Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.

16. BASE LOCATION

- 16.1 The service can be based in London or virtually.

17. EXIT

The contract covers the period up to 31 March 2021 with the option to extend up to the 31st July 2021. It will be agile with confirmation on taking the contract forward in the next Phase confirmed via a formal variation in accordance with Clause 4 (Variation and Extension).

- Phase 1 – Statutory instrument in place. Expected timeframe from July until mid / end August 2020 (end date dictated by laying date agreed with Parliament)
- Phase 2 – To be confirmed through formal contract amendment. Subsequent planning decisions. Prior agreement will be made on the number and timeframe for these as they arise.
- Phase 3 – To be confirmed through formal contract amendment. Support with related legal challenges to SSHCLG decisions.

- 17.1 On completion of Phase 1, the following should be returned to the Authority: all draft versions of the S.I, any legal advice generated, all policy instructions and submissions (advice to Ministers); and all legal instructions to and advice from external legal Counsel.