



Marine  
Management  
Organisation



Department  
for Transport

# **Consultation on proposed changes to Harbour Order application fees 2019**

**Summary of responses and government response**

**August 2021**



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## Introduction

A consultation was published on 16 July 2019 on the gov.uk website seeking views on Harbour Order (HO) application fees.

The consultation was promoted to individual harbours and via trade associations and was open for an eight-week period, closing on 10 September 2019.

An update was provided to consultation respondents on 10 January 2020 advising that feedback was continuing to be reviewed, including during the General Election period. Following the General Election, the Department's resourcing was significantly impacted by the global covid-19 pandemic which impacted Ministerial and official time to progress and publish this consultation summary until now.

Recognising the potential impacts of Covid 19 and our departure from the European Union, the Marine Management Organisation (MMO) and Department for Transport (DfT) offered members of the industry an additional opportunity to feedback on the impact of revised fee structures in light of these two factors. A round table meeting was held with port trade bodies, individual ports and port advisors on 28 May 2021. A summary of the discussion and our response is included in section 5 of this document.

## Consultation purpose

The purpose of the consultation was to seek views on proposals to revise the fee levels for HO applications in England and the Port of Milford Haven (a reserved trust port<sup>1</sup>). These fees have been administered by the MMO since 2010, through a delegated function from the DfT.

The MMO and DfT were jointly seeking views on options to amend the fee structure and revise the service offered to applicants.

The two options presented for consideration were:

Option 1: Increase fees based on an average total of the MMO cost for the continued provision of a complete 'as is' service. With a fee encompassing all activities rolled in to one fixed fee per band, this would result in fee bands increasing as detailed at Annex 2.

Option 2: Increased fees based on the statutory service. The fixed application fees (based on the MMO cost averages) are lower; with fee bands increasing as detailed at Annex 2. The statutory service will be supplemented by a chargeable discretionary service for non-statutory pre-application work at the applicant's request. This is chargeable under section 27 of the Marine and Coastal Access Act 2009 and would be separate to the fee for statutory activity.

These proposed changes seek to ensure that a greater proportion of the cost incurred in the determination of a HO application is met by applicants rather than taxpayers.

Recognising the scale of the increases, the consultation also sought views on how the impact of the changes may be mitigated, (particularly for smaller ports), including phased implementation.

The MMO also sought views on proposals for further changes to the HO fees structure, which would

<sup>1</sup> Reserved trust ports are defined in the Wales Act 2017. From 1 April 2018 Welsh Ministers took over responsibility for port development policy and applications for HO for harbours wholly in Wales (apart from major trust ports) under the Wales Act (Commencement No 4) Regulations 2017 (S.I. 2017/1179). The Department for Transport retain responsibility for the Port of Milford Haven.

require amendments to DfT primary legislation.

## Background

Harbour Orders (HO) are a form of delegated legislation made under the Harbours Act 1964 (HA 1964), which either amends existing harbour legislation or introduces new harbour legislation. All applications for HO were processed by the Department for Transport (DfT) until 2010 when the MMO was established under the Marine and Coastal Access Act 2009 (MCAA). Section 42A of HA 1964 (inserted by MCAA) made provision for certain functions to be delegated by the relevant authority to the MMO. The Harbours Act 1964 (Delegation of Functions) Order 2010 enabled the MMO to carry out the functions of the DfT Secretary of State in relation to HO.

Harbour Authorities seeking permission for harbour development will occasionally require other permissions such as a marine licence from the MMO. Undertaking HO applications alongside marine licensing enables the MMO to operate a more streamlined approach to the delivery of sustainable development of the marine and coastal environment.

In light of the delegation arrangements with the DfT, the MMO undertook this consultation together with the DfT who are responsible for ports policy, with both Defra and DfT Ministers agreeing to the new fee structure and publication of this consultation response.

The MMO data shows between 2010 and 2019 only 37% of costs have been recovered from applicants, with the remainder being funded by the taxpayer. An increase in HO application fees is required to ensure they reflect as closely as possible the full costs incurred by the MMO in determining applications, which are met by the applicant. This will ensure that those seeking to undertake a HO meet the cost of determining their application. This reduces the burden on the taxpayer and addresses the current difference in the treatment of MMO's fee paying customers, ensuring cost recovery is equitable to all MMO applicants.

## Overview of responses received

The consultation on proposed changes to HO application fees was open for responses from 16 July 2019 to 10 September 2019; a period of eight weeks in total.

The MMO identified a list of 266 individual interested stakeholders: including current and former HO customers, Ports and Harbours within MMOs HO jurisdiction, related associations and legal firms. The consultation was promoted to stakeholders directly by email, through the MMO and consultation sections on gov.uk, and via the MMO's social media channels on Facebook, Twitter and LinkedIn at launch; again, on 27 August 2019 and finally 03 September 2019 to advise the pending consultation closure date.

A total of nine responses were received: six directly from Ports or Harbours, one from an independent Port representative and two from associations as follows:

- UK Harbour Masters Association: a professional association of harbour masters with approximately 350 full and associate members and,
- British Ports Association: representing the interests of approximately 100 full members, and numerous associate members, to the UK and devolved Governments, the EU and national and international bodies.

Five of the responses were received through the Government's Citizen Space portal, four were received by email. No responses were received by post.

One email response was received after the formal consultation period and MMO agreed to accept this.

MMO and DfT are grateful to all those who responded to the consultation.

## Response received to consultation questions

The following sections summarise the comments received in response to the questions asked in the consultation document. Where appropriate, related questions and answers have been grouped together. The responses received did not clearly identify a preferred option.

The MMO has therefore opted to progress option 2 which will enable MMO to improve cost recovery, whilst offering a choice to the applicant on the service they require. We have considered the views expressed in responses to develop this option with particular focus on phasing over a two-year period, improving on-line guidance and process efficiency.

### Section 1 - Reason and Process

#### A. Do you have any comments on the Government reasons for reviewing the fee structure?

Generally, respondents understood the reasons for reviewing the fee structure. However, three respondents commented that many years had passed since the last review which had contributed to the scale and extent of the proposed increase in fees. They requested phasing to be considered as they felt that the move to full cost recovery in one step would be inappropriate. One respondent commented that the organisation making an application should be fully responsible for all associated costs and two respondents voiced support for moving to full cost recovery.

#### Government Response

We acknowledge the significant delay in reviewing and revising the current fee structure. Several factors have impacted this including the increasing complexity in determining applications and changes in Government priorities. The MMO is committed to re-assess fees on a more regular basis; with a post-implementation review scheduled three years after the introduction of fee increases, consideration will also be given to increasing fees in line with inflation over future years.

The Government's objective is for all regulators to fully recover the cost of providing a service. Historically, the provision of the HO service has been significantly subsidised by the taxpayer; this is no longer considered fair or sustainable due to pressures on funding, it is also important to ensure cost recovery is equitable across MMO.

#### B. Do you have any comments on how the Government has calculated the proposed fees?

Three respondents considered the calculation of the proposed fees to be logical, clear and reasonable. However, two respondents raised concerns that the calculations included time spent on familiarising new staff with an ongoing application and one respondent asked for information on the hourly rate calculation. The remaining respondents made comments not relevant to this question or did not comment on this question at all.

#### Government Response

All costs associated with the provision of a service should be recovered; including where a customer wishes to engage in a novel, unique, or complex project which requires additional resource than normal. This includes those occasions where a first-time approach is developed, and additional learning is needed to complete the process.

HOs can be complex and unique. The application process time can be significant, increasing the risk that MMO staff may change within the period the application is being considered. To help address this, the MMO has recently received training from industry experts and introduced

measures to increase its resilience and the resources available to process HO applications. The MMO will continue to consider additional training from internal and external experts to ensure the suitability of the HO processes and resource.

However, MMO's view is that an applicant should be responsible for all costs associated with processing an application, which is consistent with the approach taken for marine licensing.

The MMO's current cost recovery rate for work relating to marine licensing is £122/hour, this has been calculated in line with HM Treasury Managing Public Money guidance and has been ratified by the HMT assurance process. See Annex 1 for a breakdown of the costs included in the £122 hourly rate. The revised fee was implemented through a revision to the Statutory Instrument (Marine Licensing (Application Fees) (Amendments) Regulations 2018 No. 850) for Marine Licence applications and pre-application advice in September 2018.

## **Section 2 - Option 1 Providing a complete service**

### **Summary of Option**

This option would retain the current fee band structure; with an increase to fees by between 226% and 336%. Any application received before the implementation date would not pay any additional fees; the new fees are only applicable to new applications.

- C. Do you have any views on the proposed changes to the fee structure for harbour order applications as set out in option 1?
- D. Do you have any views on the proposed level of the fees for harbour order applications as set out in option 1?
- E. Do you have any views on the proposed transition to fees for harbour order applications as set out in option 1?

Six respondents considered that a full, immediate increase was excessive and focused on whether inflationary related increases were more appropriate. Specific comments are listed below:

- One respondent queried a perceived pattern in the percentile increases.
- One respondent commented that MMO staff should undergo full re-training by industry leads with a full review of the entire HO process carried out.
- One respondent, representing a small port, stated they would be unable to carry out even minor works if the cost of Band 3 & 4 applications were increased.
- One respondent considered increases in non-works HO applications (bands 1 and 2) unjustifiable as major process changes were related to environmental factors and therefore applicable to EIA cases only under band 4.
- One respondent asserted the fee structure had not historically changed before as it was understood that Ports are the "lifeblood" of the local economy and queried what other factors, other than cost recovery, had been considered.
- One respondent expressed support for retaining a fixed, one-off payment structure.
- Six respondents were not supportive of the transitional arrangements. One respondent suggested increases of no more than 33% in any year and another suggested phasing over a minimum of two years, but longer if possible.

### **Government Response**

Proposed increases are based on actual costs incurred, calculated on the average amount of time required to process each application multiplied by an hourly cost recovery rate. MMO considered applying inflationary increases but this would not achieve full cost recovery. The principle of full



cost recovery was introduced after the current fee structure in 1995 and there is no evidence that the current fees represented full cost recovery at any time; therefore, it cannot be used as a basis for comparison for inflation-based increases.

The proposed fees are based on time recorded against applications since 2010, any similarity between the percentage increases in any bands is coincidental and the proposed fees should be considered independently of the volume of work required by MMO for each fee band.

There are a number of reasons why the fee structure has not been reviewed since 1995, however the Ports industry should not be exempt from the principles already applied to many other sectors, including those who provide significant economic benefit, either locally or nationally. The economic benefits of all marine sectors are acknowledged and should be treated with parity.

Changes to transitional arrangements are discussed below under Option 2.

### **Section 3 - Option 2 Statutory elements of the application and discretionary pre-application service**

#### **Summary of Option**

This option would retain the current fee band structure for applications; with an increase to fees by between 213% and 289% to reflect the cost of providing the statutory elements of the service (including EIA screening and/or scoping where applicable) and introduce a chargeable discretionary pre-application service. All applications received before the implementation date would not pay any additional application fee; the new fees would only be applicable to new applications.

Fees will be applicable for all discretionary pre-application work from the implementation date of the fee revisions, subject to acceptance of fee estimates. (see below)

- F. Do you have any views on the proposed changes to the fee structure for harbour order applications as set out in option 2?
- G. Do you have any views on the proposed level of the fees for harbour order applications as set out in option 2?
- H. Do you have any views on the proposed transition to fees for harbour order applications as set out in option 2?

Responses are consistent with those received for option 1, with the addition of one respondent suggesting the difference between option 1 and 2 proposals were not significant enough given the unpredictability of the proposed hourly charged discretionary service; this was not a common view.

#### **Government Response**

As with responses to option 1, the proposed fees are based on time recorded against applications over several years.

The MMO accepts the comments provided by respondents on transitional arrangements and will implement a phased approach of the final fee structure over a two-year period; charges will be increased by 50% of the difference between the current fee and the full cost recovery fee in year one and the remaining 50% in year two. The table in annex 2 shows the fee level increase for each band. Primary legislation states the fee must be known at the point of application, therefore post implementation new fees will only apply to new applications. Following further discussion with the

sector in May 2021 we have agreed to delay the phased implementation until October 2022, which is a three-year delay since the consultation was launched in July 2019.

- I. Do you have any views on the proposed introduction of a separate charging mechanism for a discretionary service?
- J. Do you have any views on the proposed transition to charges for discretionary services as set out in option 2?

Three of the five respondents who answered these questions considered this a practical proposal; however, two respondents held conflicting views on how the service would be administered with one respondent suggesting the service should mirror Natural England's Discretionary Advice Service (DAS) and the other suggesting it would not be acceptable to follow Natural England's DAS model.

### Government Response

The MMO provides an existing DAS for Marine Case Management System (MCMS) enquiries which has been in successful operation for a number of years. The MMO aim to extend this system to include HOs, however this can only be undertaken following capital investment.

As referenced in the consultation document, the MMO has since undertaken a full review of its online HO guidance and engaged with industry representatives to review and update.

Customers who choose to use the discretionary service will receive an estimate of the number of hours of casework required from MMO, which will be multiplied by the appropriate hourly rate (currently £122 excluding VAT) to give an estimated fee. As with other applications this will require agreement by the customer before any chargeable work is undertaken. This service does not generate any profit and reflects costs incurred.

The final fees invoiced by MMO are based upon actual hours and not the agreed estimate. The MMO will monitor the costs weekly to assess whether the estimated final cost is likely to significantly differ to the actual final cost. The customer will be provided with an explanation of the circumstances and an updated estimate for agreement alongside associated terms and conditions.

## Section 4 - Other

- K. Do you have any views on how the MMO implements the changes to the fees; particularly in relation to smaller ports and harbours?

Respondents provided specific views on the implementation of revised fees:

- I. Increase fees by no more than 25% in any year.
- II. Re-band "General Direction" HOs from Band 2 to Band 1
- III. Introduce a "sliding-scale" where application fees are based on cost of works.
- IV. Implement a five-year improvement plan followed by a fee review.

### Government Response

The MMO have considered the views provided on implementation arrangements; the responses provided below are balanced against reducing any on-going subsidisation by the taxpayer.

- I. The MMO will provide a notice period ahead of a phased implementation over a 2-year period for all band application types; with charges increased by 50% of the difference between the current fee and the full cost recovery fee in year one and the remaining 50% in year two. The table in Annex 2 shows the annual fee level increase and new fee for each band. This revised fee structure will come into effect from 01 October 2022 (see section 5).

- II. The MMO has limited data relating to General Direction HOs, as this type of amendment is generally included as part of a wider application for other powers. As an alternative, there is an existing process by which harbours can apply to DfT to be designated by statutory instrument with a power to make harbour directions (harbour directions are similar to general directions in what they can do however they apply only to ships and not the broader category of vessels which general directions typically cover). Over 30 ports have been designated the power to make harbour directions since 2013 and there is no charge for this designation. The MMO and DfT will engage with industry and commit to undertake a broader review of the existing fee bands and HO service to identify further options and revisions within 12 months of the fee increases, by the end of 2023.
- III. The Harbours Act 1964 states the application must be accompanied by the fee; introducing fees commensurate to works cost, which could change substantially throughout works process would not enable either of these requirements. HM Treasury Managing Public Money prohibits cross subsidisation; the implementation of a sliding-scale charging system could introduce cross-subsidy as those with larger project costs would pay a larger proportion of the full costs with no reference to the actual cost of the service received.
- IV. Full cost recovery is a Government principle and a five-year delay to increase fees is not feasible due to the continued subsidisation by the tax payer over this period; this is unfair on other marine sectors where full cost recovery is already in place. The MMO is committed to re-assess fees more frequently with a post-implementation review scheduled three years after the introduction of fee revisions. Additionally, consideration will also be given to increasing fees in line with inflation over future years.

**L. Do you have any views or suggestions on how the MMO may mitigate the impacts of increasing fees; particularly in relation to smaller ports and harbours?**

There were three responses to this suggesting:

- Phased introduction to full cost recovery over a number of years
- Fees based on a port's turnover
- Delivery of service improvements from the MMO

**Government Response**

The MMO have assessed the feasibility of phasing the fee increases over a variety of periods and will implement a phased approach of the final fee structure over a two-year period. Charges will be increased by 50% of the difference between the current fee and the full cost recovery fee in year one and the remaining 50% in year two. The table in Annex 2 shows the fee level increase for each band. Primary legislation states the fee must be known at the point of application, therefore post implementation new fees will only apply to new applications. Likewise, applications received before the end of year one will have the year one fee structure applied to them.

The benefit of a means-based charging structure is recognised; however, we are limited by both legislation and HM Treasury guidance as to the type of fees we can charge:

- The Harbours Act 1964 states the application must be accompanied by the fee; supported by a fee structure that is simple and easily determined by the applicant. Introducing fees commensurate to turnover would not enable either of these requirements and will add to the administrative burden on the MMO.
- HM Treasury Managing Public Money prohibits cross subsidisation; the implementation of a means-based charging system would introduce substantial cross-subsidy as those with greater means would pay a larger proportion of the full costs with no reference to the actual cost of the service received.
- A means-based structure would increase the administrative cost of providing the service with MMO required to undertake financial assessments of applicants.

The MMO has already demonstrated service improvements since the HO function was delegated from DfT in 2010, these include a significant decrease in the average application time from 29 months (2008-2011) to 12.5 months (2012-2018). The MMO will continue to implement improvements particularly in relation to the on-line guidance to support the discretionary pre-application service. The process for applying and determining a HO is set out in the Harbours Act 1964; some desired changes may not be achievable in the short term given that amendments to primary legislation would be necessary. The MMO Harbours Team will work with Industry on an ongoing basis to publish service standards and commit to regular review of performance, support applicants to improve quality of applications and will seek to deliver additional efficiencies through investment in improved digital systems.

**M. Do you have any views on amendments to the future charging structure to allow alternatives to the current fixed fee at the point of application?**

- One respondent supported retaining a fixed fee structure citing it is easier for business to budget and forecast expenditure, especially for smaller ports which usually have less resource available for one-off cost such as HOs.
- One respondent suggested a complete re-model of fee structures based on a company's turnover to determine how much a company can afford to pay.
- One respondent suggested they would only be supportive of an hourly charged fee if the MMO had demonstrated they had implemented other improvements suggested elsewhere in their response.

**Government Response**

Suggestions will be recorded for consideration in development of future fee structures. MMO is committed to providing an efficient service and will consider suggestions provided by respondents as part of a wider review of the HO service. Training and guidance suggestions have already been implemented.

The move to an actual hourly charged fee for HOs is dependent on securing amendments to primary legislation; which if achieved will be developed in-line with HM Treasury guidance and the views of stakeholders. This will include the removal of any taxpayer funding, moving the entire cost to the beneficiaries of the service eliminating any residual cross-subsidy across customer groups.

**N. We have asked you a number of specific questions throughout this document. If you have any other views on the subject of this consultation, which have not been addressed, you are welcome to provide us with these views in your response.**

Mixed responses were received ranging from comments claiming Government inefficiency in reviewing the fee structure to expressing full support for full cost recovery. A desire for clear service standards to be published and performance measurement mechanisms was also expressed.

**Government Response**

Whilst the Government understands the reaction from industry over the length of time between fees reviews which has led to significant increases, there are multiple factors that have caused this. These have already been discussed as part of this response. However, the delay in reviewing HO charges has been of benefit to the sector for a number of years through subsidisation from the taxpayer; increased fees will now bring the sector more in line with other regulated industries.

Current government focus is on all regulators fully recovering the cost of providing a service. Historically, services including HOs have been significantly subsidised by the taxpayer and this is no longer sustainable.

MMO also commit to review service standards within 12 months of the fee revision implementation date as part of a wider review of the HO service and will discuss appropriate measures with DfT and representatives from the industry.

## **Section 5 - Improvements**

- O. We would also welcome your views on any other improvements you would like to see to the service.

No additional comments were provided which are not already covered in the main consultation responses

### **Government Response**

We continue to seek feedback on our processes and performance.

If customers wish to make any comments or suggestions outside of this consultation they can email MMO at [info@marinemanagement.org.uk](mailto:info@marinemanagement.org.uk) or directly to the Harbour Orders team at [harbourorders@marinemanagement.org.uk](mailto:harbourorders@marinemanagement.org.uk).

## **Roundtable Discussions**

Representatives from MMO and DfT met with the industry on Friday 28<sup>th</sup> May 2021, the nine consultation respondents were invited as well as other Port and Harbour officials, of which six attended. Representatives were from UK Major Ports Group, UK Harbour masters Association, British Ports Association, two representing individual harbours and one representative from Ashfords Law Practice who provide advice to the sector on HRO applications.

MMO and DfT recognised there could be changes since the consultation due to the impacts of Covid-19 and our departure from the European Union and invited additional comments from the industry. The feedback from the sector identified the following themes for consideration by MMO and DfT.

- A strong preference to amend the Band 1 fee band so that simple/ single issue HO's which are only seeking to include powers of General Direction could be done at a reduced Band 1 rate.
- There was no specific challenge to other fee band costs apart from a concern over the length of time since the last review resulting in the high percentage increase.
- Covid-19 has impacted small ports and harbours particularly in terms of levels of tourism visitors as well as fishing activity, which has resulted in a reduction of income over the last 18 months. To allow these smaller ports time for recovery it was suggested the implementation date is deferred to October 2022, to allow the summer season to increase and stabilise their income ahead of new applications. It was also commented that early communication of the decision should be undertaken, to allow maximum notice to ports and harbours.
- Although EU Exit was mentioned there were no specific concerns raised about it in relation to the proposed fee amendments.

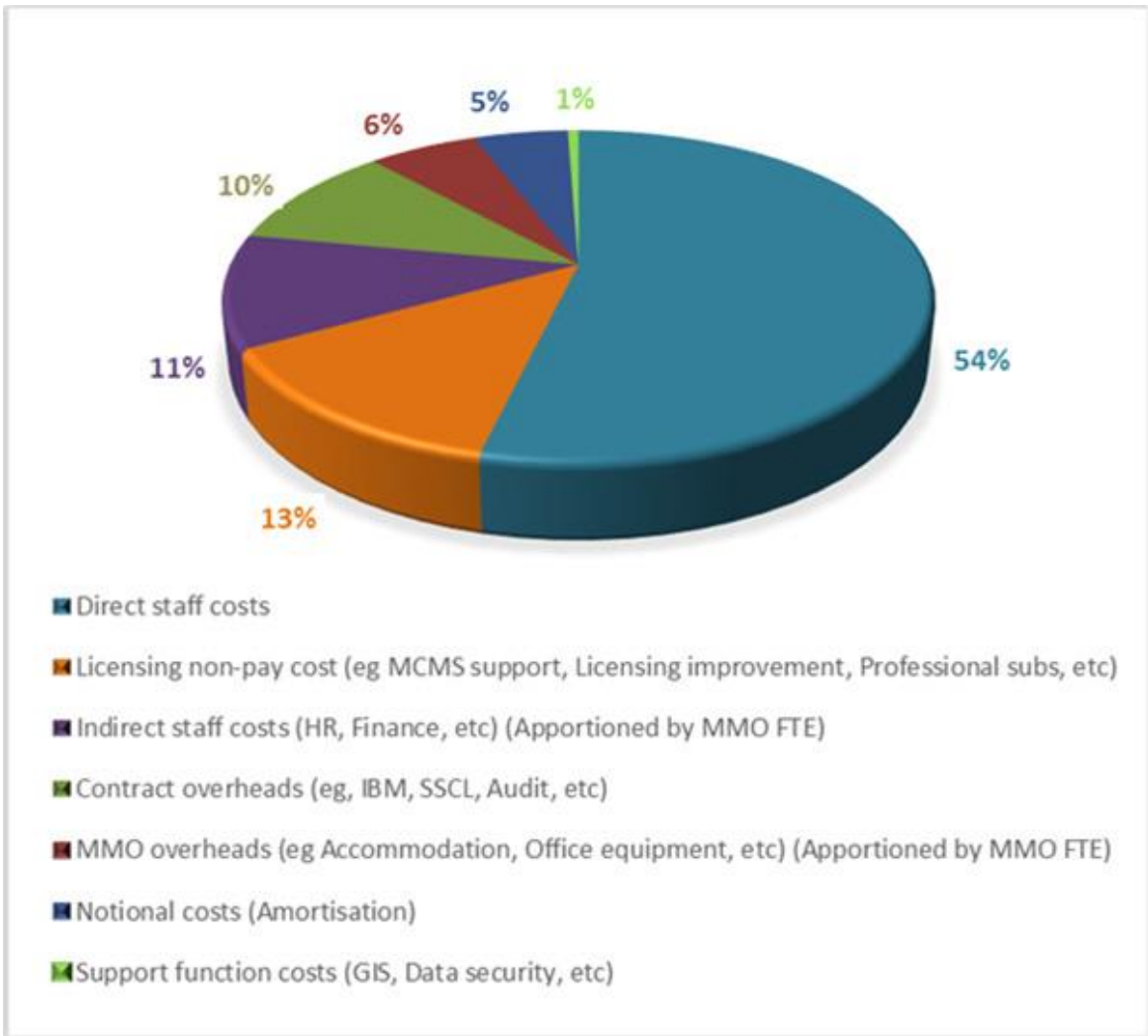
### **Government Response**

MMO and DfT has considered these additional sector comments. In reviewing the costs of applications only seeking to include powers of General Direction the average cost has been in excess of £20k therefore it is not considered appropriate to be included as a reduced Band 1 rate. Therefore, it is not proposed for there to be a revision to the current fee band structure at this time.

However, MMO and DfT acknowledge the length of time since the last review and have agreed to review on a more regular cycle and to include consideration of fee bands as well as charges in the process.

After consideration of the comments, MMO and DfT propose to defer the implementation date to October 2022, with a phased approach over 2 years to be adopted.

**Annex 1: Breakdown of Marine Licensing hourly cost, attributing to the £122 hourly charge rate**



## Annex 2: Proposed Increased Fees

### Option 1

Current fee	Proposed fee
2,000	7,229
4,000	17,360
6,000	19,581
10,000	43,633

### Option 2 – phased over two years

#### No Phasing

Current fee	Year 1
2,000	6,880
4,000	15,579
6,000	18,756
10,000	35,055

#### 100% over 2 equal value increases

Current fee	Annual increase	Year 1	Year 2
2,000	2,440	4,440	6,880
4,000	5,790	9,790	15,579
6,000	6,378	12,378	18,756
10,000	12,528	22,528	35,055