

TRANSPORT AND WORKS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2: Miscellaneous Amendments

Section 25: Amendment of Harbours Act 1964

74. Provisions within this section transpose Council Directive [2003/35/EC](#) (otherwise known as the Public Participation Directive) and significantly amend Schedule 3 to the Harbours Act 1964. A revised Schedule 3 to the 1964 Act is attached for information with the new text inserted in italics and noting where text has been repealed. A transposition schedule is attached for information.
75. Subsection (2) inserts in section 44 of the Harbours Act 1964 subsection (6) which provides a definition of the “public concerned” to include a non-governmental organisation promoting environmental protection and confirms at subsection (7) that such a party has a legitimate right to raise a challenge to a harbour revision or empowerment order authorising a project likely to have a significant effect on the environment.
76. Subsection (3) through the insertion of new section 54A obligates the Scottish Ministers to seek an affirmative resolution from the Scottish Parliament in respect of an order authorising any future harbour developments that constitute a national development. It also provides the Scottish Ministers within subsection (2)(b) with the discretion to seek Parliamentary approval, by means of an affirmative procedure, for any other harbour scheme. Section 54A(5) provides that when a harbour order seeks to amend, revoke or re-enact an instrument laid before the Scottish Parliament the order will be subject to affirmative procedure only if the order authorises work constituting a national development different to that authorised by the original instrument, or the Scottish Ministers so direct.
77. Subsection (5)(a) provides for definitions in paragraph 1 of Schedule 3. Subsection (5)(b) and (c) provide for access to information and the making of representations. Subsection (5)(d) introduces a new paragraph into Part 1 of Schedule 3 to the Act, paragraph 10A, which provides for the notification procedure in those instances when the Scottish Ministers receive additional information that will have a bearing on their consideration of the likely environmental effects of a proposed project.
78. The insertion at sub-paragraph (1D) of paragraph 18 adds a harbour authority to the list of statutory objectors, but only where they are not the applicant, in respect of an application for a harbour revision order.
79. The insertions to sub-paragraph (2) of paragraph 24 and the insertion of the new sub-paragraph (3) provide details of the publicity arrangements for a harbour order including those approved by the Scottish Parliament. The insertions to sub-paragraph (4) of paragraph 28 add a harbour order authority to the list of statutory objectors in respect

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

of a harbour revision order where the order is to be made by the Scottish Ministers of their own motion. The addition of the new sub-paragraph (3) of paragraph 31 provides details of the publicity arrangements for a harbour revision order made by the Scottish Ministers of their own motion.

80. The new sub-paragraph (3A) in paragraph 32 recognises that a harbour authority cannot be an objector in the case of an empowerment order since the purpose of a harbour empowerment order is to establish a harbour authority.
81. Subsection (6) makes changes to paragraph 3 of Schedule 4 so as to ensure that the objections of a harbour authority, as a statutory objector, to a harbour re-organisation scheme cannot be dealt with by means of correspondence; there must always be a statutory right to an inquiry or hearing.