

*Draft Regulations laid before the Scottish Parliament under section 28(3), (4) and (5) of the Transport and Works (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2007 No.**

**TRANSPORT AND WORKS  
TRANSPORT  
CANALS AND INLAND WATERWAYS**

**The Transport and Works (Scotland) Act 2007  
(Consents under Enactments) Regulations 2007**

*Made* - - - - 2007

*Coming into force* - - 28th December 2007

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 14(3), (4) and (5) and 28(6) of the Transport and Works (Scotland) Act 2007<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 28(3), (4) and (5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 and come into force on 28th December 2007.

**Interpretation**

2. In these Regulations—

“the Act” means the Transport and Works (Scotland) Act 2007;

“the 1979 Act” means the Ancient Monuments and Archaeological Areas Act 1979<sup>(2)</sup>;

“the 1997 Act” means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997<sup>(3)</sup>;

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(1) 2007 asp 8.  
(2) 1979 c. 46.  
(3) 1997 c. 9.

“conservation area consent” has the same meaning as in section 66(1) of the 1997 Act (control of demolition in conservation areas);

“listed building consent” has the same meaning as in section 7(7) of the 1997 Act (authorisation of works: listed building consent);

“scheduled monument consent” has the same meaning as in section 61(1) of the 1979 Act (interpretation);

“section 4 application” means an application made under section 4 of the Act (applications); and

“section 6 proposal” means a proposal by the Scottish Ministers to make an order by virtue of section 6 of the Act (orders made otherwise than on application).

### **Coast Protection Act 1949**

**3.** In section 35(1) of the Coast Protection Act 1949 (operations excepted from the requirement to obtain consent under section 34)(**4**), after paragraph (h) insert—

“(ha) any operations authorised by an order under section 1 of the Transport and Works (Scotland) Act 2007;”.

### **Planning (Hazardous Substances) (Scotland) Act 1997**

**4.** In section 10 of the Planning (Hazardous Substances) (Scotland) Act 1997 (deemed hazardous substances consent: government authorisation)(**5**)—

(a) after subsection (2) insert—

“(2A) On making an order under section 1 of the Transport and Works (Scotland) Act 2007 which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Scottish Ministers may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the directions.”;

(b) in subsection (3)—

(i) omit “or, as the case may be”; and

(ii) after “State” insert “or, as the case may be, the Scottish Ministers”; and

(c) in subsection (6) after “State” insert “or the Scottish Ministers”.

### **Modification of procedures for listed building consent and conservation area consent**

**5.—(1)** This regulation shall apply where listed building consent or conservation area consent is required for the purposes of proposals included in a section 4 application or a section 6 proposal and either—

(a) the application for any such consent has been made not later than 10 weeks after the section 4 application has been made, or notice of the section 6 proposal has been published pursuant to section 6(3)(b) of the Act, as the case may be; or

(b) the Scottish Ministers direct that this regulation apply.

(2) Where this regulation applies, section 11 of the 1997 Act (reference of certain applications to the Scottish Ministers)(**6**) shall have effect with the following modifications—

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(4) 1949 c. 74; paragraph (h) of section 35(1) was inserted by the Transport and Works Act 1992 (c. 42), section 19. There are other amendments to section 35 not relevant to these Regulations.

(5) 1997 c. 10.

(6) Section 11 of the 1997 Act also has effect in relation to buildings in conservation areas by virtue of section 66(3) of that Act.

- (a) for subsection (1) substitute–
  - “(1) An application for listed building consent shall be referred to the Scottish Ministers instead of being dealt with by the planning authority.”; and
- (b) subsections (2) and (3) are omitted.
- (3) Where this regulation applies, the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987(7) shall have effect with the following modifications–
  - (a) in regulation 5 (advertisement of applications)–
    - (i) for paragraph (1) substitute–
      - “(1) Where an application for listed building consent, for conservation area consent or to vary or discharge conditions attached to a listed building consent or a conservation area consent is made to a planning authority in respect of any building–
        - (a) the applicant shall not earlier than 14 days before, and not later than, the date of the application, publish in the Edinburgh Gazette and in a local newspaper circulating in the locality in which the building is situated a notice–
          - (i) indicating the nature of the works which are the subject of the application;
          - (ii) naming a place within that locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period specified in the notice, being a period of not less than 42 days from the date on which the application is made; and
          - (iii) stating that representations may be made in writing to the planning authority within that period,
      - and such notice may be combined with such notice of the concurrent application as the applicant is required, by either rules made under section 4 of the Transport and Works (Scotland) Act 2007 (applications)(8), or section 6(3)(b) of that Act (orders made otherwise than on application), to publish in the Edinburgh Gazette and in a local newspaper; and
      - (b) the planning authority shall, for not less than 7 days during the period specified in the notice under sub paragraph (a) of this paragraph by virtue of paragraph (ii) of that sub paragraph, display on or near the building a notice containing the same particulars as are required to be contained in the notice under that sub paragraph.”;
    - (ii) for paragraph (2) substitute–
      - “(2) No application for listed building consent, for conservation area consent, or to vary or discharge conditions attached to a listed building consent or a conservation area consent shall be determined before the end of the period specified in the notice under sub paragraph (a) of paragraph (1) by virtue of paragraph (ii) of that sub paragraph, and in the determination of the application account shall be taken of any representations relating to the application which are received before that period has elapsed.”; and
    - (iii) after paragraph (3) insert–

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(7) S.I.1987/1529 as amended by S.S.I. 2004/332, 2006/266, 2006/270 and 2007/221.

(8) 2007 asp 8.

“(4) In this regulation, “concurrent application” means an application made under section 4 of the Transport and Works (Scotland) Act 2007, or a proposal by the Scottish Ministers to make an order by virtue of section 6 of that Act, relating to proposals for the purposes of which the granting of listed building consent or conservation area consent is required in respect of the building to which the application for listed building consent or conservation area consent relates.”;

- (b) in regulation 6 (certificates to accompany applications)–
- (i) after paragraph (1)(a) insert–
- “(aa) a certificate stating that–
- (i) notice of the application under section 4 of the Transport and Works (Scotland) Act 2007 relating to proposals for the purposes of which the granting of listed building consent or conservation area consent is required in respect of the building has been given in accordance with rules made under that section to all of the persons (other than the applicant) who were, at the beginning of the period of 28 days ending with the date of the application under that section, the owners of the building; and
- (ii) every such notice contains a statement that the application for listed building consent or conservation area consent has been, or is to be, made in respect of the building.”;
- (ii) in paragraph (1)(c), for the word “either” substitute “any”;
- (iii) for paragraph (4) substitute–
- “(4) For the purposes of this regulation, “owner” in relation to any building means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes a lessee under a lease the unexpired period of which exceeds three years.”; and
- (iv) in paragraph (5), for the words from “Secretary of State” to “section 262A(8) of the Act” substitute “Scottish Ministers under section 11(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or in relation to that provision as applied to buildings in conservation areas by section 66(3) of that Act”;
- (c) for regulation 7(b)(ii) (application of regulation 6 for listed building or conservation area consent in respect of Crown land) substitute–
- “(ii) after paragraph (1) insert–
- “(1A) An application for listed building or conservation area consent by the Scottish Ministers shall be accompanied by–
- (a) a statement that the application is made for the purposes of proposals included in a proposal by the Scottish Ministers to make an order by virtue of section 6 of the Transport and Works (Scotland) Act 2007; and
- (b) where the application is made by a person authorised in writing by the Scottish Ministers, a copy of that authorisation.”.”; and
- (d) in Part I of Schedule 2, after Certificate A, insert–

“Certificate AA

I hereby certify that–

(1) [I have][the applicant has] served, in accordance with rules made under section 4 of the Transport and Works (Scotland) Act 2007, all the notices required to be served upon

the persons (other than the applicant) who were, at the beginning of a period of 28 days ending with the date of an application under that section, the owners of the building;

(2) every such notice contains a statement that the accompanying application for [listed building] [and] [conservation area] consent has been made in respect of the building; or”.

### **Modification of procedures for scheduled monument consent**

6.—(1) This regulation shall apply where scheduled monument consent is required for the purposes of proposals included in a section 4 application and either—

- (a) the application for scheduled monument consent has been made not later than 10 weeks after the section 4 application has been made; or
- (b) the Scottish Ministers direct that this regulation apply.

(2) Where this regulation applies, paragraph 2 of Schedule 1 to the 1979 Act (applications for scheduled monument consent) shall have effect with the following modifications—

- (a) after sub paragraph (1)(a) insert—
  - “(aa) a certificate stating that—
    - (i) notice of the concurrent application has been given in accordance with rules made under section 4 of the Transport and Works (Scotland) Act 2007 to all of the persons (other than the applicant) who were, at the beginning of the period of 28 days ending with the concurrent application, the owners of the monument; and
    - (ii) every such notice contains a statement that an application for scheduled monument consent has been, or is to be, made in respect of the monument.”;
- (b) in sub paragraph (1)(c), for the word “either”, substitute “any”; and
- (c) after sub paragraph (4) insert—

“(5) In this paragraph “concurrent application” means an application made under section 4 of the Transport and Works (Scotland) Act 2007 (applications) relating to proposals for the purposes of which the granting of scheduled monument consent is required in respect of the monument.”.

(3) Where this regulation applies, the Ancient Monuments and Archaeological Areas (Applications for Scheduled Monument Consent) (Scotland) Regulations 1981(9) shall have effect with the following modifications—

- (a) in regulation 2 (application for scheduled monument consent), after paragraph (2), insert—
  - “(3) The application shall also be accompanied by a statement that the application is made for the purposes of proposals included in the concurrent application and the statement shall give (if known) the date and the reference number of the concurrent application.
  - (4) In this regulation, “concurrent application” has the meaning given by paragraph 2(5) of Schedule 1 to the Act.”;
- (b) for regulation 4 (meaning of “owner”) substitute—

“4. For the purposes of paragraph 2 of Schedule 1 to the Act the persons who are to be treated as owners of the monument to which an application relates are persons who, in respect of any part of the monument, are under the Lands Clauses Acts enabled to sell and

convey the land to the promoters of an undertaking and includes a lessee under a lease the unexpired period of which exceeds three years.”; and

- (c) in Part I of Schedule 2, after CERTIFICATE A, insert—

“OR

CERTIFICATE AA

(To be used where concurrent application being made under section 4 of the Transport and Works (Scotland) Act 2007)

I hereby certify that—

(1) [I have] [the applicant has] served, in accordance with rules made under section 4 of the Transport and Works (Scotland) Act 2007, all the notices required to be served upon the persons (other than the applicant) who were, at the beginning of a period of 28 days ending with the date of an application under that section, owners of the monument;

(2) every such notice contains a statement that the accompanying application for scheduled monument consent has been made in respect of the monument.

Signed

[on behalf of]

Date”.

### Concurrent inquiries

7.—(1) Where the Scottish Ministers cause the following inquiries to be held, namely—

- (a) a public local inquiry under section 9(1) of the Act for the purposes of a section 4 application or, as the case may require, a section 6 proposal; and
- (b) a local inquiry into an application for—
  - (i) listed building consent or conservation area consent made in connection with that section 4 application or, as the case may require, section 6 proposal; or
  - (ii) scheduled monument consent made in connection with that section 4 application,

such inquiries shall be held concurrently unless the Scottish Ministers consider it inappropriate to do so and have given a direction to that effect.

(2) Where any inquiries are held concurrently pursuant to paragraph (1), any rules applying in relation to the inquiry which is held pursuant to section 9 of the Act shall apply also in relation to the other inquiry.

St Andrew’s House,  
Edinburgh  
2007

Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for—

- removing the requirement for a consent under section 34 of the Coast Protection Act 1949 on the making of an order (“such an order”) under section 1 of the Transport and Works (Scotland) Act 2007 (“the 2007 Act”);
- deeming hazardous substances consent to be given on the making of such an order; and
- assimilating the procedures relating to such an order and listed building, conservation area and scheduled monument consents.

Regulation 3 modifies the Coast Protection Act 1949 so that on the making of such an order consent will not also be required under section 34 of that Act to any works authorised by such an order which are detrimental to navigation.

Regulation 4 modifies the Planning (Hazardous Substances) (Scotland) Act 1997 so that, where any proposals to which such an order relates would involve the presence of a hazardous substance, on making such an order the Scottish Ministers may also direct that hazardous substances consent shall also be deemed to be granted.

Regulation 5 assimilates the procedures relating to such an order and the procedures for obtaining any listed building consent and conservation area consent required under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It does so where a project requires firstly an application under section 4 of the 2007 Act for such an order, or a proposal by the Scottish Ministers to make such an order by virtue of section 6 of the 2007 Act, and secondly listed building or conservation area consent, and where either—

- the application for listed building or conservation area consent is made not later than 10 weeks after the application or proposal for such an order; or
- the Scottish Ministers consider it appropriate to assimilate the procedures as set out in regulation 5 and give a direction to that effect.

Regulation 6 makes equivalent provision to that in regulation 5 to assimilate the procedures relating to such an order and the procedures for obtaining any scheduled monument consent required under the Ancient Monuments and Archaeological Areas Act 1979 where a project requires both an application under section 4 of the 2007 Act and scheduled monument consent.

By regulation 7, provision is made for holding concurrent inquiries for the consideration of an application or proposal for such an order and any applications for listed building, conservation area or scheduled monument consents required in connection with the project to which such an order would relate.

A Regulatory Impact Assessment has been prepared in respect of these rules. A copy can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh EH6 6QQ.