



Transport and Works (Scotland) Act 2007

2007 asp 8

PART 2

MISCELLANEOUS AMENDMENTS

VALID FROM 28/12/2007

24 Amendment of Roads (Scotland) Act 1984

- (1) The Roads (Scotland) Act 1984 (c. 54) is amended as follows.
- (2) After section 143, insert—

“143A “Developments of national significance” etc.: special procedure

- (1) Subsection (3) below applies to a statutory instrument which—
 - (a) contains an order under section 5 of this Act directing that a road proposed to be constructed shall be a trunk road and the construction of the road would constitute a national development;
 - (b) contains or confirms a scheme under section 7 of this Act which authorises the carrying out of work which would constitute a national development; or
 - (c) is the subject of a direction by the Scottish Ministers under this paragraph.
- (2) In subsection (1) above, the 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.
- (3) 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.

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- (4) Unless the Scottish Ministers otherwise direct, an instrument containing or confirming an order or scheme which revokes, amends or re-enacts an instrument laid before the Scottish Parliament under paragraph (a) of subsection (3) above is not subject to the procedure in that subsection.”.
- (3) In section 144(1) (regulations for procedure in schemes and orders), for the words “section 143” substitute “ sections 143 and 143A ”.
- (4) In Schedule 1 (procedure for making or confirming certain orders and schemes)—
- (a) after sub-paragraph (1B) of paragraph 7, insert—
- “(1BA) Where—
- (a) the Scottish Ministers publish under sub-paragraph (1B) above a decision to proceed with a project; and
- (b) the statutory instrument giving effect to that decision is to be laid before the Scottish Parliament under section 143A(3) (a) of this Act,
- they shall publish together with the decision a statement to the effect that the instrument cannot come into force until the Scottish Parliament, by resolution, approves it.”, and
- (b) after sub-paragraph (1B) of paragraph 13, insert—
- “(1BA) Where—
- (a) the Scottish Ministers publish under sub-paragraph (1B) above a decision to proceed with a project; and
- (b) the statutory instrument giving effect to that decision is to be laid before the Scottish Parliament under section 143A(3) (a) of this Act,
- they shall publish together with the decision a statement to the effect that the instrument cannot come into force until the Scottish Parliament, by resolution, approves it.”.
- (5) In Schedule 2 (validity and date of operation of orders and schemes)—
- (a) in paragraph 1—
- (i) the existing words from “stating” to “confirmed” become sub-paragraph (a),
- (ii) the word “and” where it occurs for the second time is repealed,
- (iii) the existing words from “naming” to “hours” become sub-paragraph (b), and
- (iv) after that sub-paragraph, add—
- “(c) if subsection (3) of section 143A of this Act does not apply to the statutory instrument containing or confirming the scheme or order, giving information regarding—
- (i) the date on which the scheme or order will become operative; and
- (ii) the right to challenge the validity of the scheme or order and the procedure for doing so; and
- (d) if that subsection does apply to the relevant statutory instrument, stating that the instrument

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cannot come into force until the Scottish Parliament, by resolution, approves it.”,

(b) after that paragraph, insert—

“1A

As soon as may be after the Scottish Parliament has decided whether or not to approve a statutory instrument under section 143A(3)(b) of this Act, the Scottish Ministers shall publish in the Edinburgh Gazette, and in such other manner as they think best adapted for informing persons affected, a notice—

- (a) stating 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, providing information regarding—
 - (i) the date on which the relevant scheme or order will become operative;
 - (ii) the place where a copy of it may be inspected free of charge at all reasonable hours; and
 - (iii) the right to challenge the validity of the scheme or order and the procedure for doing so.”, and

(c) in paragraph 2—

- (i) the existing words from “the date” to “published” become sub-paragraph (a), and
- (ii) after that sub-paragraph, insert “or
 - (b) in a case where a notice under paragraph 1A above is required, the date on which that notice is first published.”.

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.”.

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(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—
 - (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—

“(1) 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—

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- (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
 - (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,

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- (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.”
- (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

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- (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
 - (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

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- (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.”.

Commencement Information

II S. 25 partly in force; s. 25(2)(5)(a)-(g)(i)(j) in force on 14.5.2007, see s. 30(3)-(5)

VALID FROM 28/12/2007

26 Amendment of Pilotage Act 1987

After section 1 of the Pilotage Act 1987 (c. 21), insert—

“1A Procedure on orders under section 1

- (1) Where the Scottish Ministers propose to make an order under section 1 above (other than under subsection (4) of that section), they must before doing so—
- (a) publish a notice—
 - (i) in a newspaper circulating in the area in which the provisions of the order will have most effect;
 - (ii) in the Edinburgh Gazette; and
 - (iii) in such other publication as seems to them appropriate; and
 - (b) send a copy of the notice to such persons as they consider may be affected by the order.
- (2) Where the Scottish Ministers propose to make an order under subsection (4) of section 1 above, the harbour authority which made application under that subsection must, before the order is made—
- (a) publish a notice—
 - (i) in a newspaper circulating in the area in which the provisions of the order will have most effect;
 - (ii) in the Edinburgh Gazette; and
 - (iii) in such other publication as may be directed by the Scottish Ministers; and
 - (b) send a copy of the notice—
 - (i) to such persons as they consider may be affected by the order; and
 - (ii) to such other persons as the Scottish Ministers may direct.
- (3) A notice under subsection (1) or (2) above must—
- (a) contain a summary of the contents of the proposed order;
 - (b) specify a place where a copy of the proposed order (and of any related map or plan) is available for public inspection; and

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- (c) provide details as to the making to the Scottish Ministers of objections to the proposed order by a date specified in the notice (that date being no less than 42 days after the first date of publication of the notice in terms of paragraph (a)(i) of subsection (1) or (2) above).
- (4) Where a harbour authority affected by the proposed order makes an objection to the Scottish Ministers by the date specified in the notice, the Scottish Ministers shall arrange for the objection to be considered—
 - (a) at a public local inquiry; or
 - (b) at a hearing before a person appointed by them.
- (5) Where the Scottish Ministers receive any other objection by the date specified in the notice and they do not consider the objection to be frivolous or trivial, they shall arrange for the objection to be considered—
 - (a) at a public local inquiry;
 - (b) at a hearing before a person appointed by them; or
 - (c) by way of written representations.
- (6) 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 subsection (4)(a) or (5)(a) above as they apply to a local inquiry under that Act.
- (7) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 apply to a hearing held under subsection (4)(b) or (5)(b) above as they apply to a local inquiry under that Act.
- (8) The Scottish Ministers are to have regard to—
 - (a) a report by the person conducting any inquiry or hearing under subsection (4) or (5) above; and
 - (b) any written representations in terms of subsection (5)(c) above, before deciding whether or not to make the proposed order (with or without modifications).
- (9) After an order has been made, the Scottish Ministers or, where the order is made under subsection (4) of section 1 above, the harbour authority which made application under that subsection must—
 - (a) publish a notice—
 - (i) in a newspaper circulating in the area in which the provisions of the order will have most effect; and
 - (ii) in the Edinburgh Gazette; and
 - (b) send a copy of the notice to—
 - (i) any person to whom a copy notice was sent under paragraph (b) of subsection (1) or (2) above, as the case may be;
 - (ii) any person whose objection was considered at an inquiry or hearing under subsection (5) above; and
 - (iii) any other person whom the Scottish Ministers consider appropriate.
- (10) A notice under subsection (9) above must—

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- (a) state that the order has been made;
- (b) specify the date on which it comes into force; and
- (c) specify a place where a copy of the order is available for public inspection.”.

27 **Amendment of Transport (Scotland) Act 2001**

In section 70 of the Transport (Scotland) Act 2001 (asp 2) (grants for transport-related purposes), after subsection (1) insert—

“(1A) Without prejudice to the generality of subsection (1) above, the purposes mentioned in that subsection include the purpose of acquiring a qualifying interest in land where the use and enjoyment of that land are, or may be, seriously affected in consequence of—

- (a) any provision contained in an order under section 1 of the Transport and Works (Scotland) Act 2007 (asp 8) (orders as to transport systems and inland waterways) made on an application to the Scottish Ministers in accordance with rules made under section 4 of that Act; or
- (b) any provision contained in—
 - (i) an Act passed before the time when Part 1 of that Act of 2007 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 section 1 of that Act of 2007.

(1B) An interest in land is a qualifying interest for the purposes of subsection (1A) if it is an interest such as is mentioned in subsection (2) of section 100 of the Town and Country Planning (Scotland) Act 1997 (c. 8) (interests qualifying for protection under blight provisions), references in that section to the date of service of a notice under section 101 of that Act being taken, for those purposes, to be references to the date on which the agreement for the acquisition is made.”.

Status:

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