

## SCHEDULE 1

### Amendments to the 1964 Act

**8.—**(1) Part 1 of Schedule 3 (harbour revision orders made on application to the Secretary of State)<sup>(1)</sup> is amended as follows.

(2) In paragraph 1, as it applies in relation to England and Wales—

(a) omit the definition of “the Directive”<sup>(2)</sup>;

(b) for the definition of “EEA Agreement” substitute—

““EEA Agreement” and “EEA State” have the meanings given in Schedule 1 to the Interpretation Act 1978;”

(c) after that definition, insert—

““EIA application” means an application for a harbour revision order authorising a project which requires an environmental impact assessment;

“the EIA Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment<sup>(3)</sup>;

“the environment” means—

- (a) population and human health,
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive,
- (c) land, soil, water, air and climate,
- (d) material assets, cultural heritage and the landscape, and
- (e) the interaction between the factors referred to in paragraphs (a) to (d);

“environmental assessment” means an assessment carried out—

- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than an obligation arising under the EIA Directive), or
- (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the EIA Directive),

of the effect of anything on the environment;

“environmental impact assessment”, in relation to a project, means the process comprising—

- (a) the preparation of an environmental statement by the applicant,
- (b) the carrying out of consultations under this Part of this Schedule about the likely significant effects of the project on the environment,
- (c) the Secretary of State’s consideration of the information about the likely significant effects of the project on the environment (see paragraph 18A(2)),
- (d) the Secretary of State reaching a reasoned conclusion on the significant effects of the project on the environment (see paragraph 18A(4)), and
- (e) the Secretary of State’s consideration of that reasoned conclusion when making a decision under paragraph 19 in respect of the application for a harbour revision order authorising the project;”;

<sup>(1)</sup> Schedule 3 was substituted by Schedule 3 to [S.I. 1999/3445](#).

<sup>(2)</sup> The definition of “the Directive” was substituted by [S.I. 2009/269](#).

<sup>(3)</sup> O.J. No. L 26, 28.1.2012, p. 1.

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- (d) omit the definition of “EEA state”;
- (e) for the definition of “environmental statement”, substitute—
  - ““environmental statement” has the meaning given in paragraph 8(2);”;
- (f) after the definition of “fishery harbour” insert—
  - ““the Habitats Directive” means Council [Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>(4)</sup>;
  - “official website” means a website maintained by or on behalf of the Secretary of State;”;
- (g) after the definition of “project” insert—
  - ““reasoned conclusion”, in relation to a project, means the conclusion required by paragraph 18A(4);
  - “screening decision” has the meaning given in paragraph 4(4);”;
- (h) in the definition of “selection criteria”, for “Directive” substitute “EIA Directive”;
- (i) after the definition of “sensitive area” insert—
  - ““the Wild Birds Directive” means [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds<sup>(5)</sup>”.
- (3) In paragraph 1, as it applies in relation to Scotland—
  - (a) omit the definition of “the Directive”;
  - (b) for the definition of “EEA Agreement” substitute—
    - ““EEA Agreement” and “EEA State” have the meanings given in Schedule 1 to the Interpretation Act 1978;”
  - (c) after that definition, insert—
    - ““EIA application” means an application for a harbour revision order authorising a project which requires an environmental impact assessment;
    - “the EIA Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment<sup>(6)</sup>;
    - “the environment” means—
      - (a) population and human health,
      - (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive,
      - (c) land, soil, water, air and climate,
      - (d) material assets, cultural heritage and the landscape, and
      - (e) the interaction between the factors referred to in paragraphs (a) to (d);
    - “environmental assessment” means an assessment carried out—
      - (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than an obligation arising under the EIA Directive), or
      - (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the EIA Directive),

<sup>(4)</sup> O.J. No. L 206, 22.7.1992, p. 7.

<sup>(5)</sup> O.J. No. L 20, 26.1.2010, p. 7.

<sup>(6)</sup> O.J. No. L 26, 28.1.2012, p. 1.

- of the effect of anything on the environment;
- “environmental impact assessment”, in relation to a project, means the process comprising—
- (a) the preparation of an environmental statement by the applicant,
  - (b) the carrying out of consultations under this Part of this Schedule about the likely significant effects of the project on the environment,
  - (c) the Scottish Ministers’ consideration of the information about the likely significant effects of the project on the environment (see paragraph 18A(2)),
  - (d) the Scottish Ministers’ reaching a reasoned conclusion on the significant effects of the project on the environment (see paragraph 18A(4)), and
  - (e) the Scottish Ministers’ consideration of the reasoned conclusion when making a decision under paragraph 19 in respect of the application for a harbour revision order authorising the project;”;
- (d) omit the definition of “EEA state”;
- (e) for the definition of “environmental statement”, substitute—
- ““environmental statement” has the meaning given in paragraph 8(2);”;
- (f) after the definition of “fishery harbour” insert—
- ““the Habitats Directive” means Council [Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora(7);
- “official website” means a website maintained by or on behalf of the Scottish Ministers;”;
- (g) after the definition of “project” insert—
- ““reasoned conclusion”, in relation to a project, means the conclusion required by paragraph 18A(4);
- “screening decision” has the meaning given in paragraph 4(4);”;
- (h) in the definition of “selection criteria”, for “Directive” substitute “EIA Directive”;
- (i) after the definition of “sensitive area” insert—
- ““the Wild Birds Directive” means [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds(8);”;
- (4) After paragraph 2, insert—
- “**2A.**—(1) For purposes of this Part, the effects of a project on the environment include—
- (a) any effects on the environment which arise (directly or indirectly) from the operational phase of the project;
  - (b) any expected effects on the environment which derive (directly or indirectly) from the vulnerability of the project to risks of major accidents or disasters.
- (2) References to the adverse, likely or significant effects of a project on the environment are to be read accordingly”.
- (5) For paragraph 3 substitute—

(7) O.J. No. L 206, 22.7.1992, p. 7.

(8) O.J. No. L 20, 26.1.2010, p. 7.

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**“3.—(1)** A person may not make an application for a harbour revision order which, directly or indirectly, authorises a project unless—

- (a) the proposed applicant has given the Secretary of State notice of the proposed applicant’s intention to make the application, and
- (b) the Secretary of State has responded under paragraph 5(2) or 6(2)(a).

(2) If the project is likely to fall within Annex I or Annex II to the EIA Directive, the notice given under sub-paragraph (1)(a) —

- (a) must include the information described in Annex II.A to the EIA Directive (information to be provided on projects listed in Annex II) taking into account the results of any relevant environmental assessment which are reasonably available to the proposed applicant, and
- (b) may include a description of any feature of the project or measure envisaged to avoid or prevent what otherwise might be significant adverse effects of the project on the environment.

(3) This paragraph does not apply if the Secretary of State gives a direction in respect of the project under paragraph 20A, 20B or 20C (exemptions).”

(6) For paragraph 4 substitute—

**“4.—(1)** Where the Secretary of State is notified of a proposed application under paragraph 3(1)(a), the Secretary of State must decide whether it relates to a project which requires an environmental impact assessment.

(2) A project requires an environmental impact assessment if—

- (a) it falls within Annex I to the EIA Directive, or
- (b) it falls within Annex II to the EIA Directive and, having regard to the selection criteria, is a relevant project.

(3) For the purposes of sub-paragraph (1), the Secretary of State must take into account the results of any relevant environmental assessment which are reasonably available to the Secretary of State.

(4) In this Part of this Schedule, “screening decision” means a decision under sub-paragraph (1) of this paragraph.

**4A.—(1)** The Secretary of State may direct a person to provide the Secretary of State with such further information as the Secretary of State requires for the purpose of making a screening decision.

(2) A direction under sub-paragraph (1) must be given before the end of the period of 90 days beginning with the day on which the Secretary of State is notified of the proposed application under paragraph 3(1)(a).

(3) A direction under sub-paragraph (1) must be in writing and must—

- (a) specify the further information to be provided by the proposed applicant, and
- (b) state that, in accordance with paragraph 4B, the period within which the Secretary of State is required to make the screening decision will begin with the day on which all of the specified information has been provided by the proposed applicant.

**4B.—(1)** The Secretary of State must make a screening decision in respect of a proposed application—

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- (a) as soon as possible after the day on which the Secretary of State is notified of the proposed application under paragraph 3(1)(a), and
  - (b) in any event within the period of 90 days beginning with that day.
- (2) But if the Secretary of State gives a direction under paragraph 4A(1) to the proposed applicant, the screening decision in respect of the proposed application is to be made—
- (a) as soon as possible after the day on which all of the information specified in the direction has been provided by the proposed applicant, and
  - (b) in any event within the period of 90 days beginning with that day.
- (3) This paragraph is subject to paragraph 4C.

**4C.**—(1) The Secretary of State, if satisfied that it is appropriate to do so by reason of exceptional circumstances relating to a project (including circumstances relating to the nature, complexity, location or size of the project), may extend the period specified in paragraph 4B(1)(b) or (2)(b).

(2) If the Secretary of States extends the relevant period, the Secretary of State must inform the proposed applicant, in writing, of—

- (a) the reasons for the extension, and
- (b) the date by which the Secretary of State expects to make the screening decision.”

(7) For paragraph 5 substitute—

“**5.**—(1) This paragraph applies if the Secretary of State decides that a proposed application relates to a project which does not require an environmental impact assessment.

(2) The Secretary of State must inform the proposed applicant, in writing, of the decision and the reasons for it with reference to the selection criteria (where relevant).

(3) The Secretary of State must also publish a notice of the decision which—

- (a) states the reasons for it with reference to the selection criteria (where relevant), and
- (b) if provided by the proposed applicant in the notice under paragraph 3(1)(a) or in response to a direction given under paragraph 4A(1), includes a description of any feature of the project or measure envisaged to avoid or prevent what might otherwise be significant adverse effects of the project on the environment.”

(8) For paragraph 6 substitute—

“**6.**—(1) This paragraph applies if the Secretary of State decides that the proposed application relates to a project which requires an environmental impact assessment.

(2) The Secretary of State must—

- (a) inform the proposed applicant, in writing, of the decision and the reasons for it with reference to the selection criteria (where relevant),
- (b) publish a notice of the decision which states the reasons for it with reference to the selection criteria (where relevant), and
- (c) give the proposed applicant an opinion, in writing, about the scope and level of detail of the information which the proposed applicant will be required to supply in an environmental statement, if the application is made.

(3) In giving an opinion under sub-paragraph (2)(c), the Secretary of State must have regard to the information provided by the proposed applicant including in particular any information about—

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- (a) the specific characteristics of the project (including its location and technical capacity), and
- (b) its likely impact on the environment.

(4) Before giving the opinion the Secretary of State must consult such bodies with environmental responsibilities or local or regional competencies as the Secretary of State considers appropriate.”

(9) For paragraph 7(9) substitute—

“7.—(1) An application for a harbour revision order must be accompanied by—

- (a) a draft of the proposed order,
- (b) six copies (or such lesser number as the Secretary of State may specify) of any map which, if the order is made in the form of the draft, will be annexed to it, and
- (c) such fee as the Secretary of State may determine.

(2) The Secretary of State may specify the form in which, or means by which, any document mentioned in sub-paragraph (1) is to be provided (and may specify different forms or means for different documents).”

(10) For paragraph 8 substitute—

“8.—(1) If an applicant makes an EIA application, the applicant must—

- (a) supply the Secretary of State with an environmental statement, and
- (b) if directed to do so by the Secretary of State, supply the Secretary of State with such number of copies of the statement as is specified in the direction.

(2) In this Part of this Schedule, “environmental statement” means a statement which—

- (a) is prepared by competent experts,
- (b) includes the information which, taking into account current knowledge and methods of assessment, may reasonably be required by the Secretary of State to reach a reasoned conclusion under paragraph 18A(4) and in particular, the information specified in sub-paragraph (3),
- (c) is based on the opinion given under paragraph 6(2)(c), and
- (d) with a view to avoiding duplication of assessments, takes into account the results of any relevant environmental assessment which are reasonably available to the applicant.

(3) The specified information is—

- (a) a description of the site, design, size and any other relevant features of the project,
- (b) a description of the likely significant effects of the project on the environment,
- (c) a description of any features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset any likely significant adverse effects of the project on the environment,
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the likely effects of the project on the environment,
- (e) a non-technical summary of the information mentioned in paragraphs (a) to (d), and

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(9) Paragraph 7 was amended in relation to Scotland by section 2 (2) of the Harbours (Scotland) Act 2015 (asp 13).

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- (f) any additional information specified in Annex IV to the EIA Directive (information for the environmental impact assessment report) relevant to the specific characteristics of the project or type of project and to the environmental features likely to be affected.

(4) The environmental statement must be accompanied by a statement from the applicant setting out the relevant expertise or qualifications of the experts who prepared the environmental statement.

(5) The Secretary of State may specify the form in which, or means by which, an environmental statement, a statement under sub-paragraph (4) or a copy of an environmental statement, is to be provided (and may specify different forms or means for different documents).

**8A.**—(1) The Secretary of State must, where necessary, direct an applicant who makes an EIA application to supply the Secretary of State with any information of a type specified in Annex IV to the EIA Directive which is not included in the environmental statement but which—

- (a) is directly relevant to the reaching of a reasoned conclusion, and
- (b) having regard to current knowledge and methods of assessment, can reasonably be compiled by the applicant.

(2) The applicant must supply the Secretary of State with such number of copies of the information as is specified in the direction.

(3) For the purposes of sub-paragraph (1), it does not matter whether the information requested is specified in the opinion under paragraph 6(2)(c).

(4) A direction under sub-paragraph (1) must specify the information to be supplied.

(5) A direction under sub-paragraph (1) or (2) may specify the form in which, or means by which, the information is, or copies of the information are, to be provided (and may specify different forms or means for different documents).

Co-ordination of environmental impact assessment and other assessments

**8B.** If in respect of a project there is—

- (a) a requirement to carry out an environmental impact assessment, and
- (b) a requirement to carry out an assessment under the law of any part of the United Kingdom giving effect to the Habitats Directive or the Wild Birds Directive,

the Secretary of State must ensure that the assessments are co-ordinated.”

(11) For paragraph 9 substitute—

“**9.** The Secretary of State must not consider an application for a harbour revision order unless the applicant—

- (a) pays any fee which is due under paragraph 7(1)(c),
- (b) complies with any direction under paragraph 7(2),
- (c) if the application is an EIA application—
  - (i) supplies an environmental statement, and
  - (ii) complies with any direction under paragraph 8A(1), and
- (d) complies with any relevant requirements of paragraphs 10 to 14.”

(12) In paragraph 10—

- (a) in sub-paragraph (2)—
  - (i) after paragraph (b), insert—

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- “(ba) if the Secretary of State gives a direction in respect of the project under paragraph 20A, 20B, 20C or 20D (exemptions and deferral), state that such a direction has been given.”;
- (ii) in paragraph (c), for “8(1)” substitute “8(1)(a)”;
- (b) after sub-paragraph (5) insert—
- “(6) If an applicant publishes a notice which states that an environmental statement has been supplied under paragraph 8(1)(a), the applicant must supply the Secretary of State with a copy of the notice—
- (a) as soon as possible, and
- (b) in any event within the period of three working days starting with the date specified in accordance with sub-paragraph (2)(f).
- (7) In this paragraph and paragraph 10A, “working day” means a day other than—
- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the harbour, dock or wharf to which the application relates is situated.
- (8) The Secretary of State may specify the form in which, and means by which, the copy of the notice is to be provided.”
- (13) After paragraph 10 insert—
- “**10ZA.**—(1) If the Secretary of State receives a copy of a notice from an applicant under paragraph 10(6), the Secretary of State must—
- (a) make the specified documents available for inspection on an official website as soon as reasonably practicable after the Secretary of State receives the copy, and
- (b) keep the documents available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment.
- (2) A failure to make the documents available throughout the period specified in sub-paragraph (1)(b) is to be disregarded if—
- (a) the specified documents were available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.
- (3) The specified documents are—
- (a) the copy of the notice,
- (b) a copy of the draft order to which the notice relates,
- (c) a copy of the environmental statement mentioned in the notice, and
- (d) a copy of any map which accompanied the application to which the notice relates.
- (4) If the size or form of a specified document means that it is not practicable for the document to be made available on the official website—
- (a) the Secretary of State must state on the website how a copy of the document may be obtained, and
- (b) where the Secretary of State does so—



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- (i) the requirement in sub-paragraph (1)(a) as it applies in relation to the document is taken to be satisfied, and
- (ii) the requirement in sub-paragraph (1)(b) applies to the statement.

**10ZB.**—(1) This paragraph applies if an applicant makes an EIA application and before the Secretary of State makes a decision under paragraph 19(6) in relation to the application—

- (a) the applicant supplies the Secretary of State with information in accordance with a direction under paragraph 8A(1)(a), or
  - (b) the applicant or any other person supplies the Secretary of State with information which the Secretary of State is satisfied must be considered in order to assess properly the significant effects of the project on the environment.
- (2) The Secretary of State must—
- (a) make the information available on an official website as soon as reasonably practicable after the Secretary of State receives it, and
  - (b) keep the information available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment.
- (3) A failure to make the further information available throughout the period specified in sub-paragraph (2)(b) is to be disregarded if—
- (a) the information was available on the official website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.
- (4) If the size or form of any further information means that it is not practicable for it to be made available on the official website—
- (a) the Secretary of State must state on the website how a copy of the information may be obtained, and
  - (b) where the Secretary of State does so—
    - (i) the requirement in sub-paragraph (2)(a) as it applies in relation to the information is taken to be satisfied, and
    - (ii) the requirement in sub-paragraph (2)(b) applies to the statement.”

(14) For paragraph 10A(10) substitute—

“**10A.**—(1) Where further information is made available on an official website under paragraph 10ZB, the Secretary of State must publish, or direct another person to publish, an information notice.

(2) But the Secretary of State is not required to publish, or direct the publication of, an information notice if the Secretary of State considers that the information will be made publicly available at an inquiry or hearing under paragraph 18.

(3) An information notice must—

- (a) state that the Secretary of State has received the information,
- (b) specify a place where a copy of the information can, until the expiry of the period referred to in paragraph (d), be inspected at all reasonable hours,

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(10) Paragraph 10A was inserted by regulation 6 of [S.I. 2009/269](#) in relation to England and Wales and section 25(5)(d) of the Transport and Works (Scotland) Act 2007 ([asp 8](#)) in relation to Scotland.

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- (c) provide an address from which a copy of the information can, until the expiry of that period, be obtained and details of the amount of any charge for the provision of such a copy, and
  - (d) state that any person who desires to make representations in relation to the further information should do so in writing to the Secretary of State before the expiry of the period of 42 days starting with a date specified in the notice.
- (4) The information notice must—
- (a) be published by Gazette and local advertisement, and
  - (a) be published in such other ways, if any, as seem appropriate to the Secretary of State.
- (5) The information notice, or a copy of it, must also—
- (a) be made available by the Secretary of State on an official website, and
  - (b) be kept available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment for the project to which the notice relates.
- (6) Any charge imposed under sub-paragraph (3)(c) must be reasonable.
- (7) The date specified in accordance with sub-paragraph (3)(d) must be the date on which the notice first appears in a local newspaper.
- (8) If the Secretary of State directs a person to publish an information notice, the person must supply the Secretary of State with a copy of the notice—
- (a) as soon as possible, and
  - (b) in any event within the period of three working days (see paragraph 10(7)) starting with the date specified in accordance with sub-paragraph (3)(d).
- (9) The Secretary of State may specify the form in which, and means by which, a copy of an information notice is to be provided.”
- (15) For paragraph 15(11), substitute—
- “15.—(1) The Secretary of State, before determining an application, must—
- (a) consult such bodies that are likely to have an interest in the application by reason of their environmental responsibilities or local or regional competencies as the Secretary of State thinks appropriate, and
  - (b) send the information listed in sub-paragraph (2) to the bodies consulted.
- (2) The information is—
- (a) the environmental statement supplied under paragraph 8(1)(a);
  - (b) any information supplied in pursuance of a direction under paragraph 8A(1);
  - (c) any information about the project falling within paragraph 10ZB(1)(b).”

(16) In paragraph 16(12)—

    - (a) in sub-paragraph (1), for paragraph (b), substitute—
      - “(b) the application is an EIA application,”;
    - (b) in sub-paragraph (4), for paragraph (b), substitute—

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(11) Paragraph 15 was amended by [S.I. 2009/269](#) in relation to England and Wales and section 25(5)(e) of the Transport and Works (Scotland) Act 2007 ([asp 8](#)) in relation to Scotland.

(12) Paragraph 16 was amended by [S.I. 2009/269](#) in relation to England and Wales and section 25(5)(f) of the Transport and Works (Scotland) Act 2007 ([asp 8](#)) in relation to Scotland.

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- “(b) the environmental statement supplied to the Secretary of State under paragraph 8(1)(a);
  - (ba) any information supplied in pursuance of a direction under paragraph 8A(1);
  - (bb) any information falling within paragraph 10ZB(1)(b);”;
  - (c) in sub-paragraph (5), in paragraph (a) after “responsibilities” insert “or local or regional competencies”;
  - (d) in sub-paragraph (7)—
    - (i) at the end of paragraph (ba) insert “and”;
    - (ii) after paragraph (ba) insert—
      - “(bb) a summary of—
        - (i) the results of any consultations under paragraph 15 in connection with the application,
        - (ii) any objections made to the application and not withdrawn,
        - (iii) any representations made in relation to the environmental statement for the project or in relation to any information in accordance with a notice published under paragraph 10 or 10A, and
        - (iv) how the information mentioned in paragraphs (i) to (iii) above and any opinion given under sub-paragraph (5)(b) have been taken into account in reaching the decision.”;
      - (iii) omit paragraphs (c) and (d).
- (17) After paragraph 18 insert—

*“Reasoned conclusion about environmental impact*

**18A.—**(1) This paragraph applies where an EIA application is made.

(2) The Secretary of State must consider—

- (a) the environmental statement relating to the project,
- (b) any information supplied in pursuance of a direction under paragraph 8A in relation to the project,
- (c) any information about the project made available on an official website under paragraph 10ZB,
- (d) the results of any consultations under paragraph 15 or 16(6)(a) in relation to the project,
- (e) any opinion about the project which is sent under paragraph 16(5)(b),
- (f) any relevant objections made about the project and not withdrawn,
- (g) any relevant representations about the project made in accordance with a notice published under paragraph 10 or 10A,
- (h) where an inquiry or hearing relating to the project is held under paragraph 18, any relevant report of the person who held the inquiry or person appointed for the purpose of hearing the objector, or any relevant part of such a report, and
- (i) any features of the project or measures envisaged to avoid, prevent or reduce, and, if possible, offset any likely significant adverse effects of the project on the environment.

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(3) For the purposes of sub-paragraph (2), an objection, representation, report or part of a report is “relevant” if it concerns the likely significant effects of the project on the environment.

(4) Following the consideration required by sub-paragraph (2), the Secretary of State must reach a reasoned conclusion about the likely significant effects of the project on the environment.

(5) The Secretary of State must obtain such expert advice as appears to the Secretary of State to be necessary for the purposes of considering the environmental statement.”

(18) For paragraph 19(13), substitute—

“19.—(1) The Secretary of State must—

(a) in the case of an EIA application, consider the matters specified in sub-paragraph (2) and, if relevant, sub-paragraph (5);

(b) in the case of any other application, consider the matters specified in sub-paragraph (4) and, if relevant, sub-paragraph (5).

(2) The matters to be considered in respect of an EIA application are—

(a) the reasoned conclusion (including whether it is up to date);

(b) to the extent that they were not required to be taken into account in reaching the reasoned conclusion—

(i) any objections made and not withdrawn;

(ii) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector;

(c) if the Secretary of State is minded to make the order applied for, whether monitoring of the significant adverse effects of the project on the environment is appropriate, and if so—

(i) whether it is necessary to modify the order to include a monitoring measure, and

(ii) whether or not to include provision in the order for potential remedial action.

(3) For the purpose of determining whether it is appropriate to impose a monitoring measure, the Secretary of State must have regard to any existing monitoring arrangements which are carried out in accordance with an obligation under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).

(4) The matters to be considered in respect of an application mentioned in sub-paragraph (1)(b) are—

(a) any objections made and not withdrawn, and

(b) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector.

(5) If an application for a harbour revision order relates to a project to be carried out in Scotland, the Scottish Ministers must also consider any written representations—

(a) submitted to them by the applicant in elaboration of the application, or

(b) submitted to them by an objector in elaboration of any objection.

(6) Following the consideration required by sub-paragraph (1), the Secretary of State must decide—

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(13) Paragraph 19 was amended by [S.I. 2009/269](#) in relation to England and Wales. Paragraph 19 was amended by section 46(5) of the Transport (Scotland) Act 2005 ([asp 12](#)) and section 25(5)(i) of the Transport and Works (Scotland) Act 2007 ([asp 8](#)) in relation to Scotland.

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- (a) not to make the order applied for,
- (b) to make the order in the form of the draft submitted to him, or
- (c) to make the order with modifications.

(7) Sub-paragraph (6) is subject to paragraph 19A.

(8) In this paragraph and paragraph 19A “monitoring measure” means a requirement to monitor any significant adverse effects of a project on the environment.

**19A.**—(1) The Secretary of State must make a decision under paragraph 19(6) in respect of an EIA application only if satisfied that the reasoned conclusion relating to that application is up to date.

(2) A reasoned conclusion is to be taken to be up to date if, in the opinion of the Secretary of State, it addresses the likely significant effects of the project on the environment.

(3) The Secretary of State may decide to modify an order to include a monitoring measure only if satisfied that the type of parameters which will be required to be monitored and the duration of such monitoring are proportionate having regard to—

- (a) the nature, location and size of the project, and
- (b) the significance of the effects of the project on the environment.

**19B.** The Secretary of State must make the decision required by paragraph 19(6) in respect of an EIA application within a reasonable period of time (having regard to the nature and complexity of the application and the project to which it relates) beginning with the day on which the Secretary of State has all the information needed to make that decision.”

(19) For paragraph 20(14), substitute—

“**20.**—(1) This paragraph applies where the Secretary of State makes a decision under paragraph 19(6) in relation to an EIA application.

(2) The Secretary of State—

- (a) as soon as reasonably practicable after making the decision, must make the information specified in sub-paragraph (3) available on an official website, and
- (b) must keep the information available on the website throughout the period of three months beginning with the day on which it is first made available on the website in accordance with this paragraph.

(3) The specified information is—

- (a) the content of the decision whether or not to make the order and any conditions attached to it,
- (b) the main reasons and considerations on which the decision is based,
- (c) a summary of the results of any consultations under paragraph 15 or 16(6)(a),
- (d) a copy of any opinion given under paragraph 16(5)(b),
- (e) the details of the provision made for public participation in the making of the decision,
- (f) a summary of any objections—
  - (i) made about the likely significant adverse effects of the project on the environment, and
  - (ii) not withdrawn,

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(14) Paragraph 20 was amended by regulation 11 of [S.I. 2009/269](#).

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- (g) a summary of any representations made under paragraph 10 or 10A about the likely significant adverse effects of the project on the environment,
  - (h) a copy of the reasoned conclusion,
  - (i) a description of any features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset, any likely significant adverse effects of the project on the environment,
  - (j) a summary of how the information mentioned above (and, in particular, any opinion given under paragraph 16(5)(b) or the results of any consultations under paragraph 16(6)(a)) have been taken into account in making the decision, and
  - (k) a statement regarding the right to challenge the validity of the decision and the procedure for doing so.
- (4) A failure to make the specified information available throughout the period specified in sub-paragraph (2)(b) is to be disregarded if—
- (a) the information was available on the official website for part of that period, and
  - (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.
- (5) The Secretary of State, as soon as reasonably practicable after making the decision, must also publish by Gazette and local advertisement the following information—
- (a) the content of the decision whether or not to make the order and any conditions attached to it,
  - (b) the main reasons and considerations on which the decision is based,
  - (c) a statement regarding the right to challenge the validity of the decision and the procedure for doing so,
  - (d) a statement that the matters referred to in paragraph 19(1) have been taken into consideration, and
  - (e) details of the official website on which the information referred to in sub-paragraph (2) is made available.
- (6) The Secretary of State must also give notice of the information referred to in sub-paragraph (5) to such bodies likely to have an interest in the project by reason of their environmental responsibilities, or their local or regional competencies, as the Secretary of State considers appropriate.”
- (20) After paragraph 20 insert—

*“Defence projects: exemption from environmental impact assessment*

- 20A.**—(1) The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—
- (a) the sole purpose of the project is national defence, and
  - (b) carrying out the assessment would have an adverse effect on the fulfilment of that purpose.
- (2) The Secretary of State must, as soon as reasonably practicable, send a copy of a direction given under sub-paragraph (1)—
- (a) to the Scottish Ministers, if the application for a harbour revision order authorising the project is required to be made to the Scottish Ministers;
  - (b) to the Welsh Ministers, if the application for a harbour revision order authorising the project is required to be made to the Welsh Ministers;

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- (c) to a person designated by an order made under section 42A(1), if the application for a harbour revision order authorising the project is required to be made to that person.

*Civil emergencies: exemption from environmental impact assessment*

**20B.** The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—

- (a) the sole purpose of the project is the response to a civil emergency, and
- (b) carrying out the assessment would have an adverse effect on the fulfilment of that purpose.

*Exemption from environmental impact assessment in exceptional circumstances*

**20C.—(1)** The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—

- (a) it is appropriate to do so by reason of exceptional circumstances,
- (b) carrying out the assessment would have an adverse effect on the fulfilment of the purpose of the project,
- (c) the objectives of the EIA Directive will be met even though the assessment is not carried out, and
- (d) the project is unlikely to have significant effects on the environment in another EEA State.

(2) Before giving a direction under sub-paragraph (1), the Secretary of State must consider whether another form of assessment of the effects of the project on the environment would be appropriate.

(3) The Secretary of State must—

- (a) as soon as reasonably practicable, make a copy of any direction given and a statement of the reasons for which it is given available for inspection on an official website,
- (b) publish the results of any other assessment considered appropriate for the purposes of sub-paragraph (2), and
- (c) keep the copy of the direction and the results (if any) available on the website throughout the period of three months beginning with the day on which the information is first made available on the website in accordance with this paragraph.

(4) A failure to make information available throughout the period specified in sub-paragraph (3)(c) is to be disregarded if—

- (a) the information was available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(4) If the Secretary of State gives a direction under sub-paragraph (1), paragraph 19 applies in relation to the relevant application as if the matters listed in sub-paragraph (4) of that paragraph included any results published under sub-paragraph (3)(b) of this paragraph.

*Deferral of environmental impact assessment: direction and effect of direction*

**20D.—(1)** The Secretary of State may give a deferral direction in respect of a project which requires an environmental impact assessment if satisfied that—

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- (a) an assessment of the effects of the project on the environment, or any activity to be carried out in the course of it, has been, is being or will be carried out by a consenting authority, and
- (b) the assessment satisfies or will satisfy the requirements of Article 1(2)(g)(i) to (iv) of the EIA Directive (definition of environmental impact assessment) in respect of the project.

(2) In this paragraph, “consenting authority”, in relation to a project or an activity, means an authority (including the Secretary of State) whose consent to, or authority for, the project or the activity is required under an enactment (other than this Act).

(3) The Secretary of State must—

- (a) as soon as reasonably practicable, make a copy of any deferral direction given and a statement of the reasons for which it is given available on an official website, and
- (b) keep the copy of the direction and statement available throughout the period required to ensure the effective participation of the public in the environmental impact assessment.

(4) A failure to make a copy of a deferral direction or statement available throughout the period specified in sub-paragraph (3)(b) is to be disregarded if—

- (a) the copy was available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(5) The effect of a deferral direction is set out in paragraphs 20E to 20G.

**20E.**—(1) If a deferral direction is given in respect of a project (referred to in this Part as a “deferred project”), the following provisions of this Part of this Schedule do not apply in relation to an application for a harbour revision order authorising the deferred project—

- (a) paragraph 6(2)(c);
- (b) paragraphs 8 to 8B;
- (c) paragraph 9(c);
- (d) paragraph 10(6) to (8);
- (e) paragraphs 10ZA to 10A;
- (f) paragraph 15, in so far as it requires consultation about the likely effects of the project on the environment;
- (g) paragraph 16;
- (h) paragraph 18A;
- (i) paragraphs 19A and 19B.

(2) Paragraph 19 applies to an application for a harbour revision order authorising a deferred project but as if—

- (a) the matters the Secretary of State is required to consider under sub-paragraph (1) were the specified matters, and
- (b) the reference to paragraph 19A in sub-paragraph (7) were a reference to paragraph 20F(1).

(3) The specified matters are—

- (a) the conclusion on the significant effects of the deferred project on the environment reached by the consenting authority following the assessment mentioned in paragraph 20D(1)(a);



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- (b) to the extent they were not taken into account for the purposes of that conclusion, any objections made and not withdrawn;
- (c) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector;
- (d) any comments made by the consenting authority about the deferred project or any activity to be carried on during the course of the project;
- (e) if consent or authorisation has been granted by the consenting authority—
  - (i) any conditions attached to the consent or authorisation which relate to the significant effects of the deferred project on the environment;
  - (ii) any description of any features of the deferred project or any measures envisaged to avoid, prevent or reduce and, if possible, offset any significant adverse effects of the project on the environment;
  - (iii) any measures considered appropriate by the consenting authority for the purpose of monitoring the significant adverse effects of the deferred project on the environment;
- (f) if the Secretary of State is minded to make the order applied for, whether monitoring of the significant adverse effects of the deferred project on the environment is appropriate, and if so—
  - (i) whether it is necessary to modify the order to include a monitoring measure, and
  - (ii) whether to include provision in the order for potential remedial action;
- (g) if the application relates to a deferred project which is to be carried out in Scotland, any written representations submitted to the Scottish Ministers by the applicant in elaboration of the application or by an objector in elaboration of an objection.

(4) For the purpose of determining whether it is appropriate to impose a monitoring measure, the Secretary of State must have regard to any existing monitoring arrangements which are carried out in accordance with an obligation under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).

**20F.**—(1) The Secretary of State may make an order authorising a deferred project only if satisfied that—

- (a) the conclusion mentioned in paragraph 20E(3)(a) is up to date, and
- (b) making the order in the form of the draft submitted with the application, or with modifications, would be compatible with the decision made by the consenting authority following the assessment mentioned in paragraph 20D(1)(b).

(2) A conclusion is to be taken to be up to date for the purposes of sub-paragraph (1)(a) if, in the opinion of the Secretary of State, it addresses the likely significant effects of the project on the environment.

(3) The Secretary State must consult the consenting authority if satisfied that it is appropriate to do so for the purposes of sub-paragraph (1)(b).

**20G.** The Secretary of State must make the decision required by paragraph 19(6) in respect of an application for an order authorising a deferred project within a reasonable period of time (having regard to the nature and complexity of the application and the project to which it relates) beginning with the day on which the Secretary of State has all the information needed to make that decision.”

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