

TRANSPORT AND WORKS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2: Miscellaneous Amendments

Section 24: Amendment of Roads (Scotland) Act 1984

71. Subsection (2) through the insertion of new section 143A obligates the Scottish Ministers to seek an affirmative resolution from the Scottish Parliament in respect of an order authorising any future road developments that constitute a national development or when the Scottish Ministers so direct. The new section 143A provides the definition of a national development and identifies the instruments to be subject to affirmative procedure. It also provides that an order which seeks to amend, revoke or re-enact an instrument laid before the Scottish Parliament will only be subject to affirmative procedure if the Scottish Ministers so direct.
72. Subsection (4) ensures that when an order is subject to affirmative procedure the public are to be informed that the instrument cannot come into force until and unless approval is given by the Scottish Parliament.
73. Subsection (5) inserts a new paragraph 1A to Schedule 2 of the Roads (Scotland) Act 1984 which details the publicity arrangements of any roads order or scheme that has been approved by the Scottish Parliament.

Section 25: Amendment of Harbours Act 1964

74. Provisions within this section transpose Council Directive [2003/35/EC](#) (otherwise known as the Public Participation Directive) and significantly amend Schedule 3 to the Harbours Act 1964. A revised Schedule 3 to the 1964 Act is attached for information with the new text inserted in italics and noting where text has been repealed. A transposition schedule is attached for information.
75. Subsection (2) inserts in section 44 of the Harbours Act 1964 subsection (6) which provides a definition of the “public concerned” to include a non-governmental organisation promoting environmental protection and confirms at subsection (7) that such a party has a legitimate right to raise a challenge to a harbour revision or empowerment order authorising a project likely to have a significant effect on the environment.
76. Subsection (3) through the insertion of new section 54A obligates the Scottish Ministers to seek an affirmative resolution from the Scottish Parliament in respect of an order authorising any future harbour developments that constitute a national development. It also provides the Scottish Ministers within subsection (2)(b) with the discretion to seek Parliamentary approval, by means of an affirmative procedure, for any other harbour scheme. Section 54A(5) provides that when a harbour order seeks to amend, revoke or re-enact an instrument laid before the Scottish Parliament the order will be

subject to affirmative procedure only if the order authorises work constituting a national development different to that authorised by the original instrument, or the Scottish Ministers so direct.

77. Subsection (5)(a) provides for definitions in paragraph 1 of Schedule 3. Subsection (5)(b) and (c) provide for access to information and the making of representations. Subsection (5)(d) introduces a new paragraph into Part 1 of Schedule 3 to the Act, paragraph 10A, which provides for the notification procedure in those instances when the Scottish Ministers receive additional information that will have a bearing on their consideration of the likely environmental effects of a proposed project.
78. The insertion at sub-paragraph (1D) of paragraph 18 adds a harbour authority to the list of statutory objectors, but only where they are not the applicant, in respect of an application for a harbour revision order.
79. The insertions to sub-paragraph (2) of paragraph 24 and the insertion of the new sub-paragraph (3) provide details of the publicity arrangements for a harbour order including those approved by the Scottish Parliament. The insertions to sub-paragraph (4) of paragraph 28 add a harbour order authority to the list of statutory objectors in respect of a harbour revision order where the order is to be made by the Scottish Ministers of their own motion. The addition of the new sub-paragraph (3) of paragraph 31 provides details of the publicity arrangements for a harbour revision order made by the Scottish Ministers of their own motion.
80. The new sub-paragraph (3A) in paragraph 32 recognises that a harbour authority cannot be an objector in the case of an empowerment order since the purpose of a harbour empowerment order is to establish a harbour authority.
81. Subsection (6) makes changes to paragraph 3 of Schedule 4 so as to ensure that the objections of a harbour authority, as a statutory objector, to a harbour re-organisation scheme cannot be dealt with by means of correspondence; there must always be a statutory right to an inquiry or hearing.

Section 26: Amendment of Pilotage Act 1987

82. This section introduces a new section 1A into the Pilotage Act 1987 to improve notification provisions and permit the Scottish Ministers in those cases where there are unresolved objections to a proposal to determine the procedure for detailed consideration of those objections.
83. The new subsection (1) details the notification provisions. The Scottish Ministers must before making an order give notice by advertisement in at least one newspaper (subsection (1)(a)(i)) and the Edinburgh Gazette (subsection (1)(a)(ii)). The Scottish Ministers are also obliged to provide a copy to any other persons that might be affected. This may include parties who are engaged in shipping movements but who may not have access to a local newspaper or the Edinburgh Gazette.
84. The new subsection (2) details the notification provisions that are to apply when a harbour authority which is not a competent harbour authority (i.e. a harbour authority which has statutory powers in relation to the regulation of shipping movements and the safety of navigation within its harbour and whose harbour falls wholly or partly within an active former Pilotage district) makes an application to the Scottish Ministers to be a competent harbour authority. The notification provisions require the harbour authority to give notice by advertisement in at least one newspaper (paragraph (a)(i)) and the Edinburgh Gazette (paragraph (a)(ii)). The harbour authority is also obliged to provide a copy to any other persons that might be affected. This may include parties who are engaged in shipping movements but may not have access either to a local newspaper or the Edinburgh Gazette.
85. The new subsection (3) provides details of the content of the notice. The notice must contain a summary of the proposed order, the place where a copy may be inspected and

*These notes relate to the Transport and Works (Scotland) Act
2007 (asp 8) which received Royal Assent on 14 March 2007*

specify a time period of at least 42 days during which affected persons will have an opportunity to make an objection.

86. The new subsection (4) provides a statutory right for a public local inquiry or hearing when a harbour authority affected by the proposal raises an objection. Subsection (5) provides that any other objections unless they are considered frivolous or trivial are to be considered at an inquiry, hearing or by written representation. Subsections (6) and (7) state that certain provisions of the Local Government (Scotland) Act 1973 which apply in respect of an inquiry under that Act will apply in similar circumstances to an inquiry or hearing carried out under the Pilotage Act 1987.
87. Following consideration of a report from an inquiry or hearing or of written representations, as the case may be, the Scottish Ministers under the new subsection (8) may either make the order as proposed, make the order with modifications or decide not to make the order.
88. The new subsection (9) provides for public notification that the order has been made. It also places a duty to notify those persons who received a copy of the original notice that was issued under the provisions of subsections (1) and (2).
89. The new subsection (10) provides for the detail that must be contained within the notice notifying the making of an order.

Section 27: Amendment of Transport (Scotland) Act 2001

90. This section inserts new subsections (1A) and (1B) into section 70 of the Transport (Scotland) Act 2001.
91. New subsection (1A) allows the Scottish Ministers to make a grant or loan in respect of the purchase of eligible properties the use or enjoyment of which are or may be seriously affected by the construction or operation of a development authorised under section 1 of this Act or by a development authorised through earlier legislation but which, had it been in place at the time, could have been authorised by provisions within this Act.
92. New subsection (1B) provides a definition of qualifying interest which comprises not only an interest in domestic property but also relevant agricultural property and in certain cases in other non-domestic property