

EXPLANATORY MEMORANDUM TO
THE HARBOUR WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
(AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2009

2009 No. 269

1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2 Purpose of the instrument

2.1 The Order amends the procedures governing applications for Harbour Orders under the Harbours Act 1964 ("the Act") where the applications relate to approval for Harbour Works. The amendments affect the procedures governing the supply and advertisement of information about the environmental impacts of the works and the public's involvement in the decision making process, and in particular they provide for the handling of environmental information supplied after that initially supplied with the application.

3 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4 Legislative Context

4.1 The Order is being made to 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 83/337/EEC and 96/61/EC.

4.2 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 (SI 1999/3445) which substituted Schedule 3 to the Harbours Act 1964. The Order makes amendments to Schedule 3 which sets out the procedure for making harbour revision and harbour empowerment orders.

4.3 The amendments in the Order follow closely the amendments made to the Harbours Act 1964 by the Transport and Works (Scotland) Act 2007 (asp 8).

5 Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6 European Convention on Human Rights

6.1 The Secretary of State for Transport has made the following statement regarding Human Rights:

In my view the provisions of The Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009 are compatible with the Convention rights.

Policy background

7 *What is being done and why*

7.1 Council Directive 85/337/EC aimed to ensure adequate consideration of the environmental impacts of works projects. The Harbour Works (Environmental Impact Assessment) Regulations 1999 (SI 1999/3445) applied the provisions of the Directive to the procedures governing applications for Harbour Orders under Section 3 to the Harbours Act 1964. These Orders are applied for by Harbour Authorities seeking to carry out works in their Harbours and are determined by the Secretary of State for Transport, or in the case of Fishery Harbours in Wales, by the Welsh Assembly Government.

7.2 Harbour Orders, there are around 5 per year, which apply for approval for a project having significant impacts on the environment must be accompanied by an Environmental Statement (ES) assessing the impacts. The ES must be advertised to and be inspectable by the general public who can make representations about it to the Secretary of State before he arrives at a determination of the application.

7.3 Council Directive 83/337/EEC and 96/61/EC aim to increase public participation in the process of considering projects having environmental impacts. In order to comply with the Directive the Order has clarified the right of challenge to the making of an Order and introduces a procedure, which follows current practice, to deal with the provision of additional environmental information during the course of consideration of an application and subsequent to the information originally supplied.

7.4 There are no plans for consolidation of the SI.

8 Consultation outcome

8.1 The Department has not undertaken a consultation exercise. Following a recent judgment against it in the European Court of Justice, the UK may be subject to a fine for non transposition if the Regulations are not laid in time to come into force by early March. The Department's view is that in addition a consultation exercise would not be meaningful given the limited changes being made, the limited impact of even these changes and the lack of substance therefore upon which to consult.

9 Guidance

9.1 Brief guidance about the procedure for applying for Harbour Orders is available on the Department for Transport's Website at <http://www.dft.gov.uk/pgr/shippingports/ports/harbourorders/>

10 Impact

10.1 The impact on business, charities or voluntary bodies is not significant.

10.2 The impact on the public sector is not significant.

10.3 An Impact Assessment is attached to this memorandum.

11 Regulating small business

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take to assist small business is that no specific action is required given the insignificant impact of changes.

12 Monitoring & review

12.1 The impact of the Regulations on the procedure for making HROs will be kept under review by the Department and the Department will consider amending the Regulations if it proves necessary in the light of their practical application.

13 Contact

13.1 Colin Morris at the Department for Transport, Tel: 0207 944 5077 or e-mail: colin.morris@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Transport	Title: Impact Assessment of The Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2008	
Stage: Implementation	Version: 1	Date: 15 January 2009
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk>

Contact for enquiries: Colin Morris

Telephone: 0207 944 5077

What is the problem under consideration? Why is government intervention necessary?

The existing Harbour Works (Environmental Impact Assessment) Regulations 1999 require amendment to transpose into UK law Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice.

What are the policy objectives and the intended effects?

The aim of the new regulations is to make the necessary changes to current regulations, so as to properly transpose the EC Directive with the intention that Environmental Statements produced to accompany applications for Harbour Orders are appropriately advertised and any additional environmental information produced is made available to the public on the same terms as that originally provided.

What policy options have been considered? Please justify any preferred option.

1. The Do nothing option which would have the effect of opening the UK to the likelihood of infraction proceedings.
2. The option of amending as intended i.e. to the advertising procedures and handling of environmental information subsequently received.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

3 years after coming into force.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jim Fitzpatrick

..... Date: 12th February
2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Amendments to Existing regulations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Cost of advertising environmental information not heard at public inquiry (approximately £1500 per application), borne by either the applicant, another body providing the information or the Secretary of State. Additionally, enforcement costs (ranging from nil to £1000 per annum, and so £500 on average) are borne by
	One-off (Transition)	Yrs	
	£ N/A	3	
	Average Annual Cost (excluding one-off)		
	£ 3,500-5,000		
Total Cost (PV)			£ 10,500-15,000
Other key non-monetised costs by 'main affected groups' N/A			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' N/A
	One-off	Yrs	
	£ N/A	3	
	Average Annual Benefit (excluding one-off)		
	£ N/A		
Total Benefit (PV)			£ N/A
Other key non-monetised benefits by 'main affected groups' The general public will benefit from greater awareness of and participation in environmental decision-making relating to harbour works.			

Key Assumptions/Sensitivities/Risks The number of HROs submitted per year remain at no more than 5 and that only 2 or 3 will require additional environmental information to be produced. The cost of advertising environmental information is £1500 per application. Enforcement costs are on average £500 per annum.

Price Base Year 2009	Time Period Years 3	Net Benefit Range (NPV) £ -7,000 to -15,000	NET BENEFIT (NPV Best estimate) £ -10,000
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What is the geographic coverage of the policy/option?	England & Wales			
On what date will the policy be implemented?	March 2009			
Which organisation(s) will enforce the policy?	Dept for Transport			
What is the total annual cost of enforcement for these organisations?	£ nil-1000 p.a.			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase	£ 0	Decrease	£ 0	Net	£ 0

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Order is being made to 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 83/337/EEC and 96/61/EC.

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 (SI 1999/3445) which substituted Schedule 3 to the Harbours Act 1964. The Order makes amendments to Schedule 3 which sets out the procedure for making harbour revision and harbour empowerment orders.

Harbour revision and harbour empowerment orders are Statutory Instruments, applied for almost exclusively by harbour authorities or potential harbour authorities. The relevant ones affected by the revised Schedule 3 are those which are seeking approval for harbour works which have an environmental impact.

The amendments make the following main changes to Schedule 3 to the 1964 Act:

- To clarify that environmental organisations have sufficient interest to be able to mount a challenge to the making of a Harbour Order which has been accompanied by an Environmental Statement.
- To add to the requirements on an applicant, at the time of application, that they make available to the public any Environmental Statement that accompanies the application. A reasonable charge may be made.
- To add to the public notice of application a statement about details of the procedure for public representations.
- To introduce a procedure for advertising and putting into the public domain, any further environmental information about the project applied for, unless this will be made available at a public inquiry.

Approximately 2-3 Harbour Orders with an Environmental Statement are submitted each year. Extra costs will only be incurred as a result of advertising required in the event of new environmental information being provided where a public inquiry is not considered a suitable occasion for such advertising. The bearer of those costs will be determined by the Secretary of State and may be the applicant, another body providing the information, or the Secretary of State.

Given the small number of orders involved, the even smaller number of occasions when the requirement for additional advertising outside a public inquiry will arise, and the small cost of any actual advertising (c£1500 per advert), extra costs incurred as a result of the amendments are therefore going to be minimal.

Enforcement/compliance

The Department will review the impact of the regulations on a case by case basis. Should an application reveal a defect in them the Government will consider amendment if necessary.

Enforcement costs expected to range from nil to £1000 per annum, will be borne by Department for Transport, and will ensure that the correct environmental information is advertised in a manner compliant with the amended regulations.

Competition Assessment

There are no competition issues. The regulations will apply to any Harbour Authority's application.

Small Firms

Some harbour authorities are small firms and they may be involved in submitting applications for harbour orders which require Environmental Statements to accompany them. Any extra costs resulting from the regulations are likely to be insignificant, especially in relation to the overall cost of promoting a project and no distinction is being made on the way the regulations will apply to authorities which are small firms.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Annexes

1. No Annexes

Transposition Note for The Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009

This note sets out the way in which the Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009 transpose, in respect of Harbour Orders made under the Harbours Act 1964, 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 83/337/EEC and 96/61/EC.

These Regulations do not go beyond what is necessary to implement article 3 of the Directive in relation to harbour orders, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Council Directive 85/337/EC on the assessment of the effects of certain public and private projects on the environment was implemented in respect of Harbour Orders by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (SI 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.

Council 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 83/337/EEC and 96/61/EC		
Article of Directive 2003/35/EC	Objectives (References to the Directive are to 83/337/EEC)	Implementation
3.1	Amends Article 1(2) of Directive to add definitions of the "public" and the "public concerned."	Schedule 3 to the Harbours Act makes no distinction between the two definitions - the public has always been regarded to be an all inclusive term for participation in consideration of Harbour Order applications
3.2	Amends Article 1(4) of the Directive to allow national defence projects to be exempted from the provisions of the Directive.	Not considered relevant to the Harbour Order procedure.
3.3	Amends Article 2(3) of the Directive to allow for another form of assessment to be applied to a project and for information arising from that assessment to be made publicly available	Not considered relevant to the Harbour Order procedure.
3.4	Amends Article 6(2) of the Directive so that the public shall be informed of	
	a) the request for development consent	Already included in Schedule 3
	b) the fact that the project is subject to an environmental assessment	Already included in Schedule 3
	c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or	Mostly already included in Schedule 3 but Regulation 5 of the Regulations adds a requirements for an Environmental Statement to be obtainable during the

	questions can be submitted, and details of the time schedule for transmitting comments or questions	period for public representation, for a reasonable charge, and for the public advertisement to include details of the process for dealing with public representations.
	d) the nature of possible decisions, or where there is one the draft decision d)	Already included in Schedule 3
	e) an indication of the availability of the information gathered pursuant to Article 5 ie the environmental information	Already included in Schedule 3
	f) an indication of the time and places where and means by which the relevant information will be made available	Already included in Schedule 3
	g) details of the arrangements for public participation	Already included in Schedule 3
	Amends Article 6(3) of the Directive so that the following is made available to the public concerned	
	a) environmental information	Already included in Schedule 3
	b) the main reports and advice issued to the authorities during the decision making process	Already included in Schedule 3, but also covered by public inquiry process and documents accompanying the application for a Harbour Order.
	c) Information becoming available after the initial provision of information	Regulation 6 of the Regulations is intended to introduce a process to meet this new provision and does so by requiring new information to be made publicly available by way of public advertisement or by inclusion in the consideration at a public inquiry and Regulation 10 includes such information in the things the Secretary of State must consider in making a decision. Regulation 7 of the Regulations requires the Secretary of State to send the information to his consultees.
	Introduces new Articles 6(4), 6(5), and 6(6) which requires the public to be given full opportunity to participate in the decision making process from an early stage, to be given information about how they are informed about that process and requires	Already included in Schedule 3

	reasonable time frames for the process.	
3.5	Amends Article 7 of the Directive so that where a project will impact on another EEA State, the Member State in whose territory the project lies informs the other state (s) of the information that has been provided within its own state if the other state so wishes.	Provisions to this effect were already included in Schedule 3 but Regulation 8 of the Regulations adds to the information to be provided to another state, details about public participation.
3.6	Amends Article 9 of the Directive so that in making a decision information is made available to the public about the content of the decision, the main reasons for the decision, information about the public participation process and a description of the main measures to mitigate or avoid adverse effects.	Mostly already included in Schedule 3 but Regulation 11 adds to the items for inclusion in the public notification of a decision, details on the provision for public participation in the making of the decision.
3.7	Inserts new Article, 10a, into the Directive to ensure the public have access to a review procedure to make challenges regarding alleged breaches of the public participation provisions of the Directive and that information about the review procedure is made available to the public at the time of decision.	The procedure for challenge is set out in Section 44 of the Harbours Act 1964. Regulation 2 of the Regulations makes clear that an environmental organisation is deemed to have sufficient interest to mount a challenge where an Environmental Statement has been supplied with an application for an Order. Regulation 12 of the Regulations adds to the items for inclusion in the public notification of a decision, a statement regarding the right to challenge the validity of the decision and the procedures for doing so.