

**2009 No. 269**

**HARBOURS, DOCKS, PIERS AND FERRIES, ENGLAND  
AND WALES**

**The Harbour Works (Environmental Impact Assessment)  
(Amendment) (England and Wales) Regulations 2009**

<i>Made</i> - - - -	<i>12th February 2009</i>
<i>Laid before Parliament</i>	<i>16th February 2009</i>
<i>Coming into force</i> - -	<i>10th March 2009</i>

The Secretary of State for Transport, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), makes the following Regulations.

The Secretary of State for Transport has been designated(b) for the purposes of section 2(2) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009 and shall come into force on 10th March 2009.

(2) These Regulations apply to an application for a harbour revision order or a harbour empowerment order where the application is made on or after the date on which these Regulations come into force.

(3) In these Regulations, “the Act” means the Harbours Act 1964(c).

(4) These Regulations do not extend to Scotland.

**Amendment of the Harbours Act 1964**

2. In section 44(d) of the Act (limitation of right to challenge orders in legal proceedings), at the end add—

“(6) In the case of an order falling within subsection (7), an environmental organisation is, in accordance with Article 10a of the Directive, to be deemed to have sufficient interest to make an application under subsection (1).

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(a) 1972 c.68; The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)

(b) S.I. 1988/785.

(c) 1964 c.40.

(d) Section 44 was substituted by the Docks and Harbours Act 1966 (c. 28) (section 44) and amended by the Transport Act 1981 (c. 56) (section 18(1) and Schedules 6 (paragraphs 5(2)(a) and (b) and 6(4)) and 12 (Part II)). Section 44 was amended in relation to Scotland by the Transport and Works (Scotland) Act 2007 (asp 8) (section 25(2)).

(7) An order is within this subsection if the decision to make it was subject to the public participation provisions of the Directive.

(8) For the purposes of subsections (6) and (7)—

- (a) “the Directive” has the meaning given in Schedule 3;
- (b) an “environmental organisation” is a non-governmental organisation promoting environmental protection; and
- (c) “the public participation provisions” has the same meaning as in the Directive.”.

3. Schedule 3 (procedure on harbour revision and empowerment orders) to the Act(a) is amended as follows.

4. In paragraph 1, in the definition of “the Directive”, at the end add “and by Directive 2003/35/EC of the European Parliament and of the Council(b)”.

5.—(1) Paragraph 10 is amended as follows.

(2) In sub-paragraph (2)—

(a) after paragraph (c), insert—

“(ca) 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;”;

(b) the word “and” which follows paragraph (e) is omitted;

(c) in paragraph (f), after “application” insert “or to make representations in relation to any environmental statement supplied under paragraph 8(1)”;

(d) in that paragraph, after “specifying” insert “(where relevant)”;

(e) at the end, add—

“; and

(g) provide details of the procedure under this Schedule for dealing with any objection or representations made as mentioned in the notice”.

(3) After sub-paragraph (2), insert—

“(2A) Any charge imposed as mentioned in sub-paragraph (2)(ca)(i) must be reasonable.”

(4) In sub-paragraph (4), after “can” insert “, until the expiry of the period referred to in sub-paragraph (2)(f),”.

6. After paragraph 10, add—

“10A.—(1) This paragraph applies where—

(a) a notice has been published under paragraph (10)(1) which states that an environmental statement has been supplied under paragraph 8(1), and

(b) prior to the Secretary of State making a decision under paragraph 19(2)—

- (i) he is supplied by the applicant or any other person with further information; and

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(a) Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445) and amended in relation to England and Wales by the Countryside and Rights of Way Act 2000 (c. 37) (Schedules 10 (paragraph 3), 15 (paragraph 4) and 16 (Part III)). S.I. 1999/3445 was amended by S.I. 2000/2391. Schedule 3 was amended in relation to Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6) (paragraph 1(a) of Schedule 7), the Transport (Scotland) Act 2005 (asp 12) (sections 46 and 47) and the Transport and Works (Scotland) Act 2007 (asp 8) (section 25).

(b) O.J. No. L 156 25.06.2003, p. 17.

(ii) he is of the view that that information requires to be considered in order properly to assess the likely environmental effects of the proposed project.

(2) Subject to sub-paragraph (3), where this paragraph applies the Secretary of State must publish a notice, or direct another person to publish a notice, which—

- (a) states that further information of the sort referred to in paragraph (b) has been received,
- (b) specifies 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) provides 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) states that any person who desires to make representations in relation to the 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.

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

(4) The notice must be published —

- (a) by Gazette and local advertisement, and
- (b) in such other ways, if any, as seem to the Secretary of State appropriate.

(5) Any charge imposed as mentioned in sub-paragraph (2)(c) must be reasonable.

(6) The date specified in accordance with sub-paragraph (2)(d) must be the date on which the notice first appears in a local newspaper.”.

**7.** In paragraph 15(b), after “8(1)” insert “and any further information by virtue of the supply of which paragraph 10A applies”.

**8.** In paragraph 16, after paragraph (b) of sub-paragraph (7) insert—

“(ba) details of what provision was made for public participation in the making of the decision;”.

**9.** In paragraph 17—

- (a) in sub-paragraph (a), after “10(1)” insert “, 10A”, and
- (b) in sub-paragraph (c) after “objections” insert “or representations”.

**10.** In paragraph 19(1)—

- (a) in paragraph (a), after “8(1)” insert “and any further information by virtue of the supply of which paragraph 10A applies”;
- (b) at the end of paragraph (d), omit “and”; and
- (c) after paragraph (d), insert—

“(da) any representations made as specified in a notice published under paragraph 10 or 10A; and”.

**11.** In paragraph 20(2)—

- (a) after “publish” insert “by Gazette and local advertisement”; and
- (b) after paragraph (b), insert—

“(ba) details of what provision was made for public participation in the making of the decision,

(bb) a statement regarding the right to challenge the validity of the decision and the procedures for doing so,”.

Signed by authority of the Secretary of State

12th February 2009

*Jim Fitzpatrick*  
Parliamentary Under Secretary of State  
Department for Transport

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement, in relation to harbour works, article 3 of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC(a) and 96/61/EC(b).

Council Directive 85/337/EC on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) was implemented in relation to harbour works by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445) which substituted Schedule 3 to the Harbours Act 1964. Schedule 3 sets out the procedure for making harbour revision and harbour empowerment orders.

These Regulations amend Schedule 3 by making provision for the making of representations in relation to an environmental statement (*regulation 5*) and for dealing with additional information supplied to the Secretary of State before the decision is made on the order (*regulation 6*). *Regulations 4 and 7 to 11* make ancillary provision.

These Regulations also amend section 44 (limitation of right to challenge orders in legal proceedings) of the Harbours Act 1964 to ensure that an environmental organisation is able to make an application under section 44(1) (*regulation 2*).

The impact assessment and transposition note are available from the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)).

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- (a) O.J. No L 175 05.07.1985, p. 40.  
(b) O.J. No L 257 10.10.1996, p. 26.

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