



# Transport and Works (Scotland) Act 2007

## 2007 asp 8

### PART 1

#### ORDERS AUTHORISING WORKS ETC.

##### *Procedure for making orders*

#### **12 Publicity for making or refusal of order**

- (1) As soon as practicable after making a determination under subsection (2) of section 11, the Scottish Ministers are—
- (a) where the determination is made by virtue of paragraph (a) of subsection (1) of that section, to give notice of it to the person who applied for the order,
  - (b) to give notice of the determination—
    - (i) to every person who made an objection which, in accordance with section 9(3), was referred to an inquiry or hearing,
    - (ii) to the local authority for any area, to the National Park authority for any National Park and to the Transport Partnership created under section 1(1)(b) of the Transport (Scotland) Act 2005 (asp 12) for any region, in which the proposals contained in the application, or as the case may be in the draft order prepared under section 6(3)(a), are or were intended to have effect,
    - (iii) if the order relates, or as the case may be would have related, to the construction or operation of a railway, to [<sup>F1</sup>the Office of Rail and Road], and
    - (iv) to such other persons (if any) as may be prescribed, and
  - (c) to publish in the Edinburgh Gazette a notice of the determination.
- (2) Any notice—
- (a) under subsection (1) must give such information as to the terms of the order made [<sup>F2</sup>or contained in the draft statutory instrument laid before the Parliament] (or where the determination was not to make an order, of the order applied for or as the case may be which the Scottish Ministers had proposed to make) as they consider appropriate and in particular must, where

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the determination is made by virtue of paragraph (a) of section 11(1), state the name and address of the person who applied for the order,

- (b) under subsection (1)(a) or (b)—
  - (i) must include the terms of the determination,
  - (ii) must state the reasons for the determination and the considerations upon which it is based,
  - (iii) must give information as to what provision was made for public participation in the decision making upon which the determination is based, and
  - (iv) must give information regarding the right to challenge the validity of the determination and the procedures for doing so, and
- (c) under subsection (1)(c)—
  - (i) must include the terms of the determination,
  - (ii) must state that notice given under subsection (1)(a) or (b) contains such statement and information as is mentioned in sub-paragraphs (ii) to (iv) of paragraph (b), and
  - (iii) must give information as to where a copy of that notice may be obtained<sup>[F3]</sup>, and—
  - (iv) where subsection (4) applies, must state a website address where the Scottish Ministers have made information referred to in this subsection and subsection (4) available]

[<sup>F4</sup>(3) Where the order is subject to the affirmative procedure by virtue of section 13, any notice giving information under sub-paragraph (iv) of subsection (2)(b) must intimate that the order cannot be made unless the Parliament, by resolution, approves the draft statutory instrument containing the order.]

[<sup>F5</sup>(4) Where a determination under section 11 relates to an application or proposal to which this subsection applies, in addition to the matters referred to in subsection (2), any notice under subsection (1) must include the following—

- (a) a description of the proposed works which are the subject of the order,
- (b) a summary of—
  - (i) the environmental information, and
  - (ii) the results of the consultations and information gathered following on from the publication of any reports and additional information received by the Scottish Ministers pursuant to rules made under sections 4 or 6, and how those results, in particular comments received from an EEA State, have been incorporated or otherwise addressed,
- (c) if the determination is to make the order—
  - (i) any conditions to which the determination is subject,
  - (ii) the reasoned conclusion by the Scottish Ministers on the significant effects of the proposed works on the environment, taking into account the results of the examination of the environmental information which may be required in terms of rules made under section 4 or 6,
  - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date,
  - (iv) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment, and
  - (v) a description of any monitoring measures required under section 20A.

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- (5) For the purposes of subsection (4)(c)(iii) the reasoned conclusion is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the proposed works on the environment.
- (6) In subsection (4) “environmental information” means—
- (a) any environmental impact assessment report as required by rules made under section 4 or section 6, and
  - (b) any—
    - (i) additional information required by rules made under section 4 or 6,
    - (ii) representations made by any body required by any such rules to be invited to make representations, and
    - (iii) representations made by any other person about the environmental effects of the implementation of the order applied for under section 4 or proposed under section 6.]
- (7) Subsection (4) applies to any application under section 4 for an order, and any proposal to make an order by virtue of section 6, where the order would authorise works or other projects in a class—
- (a) listed in Annex I to the relevant directive, or
  - (b) listed in Annex II to that directive which are, by virtue of their nature, size or location, likely to have significant effects on the environment.
- (8) In relation to any challenge to an order under section 1 authorising such works or other projects as are referred to in subsection (7), [<sup>F6</sup>any non-governmental organisation promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom is deemed to—
- (a) have an interest for the purposes of Article 11(1)(a) of the relevant directive, and
  - (b) rights capable of being impaired for the purposes of Article 11(1)(b) of that directive].
- [<sup>F7</sup>(8A) For the purpose of subsection (8), Article 11(1) of the relevant directive is to be read as if the reference to—
- (a) “Member States” were a reference to “The Scottish Ministers”,
  - (b) “a Member State” were a reference to “Scotland”.]
- (9) In subsections (7) [<sup>F8</sup>, (8) and (8A)], references to the relevant directive are to [<sup>F9</sup>Council [Directive 2011/92/EU](#) (as amended by Council [Directive 2014/52/EU](#))] on the assessment of the effects of certain public and private projects on the environment.
- (10) The Scottish Ministers are to send a copy of any notice—
- (a) given under subsection (1), and
  - (b) required by subsection (4) to contain a [<sup>F10</sup>notice] such as is provided for in that subsection,
- to each person [<sup>F11</sup>and body] mentioned in subsection (11).
- [<sup>F12</sup>(11) The persons and bodies are those who—
- (a) made an objection in accordance with rules made under section 8 in relation to the environmental information referred to in subsection (4), being an objection which was not referred to an inquiry or hearing in accordance with section 9(3);

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- (b) made representations in accordance with rules made under section 8 in relation to the environmental information referred to in subsection (4);
  - (c) are consultation bodies prescribed in terms of rules made under section 4 or 6;
  - (d) are a body who was notified of any environmental impact assessment report as required by rules made under section 4, or prepared in connection with the publication of a notice of a proposal to make an order by virtue of section 6, by reason of that body’s specific environmental responsibilities or local and regional competencies.]
- (12) Where by virtue of—
- (a) paragraph (a) of section 11(1) the Scottish Ministers make a determination under section 11(2), the person who applied for the order is to publish in a local newspaper circulating in the area (or in each of the areas) in which the proposals contained in the application,
  - (b) paragraph (b) of section 11(1) the Scottish Ministers make such a determination, they are to publish in a local newspaper circulating in the area (or in each of the areas) in which the proposals contained in the draft order prepared by them under section 6(3)(a),
- are or were intended to have effect a notice which includes the terms of the determination and a copy of the statement and information published under subsection (2)(c).
- (13) Subject to subsection (14), as soon as practicable after the making of an order under section 1 [F<sup>13</sup>(or where the order is subject to the affirmative procedure by virtue of section 13, after a draft of the statutory instrument containing the order is laid before the Parliament)], the person who applied for the order is (or, where the order is made by virtue of section 6 [F<sup>14</sup>, or is to be made by virtue of that section if the Parliament approves the draft statutory instrument containing it], the Scottish Ministers are)—
- (a) to lay before the Parliament a copy of the order, and of any plan or book of reference prepared in connection with the application (or as the case may be in connection with the proposal to make the order),
  - (b) to deposit with each relevant authority in whose area works authorised by the order are to be carried out—
    - (i) a copy of the order [F<sup>15</sup>or where the order is subject to the affirmative procedure a draft of the statutory instrument containing the order], and
    - (ii) a copy of each of those other documents (or of so much of the documents as is relevant to the carrying out of those works in the area of the authority in question).
- (14) Subsection (13)(a) does not apply where the order is [F<sup>16</sup>subject to the affirmative procedure by virtue of section 13].
- (15) Where a plan or book of reference is revised before the order is made, the reference in subsection (13)(a) is to the later (or as the case may be the latest) version.
- (16) A relevant authority are (or as the case may be is) to make available for inspection by any person, free of charge at all reasonable hours, any documents deposited under subsection (13)(b) with the authority.
- (17) In subsections (13)(b) and (16), “relevant authority” means—
- (a) a local authority, or
  - (b) a National Park authority.

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(18) In subsection (1)(b)(iv), “prescribed” means prescribed under this subsection by the Scottish Ministers by order.

#### Textual Amendments

- F1** Words in s. 12(1)(b)(iii) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 11(b)**
- F2** Words in s. 12(2)(a) inserted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(a)**
- F3** S. 12(2)(c)(iv) and word inserted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(a)** (with reg. 7)
- F4** S. 12(3) substituted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(b)**
- F5** S. 12(4)-(6) substituted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(b)** (with reg. 7)
- F6** Words in s. 12(8) substituted (31.12.2020) by [The Environmental Impact Assessment \(Transport\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/415\)](#), regs. 1, **3(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** S. 12(8A) inserted (31.12.2020) by [The Environmental Impact Assessment \(Transport\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/415\)](#), regs. 1, **3(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in s. 12(9) substituted (31.12.2020) by [The Environmental Impact Assessment \(Transport\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/415\)](#), regs. 1, **3(4)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in s. 12(9) substituted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(d)** (with reg. 7)
- F10** Word in s. 12(10)(b) substituted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(e)(i)** (with reg. 7)
- F11** Words in s. 12(10) inserted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(e)(ii)** (with reg. 7)
- F12** S. 12(11) substituted (16.5.2017) by [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(S.S.I. 2017/138\)](#), regs. 1, **5(f)** (with reg. 7)
- F13** Words in s. 12(13) inserted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(d)(i)**
- F14** Words in s. 12(13) inserted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(d)(ii)**
- F15** Words in s. 12(13)(b)(i) inserted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(d)(iii)**
- F16** Words in s. 12(14) substituted (11.11.2011) by [The Interpretation and Legislative Reform \(Scotland\) Act 2010 \(Consequential, Savings and Transitional Provisions\) Order 2011 \(S.S.I. 2011/396\)](#), arts. 1, **20(e)**

#### Modifications etc. (not altering text)

- C1** Ss. 12-14 applied (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), **ss. 52(2)(3)**, 70(1)
- C2** S. 12(4): power to disapply conferred (5.12.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments Relating to Harbours, Highways and Transport\) Regulations 2017 \(S.I. 2017/1070\)](#), reg. 1(1), **Sch. 5 para. 3(1)(a)**

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**Commencement Information**

**II** S. 12 in force at 28.12.2007 by [S.S.I. 2007/516](#), **art. 2**

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