

**Changes to legislation:** Harbours Act 1964, Cross Heading: Deferral of environmental impact assessment: direction and effect of direction is up to date with all changes known to be in force on or before 21 April 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

#### 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 I

#### ORDERS MADE ON APPLICATION TO THE SECRETARY OF STATE

[<sup>F2</sup>Deferral of environmental impact assessment: direction and effect of direction

##### Textual Amendments

- F2** 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\(3\)](#))

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 [<sup>F3</sup>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—

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- (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

**F3** 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)

- 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;

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- (d) any comments made by the consenting authority about the deferred project or any activity to be carried on during the course of the project;
  - (e) if consent or authorisation has been granted by the consenting authority—
    - (i) any conditions attached to the consent or authorisation which relate to the significant effects of the deferred project on the environment;
    - (ii) any description of any features of the deferred project or any measures envisaged to avoid, prevent or reduce and, if possible, offset any significant adverse effects of the project on the environment;
    - (iii) any measures considered appropriate by the consenting authority for the purpose of monitoring the significant adverse effects of the deferred project on the environment;
  - (f) if the Secretary of State is minded to make the order applied for, whether monitoring of the significant adverse effects of the deferred project on the environment is appropriate, and if so—
    - (i) whether it is necessary to modify the order to include a monitoring measure, and
    - (ii) whether to include provision in the order for potential remedial action;
  - (g) if the application relates to a deferred project which is to be carried out in Scotland, any written representations submitted to the Scottish Ministers by the applicant in elaboration of the application or by an objector in elaboration of an objection.
- (4) For the purpose of determining whether it is appropriate to impose a monitoring measure, the Secretary of State must have regard to any existing monitoring arrangements which are carried out in accordance with an obligation under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).
- 20F. (1) The Secretary of State may make an order authorising a deferred project only if satisfied that—
- (a) the conclusion mentioned in paragraph 20E(3)(a) is up to date, and
  - (b) making the order in the form of the draft submitted with the application, or with modifications, would be compatible with the decision made by the consenting authority following the assessment mentioned in paragraph 20D(1)(b).
- (2) A conclusion is to be taken to be up to date for the purposes of sub-paragraph (1)(a) if, in the opinion of the Secretary of State, it addresses the likely significant effects of the project on the environment.
- (3) The Secretary State must consult the consenting authority if satisfied that it is appropriate to do so for the purposes of sub-paragraph (1)(b).
- 20G. The Secretary of State must make the decision required by paragraph 19(6) in respect of an application for an order authorising a deferred project within a reasonable period of time (having regard to the nature and complexity of the application and the project to which it relates) beginning with the day on which the Secretary of State has all the information needed to make that decision.]]

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

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