



# Wales Act 2017

## 2017 CHAPTER 4

### PART 2

#### LEGISLATIVE AND EXECUTIVE COMPETENCE: FURTHER PROVISION

##### *Harbours: consultation and consent requirements*

### **34 Exercise of functions in relation to cross-border harbours**

- (1) Where—
  - (a) a Minister of the Crown proposes to exercise a relevant function in relation to a cross-border harbour, and
  - (b) the exercise of that function would, in the opinion of the Minister, be likely to have a material effect in Wales,the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).
- (2) Where a Minister of the Crown proposes to exercise a function under the Harbours Act 1964 in such a way that it would result in a cross-border harbour being created, the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).
- (3) Where a Minister of the Crown has made an order under section 42A of the Harbours Act 1964, the duties in subsections (1) and (2) apply to the delegate as they apply to a Minister of the Crown.
- (4) The following are “relevant functions”—
  - (a) making an order under section 21 of the Sea Fish Industry Act 1951;
  - (b) making a harbour revision order under section 14 or 15 of the Harbours Act 1964, other than an order of the type described in section 7(5) of the Pilotage Act 1987 (order extending limits of pilotage jurisdiction);
  - (c) making an order under any of the following sections of the Harbours Act 1964—

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- (i) section 15A (orders about port appointments);
- (ii) section 16 (harbour empowerment orders);
- (iii) section 17A (closure orders);
- (iv) section 18 (orders for harbour reorganisation schemes);
- (v) section 40A (orders designating harbour authority);
- (vi) section 60 (orders amending local Acts);
- (d) making regulations under section 19 of that Act (compensation for loss of office etc);
- (e) approving a charge to which section 31 of that Act applies, or giving directions with respect to such a charge, under section 31(6)(a) or (b) of that Act (harbour dues);
- (f) giving or refusing consent under section 36(1) of the Docks and Harbours Act 1966 (inland clearance depots);
- (g) making an order under section 5(2) of the Ports (Finance) Act 1985 (order amending local enactments in consequence of borrowing powers etc);
- (h) giving or refusing consent under section 5(1) of the Ports Act 1991 (control over issue or disposal of securities etc);
- (i) giving directions under section 5(2) of that Act (directions about issue or disposal of securities etc);
- (j) making a decision under section 9(6) of that Act (decision confirming port transfer scheme);
- (k) giving directions under section 10(2) or (3) of that Act (directions requiring port authority to form a company or submit a scheme);
- (l) making a scheme under section 12(1) of that Act (required port transfer scheme).

(5) In this section—

“cross-border harbour” means a harbour that is partly in England and partly in Wales;

“England” includes the sea adjacent to England out as far as—

- (a) the seaward boundary of the territorial sea, or
- (b) if nearer to the land, any boundary between waters that are treated as part of the sea adjacent to Wales and those that are not, as determined by an order made under section 158(3) of the Government of Wales Act 2006;

“Wales” has the same meaning as in the Government of Wales Act 2006 (see section 158(1) and (3) of that Act).

### **35 Cross-border exercise of pilotage functions**

(1) Where—

- (a) the Secretary of State proposes to exercise a relevant pilotage function, and
- (b) the function would be exercised in relation to waters in Wales,

the Secretary of State must first consult the Welsh Ministers (except where section 38(1) applies).

(2) Where—

- (a) the Welsh Ministers propose to exercise a relevant pilotage function other than a function mentioned in subsection (5)(e) or (h), and
- (b) the function would be exercised in relation to waters in England,

the Welsh Ministers must first obtain the consent of the Secretary of State.

- (3) Where the Secretary of State or the Welsh Ministers have made an order under section 42A of the Harbours Act 1964 delegating the function of making a harbour revision order, the duty in subsection (1) or (2), so far as it relates to the function mentioned in subsection (5)(c), applies to the delegate as it applies to the Secretary of State or the Welsh Ministers.
- (4) Where—
- (a) the Welsh Ministers propose to exercise a function mentioned in subsection (5)(e) or (h), and
  - (b) the function would be exercised in relation to waters in England,
- the Welsh Ministers must first consult the Secretary of State (except where section 38(1) applies).
- (5) The following are “relevant pilotage functions”—
- (a) making an order under section 1(3) of the Pilotage Act 1987 (order about exercise of pilotage jurisdiction);
  - (b) making an order under section 1(4) or (4A) of that Act (orders about competent harbour authorities);
  - (c) making an order of the type described in section 7(5) of that Act (harbour revision order extending limits of pilotage jurisdiction of a harbour authority);
  - (d) making a direction under section 8(3) of that Act (pilotage exemption certificates);
  - (e) approving a charge imposed by virtue of section 10 of that Act, or giving directions with respect to such a charge, under section 31(6) of the Harbours Act 1964 as applied by section 10(6) of the Pilotage Act 1987;
  - (f) making directions under section 12(2) or (3) of the Pilotage Act 1987 (joint arrangements);
  - (g) settling a dispute under section 13 of that Act (resolution of dispute between authorities);
  - (h) deciding an appeal under paragraph 4 of Schedule A1 to that Act (decisions on authorisation of EEA pilots).
- (6) In this section “England” and “Wales” have the same meanings as in section 34.

### **36 Exercise of functions in relation to two or more harbours**

- (1) Where—
- (a) a Minister of the Crown proposes to exercise a relevant function in relation to two or more harbours, and
  - (b) at least one of those harbours is a harbour that is wholly in Wales and is not a reserved trust port,
- the Minister of the Crown must first consult the Welsh Ministers (except where section 38(1) applies).
- (2) Where a Minister of the Crown has made an order under section 42A of the Harbours Act 1964, the duty in subsection (1) applies to the delegate as it applies to a Minister of the Crown.
- (3) In this section—
- “relevant function” has the same meaning as in section 34;

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“reserved trust port” has the meaning given in section 32;  
 “Wales” has the same meaning as in section 34.

### **37 Consequential amendments to consent requirements in Harbours Act 1964**

- (1) In section 42C of the Harbours Act 1964 (consent of Welsh Ministers for certain orders and schemes), after subsection (2) insert—

“(2A) The references in subsections (1)(c) and (2) to a statutory provision of local application do not include a harbour revision order, a harbour empowerment order or a harbour reorganisation scheme.”

- (2) In section 42D of that Act (consent of Secretary of State for certain orders and schemes), after subsection (2) insert—

“(2A) The references in subsections (1)(c) and (2) to a statutory provision of local application do not include a harbour revision order, a harbour empowerment order or a harbour reorganisation scheme.”

### **38 Sections 34 to 37: supplementary**

- (1) The duty to consult in section 34(1) or (2), section 35(1) or (4) or section 36(1) does not apply in relation to the exercise of a function if it is not reasonably practicable to comply with it in relation to the exercise of the function.
- (2) If the duty to consult in section 34(1) or (2), section 35(1) or section 36(1) does not apply in relation to the exercise of a function by reason of subsection (1), the Secretary of State must as soon as is reasonably practicable inform the Welsh Ministers of the exercise of the function and of the reasons for its exercise.
- (3) If the duty to consult in section 35(4) does not apply in relation to the exercise of a function by reason of subsection (1), the Welsh Ministers must as soon as is reasonably practicable inform the Secretary of State of the exercise of the function and of the reasons for its exercise.
- (4) A failure to comply with a duty to consult in section 34(1) or (2), section 35(1) or (4) or section 36(1) in relation to the exercise of a function does not affect the validity of its exercise.
- (5) The Secretary of State may make regulations modifying the application of sections 34, 35, 36 and this section in relation to the harbours, or descriptions of harbour, specified in the regulations.
- (6) Before making regulations under subsection (5), the Secretary of State must consult the Welsh Ministers.
- (7) The regulations may in particular—
- (a) disapply a requirement for a Minister of the Crown to consult the Welsh Ministers before exercising a function;
  - (b) disapply a requirement for the Welsh Ministers to consult or obtain the consent of the Secretary of State before exercising a function;
  - (c) change a requirement to consult into a requirement to obtain consent, and vice versa;

- (d) provide that a Minister of the Crown must consult, or obtain the consent of, the Welsh Ministers before exercising a function not mentioned in section 34, 35 or 36, in the circumstances set out in the regulations;
  - (e) provide that the Welsh Ministers must consult, or obtain the consent of, the Secretary of State before exercising a function not mentioned in section 35, in the circumstances set out in the regulations.
- (8) Regulations under subsection (5) may make—
- (a) different provision for different purposes or cases, and
  - (b) consequential, incidental, supplementary, transitional and saving provision.
- (9) Regulations under subsection (5) must be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.