



Transport and Works (Scotland) Act 2007

2007 asp 8

PART 1

ORDERS AUTHORISING WORKS ETC.

Miscellaneous

16 Validity of orders under section 1

- (1) If a person aggrieved by an order under section 1 desires to question the validity of it, or of any provision contained in it, on the ground—
 - (a) that it is not within the powers of this Act, or
 - (b) that any requirement imposed by or under this Act has not been complied with,that person may, within the period of 42 days beginning with the relevant day, make an application for the purpose to the Court of Session.
- (2) In subsection (1), “the relevant day” is—
 - (a) where the order is one in respect of which a notice requires to be published under section 13(5)(a), the day on which that notice is published, or
 - (b) in any other case, the day on which the notice required by section 12(1)(c) is published.
- (3) On an application under subsection (1), the Court—
 - (a) may by interim order suspend the operation of the order, or of any provision contained in it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings, and
 - (b) if satisfied that the order or any provision contained in it is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement imposed by or under this Act, may quash the order or any provision contained in it, either generally or in so far as it affects any property of the applicant.
- (4) Subject to subsections (1) and (3), an order under section 1 shall not, either before or after it has been made, be questioned in any legal proceedings whatever.

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17 Powers of certain bodies to apply for, or object to, order under section 1

- (1) A body which has power to promote or power to oppose a Bill (whether a Bill in the Scottish Parliament or in the Parliament of the United Kingdom) also has power to apply for, or as the case may be to object to, an order under section 1.
- (2) Where the power of a body to promote or oppose a Bill is subject to any condition then, subject to subsection (3), the corresponding power conferred on the body by subsection (1) is subject to the like condition.
- (3) In construing subsection (2) for the purposes of its application to the British Waterways Board, the requirements for consent in section 17(1) and (1A) of the Transport Act 1962 (c. 46) (power to promote and oppose Bills) are to be disregarded.
- (4) Subsection (1) is without prejudice to any right of a person other than a body described in that subsection to apply for, or object to, an order under section 1.

18 Access to land

- (1) The Scottish Ministers may by order make provision as regards—
 - (a) authorising prospective applicants for orders under section 1 to enter land for purposes connected with construction, operation or works to which the order would relate, or
 - (b) entry by the Scottish Ministers to land for purposes connected with construction, operation or works to which an order made by virtue of section 6 would relate.
- (2) Without prejudice to the generality of paragraphs (a) and (b) of subsection (1)—
 - (a) if provision is made under paragraph (a) of that subsection it may include provision as to—
 - (i) conditions that must be met before authorisation is applied for,
 - (ii) the manner of applying for authorisation,
 - (iii) intimation that authorisation has been applied for,
 - (iv) affording an opportunity to make representations as respects the authorisation applied for (and may include provision affording any person who has made such representations an opportunity to be heard),
 - (v) conditions that must be met before authorisation is granted,
 - (vi) the attaching of conditions and limitations to any authorisation granted,
 - (vii) a right of appeal to the sheriff in relation to an authorisation granted or in relation to any decision to attach, or decline to attach, conditions or limitations to an authorisation granted,
 - (viii) the recovery of compensation for, or the making good of, any damage done in entering, or in consequence of entering, land,
 - (ix) the resolution of any dispute as to compensation payable for damage done in entering, or in consequence of entering, land,
 - (x) a right of entry to land being conferred by the sheriff by warrant where entry to which a person is entitled by virtue of this section is refused or in such other circumstances as the Scottish Ministers consider appropriate, and

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- (xi) an offence of wilfully obstructing a person upon whom a right of entry has been so conferred,
- (b) if provision is made under paragraph (b) of that subsection it may include provision as to—
 - (i) intimation that entry is proposed,
 - (ii) affording an opportunity to make representations as respects the proposed entry (and may include provision affording any person who has made such representations an opportunity to be heard),
 - (iii) conditions and limitations in relation to the proposed entry,
 - (iv) a right of appeal to the sheriff in relation to the proposed entry,
 - (v) the recovery of compensation for, or the making good of, any damage done in entering, or in consequence of entering, land,
 - (vi) the resolution of any dispute as to compensation payable for damage done in entering, or in consequence of entering, land,
 - (vii) a right of entry to land being conferred by the sheriff by warrant where entry to which a person is entitled by virtue of this section is refused or in such other circumstances as the Scottish Ministers consider appropriate, and
 - (viii) an offence of wilfully obstructing a person upon whom a right of entry has been so conferred, and
- (c) the purposes mentioned in paragraphs (a) and (b) of that subsection may include inspecting or surveying land to be entered or any other land.

19 Acquisition of land by agreement

- (1) Subject to subsection (4), a promoter may acquire land by agreement if—
 - (a) the enjoyment of it is seriously affected by—
 - (i) the carrying out of works authorised by an order under section 1, or
 - (ii) the operation of a transport system or inland waterway authorised by such an order, and
 - (b) the interest of the seller is a qualifying interest.
- (2) A promoter who proposes to carry out on relevant land works authorised by an order under section 1 may acquire land by agreement if—
 - (a) the enjoyment of it will be seriously affected by—
 - (i) the carrying out of the works, or
 - (ii) the operation of the transport system or inland waterway to which the works relate, and
 - (b) the interest of the seller is a qualifying interest.
- (3) An interest is a qualifying interest for the purposes of subsections (1) and (2) if it is an interest such as is mentioned in subsection (2) of section 100 of the 1997 Act (interests qualifying for protection under blight provisions), references in that section to the date of service of a notice under section 101 of that Act being taken, for those purposes, to be references to the date on which the agreement for the acquisition is made.
- (4) The power conferred by—
 - (a) subsection (1)(a)(i) is not exercisable unless the agreement for the acquisition is made before the date on which operation of the transport system or inland waterway to which the works relate commences, and

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- (b) subsection (1)(a)(ii) is not exercisable unless the agreement for the acquisition is made no later than one year after that date.
- (5) This section applies only where a promoter would not, apart from this section, have power to acquire land as mentioned in subsections (1) and (2).
- (6) In this section—
 - “the 1997 Act” means the Town and Country Planning (Scotland) Act 1997 (c. 8),
 - “promoter” means any person authorised by an order under section 1 to carry out works or operate a transport system or inland waterway,
 - “relevant land” means land such as is mentioned in Schedule 14 to the 1997 Act.
- (7) In the Land Compensation (Scotland) Act 1973 (c. 56)—
 - (a) at the end of section 24(6) (acquisition of land in connection with public works) add “or authorised by an order under section 1 of the Transport and Works (Scotland) Act 2007”, and
 - (b) at the end of section 25(5) (execution of works in connection with public works) add “or any works authorised by an order under section 1 of the Transport and Works (Scotland) Act 2007”.

20 Service of notices and other documents

- (1) A notice or other document required or authorised to be served for the purposes of this Act—
 - (a) may be served by post,
 - (b) may be delivered, or
 - (c) in a case where an address for service of a notice or document of the kind in question (or of notices or documents generally) using electronic means has been given by the person on whom the notice or document is to be served, may be transmitted by electronic means in accordance with the conditions set out in subsection (2).
- (2) The conditions are that the notice or other document is—
 - (a) capable of being accessed by the person mentioned in subsection (1)(c),
 - (b) legible in all material respects, and
 - (c) in a form sufficiently permanent to be used for subsequent reference,
 and for the purposes of paragraph (b), “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served as a notice or document in printed form.
- (3) Where the person on whom a notice or other document to be served for the purposes of this Act is—
 - (a) a body corporate other than a limited liability partnership, the notice or document is duly served if it is served on the secretary or clerk of that body,
 - (b) a limited liability partnership, the notice or document is duly served if it is served on a member of the partnership,
 - (c) a partnership other than a limited liability partnership, the notice or document is duly served if it is served on a member of the partnership or on a person having the control or management of the partnership business.
- (4) For the purposes of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish

Parliament) Order 1999 (S.I. 1999/1379) (references to service by post) as it applies for the purposes of this section, the proper address of any person in relation to the service on the person of a notice or document under subsection (1) is, if an address for service has been given by the person, that address and otherwise—

- (a) in the case of service by virtue of—
 - (i) paragraph (a) of subsection (3), the registered or principal office of the body corporate,
 - (ii) paragraph (b) of that subsection, the registered or principal office of the partnership,
 - (iii) paragraph (c) of that subsection, the principal office of the partnership, and
 - (b) in any other case, the person’s last known address at the time of service.
- (5) Where for the purposes of this Act a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the person’s name or address cannot be ascertained after reasonable inquiry, the notice may be served by—
- (a) addressing it to the person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (b) leaving it either—
 - (i) in the hands of a person who is, or appears to be, resident or employed on the land, or
 - (ii) conspicuously affixed to some building or object on the land.
- (6) This section—
- (a) is not to be taken to exclude the employment of any method of service not expressly provided for by it, and
 - (b) in particular, is without prejudice to any provision made by virtue of section 4(2)(c) or 6(3)(c) in relation to service of notice on such persons as are mentioned in sub-paragraphs (ii) to (iv) of paragraph 3(b) of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (service of notice on holder of personal real burden, on owner of benefited property or on owners' association).

21 Annual report

- (1) The Scottish Ministers are, by 1st. October in each year after the year of Royal Assent, to prepare a report on—
- (a) such orders as were, in the relevant period, made (or by virtue of section 11(2) (c) not made) under section 1,
 - (b) such applications as were made by virtue of section 4 (whether in the relevant period or before it commenced) and remained current as at the date that period ended, and
 - (c) such proposals as were (whether in the relevant period or before it commenced) the subject of a notice published under section 6(3)(b) and remained current as at that date.
- (2) Without prejudice to the generality of subsection (1), the report is to include—
- (a) details of each order, and as the case may be of—
 - (i) each applicant and application, or
 - (ii) each proposal,

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- (b) where the Scottish Ministers have—
 - (i) dealt with an application,
 - (ii) made, or determined not to make, an order notice of the proposal for which was published under section 6(3)(b), or
 - (iii) made a direction under section 13(1)(c) or (7)(c),
 a summary of the reasons which they had for doing as they did,
 - (c) in relation to each order made during the relevant period (or which the Scottish Ministers have, during that period, determined not to make)—
 - (i) on an application, the length of time which elapsed between the application being made and the date on which the order (or determination) was made, or
 - (ii) other than on an application, the length of time which elapsed between notice of the proposal to make the order being published under section 6(3)(b) and that date.
- (3) The Scottish Ministers are to lay a copy of the report before the Parliament and are to publish the report.
- (4) In this section the “relevant period” means the period of 12 months which ends on 31st. July in the year in which the report is prepared (except that in the case of the report first prepared under this section, it means the period which begins on the day on which section 1 comes into force and ends on 31st. July in the year in which the report is prepared).

22 Orders under the Light Railways Act 1896

No order is to be made under the Light Railways Act 1896 (c. 48) by the Scottish Ministers on or after the day on which section 1 (of this Act) comes into force.

23 Interpretation

- (1) In this Part, except where the context otherwise requires—
- “carriageway” has the same meaning as in the Roads (Scotland) Act 1984 (c. 54),
 - “guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way),
 - “inland waterway” includes both natural and artificial waterways, and waterways within parts of the sea, but not any waterway managed or maintained by a person who is a harbour authority (within the meaning of the Harbours Act 1964 (c. 40)) in relation to the waterway,
 - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
 - “railway” means a system of transport employing parallel rails which—
 - (a) provide support and guidance for vehicles carried on flanged wheels, and
 - (b) form a track which either is of a gauge of at least 350 millimetres or crosses a carriageway (whether or not on the same level),
 but does not include a tramway,
 - “road” means a road within the meaning of section 107 of the New Roads and Street Works Act 1991 (c. 22), together with land on the verge of a road or between two carriageways,

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“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels, and
- (b) are laid wholly or mainly along a road or in any other place to which the public has access (including a place to which the public has access only on making a payment),

“trolley vehicle system” means a system of transport by vehicles constructed or adapted for use on roads without rails under electric power transmitted to them by overhead wires (whether or not there is in addition a source of power on board the vehicles),

“vehicle” includes mobile traction unit.

- (2) References in this Part to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.