

2017 No. 74

TRANSPORT AND WORKS

**The Transport and Works (Scotland) Act 2007 (Applications and
Objections Procedure) Amendment Rules 2017**

<i>Made</i>	- - - -	<i>14th March 2017</i>
<i>Laid before the Scottish Parliament</i>		<i>15th March 2017</i>
<i>Coming into force</i>	- -	<i>16th May 2017</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), sections 4 to 6, 8 and 28(6) of the Transport and Works (Scotland) Act 2007(b) and section 56 of the Finance Act 1973(c), and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017 and come into force on 16th May 2017.

Amendment of the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007

2. The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007(d) are amended in accordance with rules 3 to 18.

Amendment of rule 2

3. In rule 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Act” insert—

““additional information” means—

(a) supplementary information required in accordance with rule 15(2); or

-
- (a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (b) 2007 asp 8.
- (c) 1973 c.51. Section 56(1) was amended by S.I. 2011/1043. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of S.I. 1999/1820 and the functions conferred upon the Minister of the Crown under section 56, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) (“the 1998 Act”). The requirement to obtain Treasury consent was removed by section 55 of the 1998 Act.
- (d) S.S.I. 2007/570.

- (b) any other information provided by the applicant which, in the opinion of the Scottish Ministers is substantive information about a matter to be included in the EIA report in accordance with rule 9(2);
 - (ii) in the definition of “the Directive” for “Council Directive 85/337/EEC” substitute “Directive 2011/92/EU of the European Parliament and of the Council(a)”;
 - (iii) after the definition of “bridleway” insert—
 - ““the consultation bodies” means—
 - (a) every local authority in whose area the works would be carried out were the order for which an applicant proposes to apply under section 4 or the Scottish Ministers propose to make under section 6 of the Act 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 an applicant proposes to apply under section 4 or the Scottish Ministers propose to make under section 6 of the Act to be made;
 - (c) the Scottish Environment Protection Agency;
 - (d) Scottish Natural Heritage;
 - (e) Historic Environment Scotland;”;
 - (iv) omit the definitions of “environmental impact assessment” and “environmental statement” (including the definition of “the applicant’s statement of environmental information”) and substitute—
 - ““EEA State”, in relation to any time, means—
 - (a) a state which at that time is a member State; or
 - (b) any other State which at that time is a party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992(b), together with the Protocol adjusting that agreement signed at Brussels on 17th March 1993(c), as modified or supplemented from time to time;
 - “EIA application” means an application under section 4 of the Act for works which—
 - (a) would constitute a project of a type mentioned in Annex I to the Directive; or
 - (b) would constitute a project of a type mentioned in Annex II to the Directive and are likely to have significant effects on the environment by virtue of factors such as its nature, size or location;
 - “EIA report” has the meaning given in rule 9;
 - “environmental impact assessment” has the meaning given in rule 2A;”;
 - (v) after the definition of “regional Transport Partnership” insert—
 - ““relevant assessment” means an assessment, or verification, of effects on the environment carried out pursuant to Union legislation (other than legislation implementing the requirements of the Directive) which is relevant to the assessment of the environmental impacts of the proposed development;”;
 - (vi) after the definition of “transport system” insert—
 - ““Union legislation” means any enactment in the domestic legislation of Scotland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU treaties;”;
- (b) in paragraph (2), after the word “newspaper” insert “or on a website”.

(a) OJ L 26, 28.1.2012, p.1 as amended by Council Directive 2014/52/EU (OJ L 124, 25.4.2014, p.1).
 (b) Command Paper 2073.
 (c) Command Paper 2183.

Insertion of rule 2A

4. After rule 2 insert—

“Environmental impact assessment

2A.—(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an EIA report by the applicant;
- (b) the carrying out of consultation, publication and notification as required by rules 5, 6 and 11 to 15, and where relevant rule 14;
- (c) the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information being any additional information, any representations made by any body required by these Rules to be invited to make representations and any representations duly made by any other person about the environmental effects of the proposed works which are the subject of the EIA application;
- (d) the reasoned conclusion by the Scottish Ministers of the significant effects of the proposed works which are the subject of the application on the environment, taking into account the results of the examination referred to in sub-paragraph (c) and, where appropriate, their own supplementary examination; and
- (e) the integration of the Scottish Ministers’ reasoned conclusion into the determination under section 11 of the Act.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed works which are the subject of the EIA application, the direct and indirect effects of those works on the factors specified in paragraph (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under Directive 92/43/EEC(a) and Directive 2009/147/EC(b);
- (c) land, soil, water, air and climate; and
- (d) material assets, cultural heritage and the landscape.

(4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the proposed works to risks, so far as relevant to the proposed works, of major accidents and disasters.

(5) Unless the Scottish Ministers consider that the likely significant effects of the proposed works on the environment are not fully identifiable at the time of their determination under section 11(2) of the Act, the environmental impact assessment to be carried out in relation to the determination of an EIA application must identify the likely significant effects of the application on the environment before such a determination is made.

(6) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.”.

(a) OJ L 206, 22.7.1992, p.7.

(b) OJ L 20, 26.1.2010, p.7.

Amendment of rule 3

5. For rule 3(3) (pre-application documentation) substitute—

“(3) The applicant must, not later than 42 days before making the application, send a draft of the applicant’s EIA report to—

- (a) the Scottish Ministers; and
- (b) the consultation bodies.

(4) The applicant must, within the timescale specified by the Scottish Ministers, send a draft of the EIA report to any other public body which the Scottish Ministers have advised the applicant is likely to have an interest in the proposed works by reason of that body’s specific environmental responsibilities or local and regional competencies.”

Substitution of rule 5

6. For rule 5 (the requirement for environmental statement and screening decision) substitute—

“EIA application and screening decision

5.—(1) The occurrence of an event mentioned in paragraph (2) determines for the purpose of these Rules that an application is an EIA application.

(2) The events are—

- (a) the making by the Scottish Ministers of a screening decision to the effect that proposed application will be an EIA application; or
- (b) if no screening decision has been made by the Scottish Ministers, the submission by the applicant in relation to those proposed works of a report referred to by the applicant as an EIA report.

(3) The Scottish Ministers may direct that these Rules do not apply in relation to particular proposed works specified in the direction if the works will have as their sole purpose response to civil emergencies and where in the opinion of the Scottish Ministers compliance with these Rules would have an adverse impact on their purpose.

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

(5) In making a screening decision as to whether an application for proposed works which would constitute a project of a type mentioned in Annex II to the Directive is an EIA application, the Scottish Ministers must—

- (a) in all cases take into account—
 - (i) such of the selection criteria set out in Annex III to the Directive as are relevant to the proposed works; and
 - (ii) the available results of any relevant assessment of the effects of the proposed works; and
- (b) where that decision is made following a request for a screening decision under paragraph (4), base their decision on the information provided in accordance with paragraph (6).

(6) A request for a screening decision under paragraph (4) must be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a description of the proposed works, including in particular—
 - (i) a description of the physical characteristics of the proposed works and, where relevant, of demolition works;

- (ii) a description of the location of the proposed works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the proposed works; and
- (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed works on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(7) A request for a screening decision may, in addition to the information required in accordance with paragraph (6), also be accompanied by a description of any features of the proposed works, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

(8) The information referred to in paragraph (6) is to be compiled taking into account, where relevant—

- (a) the selection criteria set out in Annex III to the Directive; and
- (b) the available results of any relevant assessment.

(9) If the Scottish Ministers consider that the information provided by the applicant in or with a request under paragraph (4) is insufficient to enable them to make a screening decision they must, not later than 28 days after receiving the request, notify the applicant in writing of the points on which they require further information.

(10) On receiving notification under paragraph (9), the applicant must provide the Scottish Ministers with such of the further information specified in that notification as the applicant is reasonably able to supply and, where any of the further information so specified is not provided, a written explanation as to why the applicant is unable to provide the information.

(11) The Scottish Ministers must not give a screening decision until they have given notice of the request to, and invited the views of, the following bodies—

- (a) the consultation bodies; and
- (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies,

and the Scottish Ministers must include in each such notice the information provided in or with a request under paragraph (4).

(12) Any body falling within paragraph (11) which is the recipient of a notice served under that paragraph must, not later than 28 days after receiving the 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.

(13) 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.

(14) The Scottish Ministers may of their own volition make a screening decision following intimation to the applicant of the intention to make such a decision, and paragraphs (5) to (13) apply in relation to such intimation and decision as they apply where a request is made under paragraph (4).

- (15) Where the Scottish Ministers make a screening decision—
- (a) that screening decision must be accompanied by a written statement giving, with reference to such of the criteria set out in Annex III to the Directive as are relevant to the proposed works, the main reasons for that decision; and
 - (b) where the screening decision is to the effect that the proposed works do not require an environmental impact assessment, the statement referred to in sub-paragraph (a) must state any features of the proposed works or proposed measures which are envisaged to avoid or prevent significant adverse effects on the environment.
- (16) The Scottish Ministers must notify the applicant in writing of their screening decision not later than 42 days after—
- (a) receipt of the request made pursuant to paragraph (4);
 - (b) intimation of the intention to make a decision of their own volition under paragraph (14); or
 - (c) receiving the further information that the applicant is required to supply by virtue of paragraph (10).
- (17) Following a screening decision the Scottish Ministers must publicise notice of that decision—
- (a) in the Edinburgh Gazette;
 - (b) in such newspapers as they consider appropriate; and
 - (c) on a website maintained by the Scottish Ministers for the purpose of making publicly available information relating to applications to which these Rules apply.”

Substitution of rule 6

7. For rule 6 (scoping opinion) substitute—

“**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 EIA report (a “scoping opinion”).

(2) A request under paragraph (1) must include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the proposed works and of their possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information to provide a scoping opinion, they must, within 28 days of receipt of the request under paragraph (1), notify the applicant of the points on which they require further information.

(4) The Scottish Ministers must not give a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the consultation bodies; and
- (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body’s specific environmental responsibilities or local and regional competencies.

(5) Where any body consulted under paragraph (4) wishes to provide the Scottish Ministers with a written opinion as to the information to be contained in the EIA report, that body must do so no later than 28 days after being consulted.

- (6) Before giving a scoping opinion the Scottish Ministers must take into account—
- (a) the specific characteristics of the proposed works;
 - (b) the specific characteristics of works of the type concerned;
 - (c) the environmental features likely to be affected by the works; and
 - (d) any representations made to them in response to consultation undertaken under paragraph (4).

(7) Subject to paragraph (8), the Scottish Ministers must notify the applicant who made the request under paragraph (1) of the Scottish Ministers' scoping opinion, not later than 42 days after the receipt of that request or, where the Scottish Ministers have given a notification under paragraph (3), 42 days after receipt of the further information mentioned in that notification.

- (8) Where an applicant makes a request for a scoping opinion—
- (a) under paragraph (1) at the same time as the making of a request for a screening decision under rule 5(4) in relation to the same proposed works; or
 - (b) after the applicant has made such a request for a screening decision but before the Scottish Ministers have notified the applicant of that decision in relation to the same proposed works,

the Scottish Ministers must 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 their screening decision to the effect that the works are an EIA application.

(9) Where the Scottish Ministers have given a scoping opinion to an applicant, they are not precluded from requiring that applicant to provide further information in connection with any EIA report 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.

(10) The Scottish Ministers may of their own volition give a scoping opinion and paragraphs (4) to (9) apply in relation to such a scoping opinion as they apply where a request is made under paragraph (1).

- (11) The Scottish Ministers must publish notice of a scoping opinion—
- (a) in the Edinburgh Gazette;
 - (b) in such other newspapers as they consider appropriate; and
 - (c) on the website referred to in rule 5(17)(c)."

Amendment of rule 8

- 8.** In rule 8 (documents accompanying application)—
- (a) in paragraph (2)(h) and (i) for "statement of environmental information" substitute "EIA report";
 - (b) in paragraph (2)(i) after "3(3)" insert "or rule 3(4)"; and
 - (c) in paragraph (9) for "statement of environmental information" substitute "EIA report".

Substitution of rule 9

- 9.** For rule 9 (environmental statements: provision of information) substitute—

"Environmental impact assessment report

9.—(1) An EIA application must be accompanied by an environmental impact assessment report ("EIA report").

(2) An EIA report is a report prepared in accordance with this rule by the applicant which assesses the environmental impact of the proposed works that are the subject of the application and which includes (at least)—

- (a) a description of the works comprising information on the site, design, size and other relevant features of the works;
- (b) a description of the likely significant effects of the works on the environment;
- (c) a description of the features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the works and their specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 1 relevant to the specific characteristics of the works and to the environmental features likely to be affected.

(3) Where a scoping opinion has been issued, the EIA report must be based on that scoping opinion and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments under Union legislation or national legislation in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise of such experts.”.

Amendment of rule 11

10. In rule 11 (deposit of copy application etc. with others)—

(a) for paragraph (4) insert—

“(4) In relation to an EIA application, in addition to the requirements of paragraph (1), the applicant must serve a copy of the application and of every document that these Rules require to accompany it, including the EIA report, upon—

- (a) the consultation bodies; and
- (b) any other public body that the Scottish Ministers have advised the applicant is likely to have an interest in the application by reason of that body’s specific environmental responsibilities or local and regional competencies.”; and

(b) in paragraph (7)—

(i) omit “and” immediately after sub-paragraph (b); and

(ii) at the end, insert—

“; and

(d) in the case of an EIA application—

- (i) the main proposals and location of the proposed works; and
- (ii) that an EIA report will be taken into consideration in determining the application.”.

Amendment of rule 12

11. In rule 12 (publicity for application)—

- (a) in paragraph (4)(e) after “documents” insert “, including the EIA report.”;
- (b) after paragraph (9) insert—

“(10) In relation to an EIA application the Scottish Ministers must publish on the website referred to in rule 5(17)(c) a notice which—

- (a) describes the application and proposed works to which the report relates;
- (b) states that the proposed works are subject to environmental impact assessment and, where relevant, states that they are likely to have significant effects on the environment in another EEA State;
- (c) states that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the report is available for inspection;
- (d) states how copies of the EIA report may be obtained;
- (e) states the cost of a copy of the EIA report;
- (f) states how and by what date objections or representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
- (g) provides details of the arrangements for public participation in the decision making procedure, including a description of the procedures requiring the publication of additional information submitted subsequently by the applicant and in accordance with which any person may make objections or representations in relation to that additional information, and the circumstances under the Act in which the Scottish Ministers may cause a public local inquiry or hearing to be held into the application; and
- (h) states the nature of possible decisions to be taken in relation to the application and provides details of the authority by whom such decisions are to be taken.

(11) Where an EIA report is provided in relation to an EIA application, the applicant must ensure that a reasonable number of copies of the report are available at an address specified on the website referred to in rule 5(17)(c).

(12) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the report made available in accordance with paragraph (11).”.

Amendment of rule 14

12. In rule 14 (developments likely to have significant effects in certain places outwith Scotland) in paragraph (6)(b) for “statement of environmental information” substitute “EIA report”.

Amendment of rule 15

13. In rule 15 (further information and notices)—

- (a) for paragraphs (1) and (2) substitute—

“(1) This rule applies where the Scottish Ministers are dealing with an EIA application.

(2) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) direct the applicant to provide supplementary information about any matter to be included in the EIA report in accordance with rule 9(2) which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the proposed works on the environment.”;

- (b) in paragraph (3) omit “(1) or”;
- (c) in paragraph (4)(b) for “statement of environmental information” substitute “EIA report”;

(d) after paragraph (4) insert—

“(4A) Where supplementary information is provided to the Scottish Ministers pursuant to paragraphs (1) to (3) or (6), the Scottish Ministers must publish on the website referred to in rule 5(17)(c) the information referred to in Form 5 of schedule 2.”; and

(e) in paragraph (6)(a) omit “(1) or”.

Insertion of rule 15A

14. After rule 15 insert—

“Co-ordination of assessments

15A.—(1) Where in relation to an EIA application there is in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Rules also a requirement to carry out a Habitats Regulation Assessment, the Scottish Ministers must, where appropriate, ensure that the Habitats Regulation Assessment and the environmental impact assessment are co-ordinated.

(2) In this rule a “Habitats Regulation Assessment” means an assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994(a).”.

Insertion of rule 26

15. After rule 25 (power to set later time limits) insert—

“Competent authority – avoidance of conflict of interest

26.—(1) The Scottish Ministers are to perform their duties arising under these Rules in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are considering whether to make an order under section 6 of the Act which would authorise a project which—

(a) is of a type mentioned in Annex I to the Directive; or

(b) is of a type mentioned in Annex II to the Directive and which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location,

they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Rules.”.

Substitution of schedule 1

16. For schedule 1 (information to be included in environmental statement), substitute schedule 1 as contained in schedule 1 of these Rules.

Amendment of schedule 2

17. For Form 5 in schedule 2 (notice of further environmental information), substitute Form 5 as contained in schedule 2 of these Rules.

(a) S.I. 1994/2716 to which there are amendments not relevant to these Rules.

Amendment of schedule 5

18. In schedule 5 (proposals for orders by virtue of section 6)—

- (a) in paragraph 5—
 - (i) for “ rule 5(7)” substitute “ rule 5(11)”;
 - (ii) for “rule 5(4)” substitute “ rule 5(6)”;
- (b) for paragraph 6 substitute—

“6. Any body falling within rule 5(11) consulted pursuant to paragraph 5 must, not later than 28 days after being consulted, provide the Scottish Ministers with a written opinion as to whether or not, in their opinion, the works in question should be the subject of an environmental impact assessment.”;

- (c) for paragraph 7 substitute—

“7. In reaching a determination as to whether an environmental impact assessment is necessary, the Scottish Ministers must take into account—

- (a) such of the selection criteria set out in Annex III to the Directive as are relevant to the proposed works; and
- (b) the available results of other assessments of the proposed works.”;
- (d) for paragraph 8 substitute—

“8.—(1) Where the Scottish Ministers make a determination pursuant to paragraph 3—

- (a) that determination must be accompanied by a written statement giving, with reference to such of the criteria set out in Annex III to the Directive as are relevant to the proposed works, the main reasons for that conclusion; and
- (b) where the determination is to the effect that the proposed works do not require an environmental impact assessment, the statement referred to in paragraph (a) must state any features of the proposed works or proposed measures which are envisaged to avoid or prevent significant adverse effects on the environment.

(2) The Scottish Ministers must publish any determination referred to in paragraph (1) within 14 days of such a determination being reached—

- (a) in the Edinburgh Gazette;
- (b) in such other newspapers as they consider appropriate; and
- (c) on a website maintained by the Scottish Ministers for the purpose of making publicly available information relating to applications to which these Rules apply.”;
- (e) in paragraphs 9 and 10 for “environmental statement” substitute “EIA report”;
- (f) after paragraph 11 insert—

“11A. Where the Scottish Ministers have determined that an environmental impact assessment is necessary, in addition to the matters referred to in paragraph 11 the notice referred to in that paragraph must—

- (a) where relevant, state that the proposed works are likely to have significant effects on the environment in another EEA State;
- (b) state that the EIA report is available for inspection free of charge and the times and places (including the Scottish Parliament Information Centre) at which, and the means by which, the report is available for inspection;
- (c) state how copies of the EIA report may be obtained;
- (d) state the cost of a copy of the EIA report;

- (e) provide details of the arrangements for public participation in the decision making procedure and the circumstances under the Act in which the Scottish Ministers may cause a public local inquiry or hearing to be held into the proposal; and
- (f) state the nature of possible decisions to be taken in relation to the proposal.”;
- (g) in paragraph 12(a) after “11” insert “and, where relevant, paragraph 11A”;
- (h) after paragraph 12 insert—

“**12A.** Where the Scottish Ministers have determined that an environmental impact assessment is necessary they must publish a notice containing the information specified in paragraphs 11, 11A and 12 on a website maintained by the Scottish Ministers for the purpose of making publicly available information relating to applications to which these Rules apply.”
- (i) in paragraph 16 for sub-paragraph (f) substitute—

“(f) where the proposed works are to be subject to an environmental impact assessment, an EIA report which must include the information referred to in rule 9, confirmation that a draft of the EIA report has been sent to the persons and bodies specified in rule 3(3)(b) and (4) and a memorandum setting out any comments those persons might have made in respect of the draft;”;
- (j) for paragraph 19 substitute—

“**19.** Where the Scottish Ministers have determined that an environmental impact assessment is necessary the Scottish Ministers must serve a copy of the documents referred to in paragraph 16 upon—

 - (a) the consultation bodies; and
 - (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposal to make an order under section 6 of the Act by reason of that body’s specific environmental responsibilities or local and regional competencies.”;
- (k) in paragraph 20 for “or 18” substitute “, 18 or 19”;
- (l) in paragraph 21 after “information specified in” insert “paragraph 11A, where relevant, and”;
- (m) in paragraph 30(2)(d) omit “environmental statement” and substitute “EIA report”;
- (n) in paragraph 31—
 - (i) in sub-paragraphs (1) and (2) for “environmental statement”, wherever it occurs, substitute “EIA report”;
 - (ii) in sub-paragraph (1)—
 - (aa) omit “and” immediately after paragraph (b); and
 - (bb) at the end insert—

“; and
 - (d) publish the notice referred to in sub-paragraph (a) on the website referred to in paragraph 12A”; and
 - (iii) in sub-paragraphs (2) and (3) omit the word “may” wherever it occurs and substitute “must”;
- (o) in paragraph 35(2) for “environmental statement” substitute “EIA report”; and
- (p) for paragraph 41 substitute—

“**41.** Rule 4 has effect in relation to any proposal of the Scottish Ministers to make an order under section 6 of the Act.”.

Transitional and savings provisions

19.—(1) In a case where the Scottish Ministers had made a screening decision under rule 5 of the principal Rules prior to 16th May 2017, that rule continues to have effect in relation to that case as it did immediately prior to that date.

(2) The principal Rules continue to have effect as they did immediately prior to 16th May 2017 in respect of an application under section 4, or a proposal under section 6, of the Act where prior to that date—

- (a) an applicant had made a request in writing under rule 6(1);
- (b) the Scottish Ministers had started a consultation as referred to in paragraph 9 of schedule 5;
- (c) an applicant had submitted an environmental statement in accordance with rule 8(2); or
- (d) the Scottish Ministers have served a copy of the environmental statement in accordance with paragraph 14 of schedule 5,

of those Rules.

(3) In this rule “the principal Rules” means the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007(a).

HUMZA YOUSAF

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
14th March 2017

(a) S.S.I. 2007/570.

“SCHEDULE 1

Rule 9(2)

**INFORMATION FOR INCLUSION IN ENVIRONMENTAL
IMPACT ASSESSMENT REPORTS**

- 1.** A description of the proposed project, including in particular—
 - (a) a description of the location of the project;
 - (b) a description of the physical characteristics of all the works covered by the application, including, where relevant, demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.
- 2.** A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
- 3.** A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
- 4.** A description of the factors specified in rule 2A(3) likely to be significantly affected by the proposed project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage including architectural and archaeological aspects and landscape.
- 5.** A description of the likely significant effects of the proposed project on the environment resulting from, inter alia—
 - (a) the construction and existence of the project, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
 - (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
 - (e) the cumulation of effects with other existing and/or approved development projects, taking into account any existing environmental problems relating to areas

of particular environmental importance likely to be affected or the use of natural resources;

- (f) the impact of the proposed project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in rule 2A(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the proposed project. This description should take into account the environmental protection objectives established at European Union or Member State level which are relevant to the project.

7. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the proposed project on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU^(a) of the European Parliament and of the Council or Council Directive 2009/71/Euratom^(b) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under points 1 to 9.

11. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.”

(a) OJ L 197, 24.7.2012, p.1.

(b) OJ L 172, 2.7.2009, p.18.

Form 5	Rule 15(4A) and rule 18 (with paragraph 31 of schedule 5)
The Transport and Works (Scotland) Act 2007	
The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007	
[Order title]	
NOTICE OF FURTHER ENVIRONMENTAL IMPACT ASSESSMENT REPORT	
<p>On [date] [Name and address of applicant] applied to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for the above-mentioned order under section 1 of that Act.</p> <p>The draft order makes provision for (a).</p> <p>The application is subject to an environmental impact assessment and further information is available in relation to the environmental impact assessment report which was provided with the application. A copy of that information may be inspected free of charge between the hours of (b) and (b) on (b) to (b) at (c) until (d). Copies of that information may be obtained from (e) for *£ [free of charge].</p> <p>Objections or representations about the further information should be sent to the Scottish Ministers c/o Transport and Works Unit [postal and e-mail address]. Any such objection or representations MUST (i) be received by the Scottish Ministers on or before (d), (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).</p> <p>The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.</p> <p>Signed: _____</p> <p>*On behalf of: _____</p> <p>Date: _____</p> <p>Name and status of signatory: _____</p> <p>*Delete or amend as appropriate</p> <p style="text-align: center;">_____</p>	

Notes

- (a) Summarise the provisions in the draft order which are relevant to the area in which the newspaper circulates. A brief description of the works relevant to the area should be included and their location indicated.
- (b) Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.
- (c) Address in the locality where the further information may be inspected.

”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 (S.S.I. 2007/570) (“the principal Rules”). These Rules apply in relation to Scotland only.

The Rules implement the amendments to Directive 2011/92/EU of the European Parliament and of the Council on the assessment of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1) made by Council Directive 2014/52/EU (OJ L 124, 25.4.2014, p.1).

The Rules make amendments to the principal Rules as follows—

Rule 3 amends rule 2 (interpretation) of the principal Rules.

Rule 4 inserts a new rule 2A into the principal Rules to set out the requirements for an environmental impact assessment.

Rule 5 substitutes rule 3(3) of the principal Rules for the purpose of adding further bodies to be consulted regarding the draft environmental impact assessment report (“the EIA report”).

Rule 6 substitutes rule 5 of the principal Rules to set out—

- the circumstances in which an application under section 4 for an order under the Transport and Works (Scotland) Act 2007 (“the Act”) which authorises works etc. will require an environmental impact assessment. Those circumstances are where the Scottish Ministers issue a screening decision to the effect that an environmental impact assessment is necessary or, where no such screening decision has been made, the applicant for an order under section 1 of the Act submits an EIA report to the Scottish Ministers;
- the requirements for a request for a screening decision.

Rule 7 substitutes rule 6 of the principal Rules to set out the requirements in relation to a request for an opinion of the Scottish Ministers as to the information to be included in the EIA report, referred to as a “scoping opinion”.

Rule 8 updates rule 8 of the principal Rules to refer to the EIA report.

Rule 9 substitutes rule 9 of the principal Rules to set out the requirements for an EIA report. Those requirements include—

- the information to be contained in the EIA report;
- that the EIA report is to be prepared by competent experts.

Rule 10 updates rule 11 of the principal Rules to require an applicant to send copies of the application and accompanying documents to additional consultation bodies.

Rule 11 inserts new provision into rule 12 of the principal Rules to provide, among other matters, that the Scottish Ministers must ensure that information in relation to an application for an order authorising works etc. under section 1 of the Act, including in particular the EIA report, is published on a website maintained by the Scottish Ministers for the purpose of ensuring that information relating to such applications is publicly available.

Rule 12 updates rule 14 of the principal Rules to include a reference to the EIA report.

Rule 13 amends rule 15 to update the power of the Scottish Ministers to, if necessary, direct an applicant for an order under section 1 of the Act to provide supplementary information in order to ensure the completeness and quality of the EIA report. Where supplementary information is provided under rule 15, the Scottish Ministers must publish any further information relevant to the EIA report on the website referred to above.

Rule 14 inserts a new rule 15A into the principal Rules to provide that where an assessment under the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716) is required in addition

to an environmental impact assessment the Scottish Ministers must ensure, where appropriate, that the assessments are co-ordinated.

Rule 15 inserts a new rule 26 into the principal Rules to provide that the Scottish Ministers must exercise their duties under those Rules in an objective manner which avoids any conflict of interest.

Rule 16 substitutes a new schedule 1 into the principal Rules. This schedule sets out detailed information which must, if relevant, be included in the EIA report.

Rule 17 substitutes a new Form 5 in schedule 2 of the principal Rules. The new Form 5 contains an updated reference to the EIA report.

Rule 18 amends schedule 5 of the principal Rules to make similar provision to that which is outlined above except in relation to proposals under section 6 of the Act for the Scottish Ministers to make an order under the Act of their own volition.

Rule 19 contains transitional and savings provisions.

A business and regulatory impact assessment has been prepared in relation to these Rules and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF.

© Crown copyright 2017

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

£6.00

S2017031424 03/2017 19585

<http://www.legislation.gov.uk/id/ssi/2017/74>

ISBN 978-0-11-103501-6



9 780111 035016