

# **TRANSPORT AND WORKS (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 1 – Orders Authorising Works Etc.**

##### **Procedure for making orders**

##### ***Section 12: Publicity for making or refusal of order***

40. This section sets out the arrangements for the publicity for the making or refusal of an order.
41. A duty is placed on the Scottish Ministers to give notice to the persons as specified in subsection (1) and to publicise the notice in the Edinburgh Gazette, which is the official newspaper of record in Scotland and is the primary source for a range of official notices. The information that must be contained within the notice is set out in subsection (2). Subsection (3) ensures in those instances when there is a requirement for an order to be laid before the Scottish Parliament that the notice must advise that the order cannot come into force unless the Scottish Parliament by resolution approves the order.
42. Subsection (4), where it applies, also requires the notice to cover additional matters. Those matters relate to consideration of the environmental statement, a definition of which is provided within subsection (5).
43. Subsection (6) amplifies the information that must be contained within a notice in respect of certain environmental considerations. Subsection (7), supplemented by the definition in subsection (9), states that subsection (4) applies in relation to projects in a class as listed in the European Directives on the assessment of the effects of certain public and private projects on the environment.
44. Subsection (8) transposes an element of Directive [85/337/EEC](#) (as amended by Directive [2003/35/EC](#), which provides for public participation in respect of plans and programmes relating to the environment and amends with regard to public participation and access to justice Council Directives [85/337/EEC](#) and [96/61/EC](#)) and means that any non-governmental organisation promoting environmental protection and meeting any requirements under the law shall be deemed to have an interest for the purposes of Article 10a(a) of Directive [85/337/EEC](#) (as amended) and rights capable of being impaired for the purposes of Article 10a(b) of the Directive and shall be able to challenge the substantive or procedural legality of decisions.
45. Subsection (9) provides the appropriate references.
46. Subsections (10) and (11) direct the Scottish Ministers to send a copy of their determination notice containing such information as relates to the environmental statement to persons who made an objection, those who made a representation or those that made both a representation and an objection.

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

47. Subsection (12)(a) directs, in those instances where the Scottish Ministers make a determination on an application, the promoter to make arrangements to publish in a local newspaper a copy of the Scottish Ministers' determination, the reasons for the determination, the matters taken into consideration and the extent of public participation in the process prior to the decision and information as to the right of challenging the decision. Under subsection (12)(b) the Scottish Ministers are obliged to publish similar information in respect of a development which they have promoted.
48. Once an order has been made the person who applied for the order or the Scottish Ministers, if they have made an order without an application being made to them, must place with the Scottish Parliament a copy of the order and such documentation as is described in subsection (13)(a) and deposit with the local authority and the National Park authority within whose area the proposed works are to take place a copy of the order and documents as described in subsection (13)(b). Subsection (14) dis-applies subsection (13)(a) for developments of national significance or otherwise considered by the Scottish Parliament under section 13.
49. Subsection (16) places a duty on a relevant authority to make the deposited documentation available for inspection by any person, free of charge at all reasonable hours.