



Transport and Works (Scotland) Act 2007

2007 asp 8

PART 2

MISCELLANEOUS AMENDMENTS

25 Amendment of Harbours Act 1964

- (1) The Harbours Act 1964 (c. 40) is amended as follows.
- (2) In section 44 (limitation of right to challenge orders in legal proceedings), at the end add—
 - “(6) In relation to any challenge to an order to which subsection (7) below applies, an organisation mentioned in the definition of “the public concerned” in Article 1(2) of the 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.
 - (7) This subsection applies to a harbour revision or empowerment order authorising a project which—
 - (a) falls within Annex I to the Directive; or
 - (b) falls within Annex II to the Directive and is a relevant project.
 - (8) In this section, “the Directive”, “project” and “relevant project” have the meanings assigned by paragraph 1 of Schedule 3 to this Act.”.
- (3) After section 54, insert—

“54A “Developments of national significance” etc.: special procedure

- (1) Subsection (4) below applies to a statutory instrument which—
 - (a) contains a harbour revision order or a harbour empowerment order; and
 - (b) falls within subsection (2) below.
- (2) A statutory instrument falls within this subsection if—

Status: This is the original version (as it was originally enacted).

- (a) the order in question authorises the carrying out of work which would constitute a national development; or
 - (b) the instrument is the subject of a direction by the Scottish Ministers under this paragraph.
- (3) In subsection (2) above and subsection (5) below, references to a “national development” are to any development (within the meaning of the Town and Country Planning (Scotland) Act 1997) for the time being designated under section 3A(4)(b) of that Act as a national development.
- (4) The statutory instrument—
- (a) is to be laid before the Scottish Parliament; and
 - (b) cannot come into force unless the Scottish Parliament, by resolution, approves the instrument.
- (5) An instrument containing an order which revokes, amends or re-enacts an instrument laid before the Parliament under paragraph (a) of subsection (4) above is subject to the procedure in that subsection only if—
- (a) the order authorises the carrying out of work which would constitute a national development (other than a national development to which the instrument revoked, amended or re-enacted relates); or
 - (b) the Scottish Ministers so direct.”.
- (4) In section 57(1) (interpretation), at the appropriate places insert—
- ““Act” means an Act of Parliament or an Act of the Scottish Parliament;”, and
- ““enactment” includes an Act of the Scottish Parliament or an instrument made under such an Act;”.
- (5) In Schedule 3 (procedure on harbour revision and empowerment orders)—
- (a) in paragraph 1—
 - (i) in the definition of “the Directive”, at the end add “and Council Directive [2003/35/EC](#)”,
 - (ii) paragraphs (c) to (f) and (i) of the definition of “sensitive area” are repealed, and
 - (iii) in that definition, at the end add—
 - “(l) an area designated as a national park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000”,
 - (b) in sub-paragraph (2) of paragraph 10—
 - (i) after head (c) insert—
 - “(ca) where such a statement has been supplied—
 - (i) provide an address from which a copy of the statement can, until the expiry of the period referred to in head (f), be obtained and information as to the amount of any charge for the provision of such a copy,
 - (ii) provide an address from which further information about the works proposed to be authorised can, until the expiry of that period, be obtained, and

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

- (iii) state whether paragraph 16 applies,”
- (ii) the word “and” which follows head (e) is repealed,
- (iii) in head (f), after the word “application” insert “or to make representations in relation to any environmental statement supplied under paragraph 8(1)”,
- (iv) in that head, after the word “specifying” insert “(where relevant)”, and
- (v) at the end add “and
 - (g) provide details of the procedure under this Schedule for dealing with any objection or representations made under head (f)”,
- (c) in sub-paragraph (4) of paragraph 10, after the word “can” insert “, until the expiry of the period referred to in sub-paragraph (2)(f)”,
- (d) after that paragraph, add—
 - “10A (1) This paragraph applies where—
 - (a) an environmental statement has been supplied under paragraph 8(1), and
 - (b) prior to the Scottish Ministers making a decision under paragraph 19(2), they are supplied by the applicant or any other person with further information falling within sub-paragraph (2).
 - (2) Information falls within this sub-paragraph if—
 - (a) the Scottish Ministers are of the view that it requires to be considered in order properly to assess the likely environmental effects of the proposed project, and
 - (b) it is not information required for the purposes of an inquiry or hearing held under paragraph 18.
 - (3) The applicant shall arrange for a notice to be published—
 - (a) by Gazette and local advertisement, and
 - (b) in such other ways as seem to the Scottish Ministers appropriate.
 - (4) The notice must—
 - (a) state that further information of the sort referred to in sub-paragraph (2)(a) has been received,
 - (b) specify a place where a copy of the information can, until the expiry of the period referred to in head (d), be inspected at all reasonable hours,
 - (c) provide an address from which a copy of the information can, until the expiry of that period, be obtained and details of the amount of any charge for the provision of such a copy, and
 - (d) state that any person who desires to make representations in relation to the information should do so in writing to the Scottish Ministers before the expiry of the period of 42 days starting with a date specified in the notice.
 - (5) The date specified in accordance with sub-paragraph (4)(d) must be the date on which the notice first appears in a local newspaper.”,

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

- (e) in sub-paragraph (b) of paragraph 15, after the words “8(1)” insert “and any further information falling within paragraph 10A(2)”,
- (f) in paragraph 16—
 - (i) in sub-paragraph (4)(b), after the words “8(1)” insert “and any further information falling within paragraph 10A(2)”, and
 - (ii) after head (b) of sub-paragraph (7), insert—
 - “(ba) details of what provision was made for public participation in the making of the decision,”,
- (g) in sub-paragraph (c) of paragraph 17, after the word “objections” insert “or representations”,
- (h) in sub-paragraph (1D) of paragraph 18, after head (a) insert—
 - “(aa) the harbour authority;”,
- (i) in sub-paragraph (1) of paragraph 19—
 - (i) in head (a), after the words “8(1)” insert “and any further information falling within paragraph 10A(2)”, and
 - (ii) after head (d), insert—
 - “(da) any representations made under paragraph 10(2)(f) or 10A(4)(d);”,
- (j) in sub-paragraph (2) of paragraph 20—
 - (i) after the word “publish” insert “by Gazette and local advertisement”, and
 - (ii) after head (b) insert—
 - “(ba) details of what provision was made for public participation in the making of the decision,
 - (bb) a statement regarding the right to challenge the validity of the decision and the procedures for doing so,”,
- (k) in sub-paragraph (2) of paragraph 24, for head (c) and the word “and” which precedes it substitute—
 - “(c) if subsection (4) of section 54A of this Act does not apply to the statutory instrument containing the order, give information regarding—
 - (i) the date on which the order comes into operation, and
 - (ii) the right to challenge the validity of the order and the procedure for doing so, and
 - (d) if that subsection does apply to the statutory instrument containing the order, state that the instrument cannot come into force until the Scottish Parliament, by resolution, approves it.”,
- (l) after that sub-paragraph, add—
 - “(3) As soon as possible after the Scottish Parliament has decided whether or not to approve under section 54A(4)(b) of this Act a statutory instrument containing a harbour revision order, the applicant for that order shall publish by Gazette and local advertisement a notice—
 - (a) stating that the Parliament has, or as the case may be has not, passed a resolution approving the instrument, and

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

- (b) where a resolution has been passed, providing information regarding—
 - (i) the place where a copy of the order and any map annexed to it may be inspected at all reasonable hours,
 - (ii) the date on which the order comes into operation, and
 - (iii) the right to challenge the validity of the order and the procedure for doing so.”,
 - (m) in sub-paragraph (4) of paragraph 28—
 - (i) in head (a), after the word “situated” add “or by the harbour authority”, and
 - (ii) in head (b), after the word “council” insert “or the authority”,
 - (n) in sub-paragraph (2) of paragraph 31, for the words from “state” to the end substitute “contain the information specified in paragraph 24(2)”,
 - (o) after that sub-paragraph, add—
 - “(3) As soon as possible after the Scottish Parliament has decided whether or not to approve under section 54A(4)(b) of this Act a statutory instrument containing a harbour revision order made by the Scottish Ministers of their own motion, those Ministers shall publish by Gazette and local advertisement a notice containing the information specified in head (a) of sub-paragraph (3) of paragraph 24 and, if appropriate, that specified in head (b) of that sub-paragraph.”, and
 - (p) in paragraph 32, after sub-paragraph (3) insert—
 - “(3A) Paragraph 18(1D)(aa) shall be omitted.”.
- (6) In paragraph 3 of Schedule 4 (procedure on harbour reorganisation schemes: objections)—
 - (a) in sub-paragraph (5)—
 - (i) after the word “further” insert “and subject to sub-paragraph (5A) below”,
 - (ii) the words “an inquiry to be held with respect to” are repealed,
 - (iii) after the words “not withdrawn” insert “to be considered—
 - (a) at an inquiry;
 - (b) at a hearing before a person appointed by the Scottish Ministers; or
 - (c) by way of written representations,”, and
 - (iv) for the words “the holding of an inquiry with respect thereto” substitute “being considered in any of these ways”, and
 - (b) after that sub-paragraph, insert—
 - “(5A) The Scottish Ministers are not to cause to be considered by way of written representations under sub-paragraph (5)(c) above an objection made by a harbour authority on whom a copy of the scheme was served under paragraph 2(d) above.”.