
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 570

**The Transport and Works (Scotland) Act 2007
(Applications and Objections Procedure) Rules 2007**

Citation and commencement

1. These Rules may be cited as the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 and come into force on 28th December 2007.

Interpretation

2.—(1) In these Rules (unless the context otherwise requires)—

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

“applicant” means a person making, or proposing to make, an application;

“application” means an application under section 4 of the Act;

“the appropriate authority” has the same meaning as in section 3(4) of the Act (Crown land);

“benefited property” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003 (interpretation)^{M1};

“bridleway” has the same meaning as in section 47 of the Countryside (Scotland) Act 1967 (interpretation)^{M2};

“Crown interest” has the same meaning as in section 3(3) of the Act;

“cycle track” has the same meaning as in section 151 of the Roads (Scotland) Act 1984 (interpretation)^{M3};

“development management scheme” has the same meaning as in section 71(3) of the Title Conditions (Scotland) Act 2003;

“the Directive” means Council Directive [85/337/EEC](#)^{M4} on the assessment of the effects of certain public and private projects on the environment;

“documents” includes photographs, drawings, maps and plans;

“environmental impact assessment” means an assessment, in accordance with Articles 5 to 10 of the Directive, of the likely impact upon the environment of the implementation of the works included in any order in respect of which an application is being, or is to be, made;

“environmental statement” means a statement that contains—

- (a) the information referred to in rule 9(1); and
- (b) such of the information referred to in Schedule 1 as may reasonably be required in order to assess the environmental effects of the proposed works and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile,

and “the applicant's statement of environmental information” means a statement submitted by an applicant as the environmental statement in relation to that applicant's application;

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Changes to legislation: There are currently no known outstanding effects for the The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007. (See end of Document for details)

“equipment” includes apparatus and any structure for the lodging in it of equipment or for gaining access to equipment;

“expiry date for objections” means the date, being a date not less than 42 days after the date on which the application in question is made, which the applicant specifies in the notice published pursuant to rule 12(1) as the final date for making objections;

“footpath” has the same meaning as in section 151 of the Roads (Scotland) Act 1984;

“holder”, in relation to a personal real burden, has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003 ^{M5};

“in writing” includes electronic transmission;

“Member State” has the same meaning as in section 5(3) of the Act;

“navigation authority” has the same meaning as in section 9(5) of the Act;

“occupier” includes—

- (a) statutory undertakers (not being an owner) having a right to keep equipment on, in or over land; and
- (b) a person having the right to construct or maintain, at a specific position on an inland waterway, a mooring post, gangway, landing stage or other erection or installation for a vessel (not being anything which when not in use is normally carried on the vessel);

“operative date” means the date falling 21 days after the expiry date for objections or such later date as the Scottish Ministers may specify;

“operator”—

- (a) in relation to a transport system, means any person carrying on an undertaking which includes the system, or any part of it, or the provision of transport services on the system; and
- (b) in relation to an inland waterway, means any person authorised by any enactment to work, maintain, conserve, improve or control the inland waterway;

“owner”, in relation to any land, 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;

“personal real burden” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003;

“planning authority” has the same meaning as for the purposes of Part 3 of the Town and Country Planning (Scotland) Act 1997 (control over development) ^{M6};

“regional Transport Partnership” means a Transport Partnership created under section 1(1)(b) of the Transport (Scotland) Act 2005 ^{M7};

“river” means any river (including any part of a river which is tidal or which has been canalised), loch, lake, stream, burn, ditch, culvert, drain, sluice, weir or any other passage by which water drains, but does not include—

- (a) a canal or inland navigation which is not a canalised part of a river;
- (b) a public sewer or a sewer or pipe used primarily for the drainage of a building or any premises appurtenant to a building, or of a road;

“road managers” has the same meaning as in section 108(4) of the New Roads and Street Works Act 1991 ^{M8};

“roads authority” has the same meaning as in section 151(1) of the Roads (Scotland) Act 1984 ^{M9};

“scoping opinion” has the meaning given in rule 6(1);

“screening decision” has the meaning given in rule 5(3);

“statutory undertakers” has the same meaning as in section 214 of the Town and Country Planning (Scotland) Act 1997 ^{M10} except that it includes a public communications provider within the meaning of section 151(1) of the Communications Act 2003 (interpretation) ^{M11};

“tidal waters” means such part of–

- (a) the territorial sea of the United Kingdom as is adjacent to Scotland; and
- (b) the internal waters of the United Kingdom as are in or adjacent to Scotland insofar as they are tidal or constitute part of the sea;

“title condition” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003;

“transport system” means a railway, tramway or trolley vehicle system or any system (other than a railway or tramway) using a mode of guided transport;

“works” means any works that may be authorised by an order made under section 1 of the Act but in rules 5, 6, 9 and 14, Schedule 1 and in paragraphs 6, 9, 16(f), 29 and 30 of Schedule 5, shall also include any matter that may be authorised by such an order; and

“works affecting”, in relation to any land, means works proposed to be carried out in, on, over or adjacent to that land.

(2) Where these Rules require that notice be served, published or displayed in a prescribed form, the notice shall be served, published or displayed (as the case may be) duly completed–

- (a) in that form;
- (b) in a version of that form adapted to meet the circumstances of the particular case; or
- (c) in a form which has substantially the same effect as that form (whether the form is adapted or not),

and, except where these Rules require that the notice in question be published in a newspaper, duly signed by or on behalf of the person required to serve the notice.

Marginal Citations

M1 2003 asp 9.

M2 1967 c. 86; section 47 was relevantly amended by the [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#), [schedule 2](#), paragraph 5.

M3 1984 c. 54.

M4 O.J. L 175, 5.7.85, p.40, as amended by Council Directive 97/11/EC (O.J. L 073, 14.3.97, p.5) and Council Directive 2003/35/EC (O.J. L 156, 25.6.03, p.17).

M5 The definition of “holder” was amended by [S.S.I. 2003/503](#).

M6 1997 c. 8. See section 1 of that Act for the meaning of “planning authority”. The functions of a local authority under Part 3 of that Act have been transferred to and are exercisable by the Loch Lomond and The Trossachs National Park Authority by virtue of [S.S.I. 2002/201](#) in respect of the National Park designated by that instrument.

M7 2005 asp 12.

M8 1991 c. 22.

M9 The definition of “roads authority” was relevantly amended by the [Local Government etc. \(Scotland\) Act 1984 \(c. 39\)](#), [Schedule 13](#), paragraph 135 and [S.I. 2001/1400](#).

M10 Section 214 was amended by the [Transport Act 2000 \(c. 38\)](#), [Schedule 5](#), paragraph 10 and [S.I. 2001/1149](#).

M11 2003 c. 21.

Pre-application documentation

3.—(1) The applicant shall send to the Scottish Ministers not later than 42 days before making an application a draft of—

- (a) the proposed order under section 1 of the Act;
- (b) the explanatory memorandum to the order; and
- (c) the statement and memorandum in respect of legislative competence,

that the applicant intends to submit in pursuance of rule 8(2).

(2) Where an applicant has sent drafts to the Scottish Ministers in accordance with the provisions of paragraph (1) but subsequently amends any of those drafts the applicant shall not be required to send any amended drafts to the Scottish Ministers before making an application unless the applicant is of the opinion that any amendment substantially alters the nature or effect of the proposed order.

(3) The applicant shall, not later than 42 days before making the application, send a draft of the applicant's statement of environmental information to—

- (a) the Scottish Ministers;
- (b) the Scottish Environment Protection Agency; and
- (c) Scottish Natural Heritage.

Provision of environmental information

4.—(1) Where an applicant at any time serves notice in writing on any person who is not a Scottish public authority within the meaning of regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (interpretation)^{M12} that for the purposes of the proposed application the applicant wishes to be provided with environmental information, the recipient of the notice so served shall, within 28 days of the request, provide to the applicant any information which the recipient has and which either the recipient or the applicant considers relevant to a screening decision (if that decision has not yet been made) or to the preparation of the environmental statement.

(2) The recipient of the notice may seek reimbursement from the applicant of any reasonable costs associated with the provision of information.

Marginal Citations

M12 S.S.I. 2004/520.

The requirement for environmental statement and screening decision

5.—(1) An applicant shall when making an application submit an applicant's statement of environmental information with that application in relation to any proposed works which are to be covered by that application, if those works constitute a project which is of a type mentioned in Annex I or, subject to paragraph (2), Annex II to the Directive.

(2) Where the proposed works constitute a project of a type mentioned in Annex II to the Directive, an applicant is not required to submit an applicant's statement of environmental information if the Scottish Ministers have, under paragraph (13), notified the applicant that an environmental impact assessment is not required in relation to those works.

(3) Before making an application (other than an application relating to works constituting a project which is of a type mentioned in Annex I to the Directive), an applicant may make a request in writing to the Scottish Ministers for a decision as to whether or not an environmental impact assessment of the proposed works covered by the application is required (“a screening decision”).

(4) A request made pursuant to paragraph (3) shall be accompanied by—

- (a) a plan sufficient to identify the land affected by the works in question;
- (b) a brief description of the nature and purpose of the proposed works; and
- (c) a brief description of the possible effects on the environment of the works,

and may include such other information as the applicant wishes to provide.

(5) If the Scottish Ministers consider that the information provided by an applicant in or with a request made under paragraph (3) is insufficient to enable the Scottish Ministers to make a screening decision the Scottish Ministers may, not later than 28 days after receiving the request, notify the applicant in writing of the additional information that the Scottish Ministers consider they require in order to make that decision.

(6) On receiving notification under paragraph (5), the applicant shall provide the Scottish Ministers with such of the additional information specified in that notification as the applicant is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the applicant is unable to provide the information.

(7) The Scottish Ministers shall not give a screening decision in response to a request under paragraph (3) until they have given notice of the request to, and invited the views of, the following bodies—

- (a) every local authority in whose area the works would be carried out were the order for which the applicant proposes to apply to be made;
- (b) every National Park authority for a National Park in which the works would be carried out were the order for which the applicant proposes to apply to be made;
- (c) the Scottish Environment Protection Agency;
- (d) Scottish Natural Heritage; and
- (e) any other body promoting environmental protection which is a charity registered under the Charities and Trustee Investment (Scotland) Act 2005^{M13} which the Scottish Ministers consider is likely to have an interest in the application,

and shall include in each such notice the information to be provided in or with a request under paragraph (3).

(8) Any body falling within paragraph (7)(a) to (d) which is the recipient of a notice served under paragraph (7) shall, not later than 28 days after receiving that notice, provide the Scottish Ministers with a written opinion as to whether or not, in the view of the recipient, the works in question should be the subject of an environmental impact assessment.

(9) Any body falling within paragraph (7)(e) which is the recipient of a notice served under paragraph (7) may, not later than 28 days after receiving that notice, provide the Scottish Ministers with a written opinion as to whether or not, in the view of the recipient, the works in question should be the subject of an environmental impact assessment.

(10) Where a request for a screening decision relates to an order which would, if made, authorise works which for the purposes of the Directive could constitute two or more projects which are not interdependent, the Scottish Ministers may, if they consider it expedient, treat each such project separately for the purposes of this rule and, in such a case, the references in this rule to works shall be construed as relating to each such project separately, and the references to the screening decision shall be construed as relating to such a decision in relation to each such project.

(11) In making a screening decision, the Scottish Ministers shall take into account the selection criteria set out in Annex III to the Directive.

(12) If the Scottish Ministers consider that the works in question would be likely to have a significant effect on the environment if carried out, their screening decision shall be that an environmental impact assessment of the works is required.

(13) The Scottish Ministers shall notify the applicant in writing of their screening decision and shall give reasons for that decision not later than 42 days after receipt of the request made pursuant to paragraph (3) or, where a notification has been given under paragraph (5), not later than 42 days after receiving the further information that the applicant is required to supply by virtue of paragraph (6).

(14) Following a screening decision the Scottish Ministers shall publicise notice of their screening decision in the Edinburgh Gazette and in such newspaper as they consider appropriate.

Marginal Citations

M13 2005 asp 10.

Scoping opinion

6.—(1) Before submitting an application in relation to works for which an environmental impact assessment is or may be required, the applicant may make a request in writing to ask the Scottish Ministers for an opinion as to the information to be provided in the environmental statement (a “scoping opinion”).

(2) A request under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the land affected by the works in question;
- (b) a brief description of the nature and purpose of the proposed works; and
- (c) a brief description of the possible effects on the environment of the works,

and may include such other information as the applicant wishes to provide.

(3) On receiving a request under paragraph (1), if the Scottish Ministers consider that the applicant has not provided sufficient information to enable them to give a scoping opinion, they shall not later than 28 days after receiving the request notify the applicant in writing of the additional information that they consider necessary to enable them to give that opinion.

(4) The Scottish Ministers shall not give a scoping opinion in response to a request under paragraph (1) until they have consulted the applicant and the following bodies—

- (a) every local authority in whose area the works would be carried out were the order for which the applicant proposes to apply to be made;
- (b) every National Park authority for a National Park in which the works would be carried out were the order for which the applicant proposes to apply to be made;
- (c) the Scottish Environment Protection Agency;
- (d) Scottish Natural Heritage; and
- (e) any other body promoting environmental protection which is a charity registered under the Charities and Trustee Investments (Scotland) Act 2005 which the Scottish Ministers consider is likely to have an interest in the application.

(5) In forming a scoping opinion the Scottish Ministers shall take into account—

- (a) the specific characteristics of the works in question;
- (b) the specific characteristics of works of the type concerned; and
- (c) the environmental features likely to be affected by the works.

(6) Subject to paragraph (7), the Scottish Ministers shall notify the applicant who made the request under paragraph (1) of the Scottish Ministers' scoping opinion, in writing, not later than 42 days after receipt of that request or, where the Scottish Ministers have given a notification under paragraph (3), 42 days after receipt of the additional information mentioned in that notification.

(7) Where an applicant makes a request for a scoping opinion under paragraph (1) at the same time as the making of a request for a screening decision pursuant to rule 5(3) in relation to the same proposed works, or after the applicant has made a request for such a screening decision but before the Scottish Ministers have notified the applicant of the screening decision in relation to the works, the Scottish Ministers shall notify the applicant, in writing, of the Scottish Ministers' scoping opinion not later than 42 days after the date on which the Scottish Ministers notify the applicant of the Scottish Ministers' screening decision.

(8) Where the Scottish Ministers have given a scoping opinion to an applicant they shall not be precluded from requiring that applicant to provide further information in connection with any applicant's statement of environmental information that may be submitted by that applicant in connection with an application relating to the same, or substantially the same, works as were referred to in that scoping opinion.

(9) Following a scoping opinion the Scottish Ministers shall publish that scoping opinion in the Edinburgh Gazette and in such newspaper as they consider appropriate.

Form of application

7.—(1) An application for an order to be made under section 1 of the Act shall be made in writing, dated and addressed to the Scottish Ministers.

(2) In the application, the applicant shall give the name and the address to which all requests for further information, notices or other documents required to be served upon the applicant under the Act or these Rules are to be sent.

(3) The application shall be signed by the applicant or by the duly authorised agent of the applicant (details of the authorisation must be appended to the application).

Documents accompanying application

8.—(1) The applicant shall submit with an application 3 copies of that application.

(2) The applicant shall submit with the application 4 copies of each of the following documents—

- (a) a draft of the proposed order under section 1 of the Act;
- (b) an explanatory memorandum that explains the purpose and effect of each article of and Schedule to the draft order;
- (c) a memorandum setting out the aims of the proposals to which the application relates including any alternative approach considered and the reason for rejection;
- (d) a statement that, in the view of the applicant, the provisions in the proposed order are within the legislative competence of the Scottish Parliament together with a memorandum setting out the reasons for that view;
- (e) a report summarising the consultations that have been undertaken, including confirmation that the applicant has consulted all those named in column (2) of the tables in Schedules 3 and 4 where authority is sought for works or other matters described in column (1) of those tables, or if not, an explanation of why not;
- (f) if the applicant is not an individual or a company regulated by the Companies Act 1985^{M14} a declaration as to the status of the applicant;
- (g) a list of all consents, permissions or licences required under other enactments for the purposes of the powers sought in the application, which at the date of the application are being sought or which have been obtained or refused, specifying for each relevant consent, permission or licence—
 - (i) from whom the consent, permission or licence is or was required;

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- (ii) the date of the application, or of the grant or refusal of the consent, permission or licence (as the case may be); and
 - (iii) the reference number (if any) of the application;
 - (h) any screening decision made by the Scottish Ministers under rule 5, any scoping opinion given by the Scottish Ministers under rule 6 and, in a case where the proposed works are to be subject to an environmental impact assessment, the applicant's statement of environmental information;
 - (i) confirmation that a draft of the applicant's statement of environmental information has been sent to the persons specified in rule 3(3) together with a memorandum setting out any comments that any such person might have made in respect of that draft; and
 - (j) any direction given under rule 16.
- (3) When making an application for an order the applicant shall submit with the application–
- (a) the applicant's proposals for funding the cost of implementing the order; and
 - (b) where the application is for an order containing proposals to carry out works–
 - (i) the plans and sections described in paragraphs (1) and (4) of rule 10; and
 - (ii) an estimate of the cost of carrying out the works provided for in the proposed order.
- (4) Subject to paragraph (5), in the case of an application for an order authorising the compulsory acquisition of land, or the right to use land, or to carry out protective works to buildings or structures, or the compulsory extinguishment, variation or disapplication of a title condition or development management scheme or the compulsory extinguishment of other private rights over land, the applicant shall submit with the application the plan and the book of reference respectively described in paragraphs (5) and (7) of rule 10.
- (5) In the case of an application for an order providing for the extinguishment or diversion of rights of way or passage over a footpath, bridleway or cycle track, the applicant shall submit with the application a map of a scale not smaller than 1:2500 on which the path, way or track concerned and, in the case of a diversion, the new path, way or track, is clearly delineated.
- (6) Where the applicant seeks a direction from the Scottish Ministers under section 57(2A) of the Town and Country Planning (Scotland) Act 1997 ^{M15} that planning permission shall be deemed to be granted for the development provided for in the proposed order, the applicant shall submit with the application–
- (a) a request in writing specifying the development for which the direction for such permission is sought;
 - (b) a statement of any proposed planning conditions;
 - (c) a statement of any matters which are intended to be reserved for subsequent approval by the planning authority; and
 - (d) in respect of those matters not intended to be reserved for subsequent approval by the planning authority, such further documents as have not otherwise been submitted with the application and which are necessary to support the request for the direction.
- (7) Where the applicant seeks a direction from the Scottish Ministers under section 10(2A) of the Planning (Hazardous Substances) (Scotland) Act 1997 ^{M16} that hazardous substances consent shall be deemed to be granted for the development provided for in the proposed order, the applicant shall submit with the application–
- (a) an application for hazardous substances consent in either Form 1 or 2 of the forms prescribed in Schedule 2 to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 ^{M17} as the case may require; and

- (b) the information and documentation specified in such one or more of regulations 5(1)(b), 5(2)(b) and 5(3)(b) of those Regulations (applications for hazardous substances consent) as the case may require.
- (8) The applicant shall, as soon as practicable after the date of the application, submit to the Scottish Ministers a statement of compliance with the provisions of rules 11, 12(1) to (7) and 13 together with—
- (a) copies of the notices placed in newspapers and the Edinburgh Gazette in accordance with rule 12; and
 - (b) confirmation of the date on which the notices required by rule 13 were served.
- (9) Where the Scottish Ministers are of the opinion that any of the information submitted pursuant to this rule, other than the applicant's statement of environmental information, is not adequate for its purpose the Scottish Ministers may within 21 days of receipt of an application—
- (a) direct the applicant to provide further information; and
 - (b) where the Scottish Ministers make such a direction they may require the applicant to comply with any of the provisions of rules 11 and 12 in respect of the further information required.

Marginal Citations

M14 1985 c. 6.

M15 1997 c. 8; section 57(2A) was inserted by the [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), section 15(1).

M16 1997 c. 10; section 10(2A) was inserted by the [Transport and Works \(Scotland\) Act 2007 \(Consents under Enactments\) Regulations 2007 \(S.S.I. 2007/\[\]\)](#), regulation 4.

M17 [S.I. 1993/323](#) as relevantly amended by [S.S.I. 2000/179](#).

Environmental statements: provision of information

- 9.—(1) An environmental statement submitted in connection with an application shall include—
- (a) a description of the project comprising information on the site, design and size of the proposed works;
 - (b) a description of the measures proposed to be taken in order to avoid, reduce and, if possible, remedy any significant adverse effects on the environment of the proposed works;
 - (c) the data required to identify and assess the main effects which the proposed works are likely to have on the environment;
 - (d) an outline of the main alternatives to the proposed works studied by the applicant and an indication of the main reason for the applicant's choice, taking into account the environmental effects; and
 - (e) a non technical summary of the information provided under sub paragraphs (a) to (d).
- (2) An environmental statement submitted in connection with an application shall, subject to paragraph (3), also include so much of the information specified in Schedule 1 as is relevant to the proposed works.
- (3) Where the Scottish Ministers have given a scoping opinion in relation to the application, the environmental statement in relation to that application need include only the information specified in that scoping opinion.

Plans, sections and book of reference

- 10.—(1) Subject to paragraphs (6) and (8), the plans referred to in rule 8(3)(b) are—
- (a) a plan drawn to a suitable scale not smaller than 1:50000 showing clearly the location of any works and, if provision is made for such works in the proposed order, in particular the general line of the route of any works that are of a linear nature and which exceed 2 kilometres in length; and
 - (b) a plan drawn to a suitable scale not smaller than 1:2500 showing clearly in relation to existing features, the location, the alignment, if any, and limits of deviation of the works described or for which provision is made in the proposed order.
- (2) All plans and sections described in this rule may be submitted in black and white and shall be stated in metric units.
- (3) All plans described in this rule shall contain a reference to the National Grid base or, where this is not practicable, to the latitude and longitude of the site of the proposed works.
- (4) Subject to paragraphs (6) and (8), the sections referred to in rule 8(3)(b) are sections having a suitable vertical scale not smaller than 1:500 and showing by reference to Ordnance Survey or Chart datum—
- (a) on the same horizontal scale as the plan described at paragraph (1)(b) the levels of the proposed works, including in particular where relevant—
 - (i) ground levels;
 - (ii) the height of every intended bridge, aqueduct, viaduct, embankment and elevated guideway;
 - (iii) the depth of every intended cutting and tunnel;
 - (iv) the levels of the bed of any tidal waters or inland waterway where works are proposed; and
 - (v) the height of every structure or device intended to be erected above, on or below the surface of, or on or beneath the bed of tidal waters or an inland waterway;
 - (b) on a horizontal scale not smaller than 1:500 the span and vertical clearance of every intended bridge, aqueduct, viaduct, gantry and other structure or device above ground level for which provision is made in the proposed order;
 - (c) in cross section on a horizontal scale not smaller than 1:500 the depths and water levels of every intended inland waterway for which provision is made in the proposed order;
 - (d) in cross section on a horizontal scale not smaller than 1:500 every intended tunnel for which provision is made in the proposed order; and
 - (e) on a horizontal scale not smaller than 1:500 any altered gradient of a carriageway or a way forming part of a railway, tramway or other guided transport system on either side of every level crossing, bridge, tunnel or underpass which would carry the carriageway or way or through which it would pass, for which provision is made in the proposed order.
- (5) Subject to paragraph (6) the plan referred to in rule 8(4) is a plan drawn to a suitable scale not smaller than 1:2500 (and which may be the plan described in paragraph (1)(b)) showing clearly any land—
- (a) over which it is proposed to acquire powers of compulsory acquisition, or any right to use the land or to carry out protective works to any building or structure;
 - (b) which is—
 - (i) affected by a personal real burden which it is proposed shall be varied or extinguished;
 - (ii) affected by a title condition which it is proposed shall be varied or extinguished; or

- (iii) a development to which a development management scheme applies where it is proposed to disapply that scheme;
 - (c) in relation to which it is proposed that other private rights (including private rights of navigation over water) shall be extinguished;
 - (d) of which the applicant is the sole owner and occupier and which it is proposed shall be used for the purposes of the order for which application is being made; or
 - (e) in which there subsists a Crown interest, whether or not there are other interests in such land, and which it is proposed shall be used for the purposes of the proposed order.
- (6) An applicant may in writing request the Scottish Ministers to direct that the scale for the plans and sections referred to in paragraph (1), (4) or (5) be varied and the Scottish Ministers may so direct where they are satisfied that such a request is reasonable and appropriate.
- (7) The book of reference referred to in rule 8(4) is a book which refers to the plan described in paragraph (5) and which (subject to the provisions of paragraph (9))–
- (a) contains the names (and addresses) of every owner, lessee (whatever the period of the lease) and occupier of any land which it is proposed shall be subject to–
 - (i) powers of compulsory acquisition;
 - (ii) rights to use land, including the rights to attach equipment to buildings or structures; or
 - (iii) rights to carry out protective works to buildings or structures;
 - (b) contains the names (and addresses) of every holder of any personal real burden which it is proposed shall be varied or extinguished;
 - (c) contains the names (and addresses) of every owner of land which is a benefited property in relation to a title condition which it is proposed to vary or extinguish;
 - (d) contains the names (and addresses) of every owners' association of a development to which a development management scheme applies where it is proposed to disapply that scheme;
 - (e) contains the names (and addresses) of all those entitled to enjoy other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished;
 - (f) where there is a Crown interest in land, which it is proposed shall be used for the purposes of the order for which application is being made, specifies the appropriate authority in relation to that interest;
 - (g) specifies land–
 - (i) which is common (as defined in section 7(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (interpretation) ^{M18}) or open space (as also defined in section 7(1) of that Act);
 - (ii) which is land held by the National Trust for Scotland for Places of Historic Interest or Natural Beauty;
 - (iii) which is within, or is within 3 kilometres of, 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 ^{M19};
 - (iv) which has been notified under section 23 of the National Parks and Access to the Countryside Act 1949 ^{M20} or section 3(1) or 5(1) of the Nature Conservation (Scotland) Act 2004 ^{M21} as a site of special scientific interest or which is within 3 kilometres of any such site;

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- (v) which is within, or is within 3 kilometres of, an European site or an European marine site as those expressions are defined in regulations 2(1) and 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (interpretation) ^{M22};
 - (vi) which is property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of World Cultural and Natural Heritage ^{M23} or which is within 3 kilometres of any such property;
 - (vii) in respect of which a declaration has been made under section 19 of the National Parks and Access to the Countryside Act 1949 (declarations that areas are nature reserves) ^{M24} or which is declared to be a national nature reserve under section 35 of the Wildlife and Countryside Act 1981 ^{M25} or which is within 3 kilometres of any such land;
 - (viii) which is provided as a nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949 ^{M26} or which is within 3 kilometres of any such nature reserve;
 - (ix) in respect of which a nature conservation order or land management order made under section 23 or 30 respectively of the Nature Conservation (Scotland) Act 2004 has effect or which is within 3 kilometres of any such land;
 - (x) which is an area designated as a national scenic area under section 263A of the Town and Country Planning (Scotland) Act 1997 ^{M27} or which is within 3 kilometres of any such area;
 - (xi) which is a garden or designed landscape identified in “An Inventory of Gardens and Designed Landscapes in Scotland – List of Sites 2007”, published by the Scottish Ministers in 2007 ^{M28} or which is within 3 kilometres of any such garden or landscape;
 - (xii) which is a scheduled monument within the meaning of section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 ^{M29};
 - (xiii) on which there is a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ^{M30};
 - (xiv) for which other land is to be given in exchange;
 - (xv) that is to be given in exchange for other land; and
- (h) specifies, for each plot of land identified in it and within which it is intended that all or part of the proposed works shall be carried out, the area in square metres of that plot.
- (8) Where provision is made in the proposed order for any works which are–
- (a) proposed to be formed or constructed for the accommodation of an owner or occupier of land adjacent to a proposed transport system or inland waterway; or
 - (b) ancillary to a proposed transport system or inland waterway,

the applicant shall not be obliged to show them as required by paragraphs (1) and (4) but shall give such indication of them as is reasonably practicable.

(9) The requirements of paragraph (7)(a) to (f) shall extend only to including those names (and addresses) which have been ascertained by the applicant, after making reasonable inquiry, at the beginning of a period of 28 days ending with the date of the application but where the applicant has reason to believe that relevant names (or addresses) have, or might have, been omitted the applicant must clearly indicate this in the book of reference.

(10) Subject to paragraph (9), where the applicant has made reasonable inquiry in order to attempt to obtain the information mentioned in paragraph (7) the application shall not be invalidated by reason only of an error in, or the omission of information from, the book of reference.

Marginal Citations

- M18** 1947 c. 42.
M19 2000 asp 10.
M20 1949 c. 97; section 23 was repealed by the [Wildlife and Countryside Act 1981 \(c. 69\)](#), [Schedule 17](#), but notifications under section 23 can continue to have effect by virtue of the [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#), [schedule 5](#), paragraphs 8 to 10.
M21 2004 asp 6.
M22 S.I. 1994/2716; the relevant amending instruments are S.S.I. 2004/475 and 2007/80.
M23 See Cmnd Paper 9424.
M24 Section 19 was amended by the [Nature Conservancy Council Act 1973 \(c. 54\)](#), [Schedule 1](#), paragraph 1.
M25 1981 c. 69.
M26 Section 21 was amended by the [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Schedule 27](#), paragraph 100 and Schedule 29, the [Nature Conservancy Council Act 1973 \(c. 54\)](#), [Schedule 1](#), paragraph 1, the [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), [section 10](#), the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#), [Schedule 14](#), and the [National Parks \(Scotland\) Act 2000 \(asp 10\)](#), [schedule 3](#), paragraph 2.
M27 1997 c. 8; section 263A is inserted by the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), [section 50](#).
M28 ISBN 978 1 904966 44 9. A copy is available at www.historic-scotland.gov.uk.
M29 1979 c. 46.
M30 1997 c. 9.

Deposit of copy application etc. with others

11.—(1) The applicant shall serve a copy of the application and of every document that these Rules require shall accompany it upon every—

- (a) local authority for an area;
- (b) regional Transport Partnership for a region; and
- (c) National Park authority for a National Park,

in which all or any part of a transport system, inland waterway or other works to which the application relates is or are (or is or are to be) situated.

(2) The applicant shall deposit copies of the application and of every such document in the Scottish Parliament Information Centre.

(3) In the case of an application for an order authorising the works or other matters specified in any of the categories in column (1) of the table in Schedule 3, the applicant shall serve upon those named against each such category in column (2) of that table a copy of the application and of every such document.

(4) The applicant shall serve a copy of the application and of every such document on any body not mentioned in column (2) of the table in Schedule 3 which the Scottish Ministers consider is likely to have an interest in the application by reason of that body's specific environmental responsibilities.

(5) The applicant shall not be obliged by virtue of this rule to serve upon anyone more than one copy of the same document unless the recipients are the Scottish Ministers who shall be separately served in respect of each interest identified in column (2) of the table in Schedule 3 where that arises pursuant to paragraph (3).

(6) Where any person has confirmed to the applicant in writing that they do not wish to be served with a copy of, or a copy of any part of, a document that the applicant is required to serve on that person by virtue of this rule, the applicant shall not be required to serve upon that person that document or the relevant part of it.

(7) All documents required to be served upon anyone, or deposited, by virtue of this rule shall be so served, or deposited, as soon as possible after the making of the application and the applicant shall in a covering letter specify—

- (a) the capacity (or, if there is more than one, the capacities) in which the recipient is served, or that the documents are being deposited pursuant to paragraph (2), as the case may require;
- (b) the expiry date for objections; and
- (c) the address to which objections or representations are to be sent.

Publicity for application

12.—(1) The applicant shall, as soon as possible after the application has been made, publish in the Edinburgh Gazette a notice of the application, which shall—

- (a) state the name of the applicant and the address given pursuant to rule 7(2);
- (b) state that the application has been made to the Scottish Ministers;
- (c) state whether the application is subject to an environmental impact assessment;
- (d) summarise the main proposals and specify the location of the proposed works (if any); and
- (e) state the address to which objections or representations are to be sent and the expiry date for objections.

(2) The applicant shall publish, in at least one newspaper circulating in each area in which the proposals contained in the application are intended to have effect, a notice in the form of Form 1 in Schedule 2, such notice to be published on at least two separate occasions, the first publication of which may not be made earlier than 14 days before, and not later than, the date of the application and the second or if more than two, the last, to be not more than 7 days after the date of the application.

(3) In the case of an application for an order authorising the works or other matters specified in any of the categories in column (1) of the table in Schedule 4, the applicant shall, as soon as possible after the application has been made, serve upon those named against each such category in column (2) of that table a notice containing the information specified in paragraph (4), and every notice served under the provisions of this paragraph shall state the capacity (or, if there is more than one, the capacities) in which the recipient of the notice is served.

(4) The information referred to in paragraph (3) is—

- (a) the name of the applicant;
- (b) the date when the application was made to the Scottish Ministers and the address to which objections or representations are to be sent;
- (c) a statement as to whether the application is subject to an environmental impact assessment;
- (d) a summary of the matters for which provision is to be made in the order for which application has been made (including, in a case to which paragraph (6) or (7) of rule 8 applies, a statement that planning permission or deemed hazardous substances consent, as the case may be, has been sought);
- (e) the names of all places, which shall be places within the area to which the proposals in the proposed order relate (or as close as reasonably practicable to that area), where a copy of the application and of the documents which are required by these Rules to accompany it may be inspected free of charge at all reasonable hours until the expiry date for objections; and
- (f) a statement that, until that date, any objection to the making of the order, or any representations in relation to it, may be made in writing, stating the grounds for the objection or representations, to the Scottish Ministers at the address specified pursuant to sub paragraph (b).

(5) The places referred to in paragraph (4)(e) shall include a library or libraries, or such other publicly accessible buildings as the Scottish Ministers may direct, which shall in each case be situated within the area to which the proposals in the proposed order relate (or as close as reasonably practicable to that area).

(6) In the case of an application for an order authorising works the applicant shall, as soon as possible after the application has been made, display a notice in the form of Form 2 in Schedule 2 upon, or as close as reasonably practicable to, the proposed sites of those works at a place accessible to the public and, where the order for which application has been made would include linear works exceeding 5 kilometres in length, such a notice shall be displayed at intervals of not more than 5 kilometres along the whole of the proposed route of the works except where this is impracticable due to the land in question being covered by water.

(7) Where an order for which application has been made would authorise—

- (a) the extinguishment or diversion (whether such diversion would be permanent or temporary) of a public right of way; or
- (b) the stopping up or diversion of a road, or a restriction on the use of the road by any person or traffic, whether such stopping up, diversion or restriction would be permanent or, in the case of a road specifically named in the proposed order, temporary,

the applicant shall, as soon as possible after the application has been made, display a notice in the form of Form 3 in Schedule 2 upon the right of way or road at, or as close as is reasonably practicable to, each point of extinguishment, diversion, stopping up or restriction.

(8) The applicant shall take all reasonable steps to ensure that every notice displayed under the provisions of paragraphs (6) and (7) shall continue to be displayed in a legible form until the expiry date for objections.

(9) The applicant shall supply a copy of the application, or of any document that these Rules require shall accompany an application, to any person who requests such a copy, subject to the payment by that person of a reasonable charge for the provision of that copy, and the applicant shall ensure that information as to how such copies may be obtained is displayed at every place at which copies of the application and those documents are made available for inspection.

Notices to owners, occupiers etc.

13.—(1) The applicant shall, as soon as possible after the application has been made, serve a notice in the form of Form 4 in Schedule 2 upon all those, other than the applicant and the appropriate authority in relation to any Crown interest, named in the book of reference described in rule 10(7).

(2) In every case where, pursuant to rule 10(9), the applicant has indicated in the book of reference that relevant names have or might have been omitted, the applicant shall, as soon as possible after the application has been made, serve a notice in the form of Form 4 in Schedule 2—

- (a) where the omission relates to the holder of any personal real burden, by—
 - (i) addressing it to the holder of the personal real burden by name or by the description of “holder of personal real burden”; and
 - (ii) leaving it conspicuously affixed to some building or object on the land affected by the personal real burden;
- (b) where the omission relates to the owner of land which is a benefited property in relation to a title condition, by—
 - (i) addressing it to the owner of the land which is a benefited property by name or by the description of “owner of land which is a benefited property”; and
 - (ii) leaving it conspicuously affixed to some building or object on the benefited property;

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- (c) where the omission relates to the owners' association of a development to which a development management scheme applies, by—
 - (i) addressing it to the owners' association of the development in question by name or by the description of “owners' association under a development management scheme”; and
 - (ii) leaving it conspicuously affixed to some building or object on the land to which the development management scheme applies; and
- (d) in any other case, in the manner provided by section 20(5) of the Act.

Developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states

14.—(1) This rule applies where an application for an order under section 1 of the Act has been made and—

- (a) it appears to the Scottish Ministers that the application relates to proposed works which would be likely to have significant effects on the environment in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) it appears to the Scottish Ministers that the application relates to proposed works which would be likely to have significant effects on the environment of another Member State; or
- (c) another Member State whose environment is likely to be affected significantly by the proposed works to which the application relates requests information relating to the application.

(2) In a case falling within paragraph (1)(a) the applicant shall publish, if so directed by the Scottish Ministers, the information specified in paragraphs (1)(a) to (e) and (4)(d) and (e) of rule 12 in such newspapers circulating in the place in question as the Scottish Ministers may specify.

(3) In a case falling within paragraph (1)(b) or (c), the Scottish Ministers shall—

- (a) send the information mentioned in paragraph (5) to the Member State in question as soon as reasonably practicable and in any event—
 - (i) no later than the date of the publication of a notice in the Edinburgh Gazette pursuant to rule 12(1); or
 - (ii) in a case falling within paragraph (1)(c), no later than 7 days after receiving a request from the Member State in question; and
- (b) give the Member State in question a reasonable time in which to indicate whether it wishes to participate in the procedure for consideration of the application.

(4) The Scottish Ministers shall direct the applicant to take such steps as the Scottish Ministers consider necessary to ensure that the public is informed that the project is likely to have significant effects on the environment of another Member State and that the provisions of this rule apply.

(5) The information referred to in paragraph (3)(a) is—

- (a) a description of the proposed works, together with any information the Scottish Ministers have in connection with the application as to the possible significant effects of the works on the environment of the Member State in question; and
- (b) information on the nature of the decision which may be taken.

(6) Where a Member State has indicated, in accordance with paragraph (3)(b), that it wishes to participate in the procedure for the consideration of the application the Scottish Ministers shall, as soon as reasonably possible, send to the State in question (in so far as these documents and information have not already been supplied to that State)—

- (a) a copy of the application;

- (b) a copy of the applicant's statement of environmental information; and
 - (c) any relevant information regarding the procedure for the consideration of the application and for undertaking an environmental impact assessment of the proposed works in question.
- (7) In a case falling within paragraph (1)(b) or (c), the Scottish Ministers shall also—
- (a) arrange for the documents and other information referred to in paragraphs (5) and (6) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and to the members of the public in the territory of the Member State which is likely to be significantly affected;
 - (b) ensure that those authorities and members of the public concerned are given an opportunity, before any order is made authorising the works in question, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied;
 - (c) enter into consultations with the Member State in question, regarding any potential significant effects of the proposed works on the environment of that Member State, the measures envisaged to reduce or eliminate such effects and such other matters relating to the proposed works as may be relevant to that Member State; and
 - (d) provide, in agreement with the Member State in question, a reasonable period of time for such consultations to take place before taking any decision as to whether or not to make the order in question.
- (8) Where a Member State has been consulted in accordance with paragraph (7)(c), the Scottish Ministers shall inform that Member State of their decision as to whether or not the order in question should be made and shall send to that Member State a statement of—
- (a) the content of the decision and any conditions attached to the decision;
 - (b) the main reasons for the decision and considerations on which it is based including the public participation process; and
 - (c) a description, where relevant, of the main measures that the applicant is to be required to take in order to avoid, reduce and, if possible, remedy any major adverse environmental effects of the works.

Further information and notices

15.—(1) Where, in the opinion of the Scottish Ministers, the applicant's statement of environmental information should contain any additional information in order to constitute an environmental statement for the purposes of the application in question, the Scottish Ministers shall direct the applicant to supply that information.

(2) Without prejudice to paragraph (1), the Scottish Ministers, when considering an application in relation to which an applicant's statement of environmental information has been provided, may direct the applicant to provide such further information as they may specify concerning any matter which is required to be, or may be, dealt with in the environmental statement.

(3) Where any such direction as is mentioned in paragraph (1) or (2) has been given by the Scottish Ministers, the applicant shall comply with the requirements of that direction within such period as may be specified in that direction by the Scottish Ministers or if no such period is specified as soon as is reasonably practicable to do so.

(4) Where information is provided by the applicant pursuant to paragraphs (1) to (3), the applicant shall—

- (a) publish, in at least one newspaper circulating in the areas to which the information is relevant, a notice in the form of Form 5 in Schedule 2;

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- (b) serve a copy of the information on each person on whom, in accordance with these Rules, a copy of the applicant's statement of environmental information was served together with a notice in the form of Form 5 in Schedule 2;
 - (c) provide a copy or an additional copy of the information, or any part of the information, to any person who requests it, subject to the payment by that person of a reasonable charge for the provision of any such copy or additional copy; and
 - (d) provide the Scottish Ministers with 4 copies of the information.
- (5) The Scottish Ministers may direct an applicant to produce such evidence, to verify any information in the applicant's statement of environmental information or in any further information provided as a consequence of a direction given under paragraph (1) or (2), as the Scottish Ministers may require.
- (6) Where, after making an application—
- (a) an applicant submits to the Scottish Ministers further environmental information in relation to that application otherwise than in pursuance of a direction under paragraph (1) or (2); or
 - (b) any other person submits further environmental information relevant to that application,
- the Scottish Ministers may require the applicant to comply with the steps set out in paragraph (4) in respect of that further information.
- (7) Where further information is provided or submitted as mentioned in this rule in a case falling within rule 14(1)(b) or (c), the Scottish Ministers may send that further information to the Member State in question as soon as reasonably practicable and may comply with the requirements of rule 14(7), on the basis that the documents and information mentioned in that rule shall be the further information provided or submitted.

Waiver of requirements in relation to applications

16.—(1) An applicant may at any time before or after making an application submit a request in writing to the Scottish Ministers for a direction that any provision contained in rules 3, 7, 8 (other than paragraph (2)(h) of rule 8) and 10 to 13 shall not apply (or shall apply in part only) to an application the applicant has made or proposes to make.

(2) A request made under paragraph (1) shall give reasons for the request.

(3) Where a request is made under paragraph (1) the Scottish Ministers may, being satisfied of the reasons of the applicant not to comply with any provision contained in the rules mentioned in paragraph (1)—

- (a) direct that the provision in question shall not apply, or shall apply in part only, to the application in question; and
- (b) whether or not a direction has been given pursuant to sub paragraph (a), direct that the applicant shall comply with the provision in question, or any part of it, at such later date as may be specified in the direction.

Fees for applications

17.—(1) The fee for an application is—

- (a) £10,000; or
- (b) £1,000 where either—
 - (i) the primary object of the proposed order to which the application relates is the construction or operation of a heritage railway; or

- (ii) the applicant is a body which may refer to itself as a “charity” in terms of section 13 or 14 of the Charities and Trustee Investment (Scotland) Act 2005 (references to charitable status) ^{M31}.
- (2) In paragraph (1), “heritage railway” means a railway which is operated to—
- (a) preserve, re create or simulate railways of the past; or
 - (b) demonstrate or operate historical or special types of motive power or rolling stock,
- and which is exclusively or primarily used for tourist, educational or recreational purposes.
- (3) The fee for an application shall be paid to the Scottish Ministers when the application is made.
- (4) Where an application is withdrawn before the expiration of the time limit specified in paragraph (5) an applicant may make a request in writing to the Scottish Ministers for the repayment of any part of the fee paid when that application was made.
- (5) The time limit is—
- (a) in the case of an application in relation to which, pursuant to rules made under section 10 of the Act, the Scottish Ministers have given notice of their intention to hold a public local inquiry, the expiration of the period of 14 days commencing with the date on which any such inquiry is closed;
 - (b) in the case of an application in relation to which, pursuant to rules made under section 10 of the Act, the Scottish Ministers have given notice of their intention to hold a hearing under section 9(2) of the Act, the expiration of the period of 14 days commencing with the date on which any such hearing is closed;
 - (c) in the case of an application to which the provisions of rule 22 apply, the end of the day on which is completed the latest of such of the time periods specified in or pursuant to paragraphs (2) to (10) of that rule as shall apply to that application; or
 - (d) in any other case, the end of the operative date.
- (6) Where a request is made pursuant to paragraph (4), the Scottish Ministers shall repay to the applicant such portion (if any) of the fee paid as the Scottish Ministers shall consider appropriate.

Marginal Citations

M31 2005 asp 10.

Orders made by the Scottish Ministers by virtue of section 6

18. Schedule 5 (which imposes duties and powers on the Scottish Ministers where they propose to make an order by virtue of section 6 of the Act) shall have effect.

Objections: general

19.—(1) Subject to paragraph (2), an objection made in relation to an application shall only be an objection for the purposes of these Rules if it—

- (a) is received by the Scottish Ministers on or before the expiry date for objections;
- (b) is made in writing;
- (c) states the grounds of the objection;
- (d) indicates who is making the objection; and
- (e) provides an address to which any correspondence relating to that objection may be sent.

(2) Where an objection relates to information provided or submitted as mentioned in rule 15 after the application has been made, that objection will be an objection for the purposes of these Rules, even where it is made after the expiry date for objections, if it is made not later than 42 days after the date on which the information is provided or submitted to the Scottish Ministers or the last date on which a notice relating to the information is published in a newspaper pursuant to rule 15(4), whichever date is the later.

(3) In this rule and in rules 20 to 23, a reference to an objection includes a reference to any document submitted with an objection.

Notice of objections

20.—(1) The Scottish Ministers shall, as soon as reasonably practicable after they have received an objection, provide the applicant with a copy of that objection.

(2) As soon as reasonably practicable after the expiry date for objections the Scottish Ministers shall provide the applicant with a list of the objections that the Scottish Ministers have received stating, in each case—

- (a) the name and address of the objector; and
- (b) the reference number given to the objection.

(3) The Scottish Ministers may, upon request, provide any person with a copy of any objections made by others.

Application of written representations procedure

21.—(1) Subject to paragraphs (2) to (4), rule 22 shall apply to an objection unless, on or before the operative date, the Scottish Ministers have—

- (a) given notice in accordance with rules made under section 10(1) of the Act (procedure at inquiries and hearings) that they will cause a public local inquiry to be held;
- (b) given notice to the applicant and every objector who made the objection in question that the objection will be dealt with in accordance with section 9(2) of the Act (inquiries and hearings); or
- (c) informed the objector in question and the applicant that it appears to the Scottish Ministers that the objection is of a type mentioned in paragraph (a) or (b) of section 8(3) of the Act (frivolous or trivial objections or objections relating to compensation).

(2) Rule 22 shall not apply in relation to an objection if, not later than the operative date, a statutory objector informs the Scottish Ministers in writing of the statutory objector's wish for the objection to be referred to a public local inquiry or dealt with in accordance with section 9(2) of the Act.

(3) Rule 22 shall cease to apply to an objection if after the operative date either the Scottish Ministers or a statutory objector, as the case may be, takes in relation to that objection one of the steps mentioned in paragraph (1) or (2) above.

(4) Notwithstanding that one of the steps mentioned in paragraph (1) or (2) has been taken, the Scottish Ministers may, with the consent of the applicant and every statutory objector, and after consulting such other persons as they think fit, direct that rule 22 shall thereafter apply to all objections that have not been withdrawn; provided that, where any of the steps required to be taken under that rule have been taken before the date of that direction, they need not be taken again.

(5) In this rule “statutory objector” means a person within section 9(4) of the Act who has made an objection which—

- (a) has not been withdrawn; and

- (b) does not appear to the Scottish Ministers to be of a type mentioned in paragraph (a) or (b) of section 8(3) of the Act.

Procedure by written representations

22.—(1) Where none of the steps mentioned in paragraphs (1) and (2) of rule 21 has been taken by the operative date the provisions of this rule shall apply and the Scottish Ministers shall notify the applicant and all those who have made, and not withdrawn, an objection pursuant to rule 19 that this is the case.

(2) The applicant shall, not later than 28 days of being notified pursuant to paragraph (1), send to the Scottish Ministers representations upon each objection.

(3) The Scottish Ministers shall, within 7 days of receiving representations from the applicant pursuant to paragraph (2), send to each objector a copy of any of those representations that relate to their objection and shall inform them of their rights under paragraph (4).

(4) An objector may, within 21 days of being sent a copy of the applicant's representations pursuant to paragraph (3), reply in writing to the Scottish Ministers.

(5) Where the Scottish Ministers receive no reply from an objector within the period specified in paragraph (4) they may proceed to make a determination under section 11 of the Act, unless they consider that they do not have sufficient information to enable them to make a determination.

(6) Where the Scottish Ministers receive a reply from an objector pursuant to paragraph (4) they shall, within 7 days of receipt, send a copy of such reply to the applicant.

(7) An applicant who wishes to send any further representations to the Scottish Ministers shall do so within 14 days of being sent a copy of any reply pursuant to paragraph (6).

(8) Subject to paragraph (9), the Scottish Ministers may, upon expiry of the period specified in paragraph (7), proceed to make a determination under section 11 of the Act, unless they consider that—

- (a) they do not have sufficient information to enable them to make such a determination; or
- (b) any further representations received from the applicant pursuant to paragraph (7) raise a new matter which, in the opinion of the Scottish Ministers, may affect their determination and upon which an objector should be given the opportunity to comment.

(9) Where, pursuant to paragraph (5) or (8)(a), the Scottish Ministers consider that they require further information from the applicant or an objector to enable them to make a determination under section 11 of the Act or where, pursuant to paragraph (8)(b), the Scottish Ministers decide to give an objector a further opportunity to comment, they shall write to the applicant and objector accordingly and shall specify the period during which any further information or comments, as the case may be, shall be submitted to the Scottish Ministers.

(10) Where paragraph (9) applies, the Scottish Ministers shall consider, upon receipt of any further information or comments within the specified period, whether or not a further opportunity to comment should be given to the applicant or to an objector and, if so, they shall specify a period for making any further comments.

(11) The Scottish Ministers may, upon request, provide any person with a copy of any written representations or other material that have been sent to them pursuant to this rule.

(12) In making a determination under section 11 of the Act, the Scottish Ministers may disregard any written representations or other material that have not been sent to them within any time limit specified under or pursuant to this rule.

Submission of objections to inquiry or hearing

23. Where the Scottish Ministers cause a public local inquiry or hearing to be held under section 9 of the Act, the Scottish Ministers shall submit every objection made pursuant to rule 19 to the person appointed to hold the inquiry or hearing, as soon as it is reasonably practicable to do so.

Making of representations

24.—(1) Rules 19, 20 and 23 shall apply to the making of representations as regards an application under section 4 of the Act (applications) as they apply to the making of objections to such an application, as if—

- (a) each reference to “an objection” in those rules was a reference to “representations”;
- (b) each reference to “that objection” in those rules was a reference to “those representations”;
- (c) subject to paragraph (2)—
 - (i) other references to “objection”; and
 - (ii) references to “objections”,in those rules were references to “representations”;
- (d) the reference in rule 19(3) to “this rule and in rules 20 to 23” was a reference to rules 19, 20 and 23 as applied by this rule;
- (e) the reference in rule 20(2)(a) to “objector” was a reference to “maker of the representations”; and
- (f) the reference in rule 23 to rule 19 was a reference to that rule as applied by this rule.

(2) Paragraph (1)(c) does not apply to the references to “objections” where they occur in rule 19(1)(a) and (2) and where it occurs the first time in rule 20(2).

(3) References in these Rules to the “expiry date for objections” shall apply, where the context requires, as if in the definition of that expression in rule 2(1) the words “and representations” were inserted after the words “making objections”.

(4) Where none of the steps mentioned in paragraphs (1) and (2) of rule 21 have been taken by the operative date, so that the provisions of rule 22 shall apply to an objection, the Scottish Ministers shall also notify all those who have made representations pursuant to rule 19, as that rule is applied by this rule, that this is the case.

Power to set later time limits

25. The Scottish Ministers may at any time in any particular case allow further time for the taking of any step (including a step which they are required or enabled to take themselves) which may or must be taken pursuant to these Rules and any reference to a date by which or a period within which any step is required to be taken shall be construed accordingly.

St Andrew's House,
Edinburgh
18th December 2007

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

Status:

Point in time view as at 28/12/2007.

Changes to legislation:

There are currently no known outstanding effects for the The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007.