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OFFICIAL



1. PURPOSE

- 1.1 MHCLG has agreed to make planning decisions under the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020. This will give temporary planning approvals to border departments to use specific sites in England for border processing of vehicles. In addition MHCLG will require advice on the application of Special Development Orders to national investment projects.
- 1.2 The sites for which approval have been given, have been operational supporting Great Britain taking back control of its borders from 1 January 2021, when the EU Exit Transition Period ended. Some these sites will change role, and other sites will be developed to accommodate the implementation of the complete border checking regime due to be completed by March 2022.
- 1.3 As the Government Legal Department cannot provide the necessary legal advice that robust planning decisions will be required, therefore we require an external supplier to provide this advice. We do not know the details off the sites that will be the subject of proposals, but it is likely that they will require advice on the environmental regulatory regime.

2. BACKGROUND TO THE CONTRACTING AUTHORITY

- 2.1 MHCLG is the department that is responsible for the planning system in England, and as such offered to make the planning decisions that are required for the construction of the necessary border infrastructure. The Chancellor of the Duchy of Lancaster accepted this offer.

3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1 When the EU Transition period ended on 1 January 2021, checks on goods movement with the EU will be phased in to ensure that they are treated equally to movement with the rest of the world (RoW), meaning HM Government will operationalise full import and export controls on EU goods, by March 2022.
- 3.2 The reason why the Government is implementing full border controls on imports coming into Great Britain from the EU is to:
 - i) to keep borders safe and secure
 - ii) 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
 - iii) to treat EU goods in the same way the EU will treat UK goods
 - iv) to collect the right customs, VAT and excise duties.
- 3.3 Ensuring on 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 such as medicines and food.



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- 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 processes to control the border and facilitate checks and compliance activities. The changes may involve DEFRA 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 were unwilling or unable to provide the necessary facilities from 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 ability to introduce new processes 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 (HMRC, DfT, BEIS and DEFRA) have planned for a scenario where HMG directly provides several inland “off-port” facilities for border control infrastructure.
- 3.7 Ministers have 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. COVID19 is likely to further challenge the operational delivery deadlines for any facilities provided by HMG, because of the necessary precautions around social distancing during the construction phase and has created additional infrastructure requirements to address social distancing, biosecurity and quarantine while the facilities are in operation. Some ‘on port’ infrastructure may not be able to meet the Border Departments requirements, which may require further capacity at Inland Border Facilities – either more or bigger sites.
- 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 them. The nature of the facilities means they are unlikely to be minor applications. As part of ‘No Deal’ EU Exit preparations MHCLG granted temporary planning permission for three sites in Kent and Essex to be used for the processing of goods vehicles to provide border infrastructure to support trade through priority ports. Time pressures from border departments led to permission being granted through Special Development Orders (SDOs) made under sections 59 and 60 of the Town and Country Planning Act 1990. Phase 1 of the legal support work was completed on 3 September 2020 when the Order was laid before Parliament. Dentons drafted the SDO and provided legal advice on the vires granted by the Town and Country Planning Act.
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- 3.9 Given requirement for the phased introduction of new border controls from 1 January 2021, and the national significance of having border infrastructure in place, decisions on planning proposals will need to be taken by Ministers again using the powers in the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020, subject to decisions on the planning merits of individual planning proposals. Ministers have agreed that MHCLG will be the decision-making department to consider proposals from border departments for the use and development of specific sites; we require the services of an external law firm to provide the legal advice necessary for robust decision making.
- 3.10 The government may require legal advice on the use of Special Development Orders to support nationally significant investment projects. MHCLG will provide this advice as the department that is responsible for the planning system.

4. DEFINITIONS

Expression or Acronym	Definition
The Order	means the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020.
MHCLG	Ministry of Housing Communities and Local Government
SSHCLG	Secretary of State for Housing, Communities and Local Government

5. THE REQUIREMENT

- 5.1 The Supplier will work with and advise officials in MHCLG during the drafting and preparation of the analytical papers to support the making of a decision made under the Order to give or not give approval for the use and development of a specific site.
- 5.2 Specifically, the Supplier will;
- 5.2.1 Provide a paper detailing the legal risks for each decision that the Secretary of State, or officials are required to take;
 - 5.2.2 Review and amend the standard document template that will form the basis of the submissions to ministers. These will ensure that decision making is consistent. Inconsistent decision making will create a risk of challenge.
 - 5.2.3 Provide Environmental Impact Assessment Screening Opinions to inform the Secretary of States screening decisions.
 - 5.2.4 Provide advice on the Construction Management Plans and Operations Management Plans for each site.

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- 5.2.5 Liaise with the legal advisers for the border departments that submit proposals.
 - 5.2.6 Provide advice on the impact of Natural England's guidance on Habitat Risk Assessments for the Kent area.
 - 5.2.7 Review and amend the template material on the assessment of Environmental Risks.
 - 5.2.8 Review and amend informal advice documents that MHCLG will provide to border departments.
 - 5.2.9 Provide advice on compliance and enforcement. This will be required for all sites. The Secretary of State's use of enforcement powers is both novel and contentious.
 - 5.2.10 Will instruct and liaise with external legal Counsel as requested by the MHCLG policy team.
 - 5.2.11 Pay the costs of external Legal Counsel and recharge these costs to MHCLG.
 - 5.2.12 Provide advice on parliamentary questions on the sites, as requested by the MHCLG policy team.
 - 5.2.13 Provide advice on the use of Special Development Orders within the planning regime, the use of SDOs to support large scale investment projects, the drafting and implementation of specific Orders to facilitate planning decisions on investment proposals

Eight sites are operational, **REDACTED**. Ensuring that sites are operating in compliance with the Order is also a significant task.

- 5.3 The Supplier will meet the requirement by submitting formal advice notes, instructions to Counsel, attending meetings (virtual as well as in person), amending draft documents, and contributing to discussions,
- 5.4 This phase of the border infrastructure planning will be complete when the Operational Management Plans are in place for each of the sites that are given approval under the Order. It is a requirement of the Order that MHCLG give approval for these plans. As the sites are required to be operational by January 2022 the work will be completed by then. It is possible that legal support will be needed until the last Operational Management Plan is approved. Compliance and enforcement activity is needed for the duration of operations, and during reinstatement activity (due to end 31 December 2026).
- 5.5 In the event that a decision taken under the Order is challenged, further legal support will be required. This constitutes a distinct phase of the work (Phase 3).

If MHCLG's Legal team are unable to provide sufficient resources, a further contract amendment will be sought to ensure continuity of legal advice.

- 5.6 In addition with regard to the work related to investment projects the supplier will provide legal advice on the use of SDO's in the context of the wider planning landscape.
- 5.7 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-
- 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 DLUHC.
 - Where necessary, to instruct and liaise with external legal Counsel as advised by the DLUHC policy team. External legal Counsel is expected to advise on the vires for the making of the Development Order.
 - Provide legal advice to support Ministers' decisions on individual planning decisions connected to proposals. These will be submitted by a Government Department or consultants on their behalf, for DLUHC consideration and decision.

6. KEY MILESTONES AND DELIVERABLES

- 6.1 The details of key milestones for these decisions are not known at this point 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 September 2020 to July 2021. Workloads peaked in December 2020, and it is anticipated that there will be another peak in March/April. Whilst the timeframe of delivery is tight it is anticipated that the potential for work and discussions about specific pieces of work will be held before formal commissioning.

- 6.2 The following contract milestones/deliverables shall apply:

Milestone/Deliverable	Description	Timeframe or Delivery Date
Legal Risk Paper	A document to advise the SSHCLG on the legal risks of making a decision for each proposal	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier



Review of Submission Document Templates	A track changed version of the template with supporting free text advice	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Environmental Impact Assessment Screening Opinion	A formal document advising on the EIA screening or each proposal	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Advice on the Construction and Operations Management Plans for each site.	A formal advice note on the Plans that are submitted for each site.	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Advice on Natural England's guidance on Habitats Risk Assessment in Kent	A formal advice note.	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Review of template material, and informal advice documents	Revised and track changed documents with additional free text as required	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Advice on compliance and enforcement	A formal advice note. If necessary	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier
Instruction to Counsel	Formal Instruction to Counsel. If needed	Within 1 day of formal request, or by date agreed by MHCLG and the Supplier

7. CONTINUOUS IMPROVEMENT

- 7.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 7.2 The Supplier should present new ways of working to the Authority during regular review meetings.

- 7.3 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.

8. PRICE

- 8.1 Price will be determined by the established Rate Card

9. STAFF AND CUSTOMER SERVICE

- 9.1 The Supplier shall provide a sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.
- 9.2 The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.
- 9.3 The Supplier shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.

10. SERVICE LEVELS AND PERFORMANCE

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

KPI/SLA	Service Area	KPI/SLA description	Target
1	Delivery timescales	Advice and drafting changes within 24 hours of client instructions, or by the date agreed between MHCLG and the Supplier	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%

11. SECURITY AND CONFIDENTIALITY REQUIREMENTS

- 11.1 Suppliers staff should be on the Roll of Solicitors and/or a Member of the Bar.
- 11.2 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.
- 11.3 Client privilege will be in force.

12. PAYMENT AND INVOICING

- 12.1 Payments will be monthly for work completed.
- 12.2 Before payment can be considered, each invoice must include a detailed breakdown of work completed and the associated costs for each specific site.



12.3 Invoices should be submitted to:

CP2P Team, MHCLG, 4th Floor,
High Trees, Hillfield Road,
Hemel Hempstead, HP2 4XN

InvoicesCLG@communities.gov.uk

13. CONTRACT MANAGEMENT

13.1 Attendance at contract review meetings shall be at the Supplier's own expense.

14. LOCATION

14.1 The location of the Services will be carried out at in London or virtually