



# Transport and Works (Scotland) Act 2007

## 2007 asp 8

### PART 1

#### ORDERS AUTHORISING WORKS ETC.

##### *Procedure for making orders*

#### **4 Applications**

- (1) The Scottish Ministers may make an order under section 1 on an application made to them in accordance with rules made under this section.
- (2) The Scottish Ministers may make rules as to—
  - (a) the form of an application under this section,
  - (b) the documents and information to be submitted with the application,
  - (c) the giving of notice of the application (including the publication of any such notice),
  - (d) consultation to be undertaken before the application is made, and
  - (e) any other steps to be taken—
    - (i) before the application is made, or
    - (ii) in connection with the making of the application.
- (3) The power to make such rules includes power to make provision—
  - (a) for (or in connection with) requiring the Scottish Ministers, in such cases or circumstances as may be prescribed in the rules, to give to a person who proposes to make an application under this section an opinion on the information, if any, to be supplied in connection with the application,
  - (b) as to the publicity to be given to any environmental information provided in relation to an application under this section.
- (4) Any provision made—
  - (a) by virtue of subsection (2)(b) as to the provision of information by a relevant authority to a person for the purposes of an application which the person proposes to make, or
  - (b) by virtue of subsection (2)(d),

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may include provision requiring compliance with general or special directions given by the Scottish Ministers.

- (5) Rules under this section may include provision authorising the Scottish Ministers—
  - (a) to dispense with compliance with rules that would otherwise apply, or
  - (b) to require compliance with rules that would not otherwise apply,
 in any case where they consider it appropriate to do so.
- (6) Rules under this section may provide for fees of such amounts as may be determined by, or in accordance with, the rules to be payable to the Scottish Ministers in connection with applications made under this section.
- (7) In subsection (4)(a), “relevant authority” means any authority in relation to which Article 5(4) of Council Directive [85/337/EEC](#), as amended by Council Directive [97/11/EC](#), (authorities holding relevant information to make it available to the developer) applies, and includes—
  - (a) Scottish Natural Heritage,
  - (b) the Scottish Environment Protection Agency,
  - (c) a local authority, and
  - (d) a National Park authority.

## **5 Cases where other Member States are affected**

- (1) The power to make rules under subsection (2) of section 4 includes power to make, for a case where an application has been made under that section and another Member State is affected by the project in question, rules as to—
  - (a) the provision by the Scottish Ministers to—
    - (i) the Member State,
    - (ii) authorities in that state, or
    - (iii) the public of that state,
 of documents and information relating to the application,
  - (b) consultation by the Scottish Ministers with the Member State in connection with the application, or
  - (c) notification by the Scottish Ministers to the Member State of—
    - (i) the decision, or
    - (ii) matters relating to the decision,
 on the application.
- (2) For the purposes of subsection (1), the cases where another Member State is affected by a project are those cases where—
  - (a) it appears to the Scottish Ministers that the project would be likely to have significant effects on the environment in the other Member State, or
  - (b) the other Member State is likely to be affected significantly by the project and requests information relating to the application.
- (3) In this section “Member State” includes a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.

## **6 Orders made otherwise than on application**

- (1) The Scottish Ministers may (without any application being made to them)—
  - (a) if it appears to them to be necessary or expedient to do so—
    - (i) for the purpose of suspending or discontinuing any operations, or
    - (ii) in consequence of the abandonment or neglect of any works,make an order under section 1,
  - (b) if any provisions of an order under that section appear to them to be spent, make an order under that section repealing or revoking those provisions,
  - (c) if they think fit (and whether or not an order under that section might be made by virtue of paragraph (a) or (b)), make by virtue of this paragraph an order under that section.
- (2) An order made by virtue of subsection (1)(a) may include provision for the recovery by the Scottish Ministers of any sum expended in—
  - (a) making the order, or
  - (b) carrying the provisions of the order into effect.
- (3) Where the Scottish Ministers propose to make an order by virtue of subsection (1), they are to—
  - (a) prepare a draft of the order,
  - (b) publish a notice of that proposal, including such particulars as may be prescribed, in the Edinburgh Gazette and in a local newspaper circulating in the area (or in each of the areas) in which the proposals contained in the draft order are intended to have effect, and
  - (c) give such further notice of the proposal as may be prescribed.
- (4) The power to make provision by rules under section 4 in relation to applications includes power to make such corresponding provision as the Scottish Ministers consider appropriate in relation to proposals to make orders by virtue of subsection (1); and in subsection (3), “prescribed” means prescribed by rules under that section.
- (5) Without prejudice to the generality of subsection (4), in that subsection “corresponding provision” includes provision by rules corresponding to such rules as are mentioned in section 5(1).

## **7 Model provisions**

- (1) The Scottish Ministers may issue (and whenever they do so are to publish) guidance comprising model provisions for incorporation in any draft orders which, in accordance with rules made under section 4, may be required to be submitted with applications under that section.
- (2) Different guidance may be issued under this section for different cases or descriptions of case or for different purposes.
- (3) The power to issue guidance under subsection (1) includes power to revoke or amend guidance issued under that subsection.

## **8 Objections and representations**

- (1) The Scottish Ministers may make rules as to—
  - (a) the making of objections—

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- (i) to an application under section 4, or
    - (ii) to a proposal to make an order by virtue of section 6,
  - (b) the information to be comprised within or submitted with any such objection,
  - (c) in the case of an objection made by virtue of paragraph (a)(i), the submission by the person making the application of—
    - (i) written representations, or
    - (ii) information,in relation to the objection,
  - (d) the submission of further—
    - (i) written representations, or
    - (ii) information,
  - (e) such other matters relating to the consideration of objections as appear to the Scottish Ministers to be appropriate.
- (2) Subject to the following provisions of this section, the Scottish Ministers are not to make a determination under section 11(2)(a) or (b) without first taking into consideration the grounds of any objection in respect of which rules under this section have been complied with.
- (3) If an objection is withdrawn or appears to the Scottish Ministers—
  - (a) to be frivolous or trivial, or
  - (b) to relate to matters concerned with the assessment of compensation, being matters which fall to be determined by the Lands Tribunal for Scotland,they may make a determination such as is mentioned in subsection (2) without further consideration of the objection.
- (4) Subsection (2) does not apply where the Scottish Ministers cause an inquiry to be held under subsection (1) of section 9 or cause an objection to be dealt with in accordance with subsection (2) of that section; but the Scottish Ministers are not to make a determination under section 11(2) without first taking into consideration the report of the person holding the inquiry or as the case may be of the person appointed under section 9(2).
- (5) Rules under this section may include provision authorising the Scottish Ministers—
  - (a) to dispense with compliance with rules that would otherwise apply, or
  - (b) to require compliance with rules that would not otherwise apply,in any case where they consider it appropriate to do so.
- (6) The Scottish Ministers are, as soon as practicable after giving dispensation or requiring compliance under subsection (5), to notify their reasons for doing so to every person who the Scottish Ministers consider is materially affected by the dispensation or requirement.
- (7) Reasons may be notified under subsection (6) by—
  - (a) giving notice to the persons affected, or
  - (b) publishing a notice in such manner as the Scottish Ministers consider appropriate.
- (8) Rules under this section may include provision that they are to apply, or to apply with such modifications as may be specified in the rules, to the making of representations as regards—
  - (a) an application under section 4, or

(b) a proposal to make an order by virtue of section 6,  
as they apply to the making of objections to such an application or proposal.

(9) In subsection (8) and in section 9, “representations” does not include representations submitted by virtue of paragraph (c) or (d) of subsection (1).

## **9 Inquiries and hearings**

(1) The Scottish Ministers may cause a public local inquiry to be held for the purposes of—

- (a) an application under section 4, or
- (b) a proposal by the Scottish Ministers to make an order by virtue of section 6.

(2) The Scottish Ministers may give to a person who makes an objection or representations in accordance with rules under section 8 an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for the purpose.

(3) Where a person within subsection (4)—

- (a) makes an objection, and
- (b) informs the Scottish Ministers in writing of a wish for the objection to be referred to an inquiry or dealt with in accordance with subsection (2),

then, unless section 8(3) applies, the Scottish Ministers must either cause an inquiry to be held or, if they so determine, cause the objection to be dealt with in accordance with subsection (2).

(4) The persons within this subsection are—

- (a) the local authority for an area in which any works authorised by the proposed order are to be carried out,
- (b) the National Park authority for a National Park in which any works authorised by the proposed order are to be carried out,
- (c) the Transport Partnership created under section 1(1)(b) of the Transport (Scotland) Act 2005 (asp 12) for a region in which any works authorised by the proposed order are to be carried out,
- (d) any navigation authority concerned with waters which would be affected by any works authorised by the proposed order,
- (e) where any works authorised by the proposed order would affect the construction or operation of a railway, Network Rail Infrastructure Limited, and
- (f) where the proposals include the compulsory acquisition of land, any person who, if the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applied to the acquisition, would be entitled to a notice under paragraph 3(b) of the First Schedule to that Act (notice to owners, lessees and occupiers, etc.).

(5) In subsection (4)(d), “navigation authority” means a person authorised by any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

## **10 Procedure at inquiries and hearings**

(1) The Scottish Ministers may make rules regulating the procedure to be followed in connection with—

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- (a) an inquiry held under section 9,
  - (b) a hearing held under subsection (2) of that section.
- (2) Rules under this section may regulate procedure—
- (a) in connection with the conduct of proceedings at such an inquiry or hearing,
  - (b) in connection with matters preparatory or subsequent to such an inquiry or hearing.
- (3) Subsections (2) and (4) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (attendance and evidence at, and expenses of, inquiries) apply to an inquiry held under section 9 as they apply to a local inquiry under that Act.
- (4) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 apply to a hearing held under section 9(2) as they apply to a local inquiry under that Act.
- (5) Before making rules under this section, the Scottish Ministers must consult the Council on Tribunals and that Council must consult its Scottish Committee.

## **11 Making or refusal of orders under section 1**

- (1) This section applies where—
- (a) an application is made to the Scottish Ministers under section 4, or
  - (b) they propose to make an order by virtue of section 6,
- and the requirements of the preceding provisions of this Act in relation to any objections have been satisfied.
- (2) The Scottish Ministers may determine—
- (a) to make an order under section 1 which gives effect to the proposals concerned without modification,
  - (b) to make an order under that section which gives effect to those proposals with modifications, or
  - (c) not to make an order.
- (3) Without prejudice—
- (a) to the generality of paragraph (c) of subsection (2), and
  - (b) to subsection (4),
- where this section applies by virtue of paragraph (a) of subsection (1) but the Scottish Ministers consider that any of the objects of the order applied for could be achieved other than by means of such an order, they may on that ground determine to decline to make an order.
- (4) The Scottish Ministers' powers under subsection (2) include the power to make a determination in respect of some only of the proposals concerned, while making a separate determination in respect of, or deferring consideration of, others (and accordingly the power to make an order under section 1 includes power to make two or more orders on the same application).
- (5) Where the Scottish Ministers propose to make an order giving effect, with modifications, to the proposals concerned being modifications which in their opinion make a substantial change in the proposals, they are—
- (a) to notify any person who appears to them likely to be affected by the change,

- (b) to give that person an opportunity to make representations to them about the modifications within such period as they may specify in the notification, and
  - (c) before making the order, to consider any representations timeously made to them by that person.
- (6) Subject to section 13(3)(b), an order under section 1 comes into force on the date on which the notice required by section 12(1)(c) is first published unless a later date for its coming into force is specified in the order (in which case it comes into force on that later date).

## **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,
  - (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,

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- (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—
  - (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.



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- (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).
- (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—

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- (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.

### **13 “Developments of national significance” etc.: special procedure**

(1) Subsection (3) applies to a statutory instrument containing an order under section 1 if—

- (a) the order authorises the carrying out of work which would constitute a national development,
- (b) the order includes provision adding to, replacing or omitting any part of the text of a private Act of the Parliament, or
- (c) the Scottish Ministers so direct.

(2) In subsections (1) and (7), references to a “national development” are to any development (within the meaning of the Town and Country Planning (Scotland) Act 1997 (c. 8)) for the time being designated under section 3A(4)(b) of that Act (which relates to the content of the National Planning Framework) as a national development.

(3) The statutory instrument—

- (a) is to be laid before the Parliament together with a copy 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), and
- (b) cannot come into force unless the Parliament, by resolution, approves the instrument.

(4) Where a plan or book of reference is revised before the order is made, the reference in subsection (3)(a) is to the later (or as the case may be the latest) version.

(5) As soon as practicable after the Parliament has decided whether or not to approve the instrument, the Scottish Ministers are to publish a notice in—

- (a) the Edinburgh Gazette, and
- (b) a local newspaper circulating in the area (or each of the areas) in which the provisions of the order in question will have, or would have had, effect.

(6) A notice under subsection (5)—

- (a) must state that the Parliament has, or as the case may be has not, passed a resolution approving the instrument, and
- (b) where a resolution has been passed, must give information regarding—
  - (i) when the order will come into force, and
  - (ii) the right to challenge the validity of the order and the procedures for doing so.

(7) An instrument containing an order which revokes, amends or re-enacts an instrument laid before the Parliament under paragraph (a) of subsection (3) 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),
- (b) the order includes provision such as is mentioned in subsection (1)(b), or

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(c) the Scottish Ministers so direct.