

**Changes to legislation:** Harbours Act 1964, PART II is up to date with all changes known to be in force on or before 13 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) View outstanding changes

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 3 E+W+S

#### 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](#)
- C1** 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.](#))
- C1** Sch. 3: power to amend or repeal conferred for specified purposes (26.12.2023) by [Levelling Up and Regeneration Act 2023 \(c. 55\), ss. 164\(3\), 255\(5\), Sch. 14 Pts. 1, 2](#) (with s. 247)

### PART II E+W+S

#### 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—
- publish a notice by Gazette and local advertisement and in such other ways as he thinks appropriate, and
  - 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—
- state that the Secretary of State proposes to make the order,
  - contain a concise summary of the draft order,
  - name a place where a copy of the draft order may be inspected at all reasonable hours, and
  - 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—
- state that the Secretary of State proposes to make the order, and

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- (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 [F2(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.
- (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—

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- (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.]

[<sup>F3</sup>(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—

- (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 [<sup>F4</sup>or by the harbour authority]; and
- (b) the council [<sup>F5</sup>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

- F2** 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
- F3** 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
- F4** 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
- F5** 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

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*The decision*

- 29 (1) The Secretary of State shall consider—
- (a) any objections made and not withdrawn, [<sup>F6</sup>and]
  - (b) the report of any person who held an inquiry [<sup>F7</sup>and of any person appointed for the purpose of hearing an objector][<sup>F8</sup>and of any person appointed for the purpose of hearing an objector] under paragraph 28[<sup>F9</sup>; 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**

- F6** 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
- F7** 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
- F8** 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
- F9** 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 [<sup>F10</sup>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**

- F10** 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

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- (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<sup>[F11]</sup>—  
<sup>[F11]</sup>contain the information specified in paragraph 24(2)].
- <sup>[F12]</sup>(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.]
- <sup>[F13]</sup>(3) As soon as possible after the <sup>[F14]</sup>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.]]

#### Textual Amendments

- F11** 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
- F12** 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)
- F13** 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
- F14** 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)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act modified by [2023 c. 8 s. 9\(7\)](#)