

These notes relate to the Transport and Works (Scotland) Act 2007 (asp 8) which received Royal Assent on 14 March 2007

TRANSPORT AND WORKS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

Harbours Act 1964

SCHEDULE 3

This text is provided for guidance only and accuracy is not warranted.

Key:

New = *this is new text inserted by the Act*
text

inserted

Text = [this is existing text which has been deleted or repealed]

deleted

or

repealed

“SCHEDULE 3

Sections 17 and 47

PROCEDURE FOR MAKING HARBOUR REVISION AND EMPOWERMENT ORDERS

ORDERS MADE ON APPLICATION TO THE SECRETARY OF STATE]

Introduction

1 In this Part of this Schedule-

"the Directive" means Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive [97/11/EC](#) and Council Directive [2003/35/EC](#);

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 ;

"EEA State" means a State which is a Contracting Party to the EEA Agreement;

"environmental statement" means a statement which includes the information mentioned in paragraph 8(2) and such additional information as the Secretary of State may require under paragraph 8(3);

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

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"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;

"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 Directive;

"sensitive area" means any of the following-

- ((a) land within a site of special scientific interest;
- ((b) land in respect of which a conservation order or land management order made under Part 2 of the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) has effect;
- [(c) **land declared to be a national nature reserve under section 35 of that Act**];
- [(d) **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) **a National Park within the meaning of the National Parks and Access to the Countryside Act 1949**];
- ((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) **(an area of outstanding natural beauty designated by order under section 87 of the National Parks and Access to the Countryside Act 1949 (designation of areas of outstanding natural beauty))**];
- ((j) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994;
- ((k) an area designated as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972
- [(l) *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.*

[2 A project shall be treated for the purposes of this Part as not falling within 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 falling within that Annex.]

Pre-application procedure

- [3] A person may not make an application for a harbour revision order which, directly or indirectly, authorises any project unless—
- (a) he has given the Secretary of State notice of his intention to make the application, and
 - (b) the Secretary of State has responded under paragraph 5 or 6(3).]
- [4] Where the Secretary of State is notified of a proposed application under paragraph 3(a) he shall decide—
- (a) whether the application relates to a project which falls within Annex I or II to the Directive, and
 - (b) if it relates to a project which falls within Annex II, whether, taking into account the selection criteria, the project is a relevant project.]
- [5] If the Secretary of State decides that the application—
- (a) does not relate to a project which falls within Annex I or II to the Directive, or
 - (b) relates to a project which falls within Annex II but is not a relevant project, he shall inform the proposed applicant in writing of his decision.]
- [6] (1) If the Secretary of State decides that the application relates to a project which falls within Annex I or within Annex II to the Directive and is a relevant project—
- (a) he shall in writing inform the proposed applicant of the decision, and give him the reasons for his decision,
 - (b) sub-paragraph (2) shall apply, and
 - (c) if the applicant makes the application, paragraph 8 shall apply.
- (2) Where this sub-paragraph applies the Secretary of State shall give an opinion to the proposed applicant about the extent of the information referred to in Annex IV to the Directive which the proposed applicant would be required under paragraph 8(1) to supply in an environmental statement.
- (3) In giving an opinion under sub-paragraph (2), the Secretary of State shall take into account the extent to which he considers—
- (a) information to be relevant to his decision under paragraph 19 and to the specific characteristics of the project to which the proposed application relates and of the environmental features likely to be affected by it; and
 - (b) that (having regard in particular to current knowledge and methods of assessment) the proposed applicant may reasonably be required to compile the information.
- (4) The Secretary of State shall not give an opinion under sub-paragraph (2) until he has consulted the proposed applicant and such bodies with environmental responsibilities as he thinks appropriate.

The application

- [7] An application for a harbour revision order must be accompanied by—
- (a) six copies of a draft of the proposed order,
 - (b) six copies 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.]
- [8] (1) Where this paragraph applies pursuant to paragraph 6(1), the Secretary of State shall direct the applicant to supply him with an environmental statement in such form as he may specify.
- (2) The environmental statement shall include the following information—

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- (a) a description of the project comprising information on its site, design and size;
 - (b) a description of the measures which the applicant proposes to take in order to prevent, reduce or remedy significant adverse effects;
 - (c) data required to identify and assess the main effects which the project is likely to have on the environment;
 - (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects; and
 - (e) a non-technical summary of the information mentioned in paragraphs (a) to (d).
- (3) The Secretary of State may require the applicant to include in the environmental statement specified information in addition to the information listed in sub-paragraph (2) (whether or not specified in the opinion given under paragraph 6(2)).
- (4) The Secretary of State may specify information under sub-paragraph (3) only if it is information of a type set out in Annex IV to the Directive and he considers that—
- (a) it is relevant to his decision under paragraph 19 and to the specific characteristics of the project to which the application relates and of the environmental features likely to be affected by it; and
 - (b) (having regard in particular to current knowledge and methods of assessment) the applicant may reasonably be required to compile the information.
- [9] The Secretary of State shall not consider an application for a harbour revision order unless the applicant complies with any direction under paragraph 8(1) and with any relevant requirements of paragraphs 10 to 14.]

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),
 - (c) state whether an environmental statement has been supplied under paragraph 8(1)
 - (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 head (f), be obtained and information as to the amount of any charge for the provision of such a copy,*
 - (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, **[and]**
 - (f) state that any person who desires to object to the application *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

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(where relevant) the grounds of the objection, before the expiry of the period of 42 days starting with a date specified in the notice and

(g) provide details of the procedure under this Schedule for dealing with any objection or representations made under head (f).

(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 *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.]

10A(1) *This paragraph applies where—*

- (a) *an environmental statement has been supplied under paragraph 8(1), and*
- (b) *prior to the Scottish Ministers making a decision under paragraph 19(2), they are supplied by the applicant or any other person with further information falling within sub-paragraph (2).*

(2) *Information falls within this sub-paragraph if—*

- (a) *the Scottish Ministers are of the view that it requires to be considered in order properly to assess the likely environmental effects of the proposed project, and*
- (b) *it is not information required for the purposes of an inquiry or hearing held under paragraph 18.*

(3) *The applicant shall arrange for a notice to be published—*

- (a) *by Gazette and local advertisement, and*
- (b) *in such other ways as seem to the Scottish Ministers appropriate.*

(4) *The notice must—*

- (a) *state that further information of the sort referred to in sub-paragraph (2)(a) has been received,*
- (b) *specify a place where a copy of the information can, until the expiry of the period referred to in head (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 information should do so in writing to the Scottish Ministers before the expiry of the period of 42 days starting with a date specified in the notice.*

(5) *The date specified in accordance with sub-paragraph (4)(d) must be the date on which the notice first appears in a local newspaper.*

[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 every owner, lessee and occupier other than a tenant for a month or any period less than a month—

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

[15 Before the Secretary of State determines an application he shall—
(a) consult, and
(b) send any environmental statement supplied to him under paragraph 8(1) *and any further information falling within paragraph 10A(2)* to, such bodies likely to have an interest in the project by reason of their environmental responsibilities as he thinks appropriate.]

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,
(b) the Secretary of State decides under paragraph 6(1)—
(i) that the application relates to a project which falls within Annex I or II to the Directive, and
(ii) in the case of an application relating to a project which falls within Annex II to the Directive, that the project is a relevant project, 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 another EEA State, or another 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 the other 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 the other 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 the other EEA State; and
(b) information about the nature of the decision which may be taken under this Part.

(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,
(b) the environmental statement supplied to the Secretary of State under paragraph 8(1) *and any further information falling within paragraph 10A(2)*, 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 [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, 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) *details of what provision was made for public participation in the making of the decision;*
 - (c) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects; and
 - (d) confirmation that any opinion sent to the Secretary of State in accordance with sub-paragraph (5)(b) has been taken into consideration in reaching the decision.

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) 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
 - (c) every period for the making of objections *or representations* to the Secretary of State in respect of the application has expired.]
- 18 (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;
 - (aa) *the harbour authority* and
 - (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 sub-paragraph (1B)(b), the Secretary of State shall allow the applicant and such other persons as he thinks appropriate to be heard on the same occasion.
- (3) The Secretary of State may disregard an objection-
- [...]
- (b) in the case of an objection about compulsory acquisition, if he 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.

The decision

- 19 (1) The Secretary of State shall consider-
- (a) any environmental statement supplied under paragraph 8(1) *and any further information falling within paragraph 10A(2)*;
 - (b) the result of any consultations under paragraph 15;
 - (c) any opinion sent under paragraph 16(5)(b) and the result of any consultations with other EEA States under paragraph 16(6)(a);
 - (d) any objections made and not withdrawn; [...]
 - (da) *any representations made under paragraph 10(2)(f) or 10A(4)(d)*;
 - (e) the report of any person who held an inquiry and of any person appointed for the
 - (f) [(f) any written representations submitted to the Scottish Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection.]
- (2) Following the consideration required by sub-paragraph (1) the Secretary of State shall decide-
- (a) not to make the order applied for,
 - (b) to make it in the form of the draft submitted to him, or
 - (c) to make it with modifications.
- [20 (1) This paragraph applies where the Secretary of State decides under paragraph 6(1)-
- (a) that the application relates to a project which falls within Annex I or II to the Directive, and
 - (b) in the case of an application relating to a project which falls within Annex II to the Directive, that the project is a relevant project.

- (2) The Secretary of State shall 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 the decision,
 - (b) the main reasons and considerations on which his decision is based,
 - (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,*
 - (c) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects, and
 - (d) a statement that the matters referred to in paragraph 19(1) have been taken into considerations.]

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 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.]
- [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.]
- [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]**
- [24 (1) As soon as possible after a harbour revision order has been made, the applicant shall—
- (a) publish a notice by *Gazette and local advertisement*,

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- (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–
- (a) state that the order has been made,
 - (b) name a place where a copy of the order and any map annexed to it may be inspected at all reasonable hours, **and**
 - (c) **state, in the case of an order which is not subject to special parliamentary procedure, the date on which it comes into operation.]**
 - (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*
 - (d) *if that subsection does not apply to the statutory instrument containing the order, state that the instrument cannot come into force until the Scottish Parliament, by resolution, approves it.*
- (3) *As soon as possible after the Scottish Parliament has decided whether or not to approve under section 54A(4)(b) of the Act a statutory instrument containing a harbour revision order, the applicant for that order shall publish by Gazette and local advertisement a notice –*
- (a) *stating that the Parliament has, or as the case may be has not, passed a resolution approving the instrument, and*
 - (b) *where a resolution has been passed, 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.*

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, 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

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- (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 authorities 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) a fishery harbour in Wales, the National Assembly for Wales;
 - (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.]

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 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 (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 *or by the harbour authority*; and
 - (b) the council *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.

The decision

- 29 (1) The Secretary of State shall consider—
- (a) any objections made and not withdrawn;

*These notes relate to the Transport and Works (Scotland) Act
2007 (asp 8) which received Royal Assent on 14 March 2007*

- (b) the report of any person who held an inquiry and of any person appointed for the purpose of hearing an objector under paragraph 28; 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

The order

- [30] Where the Secretary of State proposes to make the order with modifications which appears to him substantially to affect the character of the order as originally proposed to be made, he—
- (a) shall take such steps as appears to him to be sufficient and reasonably practicable for informing persons likely to be concerned, and
 - (b) shall not make the order until a reasonable period for consideration of, and comment upon, the proposed modifications by those persons has expired.]
- [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 *contain the information specified in paragraph 24(2)*.
- (a) state that the order has been made, and
 - (b) **name a place where a copy of the order may be inspected at all reasonable hours.**]
- (3) *As soon as possible after the Scottish Parliament has decided whether or not to approve under section 54A(4)(b) of the Act a statutory instrument containing a harbour revision order made by the Scottish Ministers of their own motion, those 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 paragraph.*]

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 that shall be substituted references to a harbour empowerment order.
- (3) For paragraph 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

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- (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.
 - (2) The copy of the map referred to in sub-paragraph (1) must be drawn to the same scale as that map.”.
- (3A) Paragraph 18(1D)(aa) shall be omitted.
- (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).]