

Status: Point in time view as at 31/03/2023.

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SCHEDULES

[^{F1}SCHEDULE 3

Sections 17, 47

PROCEDURE FOR MAKING HARBOUR REVISION AND EMPOWERMENT ORDERS

Textual Amendments

- F1** Sch. 3 substituted (1.2.2000) by [The Harbour Works \(Environmental Impact Assessment\) Regulations 1999 \(S.I. 1999/3445\)](#), reg. 15(4), **Sch. 3**

Modifications etc. (not altering text)

- C1** Sch. 3 modified (1.4.2001) by [2000 c. 38, s. 37, Sch. 5 para. 1\(2\)\(j\)](#) (with s. 106); [S.I. 2001/869, art.2](#)
- C2** Sch. 3: transfer of functions (1.4.2018) by [Wales Act 2017 \(c. 4\), ss. 29\(2\)\(b\)\(ii\), 71\(4\)](#) (with [Sch. 7 paras. 1, 6, 9](#)); [S.I. 2017/1179, reg. 3\(g\)](#) (with transitional provisions and savings in [S.I. 2018/278, reg. 2, Sch.](#))

PART I

ORDERS MADE ON APPLICATION TO THE SECRETARY OF STATE

Introductory

1 In this Part of this Schedule—

^{F2}

[^{F3}“EEA Agreement” and “EEA State” have the meanings given in Schedule 1 to the Interpretation Act 1978;]

[^{F4}“EIA application” means an application for a harbour revision order authorising a project which requires an environmental impact assessment;]

[^{F4}“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;]

[^{F4}“the environment” means—

- (a) population and human health,
- (b) biodiversity, with particular attention to species and habitats protected under [^{F5}any law of any part of the United Kingdom which implemented] 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);]

[^{F6}“environmental assessment” means an assessment of the effect of anything on the environment if the assessment is carried out under—

- (a) retained EU law, or

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(b) any law of any part of the United Kingdom, other than any law which implemented the EIA Directive;]

[^{F7}“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;]

[^{F8}“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;]

^{F9}

[^{F10}“environmental statement” has the meaning given in paragraph 8(2);]

“fishery harbour” has the meaning assigned to it in section 21 of the Sea Fish Industry Act 1951;

[^{F11}“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;]

[^{F12}“official website” means a website maintained by or on behalf of the Secretary of State;]

[^{F13}“official website” means a website maintained by or on behalf of the Scottish Ministers;]

“project” means—

- (a) the execution of construction works or other installations or schemes, and
- (b) other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

[^{F14}“reasoned conclusion”, in relation to a project, means the conclusion required by paragraph 18A(4);]

[^{F14}“screening decision” has the meaning given in paragraph 4(4);]

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“relevant project” means a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“selection criteria” means the criteria set out in Annex III to the [F15EIA Directive];

“sensitive area” means any of the following—

(a) [F16]land within a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);]

[F17]land within a site of special scientific interest;]

(b) [F17]land in respect of which a nature conservation order or land management order made under Part 2 of the Nature Conservation (Scotland) Act 2004 (asp 6) has effect;]

(c) [F18]land declared to be a national nature reserve under section 35 of that Act;]

(d) [F18]an area to which paragraph (u)(ii) in the table in article 10 of the Town and Country Planning (General Development Procedure) Order 1995 applies;]

(e) [F18]a National Park within the meaning of the National Parks and Access to the Countryside Act 1949;]

(f) [F18]the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988;]

(g) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;

(h) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;

(i) [F18]an area of outstanding natural beauty designated by order under [F19]section 87 of the National Parks and Access to the Countryside Act 1949][F19]section 82 of the Countryside and Rights of Way Act 2000] (designation of areas of outstanding natural beauty);]

(j) [F20]a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994;]

[F20]a European site within the meaning of [F21]the Conservation of Habitats and Species Regulations 2017 (see regulation 8);]

(k) an area designated F22... [F23]as a National Scenic Area by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;]

(l) [F24] an area designated as a national park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000].

[F25]“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;]

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Textual Amendments

- F2** Words in Sch. 3 para. 1 omitted (E.W.) (5.12.2017) by virtue of [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(a)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 omitted (S.) (5.12.2017) by virtue of [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(a)** (with Sch. 6 paras. 2(2), 3(3))
- F3** Words in Sch. 3 para. 1 substituted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(b)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 substituted (S.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(b)** (with Sch. 6 paras. 2(2), 3(3))
- F4** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(c)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(c)** (with Sch. 6 paras. 2(2), 3(3))
- F5** Words in Sch. 3 para. 1 inserted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(a)(i)(b)(i)**
- F6** Words in Sch. 3 para. 1 substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(a)(ii)(b)(ii)**
- F7** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(c)** (with Sch. 6 paras. 2(2), 3(3))
- F8** Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(c)** (with Sch. 6 paras. 2(2), 3(3))
- F9** Words in Sch. 3 para. 1 omitted (E.W.) (5.12.2017) by virtue of [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(d)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 omitted (S.) (5.12.2017) by virtue of [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(d)** (with Sch. 6 paras. 2(2), 3(3))
- F10** Words in Sch. 3 para. 1 substituted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(e)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 substituted (S.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(e)** (with Sch. 6 paras. 2(2), 3(3))
- F11** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(f)** (with Sch. 6 paras. 2(2), 3(3))
 Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(3)(f)** (with Sch. 6 paras. 2(2), 3(3))
- F12** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(2)(f)** (with Sch. 6 paras. 2(2), 3(3))

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- F13** Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(3)(f)** (with Sch. 6 paras. 2(2), 3(3))
- F14** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(2)(g)** (with Sch. 6 paras. 2(2), 3(3))
Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(3)(g)** (with Sch. 6 paras. 2(2), 3(3))
- F15** Words in Sch. 3 para. 1 substituted (E.W.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(2)(h)** (with Sch. 6 paras. 2(2), 3(3))
Words in Sch. 3 para. 1 substituted (S.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(3)(h)** (with Sch. 6 paras. 2(2), 3(3))
- F16** Words in Sch. 3 para. 1 substituted (E.W.) (30.1.2001) by 2000 c. 37, ss. 76(1), 103(2), **Sch. 10 para. 3**
- F17** Words in Sch. 3 para. 1 substituted (S.) (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 7 para. 1(a)** (with s. 55(2)); S.S.I. 2004/495, art. 2 (para (b) had previously been repealed for E.W. (30.1.2001 for E., 1.5.2001 for W.) by 2000 c. 37, s. 102, Sch. 16 Pt. III; S.I. 2001/114, art. 2(1)(d)(ii); S.I. 2001/1410, art. 2(p))
- F18** Words in Sch. 3 para. 1 repealed (S.) (14.5.2007) by Transport and Works (Scotland) Act 2007 (asp 8), **ss. 25(5)(a)(ii)**, 30(3) (with s. 30(5))
- F19** Words in Sch. 3 para. 1 substituted (E.W.) (1.4.2001) by 2000 c. 37, s. 93, **Sch. 15 para. 4** (with s. 84(4)-(6)); S.I. 2001/114, **art. 2(2)(e)**
- F20** Words in Sch. 3 para. 1 substituted (E.W.) (1.4.2010) by The Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490), reg. 1(2), **Sch. 6 para. 1** (with reg. 125)
- F21** Words in Sch. 3 para. 1 substituted (E.W.) (30.11.2017) by The Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), reg. 1(2), **Sch. 6 para. 1**
- F22** Words in Sch. 3 para. 1 repealed (S.) (29.11.2004) by Nature Conservation (Scotland) Act 2004 (asp 6), s. 59(2), **Sch. 7 para. 1(b)** (with s. 55(2)); S.S.I. 2004/495, art. 2
- F23** Words in Sch. 3 para. 1 substituted (S.) (17.12.2010) by The National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 (S.S.I. 2010/460), **art. 2**
- F24** Words in Sch. 3 para. 1 added (S.) (14.5.2007) by virtue of Transport and Works (Scotland) Act 2007 (asp 8), **ss. 25(5)(a)(iii)**, 30(3) (with s. 30(5))
- F25** Words in Sch. 3 para. 1 inserted (E.W.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(2)(i)** (with Sch. 6 paras. 2(2), 3(3))
Words in Sch. 3 para. 1 inserted (S.) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(3)(i)** (with Sch. 6 paras. 2(2), 3(3))

[^{F26}1A. In this Part of this Schedule, references to provisions of the EIA Directive are to be read as if—

- (a) in Annex III—
- (i) in point 2(c)(v) the reference to Member States were a reference to the Secretary of State;
- (ii) in point 2(c)(vi) the reference to Union legislation were a reference to retained EU law;
- (b) in Annex IV—
- (i) in the text following point 5(g) the words “established at Union or Member State level” were omitted;
- (ii) in point 8 the following were substituted for the second sentence—

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“Relevant information available and obtained through risk assessments pursuant to retained EU law, such as any law of any part of the United Kingdom which implemented [Directive 2012/18/EU](#) of the European Parliament and of the Council or Council Directive 2009/71/Euratom, or relevant assessments undertaken under other domestic legislation may be used for this purpose provided that the requirements of any law of any part of the United Kingdom which implemented this Directive are met.”]

Textual Amendments

F26 Sch. 3 para. 1A inserted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(c)**

- 2 A project shall be treated for the purposes of this Part as not [^{F27}of a type specified in] Annex II to the Directive unless—
- (a) the area of the works comprised in the project exceeds 1 hectare,
 - (b) any part of the works is to be carried out in a sensitive area, or
 - (c) the Secretary of State determines that the project shall be treated for the purposes of this Part as [^{F27}of a type specified in] that Annex.

Textual Amendments

F27 Words in Sch. 3 para. 2 substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(d)**

- [^{F28}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]

Textual Amendments

F28 Sch. 3 para. 2A inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(4)** (with Sch. 6 paras. 2(2), 3(3))

Pre-application procedure

- [^{F29}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).

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- (2) If the project is likely to ^{F30}be of a type specified in] 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).]

Textual Amendments

- F29** Sch. 3 para. 3 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(5)** (with Sch. 6 paras. 2, 3(3))
- F30** Words in Sch. 3 para. 3(2) substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(e)**

- ^{F314} (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 ^{F32}is of a type specified in] Annex I to the EIA Directive, or
 - (b) it ^{F32}is of a type specified in] 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.]

Textual Amendments

- F31** Sch. 3 paras. 4-4C substituted for Sch. 3 para. 4 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(6)** (with Sch. 6 paras. 2, 3(2)3(3))
- F32** Words in Sch. 3 para. 4(2) substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(f)**

- ^{F314A}(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).

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- (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.

Textual Amendments

F31 Sch. 3 paras. 4-4C substituted for Sch. 3 para. 4 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(6)** (with Sch. 6 paras. 2, 3(2)3(3))

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

Textual Amendments

F31 Sch. 3 paras. 4-4C substituted for Sch. 3 para. 4 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(6)** (with Sch. 6 paras. 2, 3(2)3(3))

- 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.]

Textual Amendments

F31 Sch. 3 paras. 4-4C substituted for Sch. 3 para. 4 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(6)** (with Sch. 6 paras. 2, 3(2)3(3))

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- [^{F33}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.]

Textual Amendments

F33 Sch. 3 para. 5 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(7)** (with Sch. 6 paras. 2, 3(3))

- [^{F34}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—
- (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.]

Textual Amendments

F34 Sch. 3 para. 6 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(8)** (with Sch. 6 paras. 2, 3(3))

Status: Point in time view as at 31/03/2023.

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The application

- [^{F357} (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).]

Textual Amendments

F35 Sch. 3 para. 7 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(9)** (with Sch. 6 paras. 2(2), 3(3))

- [^{F368} (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
 - (f) any additional information [^{F37} of a type] specified in Annex IV to the EIA Directive (information for the environmental impact assessment report)

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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).]

Textual Amendments

- F36** Sch. 3 paras. 8-8B substituted for Sch. 3 para. 8 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(10)** (with Sch. 6 paras. 2(2), 3(3))
- F37** Words in Sch. 3 para. 8(3)(f) inserted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(g)**

[^{F36}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).

Textual Amendments

- F36** Sch. 3 paras. 8-8B substituted for Sch. 3 para. 8 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(10)** (with Sch. 6 paras. 2(2), 3(3))

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.]

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Textual Amendments

F36 Sch. 3 paras. 8-8B substituted for Sch. 3 para. 8 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(10)** (with Sch. 6 paras. 2(2), 3(3))

- [^{F389} 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.]

Textual Amendments

F38 Sch. 3 para. 9 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(11)** (with Sch. 6 paras. 2(2), 3(3))

Notices

- 10 (1) An applicant shall arrange for a notice to be published—
- (a) by Gazette and local advertisement, and
 - (b) in such other ways as the Secretary of State may direct.
- (2) The notice must—
- (a) state that an application has been made for the order,
 - (b) state the Secretary of State's decision under paragraph 4 and any reasons given under paragraph 6(1),
 - [^{F39}(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,]
 - (c) state whether an environmental statement has been supplied under paragraph [^{F40}8(1)(a)],
 - (ca) [^{F41}where such a statement has been supplied—
 - (i) provide an address from which a copy of the statement can, until the expiry of the period referred to in paragraph (f), be obtained and information as to the amount of any charge for the provision of such a copy, and
 - (ii) state whether paragraph 16 applies,]
 - [^{F42}where such a statement has been supplied—
 - (i) provide an address from which a copy of the statement can, until the expiry of the period referred to in head (f), be obtained and information as to the amount of any charge for the provision of such a copy,

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- (ii) provide an address from which further information about the works proposed to be authorised can, until the expiry of that period, be obtained, and
 - (iii) state whether paragraph 16 applies,]
 - (d) contain a concise summary of the draft order,
 - (e) give a general description of any land proposed for compulsory acquisition and of the nature of any works proposed to be authorised, ^{F43F44}...
 - (f) state that any person who desires to object to the application [^{F45}or to make representations in relation to any environmental statement supplied under paragraph 8(1)] [^{F46}or to make representations in relation to any environmental statement supplied under paragraph 8(1)] should do so in writing to the Secretary of State, specifying [^{F47}(where relevant)] [^{F48}(where relevant)] the grounds of the objection, before the expiry of the period of 42 days starting with a date specified in the notice, [^{F49}and
 - (g) provide details of the procedure under this Schedule for dealing with any objection or representations made under head (f)] [^{F50}and
 - (g) provide details of the procedure under this Schedule for dealing with any objection or representations made as mentioned in the notice].
- [^{F51}(2A) Any charge imposed as mentioned in sub-paragraph (2)(ca)(i) must be reasonable.]
- (3) The date specified in accordance with sub-paragraph (2)(f) must be the date on which the notice first appears in a local newspaper.
 - (4) The notice must also specify a place where copies of the following documents can [^{F52}, until the expiry of the period referred to in sub-paragraph (2)(f),] [^{F53}, until the expiry of the period referred to in sub-paragraph (2)(f),] be inspected at all reasonable hours—
 - (a) the draft order,
 - (b) the decision of the Secretary of State referred to in sub-paragraph (2)(b),
 - (c) any environmental statement supplied under paragraph 8(1), and
 - (d) any map accompanying the application.
 - (5) The copy of the map referred to in sub-paragraph (4)(d) must be drawn to the same scale as that map.
- [^{F54}(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.

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- (8) The Secretary of State may specify the form in which, and means by which, the copy of the notice is to be provided.]

Textual Amendments

- F39** Sch. 3 para. 10(2)(ba) inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(12)(a)(i)** (with Sch. 6 paras. 2(2), 3(3))
- F40** Word in Sch. 3 para. 10(2)(c) substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(12)(a)(ii)** (with Sch. 6 paras. 2(2), 3(3))
- F41** Sch. 3 para. 10(2)(ca) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(2)(a)** (with reg. 1(2))
- F42** Sch. 3 para. 10(2)(ca) inserted (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(b)(i)**, 30(3) (with s. 30(5))
- F43** Word in Sch. 3 para. 10(2)(e) repealed (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(b)(ii)**, 30(3) (with s. 30(5))
- F44** Word in Sch. 3 para. 10(2) omitted (E.W.) (10.3.2009) by virtue of [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(2)(b)** (with reg. 1(2))
- F45** Words in Sch. 3 para. 10(2)(f) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(2)(c)** (with reg. 1(2))
- F46** Words in Sch. 3 para. 10(2)(f) inserted (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(b)(iii)**, 30(3) (with s. 30(5))
- F47** Words in Sch. 3 para. 10(2)(f) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(2)(d)** (with reg. 1(2))
- F48** Words in Sch. 3 para. 10(2)(f) inserted (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(b)(iv)**, 30(3) (with s. 30(5))
- F49** Sch. 3 para. 10(2)(g) and preceding word added (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(b)(v)**, 30(3) (with s. 30(5))
- F50** Sch. 3 para. 10(2)(g) and preceding word added (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(2)(e)** (with reg. 1(2))
- F51** Sch. 3 para. 10(2A) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(3)** (with reg. 1(2))
- F52** Words in Sch. 3 para. 10(4) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **5(4)** (with reg. 1(2))
- F53** Words in Sch. 3 para. 10(4) inserted (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(c)**, 30(3) (with s. 30(5))
- F54** Sch. 3 para. 10(6)-(8) inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(12)(b)** (with Sch. 6 paras. 2(2), 3(3))

[^{F55}10(2A)] If the Secretary of State receives a copy of a notice from an applicant under paragraph 10(6), the Secretary of State must—

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- (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—
 - (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.

Textual Amendments

F55 Sch. 3 paras. 10ZA, 10ZB inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(13)** (with Sch. 6 paras. 2(2), 3(3))

- 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

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- (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.]

Textual Amendments

F55 Sch. 3 paras. 10ZA, 10ZB inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(13)** (with Sch. 6 paras. 2(2), 3(3))

- [^{F56}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,
 - (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—

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- (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.]

Textual Amendments

F56 Sch. 3 para. 10A substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(14)** (with Sch. 6 paras. 2(2), 3(3))

- 11 If the order will authorise the compulsory acquisition of land the applicant shall, in respect to each parcel of land, serve a notice on [^{F57}every owner, lessee and occupier other than a tenant for a month or any period less than a month][^{F57}every owner, lessee, tenant (whatever the tenancy period) and occupier]—
- (a) stating that an application has been made to the Secretary of State for the making of an order which will authorise the compulsory acquisition of the parcel,
 - (b) naming a place where a copy of the draft order may be inspected at all reasonable hours,
 - (c) naming a place where a copy of any relevant map accompanying the application, drawn to the same scale and delineating the boundaries of the parcel, may be inspected at all reasonable hours, and
 - (d) stating that if the person on whom the notice is served wishes to object to the application so far as regards the compulsory acquisition of the parcel he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.

Textual Amendments

F57 Words in Sch. 3 para. 11 substituted (E.W.) (24.5.2007) by [The Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 5** (with art. 1(3))

- 12 (1) If the order will result in the extinguishment or diversion of a public right of way over a footpath [^{F58}or bridleway][^{F58}, bridleway or restricted byway], the applicant shall—
- (a) serve a notice on every local authority for the area in which the footpath or bridleway is situated, and

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- (b) cause a copy of the notice to be displayed in a prominent position at each end of the part of the footpath or bridleway which would by virtue of the order cease to be subject to the public right of way.
- (2) The notice mentioned in sub-paragraph (1) must—
- (a) state that an application has been made to the Secretary of State for the making of an order which will result in the extinguishment or diversion of the public right of way over the footpath or bridleway,
 - (b) name a place where a copy of the draft order may be inspected at all reasonable hours,
 - (c) name a place where a copy of any relevant map accompanying the application, drawn to the same scale, may be inspected at all reasonable hours, and
 - (d) state that any person who desires to object to the application, so far as regards the extinguishment or diversion of the public right of way, should do so in writing to the Secretary of State, specifying the grounds of the objection, before the expiry of the period of 42 days starting with—
 - (i) in the case of a local authority served with a notice under paragraph 12(1)(a), the date on which the notice is served on them, or
 - (ii) in the case of any other person, the date specified in the notice displayed under paragraph 12(1)(b).
- (3) In this paragraph “local authority” means—
- (a) in England, a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a parish meeting of a parish not having a separate parish council,
 - (b) in Wales, a county council, a county borough council and a community council, and
 - (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

Textual Amendments

F58 Words in Sch. 3 para. 12 substituted (E.W.) (2.5.2006 for E., 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), **Sch. Pt. I** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))

Modifications etc. (not altering text)

C3 Sch. 3 para. 12 applied (E.W.) (2.5.2006 for E., 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), 2(1), **Sch. Pt. I** (see S.I. 2006/1172, art. 2(a)-(d) (with art. 3) and S.I. 2006/1279, art. 2(a)-(d) (with art. 3))

- 13 (1) If the applicant is not the harbour authority, the applicant shall serve on that authority a copy of the draft order and of any map accompanying the application together with a notice stating—
- (a) that the application has been made to the Secretary of State, and
 - (b) that if the authority wish to object to the application is should do so in writing to the Secretary of State, specifying the grounds of its objection, before the

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expiry of the period of 42 days starting with the date on which the notice is served on it.

- (2) The copy of the map referred to in sub-paragraph (1) must be drawn to the same scale as that map.
- 14 The Secretary of State may require the applicant to serve on any specified person within any specified period of time the documents required to be served under paragraph 13.

Consultation

- [^{F59}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).]

Textual Amendments

F59 Sch. 3 para. 15 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(15)** (with Sch. 6 paras. 2(2), 3(3))

- 16 (1) This paragraph applies where—
- (a) an application for a harbour revision order relates to a project which is proposed to be carried out in Great Britain,
 - [^{F60}(b) the application is an EIA application,] and
 - (c) it comes to the attention of the Secretary of State that the project is likely to have significant effects on the environment in [^{F61}an EEA State], or [^{F61}an EEA State] requests particulars of the project.
- (2) The Secretary of State shall—
- (a) publish in the Gazette the particulars mentioned in sub-paragraph (3) in a notice with an indication of where further information is available,
 - (b) serve on [^{F62}the EEA State] as soon as possible and no later than the date of publication of that notice, the particulars mentioned in sub-paragraph (3) and, if he thinks fit, the information mentioned in sub-paragraph (4), and
 - (c) give [^{F62}the EEA State] a reasonable time in which to indicate whether it wishes to be consulted in accordance with sub-paragraph (6).
- (3) The particulars referred to in sub-paragraph (2)(a) and (b) are—
- (a) a description of the project, together with any available information on its possible significant effects on the environment in [^{F62}the EEA State]; and
 - (b) information about the nature of the decision which may be taken under this Part.

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- (4) The information to be served on an EEA State which indicates, in accordance with sub-paragraph (2)(c), that it wishes to be consulted in accordance with sub-paragraph (6) is—
- (a) a copy of the application,
 - ^{F63}(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);] and
 - (c) information regarding the procedure under this Part,
- but only to the extent that such information has not already been provided to the EEA State in accordance with ^{F64}sub-paragraph (2)(b)].
- (5) The Secretary of State shall also—
- (a) arrange for the information referred to in sub-paragraphs (3) and (4) to be made available, within a reasonable time, to the authorities likely to have an interest in the project by reason of their environmental responsibilities ^{F65}or local or regional competencies], and the public concerned, in the territory of the EEA State concerned; and
 - (b) ensure that those authorities and the public concerned are given a reasonable opportunity, before he decides whether to make the harbour revision order in relation to the project, to send to the Secretary of State their opinion on the information.
- (6) The Secretary of State shall—
- (a) consult the EEA State concerned about the project generally and, in particular, about the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) endeavour to agree with the EEA State a reasonable period of time for the duration of the consultation period.
- (7) Where an EEA State has been consulted in accordance with sub-paragraph (6), on the determination of the application the Secretary of State shall inform the EEA State of the decision and send it a statement giving—
- (a) the content of the decision whether or not to make the order and any conditions attached to the decision;
 - (b) the main reasons and considerations on which the decision is based;
 - (ba) ^{F66}details of what provision was made for public participation in the making of the decision;]
- ^{F67}details of what provision was made for public participation in the making of the decision;]^{F68}and]
- ^{F69}(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

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(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.]

F70(c)

F71(d)

Textual Amendments

- F60** Sch. 3 para. 16(1)(b) substituted (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(a)** (with Sch. 6 paras. 2(2), 3(3))
- F61** Words in Sch. 3 para. 16(1)(c) substituted (31.12.2020) by The Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/460), regs. 1, **2(4)(h)(i)**
- F62** Words in Sch. 3 para. 16 substituted (31.12.2020) by The Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/460), regs. 1, **2(4)(h)(ii)**
- F63** Sch. 3 para. 16(4)(b)-(bb) substituted for Sch. 3 para. 16(4)(b) (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(b)** (with Sch. 6 paras. 2(2), 3(3))
- F64** Words in Sch. 3 para. 16(4) substituted (2.10.2000) by S.I. 2000/2391, **reg. 2(d)**
- F65** Words in Sch. 3 para. 16(5)(a) inserted (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(c)** (with Sch. 6 paras. 2(2), 3(3))
- F66** Sch. 3 para. 16(7)(ba) inserted (S.) (14.5.2007) by Transport and Works (Scotland) Act 2007 (asp 8), **ss. 25(5)(f)(ii), 30(3)** (with s. 30(5))
- F67** Sch. 3 para. 16(7)(ba) inserted (E.W.) (10.3.2009) by The Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/269), regs. 1(1), **8** (with reg. 1(2))
- F68** Word in Sch. 3 para. 16(7)(ba) inserted (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(d)(i)** (with Sch. 6 paras. 2(2), 3(3))
- F69** Sch. 3 para. 16(7)(bb) inserted (5.12.2017) by The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(d)(ii)** (with Sch. 6 paras. 2(2), 3(3))
- F70** Sch. 3 para. 16(7)(c) omitted (5.12.2017) by virtue of The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(d)(iii)** (with Sch. 6 paras. 2(2), 3(3))
- F71** Sch. 3 para. 16(7)(d) omitted (5.12.2017) by virtue of The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (S.I. 2017/1070), reg. 1(1), **Sch. 1 para. 8(16)(d)(iii)** (with Sch. 6 paras. 2(2), 3(3))

Objections

- 17 — The following paragraphs in this Part have effect where—
- (a) all relevant notices concerning an application for the making of a harbour revision order have been published under paragraph 10(1)^{F72}, 10A] or 16(2)(a),
- (b) all notices and other documents which are required to be served under paragraph 11, 12(1), 13(1), 14 or 16(2)(b) have been served, and

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- (c) every period for the making of objections [^{F73}or representations][^{F74}or representations] to the Secretary of State in respect of the application has expired.

Textual Amendments

- F72** Word in Sch. 3 para. 17(a) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **9(a)** (with reg. 1(2))
- F73** Words in Sch. 3 para. 17(c) inserted (E.W.) (10.3.2009) by [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/269\)](#), regs. 1(1), **9(b)** (with reg. 1(2))
- F74** Words in Sch. 3 para. 17(c) inserted (S.) (14.5.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), ss. **25(5)(g)**, **30(3)** (with s. 30(5))

18 [^{F75}(1) This paragraph applies if an objection to the application was made to the appropriate authority and has not been withdrawn.

(1A) This paragraph does not apply if—

- (a) the appropriate authority decides that the application is not to proceed further,
- (b) the appropriate authority considers that the objection is frivolous or trivial,
- (c) the objection does not specify the grounds on which it is made, or
- (d) the objection was not made within the period allowed for making it.

(1B) Before deciding the application under paragraph 19, the appropriate authority may—

- (a) cause an inquiry to be held, or
- (b) give to the person who made the objection an opportunity of appearing before, and being heard by, a person appointed by the appropriate authority.

(1C) If the objection—

- (a) was made by the Welsh Ministers to the Secretary of State, and
 - (b) is not an objection regarding compulsory acquisition of a parcel of land,
- the Secretary of State must cause an inquiry to be held under sub-paragraph (1B)(a).

(1D) If, in a case where sub-paragraph (1C) does not apply,—

- (a) the objection was made by a person within sub-paragraph (1E), and
- (b) that person makes a request in writing to the appropriate authority that the objection be referred to an inquiry or dealt with in accordance with sub-paragraph (1B)(b),

the appropriate authority must either cause an inquiry to be held under sub-paragraph (1B)(a) or cause the objection to be dealt with in accordance with sub-paragraph (1B)(b), as the appropriate authority may determine.

(1E) The persons within this sub-paragraph are—

- (a) in the case of an application to the Secretary of State, the Welsh Ministers;
- (b) any local authority for an area in which the harbour (or any part of it) is situated;
- (c) the relevant conservation body;
- (d) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.]

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[^{F76}(1) This paragraph applies if an objection to the application was made to the Scottish Ministers and has not been withdrawn.

(1A) It does not apply, however, if—

- (a) the Scottish Ministers decide that the application is not to proceed further;
- (b) they consider the objection is frivolous or trivial;
- (c) the objection does not specify the grounds on which it is made; or
- (d) the objection was not made within the period allowed for making it.

(1B) Before making their decision under paragraph 19, the Scottish Ministers may—

- (a) cause an inquiry to be held; or
- (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.

(1C) Where—

- (a) the objection referred to in sub-paragraph (1) is made by a person within sub-paragraph (1D); and
- (b) the person informs the Scottish Ministers in writing that the person wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (1B)(b),

the Scottish Ministers shall, before making their decision under paragraph 19, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (1B)(b).

(1D) The persons within this sub-paragraph are—

- (a) any council constituted under the Local Government etc. (Scotland) Act 1994 (c. 39) for an area in which the harbour (or any part of it) is situated; and
[the harbour authority;]

[^{F77}(aa)

- (b) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.]

(2) Where an objector is heard in accordance with [^{F78}sub-paragraph (1B)(b)] [^{F79}sub-paragraph (1B)(b)], the [^{F80}Secretary of State] [^{F80}appropriate authority] shall allow the applicant and such other persons as [^{F81}he] [^{F81}the authority] thinks appropriate to be heard on the same occasion.

(3) The [^{F82}Secretary of State] [^{F82}appropriate authority] may disregard an objection—

[^{F83}^{F84}(a)

-
- (b) in the case of an objection about compulsory acquisition, if [^{F85}he] [^{F85}the appropriate authority] is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom compensation in respect of the acquisition will fall to be assessed in default of agreement.

[^{F86}(4) In this paragraph—

“the appropriate authority” means—

- (a) in a case where the application was made to the Secretary of State, the Secretary of State;
- (b) in a case where the application was made to the Welsh Ministers, the Welsh Ministers;

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“local authority” means—

- (a) in England, a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a parish meeting of a parish not having a separate parish council, and
- (b) in Wales, a county council, a county borough council and a community council;

“the relevant conservation body” means—

- (a) if the harbour (or any part of it) is situated in England, Natural England, and
- (b) if the harbour (or any part of it) is situated in Wales, [^{F87}the Natural Resources Body for Wales].]

Textual Amendments

- F75** Sch. 3 para. 18(1)-(1E) substituted for Sch. 3 para. 18(1) (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(2)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F76** Sch. 3 para. 18(1)-(1D) substituted (S.) for Sch. 3 para. 18(1) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 46(2), 54(2)** (with s. 48); S.S.I. 2005/454, art. 2, sch. 2
- F77** Sch. 3 para. 18(1D)(aa) inserted (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(h), 30(4)**; S.S.I. 2007/516, art. 2
- F78** Words in Sch. 3 para. 18(2) substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(3)(a)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F79** Words in Sch. 3 para. 18(2) substituted (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 46(3), 54(2)** (with s. 48); S.S.I. 2005/454, art. 2, sch. 2
- F80** Words in Sch. 3 para. 18(2) substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(3)(b)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F81** Words in Sch. 3 para. 18(2) substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(3)(c)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F82** Words in Sch. 3 para. 18(3) substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(4)(a)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F83** Sch. 3 para. 18(3)(a) repealed (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 46(4), 54(2)** (with s. 48); S.S.I. 2005/454, art. 2, sch. 2
- F84** Sch. 3 para. 18(3)(a) repealed (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), Sch. 21 para. 5(4)(b), **Sch. 22 Pt. 6** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. paras. 2627(c)
- F85** Words in Sch. 3 para. 18(3)(b) substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(4)(c)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F86** Sch. 3 para. 18(4) inserted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 5(5)** (with Sch. 21 para. 7); S.I. 2009/3345, art. 2, Sch. para. 26
- F87** Words in Sch. 3 para. 18(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 32** (with Sch. 7)

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[^{F88} Reasoned conclusion about environmental impact

Textual Amendments

F88 Sch. 3 para. 18A and cross-heading inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(17)** (with Sch. 6 paras. 2(2), 3(3))

- 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.
- (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.]

The decision

- [^{F89}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);

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- (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—
- (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.]

Textual Amendments

F89 Sch. 3 paras. 19-19B substituted for Sch. 3 para. 19 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), [Sch. 1 para. 8\(18\)](#) (with Sch. 6 paras. 2(2), 3(3))

[^{F89}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.

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- (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.

Textual Amendments

F89 Sch. 3 paras. 19-19B substituted for Sch. 3 para. 19 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(18)** (with Sch. 6 paras. 2(2), 3(3))

- 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.]

Textual Amendments

F89 Sch. 3 paras. 19-19B substituted for Sch. 3 para. 19 (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(18)** (with Sch. 6 paras. 2(2), 3(3))

- [^{F90}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,
 - (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,

Status: Point in time view as at 31/03/2023.

Changes to legislation: Harbours Act 1964, SCHEDULE 3 is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.]

Textual Amendments

F90 Sch. 3 para. 20 substituted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(19)** (with Sch. 6 paras. 2(2), 3(3))

^{F91}Defence projects: exemption from environmental impact assessment

Textual Amendments

F91 Sch. 3 paras. 20A-20G and cross-headings inserted (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 1 para. 8(20)** (with Sch. 6 paras. 2(2), 3(3))

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

Status: Point in time view as at 31/03/2023.

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- (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;
 - (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 [^{F92}an 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—

Status: Point in time view as at 31/03/2023.

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- (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.

Textual Amendments

F92 Words in *Sch. 3 para. 20C(1)(d)* substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(i)**

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—
- (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 [^{F93}comprises, or will comprise, the steps set out in paragraphs (a) to (d) of the definition of “environmental impact assessment” in paragraph 1] 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.

Textual Amendments

F93 Words in *Sch. 3 para. 20D(1)(b)* substituted (31.12.2020) by [The Harbours and Highways \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/460\)](#), regs. 1, **2(4)(j)**

Status: Point in time view as at 31/03/2023.

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- 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);
 - (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;

Status: Point in time view as at 31/03/2023.

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- (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.]

The order

- 21 (1) Where the Secretary of State proposes to make the order applied for with modifications which appear to him substantially to affect the character of the order he—
- (a) shall take such steps as appear to him to be sufficient and reasonably practicable for informing the applicant and other persons likely to be concerned, and
 - (b) shall not make the order [^{F94}or, if the order is subject to the affirmative procedure by virtue of section 54A(4) of this Act, lay before the Scottish Parliament a draft statutory instrument containing it,] until such period for consideration of, and comment upon, the proposed modifications by the applicant and those other persons as he thinks reasonable has expired.
- (2) The Secretary of State shall not make the order with a modification authorising the compulsory acquisition of land that was not described in the draft submitted to him as land subject to be acquired compulsorily, unless all persons interested consent.

Status: Point in time view as at 31/03/2023.

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Textual Amendments

F94 Words in Sch. 3 para. 21(1)(b) inserted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(a)** (with arts. 8, 9)

- 22 (1) This paragraph applies where the Secretary of State makes an order which authorises the compulsory purchase of land and is—
- (a) a harbour revision order relating to a harbour in England or Wales, or
 - (b) a harbour empowerment order relating to a harbour or to works to be carried out in England or Wales.

- (2) The order shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 18 or 19 of the Acquisition of Land Act 1981 or paragraph 5 or 6 of Schedule 3 to that Act (National Trust land, commons etc), if it were an order under section 2(1) of that Act.

- [^{F95}23 (1) This paragraph applies to—
- (a) a harbour revision order relating to a harbour in Scotland, or
 - (b) a harbour empowerment order relating to a harbour or to works to be carried out in Scotland,
- where the order authorises the compulsory purchase of land.

- (2) The order shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 1(2)(b) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (land forming part of a common or open space or held inalienably by the National Trust for Scotland) if it were an order under section 1(1) of that Act.]

Textual Amendments

F95 Sch. 3 para. 23 repealed (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), s. 30(4), [Sch. 3](#); [S.S.I. 2007/516](#), art. 2

- 24 (1) As soon as possible after a harbour revision order has been made^{F96}, or where (by virtue of section 54A(4) of this Act) the order is subject to the affirmative procedure a draft statutory instrument containing it has been laid before the Scottish Parliament], the applicant shall—
- (a) publish a notice by Gazette and local advertisement,
 - (b) serve on the harbour authority (unless the applicant is the harbour authority) a copy of the order and a copy of any map annexed to it,
 - (c) serve a copy of the order and of any map annexed to it on each local authority on whom, in compliance with a requirement imposed by virtue of paragraph 12, a notice was served, and
 - (d) serve a copy of the order and of any map annexed to it on each person on whom, in compliance with a requirement imposed by virtue of paragraph 14, a copy of the draft order was served.
- (2) The notice mentioned in sub-paragraph (1)(a) must—

Status: Point in time view as at 31/03/2023.

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- (a) state that the order has been made^[F97], or as the case may be that a draft statutory instrument containing it has been laid before the Scottish Parliament],
 - (b) name a place where a copy of the order and any map annexed to it may be inspected at all reasonable hours, ^[F98]and
 - ^[F98](c) if subsection (4) of section 54A of this Act does not apply to the statutory instrument containing the order, give information regarding—
 - (i) the date on which the order comes into operation, and
 - (ii) the right to challenge the validity of the order and the procedure for doing so, and
 - ^[F99](d) if that subsection does apply to the order, state that the order cannot be made unless the Scottish Parliament, by resolution, approves the draft statutory instrument containing it.]]
- ^[F100](2A) Sub-paragraphs (2B) to (2F) apply where a harbour revision order—
- (a) authorises the compulsory acquisition of land in England or Wales, and
 - (b) applies Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 to the acquisition.
- (2B) The applicant must serve the notice on any person who, if Part 2 of the Acquisition of Land Act 1981 applied to the acquisition, would be entitled to a notice under section 12 of that Act (notice to owners, lessees and occupiers).
- (2C) The notice must—
- (a) contain a statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981), and
 - (b) invite any person who would be entitled to claim compensation if a declaration were executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 to give the applicant information about the person’s name, address and interest in land, using a form set out in the notice.
- (2D) The statement referred to in sub-paragraph (2C)(a) must be the same as the relevant statement prescribed under section 15(4)(e) of the Acquisition of Land Act 1981, subject to any necessary modifications.
- (2E) The form mentioned in sub-paragraph (2C)(b) must be the same as the relevant form that is prescribed under section 15(4)(f) of the Acquisition of Land Act 1981, subject to any necessary modifications.
- (2F) The applicant must send a copy of the notice to the Chief Land Registrar and it shall be a local land charge in respect of the land in England or Wales to which it relates.
- (2G) For the purposes of sub-paragraphs (2D) and (2E), a statement or a form is “relevant”—
- (a) where the harbour revision order is made by the Welsh Ministers, if it was prescribed by the Welsh Ministers, or
 - (b) where the harbour revision order is made by the Secretary of State, if it was prescribed by the Secretary of State.]
- ^[F101](3) ^[F102]Where a harbour revision order is subject to the affirmative procedure by virtue of section 54A(4) of this Act, as soon as possible after the order has been made or the Scottish Parliament has decided not to approve the draft statutory

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- instrument containing it], the applicant for that order shall publish by Gazette and local advertisement a notice—
- [^{F103}(a) stating that the order has been made, or as the case may be that the Scottish Parliament has decided not to approve the draft statutory instrument containing it, and]
- (b) where [^{F104}the order has been made], providing information regarding—
- (i) the place where a copy of the order and any map annexed to it may be inspected at all reasonable hours,
 - (ii) the date on which the order comes into operation, and
 - (iii) the right to challenge the validity of the order and the procedure for doing so.]

Textual Amendments

- F96** Words in Sch. 3 para. 24(1) inserted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(b)** (with arts. 8, 9)
- F97** Words in Sch. 3 para. 24(2)(a) inserted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(c)(i)** (with arts. 8, 9)
- F98** Sch. 3 para. 24(2)(c)(d) substituted (S.) for Sch. 3 para. 24(2)(c) and preceding word (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(k)**, 30(4); S.S.I. 2007/516, art. 2
- F99** Sch. 3 para. 24(2)(d) substituted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(c)(ii)** (with arts. 8, 9)
- F100** Sch. 3 para. 24(2A)-(2G) inserted (E.W.) (2.2.2017) by [The Housing and Planning Act 2016 \(Compulsory Purchase\) \(Corresponding Amendments\) Regulations 2017 \(S.I. 2017/16\)](#), reg. 1(2), **Sch. para. 2(1)** (with Sch. para. 2(2))
- F101** Sch. 3 para. 24(3) added (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(l)**, 30(4); S.S.I. 2007/516, art. 2
- F102** Words in Sch. 3 para. 24(3) substituted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(d)(i)** (with arts. 8, 9)
- F103** Sch. 3 para. 24(3)(a) substituted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(d)(ii)** (with arts. 8, 9)
- F104** Words in Sch. 3 para. 24(3)(b) substituted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(d)(iii)** (with arts. 8, 9)

Statutory undertakers' land

- 25 (1) This paragraph applies where application is made to the Secretary of State for a harbour revision order which will authorise the compulsory acquisition of land which includes land which has been acquired by statutory undertakers for the purposes of their undertaking.
- (2) If on a representation made to it the appropriate authority is satisfied—
- (a) that any of the said land is used for the purposes of the carrying on of the statutory undertakers' undertaking, or
 - (b) that an interest in any of the said land is held for those purposes,

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the order shall not be so made as to authorise the acquisition of any such land unless sub-paragraph (3) applies.

- (3) This sub-paragraph applies where that authority certifies that the nature and situation of the land are such—
- (a) that, without serious detriment to the carrying on of the undertaking, it can be acquired and not replaced, or
 - (b) that, if acquired, it can, without such detriment as aforesaid, be replaced by other land belonging to, or available for acquisition by, the undertakers.
- (4) The representation mentioned in sub-paragraph (2) must be made before the expiry of the period of 42 days starting with the date on which the notice that the application has been made for the order first appears in a local newspaper.
- (5) In this paragraph “statutory undertakers” means any person authorised by an Act (whether public general or local) or by any order or scheme made under or confirmed by an Act to carry on any of the following undertakings—
- (a) a railway, light railway, tramway or road transport undertaking;
 - (b) an undertaking the activities of which consist in—
 - (i) the maintenance of a canal;
 - (ii) the conservation or improvement of a river or other inland navigation;
 - (iii) the improvement, maintenance or management of a harbour (whether natural or artificial), port, haven or estuary, a dock (whether used by sea-going ships or not) or a wharf, quay, pier, jetty or other place at which ships (whether sea-going or not) can ship or unship goods or embark or disembark passengers; or
 - (iv) the provision and maintenance of a lighthouse; or
 - (c) an undertaking for the supply of hydraulic power.
- (6) In this paragraph, “the appropriate authority” means—
- (a) in relation to a statutory undertaker authorised to carry on an undertaking whose activities consist in the improvement, maintenance or management of—
 - (i) a fishery harbour in England, the Minister of Agriculture, Fisheries and Food; or
 - (ii) [F105 a harbour that is wholly in Wales other than a reserved trust port, the Welsh Ministers;]
 - (b) in relation to a statutory undertaker authorised to carry on an undertaking in Scotland, and in relation to whom the relevant Ministerial function has been transferred to the Scottish Ministers under the Scotland Act 1998, the Scottish Ministers; and
 - (c) in relation to any other statutory undertaker, the Secretary of State.

Textual Amendments

F105 Sch. 3 para. 25(6)(a)(ii) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\)](#), **ss. 30(7)**, 71(4) (with [Sch. 7 paras. 1, 6, 9](#)); [S.I. 2017/1179](#), **reg. 3(g)**

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PART II

ORDERS MADE BY THE SECRETARY OF STATE OF HIS OWN MOTION

Notices

- 26 (1) Where the Secretary of State proposes to make a harbour revision order of his own motion, he shall first—
- (a) publish a notice by Gazette and local advertisement and in such other ways as he thinks appropriate, and
 - (b) serve on the harbour authority, and on any other person who he thinks ought to have notice of the proposal, a copy of the draft order and a notice.
- (2) The notice mentioned in sub-paragraph (1)(a) must—
- (a) state that the Secretary of State proposes to make the order,
 - (b) contain a concise summary of the draft order,
 - (c) name a place where a copy of the draft order may be inspected at all reasonable hours, and
 - (d) state that any person who desires to object to the proposal should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date specified in the notice.
- (3) The date specified in accordance with sub-paragraph (2)(d) must be the date on which the notice first appears in a local newspaper.
- (4) The notice mentioned in sub-paragraph (1)(b) must—
- (a) state that the Secretary of State proposes to make the order, and
 - (b) state that if the harbour authority or other person served desires to object to the proposal he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.

Objections

- 27 (1) The following paragraphs in this Part have effect where—
- (a) all notices concerning a proposal of the Secretary of State to make a harbour revision order have been published under paragraph 26(1)(a),
 - (b) all notices and other documents which are required to be served under paragraph 26(1)(b) have been served, and
 - (c) every period for the making of objections to the Secretary of State in respect of the proposal has expired.
- 28^{F106}(1) This paragraph applies if an objection to the proposal was made to the proposing authority and has not been withdrawn.
- (2) This paragraph does not apply if—
- (a) the proposing authority decides that the proposal is not to proceed further,
 - (b) the proposing authority considers that the objection is frivolous or trivial,
 - (c) the objection does not specify the grounds on which it is made, or
 - (d) the objection was not made within the period allowed for making it.

Status: Point in time view as at 31/03/2023.

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- (3) Before deciding the application under paragraph 29, the proposing authority may—
- (a) cause an inquiry to be held, or
 - (b) give to the person who made the objection an opportunity of appearing before, and being heard by, a person appointed by the proposing authority.
- (4) If the objection was made by the Welsh Ministers to the Secretary of State, the Secretary of State must cause an inquiry to be held under sub-paragraph (3)(a).
- (5) Where—
- (a) the objection was made by a person within sub-paragraph (6), and
 - (b) that person makes a request in writing to the proposing authority that the objection be referred to an inquiry or dealt with in accordance with sub-paragraph (3)(b),
- the proposing authority must either cause an inquiry to be held under sub-paragraph (3)(a) or cause the objection to be dealt with in accordance with sub-paragraph (3)(b), as the proposing authority may determine.
- (6) The persons within this sub-paragraph are—
- (a) any local authority for an area in which the harbour (or any part of it) is situated, and
 - (b) the relevant conservation body.
- (7) Where an objector is heard in accordance with sub-paragraph (3)(b), the proposing authority must allow such other persons as the proposing authority thinks appropriate to be heard on the same occasion.
- (8) In this paragraph—
- “local authority” has the same meaning as in paragraph 18;
- “the proposing authority” means—
- (a) the Secretary of State, in a case where it is the Secretary of State who proposes to make a harbour revision order;
 - (b) the Welsh Ministers, in a case where it is the Welsh Ministers who propose to make a harbour revision order;
- “the relevant conservation body” has the same meaning as in paragraph 18.]
- [^{F107}(1) This paragraph applies if an objection to the proposal was made to the Scottish Ministers and has not been withdrawn.
- (2) It does not, however, apply if—
- (a) the Scottish Ministers decide that the proposal is not to proceed further;
 - (b) they consider the objection is frivolous or trivial;
 - (c) the objection does not specify the grounds on which it is made; or
 - (d) the objection was not made within the period allowed for making it.
- (3) Before making their decision under paragraph 29, the Scottish Ministers may—
- (a) cause an inquiry to be held; or
 - (b) give to the person who made the objection referred to in sub-paragraph (1) an opportunity of appearing before and being heard by a person appointed by them.
- (4) Where—

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- (a) the objection referred to in sub-paragraph (1) is made by a council constituted under the Local Government etc. (Scotland) Act 1994 (c. 39) for an area in which the harbour (or any part of it) is situated [^{F108}or by the harbour authority]; and
- (b) the council [^{F109}or the authority] informs the Scottish Ministers in writing that it wishes the objection to be referred to an inquiry or dealt with in accordance with sub-paragraph (3)(b),

the Scottish Ministers shall, before making their decision under paragraph 29, either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with sub-paragraph (3)(b).

- (5) Where an objector is heard in accordance with sub-paragraph (3)(b), the Scottish Ministers shall allow such other persons as they think appropriate to be heard on the same occasion.]

Textual Amendments

- F106** Sch. 3 para. 28 substituted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 6(1)** (with [Sch. 21 para. 7](#)); [S.I. 2009/3345](#), art. 2, Sch. para. 26
- F107** Sch. 3 para. 28 substituted (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 47(1)**, 54(2) (with s. 48); [S.S.I. 2005/454](#), art. 2, sch. 2
- F108** Words in Sch. 3 para. 28(4)(a) added (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(m)(i)**, 30(4); [S.S.I. 2007/516](#), art. 2
- F109** Words in Sch. 3 para. 28(4)(b) inserted (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(m)(ii)**, 30(4); [S.S.I. 2007/516](#), art. 2

The decision

- 29 (1) The Secretary of State shall consider—
 - (a) any objections made and not withdrawn, [^{F110}and]
 - (b) the report of any person who held an inquiry [^{F111}and of any person appointed for the purpose of hearing an objector][^{F112}and of any person appointed for the purpose of hearing an objector] under paragraph 28[^{F113}; and
 - (c) any written representations submitted to the Scottish Ministers by an objector in elaboration of the objection.]
- (2) Following the consideration required by sub-paragraph (1) the Secretary of State shall decide—
 - (a) not to make the order proposed,
 - (b) to make the order in the form of the draft, or
 - (c) to make it with modifications.

Textual Amendments

- F110** Word in Sch. 3 para. 29(1) repealed (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 47(2)**, 54(2) (with s. 48); [S.S.I. 2005/454](#), art. 2, sch. 2
- F111** Words in Sch. 3 para. 29(1)(b) inserted (E.W.) (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(1)(c)(d), **Sch. 21 para. 6(2)** (with [Sch. 21 para. 7](#)); [S.I. 2009/3345](#), art. 2, Sch. para. 26

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- F112** Words in Sch. 3 para. 29(1)(b) inserted (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 47(2)(a), 54(2)** (with s. 48); S.S.I. 2005/454, art. 2, sch. 2
- F113** Sch. 3 para. 29(1)(c) and preceding word inserted (S.) (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), **ss. 47(2)(b), 54(2)** (with s. 48); S.S.I. 2005/454, art. 2, sch. 2

The order

- 30 Where the Secretary of State proposes to make the order with modifications which appear to him substantially to affect the character of the order as originally proposed to be made, he—
- (a) shall take such steps as appear to him to be sufficient and reasonably practicable for informing persons likely to be concerned, and
 - (b) shall not make the order ^{F114}or, if the order is subject to the affirmative procedure, lay before the Scottish Parliament a draft statutory instrument containing it,] until a reasonable period for consideration of, and comment upon, the proposed modifications by those persons has expired.

Textual Amendments

- F114** Words in Sch. 3 para. 30(b) inserted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(e)** (with arts. 8, 9)

- 31 (1) As soon as possible after a harbour revision order has been made by the Secretary of State of his own motion he shall—
- (a) publish a notice by Gazette and local advertisement, and
 - (b) serve a copy of the order on each person on whom notice was served under paragraph 26(1)(b).
- (2) The notice mentioned in sub-paragraph (1)(a) must^{F115}—
- ^{F115}contain the information specified in paragraph 24(2)].
- ^{F116}(2A) Sub-paragraphs (2B) and (3) apply in relation to a harbour revision order where—
- (a) the Scottish Ministers have proposed to make the order of their own motion, and
 - (b) the order is subject to the affirmative procedure by virtue of section 54A(4) of this Act.
- (2B) The reference in sub-paragraph (1) to the order having been made by the Secretary of State of his own motion is to be read as a reference to a draft statutory instrument containing the order having been laid before the Scottish Parliament.]
- ^{F117}(3) As soon as possible after the ^{F118}order is made or the Scottish Parliament has decided not to approve a draft statutory instrument containing the order, the Scottish] Ministers shall publish by Gazette and local advertisement a notice containing the information specified in head (a) of sub-paragraph (3) of paragraph 24 and, if appropriate, that specified in head (b) of that sub-paragraph.]

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Textual Amendments

- F115** Words in Sch. 3 para. 31(2) substituted (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(n)**, 30(4); S.S.I. 2007/516, art. 2
- F116** Sch. 3 para. 31(2A)(2B) inserted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(f)(i)** (with arts. 8, 9)
- F117** Sch. 3 para. 31(3) added (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(o)**, 30(4); S.S.I. 2007/516, art. 2
- F118** Words in Sch. 3 para. 31(3) substituted (S.) (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **7(f)(ii)** (with arts. 8, 9)

PART III

HARBOUR EMPOWERMENT ORDERS: MODIFICATIONS OF PART I

- 32 (1) The modifications subject to which Part I of this Schedule is, by virtue of section 17(1)(g) of this Act, to have effect with respect to the procedure for the making of harbour empowerment orders by the Secretary of State are those set out in this paragraph.
- (2) For references to a harbour revision order there shall be substituted references to a harbour empowerment order.
- (3) For paragraphs 13 and 14 there shall be substituted—

“13 (1) The Secretary of State may require the applicant to serve on any specified person within any specified period of time a copy of the draft order and of any map accompanying the application together with a notice stating—

- (a) that the application has been made to the Secretary of State, and
- (b) that, if the person wishes to object to the application he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.”

[^{F119}(3A) Paragraph 18(1D)(aa) shall be omitted.]

- (2) The copy of the map referred to in sub-paragraph (1) must be drawn to the same scale as that map. "
- (4) Paragraph 24(1)(b) shall be omitted, and for the reference, in paragraph 24(1)(d), to paragraph 14, there shall be substituted a reference to paragraph 13(1).]

Textual Amendments

- F119** Sch. 3 para. 32(3A) inserted (S.) (28.12.2007) by [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), **ss. 25(5)(p)**, 30(4); S.S.I. 2007/516, art. 2

Status:

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Changes to legislation:

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