

The City of London Law Society

4 College Hill
London EC4R 2RB
Tel: 020 7329 2173
Fax: 020 7329 2190
www.citysolicitors.org.uk

Response to Consultation on the Policy Statement on Regional Strategies and Guidance on the establishment of Leaders' Boards

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the consultation on the Policy Statement on Regional Strategies and Guidance on the establishment of Leaders' Boards has been prepared by the CLLS Planning and Environmental Law Committee (the "Committee"). The Committee is made up of leading specialists in the field of planning and environmental law.

Response

The Committee welcomes the opportunity to comment on the policy statement and the guidance, both of which will be important in helping the regions to take forward the new single regional strategies and the working arrangements which will underpin them.

The Committee has chosen only to respond to those questions in the consultation where we have something material to add to the points that have been raised.

1 DRAFT POLICY STATEMENT ON REGIONAL STRATEGIES

1.3 Do you agree with the sub-regional approach at Paragraph 3.6. If not, what do you think needs to be improved?

We support the identification of sub-regions within the Regional Strategies. However, we consider further clarification is needed for the treatment of cross-boundary sub-regions. In particular, it is highly likely that Regional Strategies in England will proceed at different paces and where cross-boundary regions are concerned, it is possible that there could be a mismatch between the treatment of a sub-region in one (up-to-date) Regional Strategy and its treatment in a neighbouring (out-of-date) Regional Strategy. In practice, we think the guidance should be flexible enough to allow sub-regional strategies to be taken forward independently and subsequently

endorsed or adopted by the relevant responsible authorities as part of their respective Regional Strategies.

1.4 Is the policy framework at Paragraphs 4.8 and 4.9 on the content of Regional Strategies appropriate to ensure Regional Strategies focus on the key priorities for the region?

At paragraph 3.5 reference is made to Regional Strategies not replicating, cutting across or detrimentally affecting matters within the scope of other requirements, such as those set out in the Building Regulations. This principle of non-duplication is an important one and is also dealt with in other policy documents, notably in the Supplement to Planning Policy Statement 1 at paragraphs 11 and 45. In our view paragraph 4.5 might usefully make reference to these paragraphs by way of emphasis on this point.

1.5 Is there a need for more detail in the policy on how responsible regional authorities should decide on the priorities for their Regional Strategy? If yes, what should this detail comprise?

At paragraph 4.5 reference is made to the relationship between national and regional policy. The paragraph provides that regional authorities should consider what national policy requires a regional strategy to do. It states that in many cases national policy does not require a Regional Strategy to include a policy on a specific issue, but rather to apply specific locational or evidence based considerations such as e.g. where a national policy statement identifies a preferred location for nationally significant infrastructure. We are not entirely clear how this is intended to operate, particularly at the regional level. Those national policy statements which will be locationally specific e.g. nuclear power and airports, will presumably identify sites reasonably precisely so that reference to locationally specific criteria will be a largely redundant exercise. By implication, the Government recognises that there will also be instances where a Regional Strategy will need to deal with nationally significant infrastructure. However, no guidance is offered on this.

This is an important area which merits more than a single passing reference in paragraph 4.5. In our view the Government needs to spell out clearly in relation to nationally significant infrastructure under the Planning Act 2008 what precisely the role of the Regional Strategy (if any) will be. If this does not occur then the Government may find that its national policy statements in respect of such infrastructure, are undermined or weakened.

1.9 Is the policy framework to guide the Examination in Public process appropriate?

It is important that the Examination in Public process is, and is seen to be, transparent. We can see advantages in the Panel being able to review the evidence base and hold exploratory sessions on technical issues but this must be done in a way which is public and in which stakeholders and others who wish to make representations can be involved if they wish. If this is not the case, we envisage that the process may be subject to legal challenge, for example, on grounds of a breach of natural justice. Accordingly, we suggest that all communications between the Panel and the responsible regional authorities should be published on a website and that all exploratory sessions should be open to the public and well advertised.

1.10 Appendix A describes the broad stages of the Regional Strategy revision process. Does this provide the appropriate level of detail to guide responsible regional authorities in preparing their Strategies? If not, how can it be improved?

As with the Examination in Public process, it is important that the process of finalising the revised Regional Strategy is, and is seen to be, transparent. We are concerned that the opportunity which is to be given to the responsible regional authorities to "refine" the draft Regional Strategy in the light of the Panel Report could be perceived by other participants at the Examination in Public as being unfair. If this arrangement is to be retained then, to reduce the risk of a legal challenge, for example, on grounds of a breach of natural justice, all communications between the Secretary of State and the responsible regional authorities (including any notes of meetings) should be published on a website. This would enable other stakeholders and the public to understand clearly the extent to which modifications which are proposed by the Secretary of State have been influenced by the refinements suggested by the responsible regional authorities.

1.11 Paragraph 5.49 sets out the key expectations of Implementation Plans. Are these appropriate and do they provide sufficient clarity?

We think that the expectations for Implementation Plans are appropriate and sufficiently clear. However, we consider that better guidance should be provided to responsible authorities on Strategic Environmental Assessment (SEA) rather than simply advising them to take their own advice. In particular, we consider it is more than likely that an Implementation Plan will in fact require SEA. In our view, it will be difficult to distinguish the Implementation Plan from the Regional Strategy and in practice it will be regarded as an integral part. In our view, therefore, the Implementation Plan should be developed in conjunction with the Regional Strategy and be assessed within the same SEA and informed by that process.

1.12 Paragraph 5.60 sets out the broad policy for the preparation of annual monitoring reports. Is this appropriate and does it provide sufficient clarity?

We think that the broad policy is appropriate but that it lacks clarity in one material respect, namely that as part of the responsibility authority's duties under the SEA Directive, it should be monitoring the significant environmental effects of the Regional Strategy. One purpose or benefit of the monitoring report required by the Bill should therefore be to facilitate and incorporate the performance of the SEA duty, which will enable the responsible authority to undertake remedial measures where necessary.

3. ESTABLISHMENT OF LEADERS' BOARDS: DRAFT GUIDANCE ON THE PREPARATION OF SCHEMES

3.1 Do you agree with the range of considerations under each of the three board criteria that the Secretary of State will take into account when considering schemes for the establishment and operation of a Leaders' Board, as set out in the guidance at Annex 3? If not, how should they be changed?

If a regional strategy is to be reviewed by responsible regional authorities which comprise both an RDA and a Leaders' Board, it will be critical for the working arrangements between the RDA and the Leaders' Board to be highly effective. Paragraph 1(c) of Paragraph A 3.12 in Annex 3 requires a Leaders' Board Scheme to explain how the Leaders' Board will engage with the RDA and, in particular, the process by which joint decisions will be made. We consider that it should be a requirement that such an explanation be accompanied by confirmation from the RDA that the RDA agrees with and supports the proposals in this regard and that the Guidance should be explicit on this point.

4. SUSTAINABILITY APPRAISAL OF REGIONAL STRATEGIES: DRAFT SUPPLEMENT TO “A PRACTICAL GUIDE TO THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE”

4.2 Do you think that the Practical Guide and the Supplement together provide enough guidance to undertake Sustainability Appraisal that are compliant with legislation and meet the Regional Strategy’s objective of promoting sustainable development?

We consider that the Supplement should make clear the points raised above in relation to SEA, i.e:

- Including the Implementation Plan within the scope of SEA as a matter of course;
- A better explanation of the relationship between the monitoring report required by the Bill and the duty to monitor under the SEA Directive.

In addition, we are concerned that the Supplement is not sufficiently robust in relation to the consideration and testing of alternatives. In particular:

- We suggest that at the end of Paragraph A4.26 that if there are no reasonable alternatives, responsible authorities should take particular care that the selected option has been thoroughly tested itself.
- In Paragraph A4.35 the Guidance should set out more clearly questions that responsible authorities should ask themselves when deciding whether revisions at later stages should be subject to further SEA or should generate a Supplement to the SEA. This should be by reference to the significance of the effects of the revised changes. In addition, whilst we would agree that the SEA report should not be rewritten in such circumstances and that a revision or supplement is acceptable, we do not think that the phrase “supplementary notes” encourages authorities to take a robust approach to this issue.

CLLS Contacts

Duncan Field - *SJ Berwin LLP*
Barry Jeeps - *Stephenson Harwood*
John Qualtrough - *Bircham Dyson Bell*

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THE CITY OF LONDON LAW SOCIETY
PLANNING & ENVIRONMENTAL LAW COMMITTEE

Individuals and firms represented on this Committee are as follows:

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E-mail: rupert.jones@weil.com

Ms V.M. Fogleman (Stevens & Bolton LLP)(Vice Chairman)

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