



# Transport and Works (Scotland) Act 2007

## 2007 asp 8

### PART 1

#### ORDERS AUTHORISING WORKS ETC.

##### *Procedure for making orders*

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

- (1) As soon as practicable after making a determination under subsection (2) of section 11, the Scottish Ministers are—
- (a) where the determination is made by virtue of paragraph (a) of subsection (1) of that section, to give notice of it to the person who applied for the order,
  - (b) to give notice of the determination—
    - (i) to every person who made an objection which, in accordance with section 9(3), was referred to an inquiry or hearing,
    - (ii) to the local authority for any area, to the National Park authority for any National Park and to the Transport Partnership created under section 1(1)(b) of the Transport (Scotland) Act 2005 (asp 12) for any region, in which the proposals contained in the application, or as the case may be in the draft order prepared under section 6(3)(a), are or were intended to have effect,
    - (iii) if the order relates, or as the case may be would have related, to the construction or operation of a railway, to the Office of Rail Regulation, and
    - (iv) to such other persons (if any) as may be prescribed, and
  - (c) to publish in the Edinburgh Gazette a notice of the determination.
- (2) Any notice—
- (a) under subsection (1) must give such information as to the terms of the order made (or where the determination was not to make an order, of the order applied for or as the case may be which the Scottish Ministers had proposed to make) as they consider appropriate and in particular must, where the determination is made by virtue of paragraph (a) of section 11(1), state the name and address of the person who applied for the order,

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- (b) under subsection (1)(a) or (b)—
    - (i) must include the terms of the determination,
    - (ii) must state the reasons for the determination and the considerations upon which it is based,
    - (iii) must give information as to what provision was made for public participation in the decision making upon which the determination is based, and
    - (iv) must give information regarding the right to challenge the validity of the determination and the procedures for doing so, and
  - (c) under subsection (1)(c)—
    - (i) must include the terms of the determination,
    - (ii) must state that notice given under subsection (1)(a) or (b) contains such statement and information as is mentioned in sub-paragraphs (ii) to (iv) of paragraph (b), and
    - (iii) must give information as to where a copy of that notice may be obtained.
- (3) Where any statutory instrument containing the order requires to be laid before the Parliament under section 13, any notice giving information under sub-paragraph (iv) of subsection (2)(b) must intimate that the statutory instrument cannot come into force unless the Parliament, by resolution, approves the instrument.
- (4) Where a determination under section 11 relates to an application or proposal to which this subsection applies, any notice given under subsection (1) as respects that determination must state that, before the Scottish Ministers made the determination, they—
- (a) considered the environmental statement,
  - (b) complied with any obligations under section 8 in respect of any objection which—
    - (i) was made in accordance with rules under that section, and
    - (ii) related to that statement, and
  - (c) considered, or referred to an inquiry under section 9(1) or a person appointed under section 9(2), any representations which—
    - (i) were made in accordance with rules under section 8, and
    - (ii) related to that statement.
- (5) In subsection (4), the “environmental statement” means a statement—
- (a) which is required, by rules under section 4—
    - (i) to accompany an application under that section, or
    - (ii) to be prepared in connection with the publication of a notice of a proposal to make an order by virtue of section 6, and
  - (b) which sets out particulars of the likely impact on the environment of the implementation of the order applied for or proposed.
- (6) If, in a case where subsection (4) has effect, an order is to be made, any notice under subsection (1) must also contain a description of the main measures to avoid, reduce and (if possible) remedy major adverse environmental effects.
- (7) Subsection (4) applies to any application under section 4 for an order, and any proposal to make an order by virtue of section 6, where the order would authorise works or other projects in a class—

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- (a) listed in Annex I to the relevant directive, or
  - (b) listed in Annex II to that directive which are, by virtue of their nature, size or location, likely to have significant effects on the environment.
- (8) In relation to any challenge to an order under section 1 authorising such works or other projects as are referred to in subsection (7), an organisation mentioned in the definition of “the public concerned” in Article 1(2) of the relevant directive is deemed for the purposes of—
  - (a) sub-paragraph (a) of Article 10a of that directive to have an interest, and
  - (b) sub-paragraph (b) of Article 10a to have rights capable of being impaired.
- (9) In subsections (7) and (8), references to the relevant directive are to Council Directive [85/337/EEC](#) (as amended by Council Directives [97/11/EC](#) and [2003/35/EC](#)) on the assessment of the effects of certain public and private projects on the environment.
- (10) The Scottish Ministers are to send a copy of any notice—
  - (a) given under subsection (1), and
  - (b) required by subsection (4) to contain a statement such as is provided for in that subsection,to each person mentioned in subsection (11).
- (11) The persons are those who (either or both)—
  - (a) made an objection to which paragraph (b) of subsection (4) refers, being an objection which was not referred to an inquiry or hearing in accordance with section 9(3),
  - (b) made representations to which paragraph (c) of subsection (4) refers.
- (12) Where by virtue of—
  - (a) paragraph (a) of section 11(1) the Scottish Ministers make a determination under section 11(2), the person who applied for the order is to publish in a local newspaper circulating in the area (or in each of the areas) in which the proposals contained in the application,
  - (b) paragraph (b) of section 11(1) the Scottish Ministers make such a determination, they are to publish in a local newspaper circulating in the area (or in each of the areas) in which the proposals contained in the draft order prepared by them under section 6(3)(a),are or were intended to have effect a notice which includes the terms of the determination and a copy of the statement and information published under subsection (2)(c).
- (13) Subject to subsection (14), as soon as practicable after the making of an order under section 1, the person who applied for the order is (or, where the order is made by virtue of section 6, the Scottish Ministers are)—
  - (a) to lay before the Parliament a copy of the order, and of any plan or book of reference prepared in connection with the application (or as the case may be in connection with the proposal to make the order),
  - (b) to deposit with each relevant authority in whose area works authorised by the order are to be carried out—
    - (i) a copy of the order, and
    - (ii) a copy of each of those other documents (or of so much of the documents as is relevant to the carrying out of those works in the area of the authority in question).

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- (14) Subsection (13)(a) does not apply where the order is contained in a statutory instrument which falls to be laid before the Parliament under section 13(3)(a).
- (15) Where a plan or book of reference is revised before the order is made, the reference in subsection (13)(a) is to the later (or as the case may be the latest) version.
- (16) A relevant authority are (or as the case may be is) to make available for inspection by any person, free of charge at all reasonable hours, any documents deposited under subsection (13)(b) with the authority.
- (17) In subsections (13)(b) and (16), “relevant authority” means—
- (a) a local authority, or
  - (b) a National Park authority.
- (18) In subsection (1)(b)(iv), “prescribed” means prescribed under this subsection by the Scottish Ministers by order.