

SCHEDULES

SCHEDULE 21

Section 315

AMENDMENTS OF THE HARBOURS ACT 1964

1 The Harbours Act 1964 (c. 40) is amended as follows.

Provision that may be made by harbour empowerment order

- 2 (1) Section 16 (power to make harbour empowerment orders) is amended as follows.
- (2) In subsection (6) after “any Act (including this Act)” insert “and for repealing any statutory provision of local application affecting the area in relation to which the powers are intended to be exercised”.

Delegation of certain functions under the Act

3 (1) After section 42 (accounts and reports) insert—

“Delegation of certain functions

42A Power to make orders delegating functions

- (1) The relevant authority may by order provide for such of the delegable functions as are designated in the order to be exercisable by such person as is designated in the order.
- (2) An authority may make an order under subsection (1) only with the consent of the person designated in it (“the delegate”).
- (3) The delegate—
- (a) must comply with the order, and
 - (b) is to be taken to have all the powers necessary to do so.
- (4) For so long as an order under subsection (1) remains in force, the functions designated in the order—
- (a) are exercisable by the delegate acting on behalf of the authority, and
 - (b) are not exercisable by the authority.
- This subsection is subject to subsections (5) and (6).
- (5) The delegate must obtain the consent of the relevant authority before exercising any function under—
- (a) section 15;
 - (b) section 15A;
 - (c) section 18.
- (6) Subsection (4)(b) does not apply to any function under—

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- (a) section 15;
 - (b) section 15A;
 - (c) section 18.
- (7) If a function is, by virtue of an order under subsection (1), exercisable by a person, any reference in this Act to the relevant authority is to be read, so far as relating to that function or the exercise of it, as a reference to that person.
- (8) An order under subsection (1) may make different provision for different cases, different areas or different persons.
- (9) The delegable functions are functions under the following sections—
- (a) section 14 (making harbour revision orders, except as mentioned in paragraph (b) below);
 - (b) section 15 (making harbour revision orders for limited purposes for securing harbour efficiency);
 - (c) section 15A (making orders varying powers of appointment in the constitutions of harbour authorities);
 - (d) section 16 (making harbour empowerment orders);
 - (e) section 18 (confirming or making harbour reorganisation schemes);
 - (f) section 60 (making orders amending Acts of local application).
- (10) In this section “the relevant authority”, in relation to any delegable function, means the authority by whom (apart from any order under subsection (1)) the function is exercisable.

42B Directions as to performance of delegated functions

- (1) This section applies where any functions are exercisable by or in relation to a person by virtue of an order made under section 42A by a relevant authority.
 - (2) The authority may from time to time give directions to the person with respect to the performance of the functions.
 - (3) A person to whom directions are given under this section must comply with the directions.
 - (4) An authority which gives a direction under this section must publish the direction in a manner likely to bring the direction to the attention of persons likely to be affected by it.”
- (2) In section 54 (orders and regulations) after subsection (2) insert—
- “(3) Subsection (4) applies to any statutory instrument containing—
- (a) an order made under section 42A by a relevant authority in relation to a delegable function, or
 - (b) an order made by any person, by virtue of an order under that section, in the exercise of a delegable function under section 14, 15, 16 or 18.
- (4) A statutory instrument to which this subsection applies—
- (a) if the relevant authority in relation to the delegable function is the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament;

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- (b) if the relevant authority in relation to the delegable function is the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”.

Consent of Welsh Ministers or Secretary of State required for making of certain harbour orders

4 After section 42B (inserted by paragraph 3(1)) insert—

“42C Consent of Welsh Ministers required for certain orders and schemes

- (1) This section applies to any harbour revision order or harbour empowerment order which makes provision excluding, modifying or repealing—
 - (a) any provision of the Marine and Coastal Access Act 2009 in so far as it applies to Wales;
 - (b) any instrument made under that Act by the Welsh Ministers;
 - (c) any statutory provision of local application made by the Welsh Ministers.
- (2) This section also applies to any harbour reorganisation scheme which makes provision repealing or amending any statutory provision of local application made by the Welsh Ministers.
- (3) The Secretary of State must notify the Welsh Ministers of any intention to make an order or scheme to which this section applies.
- (4) The order or scheme must not include any provision falling within subsection (1) or, as the case may be, (2) if, within the prescribed period beginning with the date of the notification under subsection (3), the Welsh Ministers refuse their consent to the inclusion of that provision in the order or scheme.
- (5) In this section “prescribed period” means such period as is prescribed in an order made by the Secretary of State for the purposes of this section.

42D Consent of Secretary of State required for certain orders and schemes

- (1) This section applies to any harbour revision order or harbour empowerment order which makes provision excluding, modifying or repealing—
 - (a) any provision of the Marine and Coastal Access Act 2009 in so far as it applies to England;
 - (b) any instrument made under that Act by the Secretary of State;
 - (c) any statutory provision of local application made by the Secretary of State.
- (2) This section also applies to any harbour reorganisation scheme which makes provision repealing or amending any statutory provision of local application made by the Secretary of State.
- (3) The Welsh Ministers must notify the Secretary of State of any intention to make an order or scheme to which this section applies.
- (4) The order or scheme must not include any provision falling within subsection (1) or, as the case may be, (2) if, within the prescribed period

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beginning with the date of the notification under subsection (3), the Secretary of State refuses consent to the inclusion of that provision in the order or scheme.

(5) In this section “prescribed period” means such period as is prescribed in an order made by the Secretary of State for the purposes of this section.”.

Procedure for dealing with applications for harbour orders

5 (1) In Schedule 3 (procedure for making harbour revision and empowerment orders), paragraph 18 (which provides for the holding of an inquiry or public hearing when an objection is made) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) This paragraph applies if an objection to the application was made to the appropriate authority and has not been withdrawn.

(1A) This paragraph does not apply if—

- (a) the appropriate authority decides that the application is not to proceed further,
- (b) the appropriate 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.

(1B) Before deciding the application under paragraph 19, the appropriate 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 appropriate authority.

(1C) If the objection—

- (a) was made by the Welsh Ministers to the Secretary of State, and
- (b) is not an objection regarding compulsory acquisition of a parcel of land,

the Secretary of State must cause an inquiry to be held under sub-paragraph (1B)(a).

(1D) If, in a case where sub-paragraph (1C) does not apply,—

- (a) the objection was made by a person within sub-paragraph (1E), and
- (b) that person makes a request in writing to the appropriate authority that the objection be referred to an inquiry or dealt with in accordance with sub-paragraph (1B)(b),

the appropriate authority must either cause an inquiry to be held under sub-paragraph (1B)(a) or cause the objection to be dealt with in accordance with sub-paragraph (1B)(b), as the appropriate authority may determine.

(1E) The persons within this sub-paragraph are—

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- (a) in the case of an application to the Secretary of State, the Welsh Ministers;
- (b) any local authority for an area in which the harbour (or any part of it) is situated;
- (c) the relevant conservation body;
- (d) if the order will authorise the compulsory acquisition of land, any person who is entitled to be served with notice under paragraph 11.”.

(3) In sub-paragraph (2)—

- (a) for “sub-paragraph (1)(a)” substitute “sub-paragraph (1B)(b)”,
- (b) for “Secretary of State” substitute “appropriate authority”, and
- (c) for “he” substitute “the authority”.

(4) In sub-paragraph (3)—

- (a) for “Secretary of State” substitute “appropriate authority”,
- (b) omit paragraph (a), and
- (c) in paragraph (b), for “he” substitute “the appropriate authority”.

(5) After sub-paragraph (3) insert—

“(4) In this paragraph—

“the appropriate authority” means—

- (a) in a case where the application was made to the Secretary of State, the Secretary of State;
- (b) in a case where the application was made to the Welsh Ministers, the Welsh Ministers;

“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, and
- (b) in Wales, a county council, a county borough council and a community council;

“the relevant conservation body” means—

- (a) if the harbour (or any part of it) is situated in England, Natural England, and
- (b) if the harbour (or any part of it) is situated in Wales, the Countryside Council for Wales.”.

Procedure where harbour revision orders are made otherwise than on application

6 (1) For paragraph 28 of Schedule 3 (inquiry to be held in most cases where an objection is made) substitute—

“28 (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,

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- (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—
 - (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.”.
- (2) In paragraph 29 of that Schedule (decision on harbour revision order proposed by Secretary of State), in sub-paragraph (1)(b), after “inquiry” insert “and of any person appointed for the purpose of hearing an objector”.

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Application of paragraphs 5 and 6

- 7 The amendments made by paragraphs 5 and 6 apply to objections made on or after the date on which those amendments come into force.