



Transport and Works (Scotland) Act 2007

2007 asp 8

PART 1

ORDERS AUTHORISING WORKS ETC.

Power to make orders

1 Orders as to transport systems and inland waterways

- (1) The Scottish Ministers may make an order relating to, or to matters connected with—
 - (a) the construction or operation of a transport system of any of the following kinds—
 - (i) a railway which starts, ends and remains in Scotland,
 - (ii) a tramway,
 - (iii) any system (other than a railway or tramway) using a mode of guided transport,
 - (iv) a trolley vehicle system, or
 - (b) the construction or operation of an inland waterway.
- (2) The Scottish Ministers shall not make an order under paragraph (b) of subsection (1) if in their opinion the primary object of the order could be achieved by means of an order under the Harbours Act 1964 (c. 40).

2 Subject-matter of orders under section 1

- (1) Without prejudice to the generality of section 1, the matters as to which provision may be made by an order under that section include those set out in schedule 1.
- (2) An order under section 1 may make provision in relation to more than one scheme, system or mode of transport.
- (3) An order under section 1 may—
 - (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that section,
 - (b) make such amendments, repeals and revocations of enactments of local application as appear to the Scottish Ministers to be necessary or expedient

Status: This is the original version (as it was originally enacted).

in consequence of any provision of the order or otherwise in connection with the order.

- (4) The provisions that may be made by an order under section 1 include any provision that appears to the Scottish Ministers to be necessary or expedient for giving full effect to—
- (a) any other provision of the order,
 - (b) any provision of an earlier order under that section, or
 - (c) any provision which is contained in—
 - (i) an Act passed before the time when this Part of this Act is first wholly in force, or
 - (ii) an instrument made under an Act before that time,
 and which is of a kind which could be included in an order under that section.
- (5) An order under section 1 may make provision—
- (a) as to the issuing of a fixed penalty notice in respect of an offence created by the order,
 - (b) as to the enforcement of a fixed penalty under such a notice,
 - (c) authorising byelaws made by virtue of the order to include provision of the nature referred to in paragraph (a) or (b) in respect of an offence created by the byelaws.
- (6) In subsection (5)(a), “fixed penalty notice” means a notice offering the opportunity, by paying a fixed penalty, to discharge any liability to be convicted of the offence to which the notice relates.
- (7) An order under section 1 shall not extinguish any public right of way over land unless the Scottish Ministers are satisfied—
- (a) that an alternative right of way has been or will be provided, or
 - (b) that the provision of an alternative right of way is not required.

3 Crown land

- (1) If the appropriate authority agrees—
- (a) a relevant interest may be acquired compulsorily by virtue of an order under section 1,
 - (b) any provision of this Act or of such an order (other than a provision by virtue of which an interest in land is compulsorily acquired) may apply in relation to a Crown interest, and
 - (c) any provision of an order under section 18 may apply in relation to a relevant interest.
- (2) In subsection (1), “a relevant interest” is an interest (not being itself a Crown interest) which subsists in land in which there is a Crown interest.
- (3) In this section, “Crown interest” means an interest—
- (a) belonging to Her Majesty in right of the Crown or in right of Her private estates,
 - (b) belonging to an office-holder in the Scottish Administration or to a government department,
 - (c) held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder, or

- (d) held in trust for Her Majesty for the purposes of a government department.
- (4) In this section, “the appropriate authority”, in the case of—
- (a) land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
 - (b) other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration who, or as the case may be the government department which, has management of the land,
 - (c) land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
 - (d) land belonging to, or held in trust for Her Majesty for the purposes of the Scottish Administration by, such an office-holder, means that office-holder,
 - (e) land belonging to, or held in trust for Her Majesty for the purposes of, a government department, means that government department.
- (5) The references in subsections (3)(a) and (4)(c) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).
- (6) It is for the Scottish Ministers to determine, for the purposes of this section, any question arising as to what authority is the appropriate authority in relation to any land; and their determination is final.