

EXECUTIVE NOTE

THE TRANSPORT AND WORKS (SCOTLAND) ACT 2007 (APPLICATIONS AND OBJECTIONS PROCEDURE) RULES 2007 SSI/2007/570

1. The above instrument would be made in exercise of the powers conferred by sections 4, 5(1), 6(3), (4) and (5), 8(1), (5) and (8) and 28(6) of the Transport and Works (Scotland) Act 2007 (asp 8). The instrument is subject to draft affirmative resolution procedure.

Policy

2. The Act places the Scottish Ministers at the heart of an order-making process for the authorisation of the construction or operation, or matters connected with the construction and operation of a guided transport system or an inland waterway. These rules set out how a person may make an application for an order, what that application should contain and how objections are raised.

3. The policy intention is that the Scottish Ministers should be able to promote actively transport developments authorised under the Act, and section 6 of the Act provides that power. For reasons of consistency and to ensure that the authorisation process operates in a manner that has the confidence of those directly affected by proposed developments as well as the wider public the Scottish Ministers will be required when acting as a promoter to follow rules similar to those that apply to other applicants.

Pre-application activity

4. It is important that transport proposals (and indeed subsequent decisions) are well-founded, appropriately appraised, informed by policy and developmental priorities, take due account of environmental considerations and importantly are subject to participative democratic scrutiny.

5. An applicant should engage with those whose land or interest in land is directly affected by the proposed development as well as with relevant statutory bodies. In respect of environmental concerns the promoter will be required to liaise with relevant bodies so as to obtain the information necessary to produce an environmental impact assessment required under the rules.

6. The rules transpose Council Directive 85/337/EEC, known as the Environmental Impact Assessment Directive (a Directive “on the assessment of the effects of certain public and private projects on the environment”) as amended by Council Directive 97/11/EC and as further amended by Article 3 of Council Directive 2003/35/EC, known as the Public Participation Directive which is a Directive “providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council directives 85/337/EEC and 96/61/EC”. Article 3 of the Public Participation Directive amends Directive 85/337/EEC in regard to securing improved public participation in development consent processes. A Transposition Note showing how Directive 85/337/EEC (as amended) has been implemented within the Transport and Works procedures is attached to this note and for assistance web-

links to Council Directives Directives 85/337/EEC1, 97/11/EC2 and 2003/35/EC3 are footnoted.

Pre-application scrutiny

7. Once the promoter has collated all the information in support of their application they will be obliged, not later than six weeks before making their formal application, to subject their information to pre-application scrutiny by the Scottish Ministers.

8. The intention is to ensure that comments and queries on the provisions within the draft order and the environmental statement are raised at an early stage. This scrutiny will be conducted without prejudice to consideration of the merits of the scheme and any eventual decision of the Scottish Ministers. As part of the scrutiny the environmental statement will be issued for review to Scottish Natural Heritage, the Scottish Environment Protection Agency and Historic Scotland so that they may comment on the final draft proposals of the promoter. (These parties, though, will have been engaged with the promoter at a much earlier stage and may have been required to provide environmental information to the promoter).

9. It is believed that a better understanding of proposals at the outset will save time and effort for all involved in the process (namely the applicant, those affected by the proposal and the Scottish Ministers (as the determining body)), by reducing instances of future potential process delay.

Application

10. The policy objective is to have all relevant information available at the time of application so that once the information set is in the public domain all parties can make, if necessary, informed comment. To that end an applicant on the making of an application will be required to provide a comprehensive set of information including a draft of the proposed order, any relevant sections and plans, an environmental statement, details of any persons directly affected by the proposal (e.g. those subject to compulsory purchase) and a report summarising the consultations undertaken (and with whom).

11. The rules provide for the Scottish Ministers to charge a fee for the making of an application for an order of £10,000, if the applicant is a public or private sector body, or £1000 if they are a charity or are seeking to promote a project which relates to a heritage railway. One of the purposes of having a fee is to apply a financial hurdle so as to prevent ill-thought or vexatious applications from coming forward.

Objection Period

12. Once an application has been made it will trigger a specified period of not less than 42 days within which any person may make an objection or representation. To ensure that all parties are appropriately informed the rules require an applicant to undertake extensive publicity in respect of their application by providing or making available copies of the application and supporting documentation to owners, occupiers and those with a specified

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:HTML>

² <http://ec.europa.eu/environment/eia/full-legal-text/9711.htm>

³ <http://www.cefic.be/Files/Publications/4.pdf>

interest in property as well as statutory bodies, depositing copies in libraries and other publicly accessible buildings and publishing notices in newspapers giving information to the wider public on how they can obtain information about the application and make representations.

13. The rules, in accordance with Council Directive 85/337/EEC (as amended) in respect of Member States, ensure that where any application contains proposals that are likely to have significant effects on the environment of other parts of the United Kingdom, the Isle of Man, the Channel Islands or a member state of the European Economic Area⁴, then, if required, appropriate notice is given or documents and information are sent.

14. The Scottish Ministers are obliged to provide the applicant with a copy of each objection or representation received and may also, upon request, provide any other person with a copy of objections or representations made by others.

Handling of Objections

15. If upon the expiry of the period for submitting objections or representations no objections have been received (or objections are made but later withdrawn) and the application is therefore unopposed, the Scottish Ministers by virtue of section 11 of the Act may proceed to determine whether the order should be made. The absence of objections does not mean, though, that the Scottish Ministers will necessarily make the order in the form applied for (or at all). As the determining authority, the Scottish Ministers must still be satisfied that the provisions in the draft order are appropriate and justified

16. If any objections are received – excluding any which are withdrawn or which appear to the Scottish Ministers to be frivolous or trivial or to relate to matters of compensation – the Scottish Ministers can consider the objections in one of three possible ways: by causing a public inquiry; by affording the opportunity of a hearing; or by exchanging written representations between parties. An inquiry or hearing must be held if a “statutory objector” informs the Scottish Ministers that they want their objection to be referred to an inquiry or hearing. A statutory objector for the purposes of these rules is an objector who falls into one of the following categories: a local authority; a National Park authority; a regional Transport Partnership; a navigation authority; Network Rail Infrastructure Limited; or a person subject to compulsory acquisition of their interest in land. An inquiry or hearing will be conducted in accordance with the Transport and Works (Scotland) Act 2007 (Inquiries and Hearings Procedure) Rules 2007.

17. Where there are no statutory objectors the Scottish Ministers must decide whether it would be appropriate to determine the order application by way of written representations, or whether the case would be more suitably resolved by way of an inquiry or hearing.

18. Where the written representations procedure is used, the Scottish Ministers must notify the applicant and all those who have made (and not withdrawn) objections or other representations. The applicant must submit to the Scottish Ministers representations on each objection by not later than 28 days after the date of the notification. Not later than 7 days after receiving the applicant's written representations, the Scottish Ministers must serve on

⁴ The European Economic Area includes the member states of the European Community plus Norway, Iceland and Lichtenstein.

each objector a copy of those representations that relate to their objection. Objectors will be afforded the opportunity of replying to the Scottish Ministers within 21 days.

19. Where the Scottish Ministers receive no reply from an objector within the prescribed period they may proceed to a decision on the order application, unless the Scottish Ministers consider that they do not have sufficient information for the purposes of that decision. Where, however, the Scottish Ministers receive a reply from an objector, a copy of this must be served on the applicant within 7 days of receipt. If the applicant wishes to send to the Scottish Ministers further written representations on any reply from an objector, the applicant must do so within 14 days of receipt of that reply.

20. At the end of that period of 14 days, the Scottish Ministers may proceed to a decision on the order application, unless the Scottish Ministers consider either that they do not have sufficient information for the purposes of that decision, or that any further representations received from the applicant raise a new matter which may affect that decision and on which an objector should be given the opportunity to comment.

21. When the Scottish Ministers receive any information or comments they must consider whether or not to allow a further opportunity for the applicant or objector to consider that information or those comments. If the Scottish Ministers do allow such an opportunity, they must specify the period within which any further comments are to be made. In order to ensure a suitably disciplined and efficient process, the Scottish Ministers would not allow a protracted series of exchanges if it appeared that any further representations were merely repeating earlier points or raising irrelevant issues, and therefore not adding to consideration of the case.

22. The written representations process ends when the Scottish Ministers are satisfied that the information provided is sufficient to enable a properly considered decision to be reached on the application and that all parties have had a fair opportunity to consider and comment on that information.

23. Once the exchanges of written representations are concluded, the Scottish Ministers will proceed to determine the application.

Consultation

24. A formal written consultation on the draft secondary legislation of Transport and Works (Scotland) Act 2007 was conducted between 2 July and 31 August 2007⁵. Nineteen responses were received. A summary of responses was published on 27 September 2007 on the Scottish Government website⁶.

25. In the light of the consultation the rules strengthen the consultation requirements placed on applicants with a greater requirement to engage with a wider range of consultees in respect of particular types of works in particular circumstances. The rules also reflect concerns expressed by respondents to the rationale of fee setting for applications and apply

⁵ <http://www.scotland.gov.uk/Publications/2007/07/consultation>

⁶ <http://www.scotland.gov.uk/Publications/2007/09/Transport>

different level of fees for different classes of applicant (£10,000, if the applicant is a public or private sector body, and £1000 if they are a charity or are seeking to promote a project which relates to a heritage railway).

Financial Effects

26. A regulatory impact assessment for secondary legislation under the Transport and Works (Scotland) Act 2007 has been produced and a copy accompanies this note.

Transport Directorate
November 2007

Transport and Works (Scotland) Act 2007

Composite regulatory impact assessment of rules and regulations under the Transport and Works (Scotland) Act 2007.

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

Transport and Works (Scotland) Act 2007 (Inquiries and Hearings Procedure) Rules 2007

Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007

27. Title of proposals

27.1 This is a composite regulatory impact assessment of rules and regulations under the Transport and Works (Scotland) Act 2007: those being rules and regulations being Applications and Objections Procedure Rules 2007, Inquiries and Hearings Procedure Rules 2007 and Consents under Enactments Regulations 2007.

28. Purpose and intended effect

(i) Objectives

28.1 The rules and regulations made under the Transport and Works (Scotland) Act 2007 (the “TAWS”) and as detailed above set out the procedures for the making of applications for Orders under Part 1 of the TAWS and for making and considering objections and representations in respect of those applications, and assimilation of procedures for other consents.

(ii) Background

28.2 TAWS Orders are the means of authorising the construction and operation of railways, tramways, other guided transport systems, trolley vehicle systems and canals. Applications are made by promoters of schemes (either public authorities or private concerns) to the Scottish Ministers. The Scottish Ministers may also at their own volition promote schemes.

28.3 The nature and size of schemes could vary considerably. They could range from a small scale heritage railway through to a major heavy rail scheme, with light rail, trams and guided bus schemes somewhere in between.

(iii) Rationale for government intervention

28.4 In previous years promoters of schemes were required to seek a Private Bill of the Scottish Parliament. That mechanism was viewed by many, including the Scottish Parliament as being unwieldy, time-consuming and inappropriate. The TAWS remedies procedural deficiencies identified in the Private Bill process in respect of transport related developments. The TAWS also replaces the need for applications for a Light Railway Order – the current mechanism for authorising a heritage railway.

28.5 Since the Applications and Objections Procedure Rules provide a regulatory framework for making and considering applications for TAWS Orders and subjecting

them to public scrutiny, the statutory procedures must operate effectively, efficiently and fairly if decisions are to be taken promptly, while being sound and well-informed. The rules fully respect human rights and ensure that the environmental effects of schemes are to be properly considered.

28.6 The rules place great emphasis on process efficiency; an efficient process is in everybody's interests. It is important for promoters, who will be keen to get on with implementing their schemes. It is also important for objectors to schemes, who are faced with uncertainty and possible blighting of their property while a decision is awaited. Moreover, in terms of the general public interest, an efficient TAWS approval system can help to ensure that important improvements to Scotland's public transport infrastructure are delivered within a reasonable time-scale.

28.7 The Inquiries and Hearings Procedure Rules regulate the procedures prior to, the conduct of proceedings during and the procedures after an inquiry or hearing held under section 10 of the TAWS. The objective is to allow statutory objectors an opportunity, which is both fair and public, for a detailed examination by means of an inquiry or hearing of an application by an independent reporter. By having rules there is conformity and understanding for all parties taking part in the examination process.

28.8 In respect of the regulations relating to Consents under Enactments the policy objective is to ensure that permissions and consents that may be required for a particular development can, as far as possible, be considered and granted at the same time as the TAWS Order for the proposed development is being considered and approved, and in so doing make for an efficient process.

29. Consultation

(i) Within government

29.1 Internal consultation within the Scottish Government has been extensive throughout the Administration's various directorates, including transport, planning, environment and justice. Consultation has also been undertaken with Scottish Government agencies, namely, Historic Scotland and Transport Scotland.

(ii) Public consultation

29.2 A consultation paper⁷ was published on the Scottish Government's website on 4 July 2007 and invited views by 31 August 2007. A wide range of organisations were notified of the consultation exercise. These included all Local Authorities, both National Park Authorities, every regional transport partnership, all relevant Government agencies, business and environment interests as well as legal firms and representative bodies that expressed an interest during the passage of the TAWS.

29.3 Nineteen responses were received to the consultation. A summary of all responses was published on 27 September 2007 on the Scottish Government website⁸. In the light of the consultation the Applications and Objections Procedure Rules were

⁷ <http://www.scotland.gov.uk/Publications/2007/07/consultation>

⁸ <http://www.scotland.gov.uk/Publications/2007/09/Transport>

strengthened to improve the consultation requirements placed on applicants with a greater requirement to consult with a wider range of consultees in respect of particular types of works in particular circumstances. As a consequence of respondents' comments it was decided that a fee should be applied to an application for a TAWS Order.

29.4 The Inquiries and Hearings Procedure Rules did not stimulate much comment as consultees were content with the proposals, and therefore no substantive changes were required or made.

29.5 Some respondents to the consultation suggested that other consent regimes should be considered for incorporation within the Consents under Enactments Regulations. Whilst the Scottish Government welcomes endorsement of its approach to incorporate appropriate consents, directions and licences within the authorisation process, so as to provide a comprehensive one-stop shop, it had originally considered and subsequently rejected for legal and operational reasons many of the additional consents proposed by the respondents. The Scottish Government, however, intends to assess the effectiveness of the legislation in addressing the proposed set of consents and then in the light of review is prepared to consider the future inclusion, if appropriate, of other consents, directions and licences in due course.

29.6 The Scottish Government is very grateful to all those who have provided comments and observations in response to the consultation exercise.

30. Options

30.1 Two options have been identified:

Option 1 - Do nothing. Clearly this is not a realistic option; rules and regulations provide a structure that ensures conformity and understanding for all parties engaged in the process.

Option 2 – Provide a set of rules and regulations that ensure efficient, fair and consistent procedures that deliver swift decisions but without sacrificing the quality of decisions and the ability of interested parties to make their views known. This is the preferred option.

31. Costs and benefits

31.1 The bodies and individuals likely to be affected are those that can make applications (which might include, for example, local authorities or Network Rail); those whose interests are affected by a proposed development (which might include, for instance, owners and occupiers of land); those who are required to be consulted on matters arising from a proposed application (which might include bodies such as Scottish Natural Heritage or the Scottish Environment Protection Agency etc.); and the Scottish Ministers who will take an active role in administering the process.

31.2 The rules and regulations will affect everyone directly involved in the TAWS application process as well as the interests of the public at large and are intended to

benefit all interested parties, whether they are for or against a proposed project or scheme.

31.3 The Applications and Objections Rules have been designed to ensure equity and fairness in the TAWS procedures by ensuring that all interested parties, regardless of their status and their interest in the application, are given a full and fair opportunity to participate in the consideration of applications, in accordance with the principles of natural justice and the need to arrive at well informed decisions. All parties will continue to be treated equally fairly, and the Rules will deliver benefits to everyone involved in the TAWS application process. It is not considered that the Rules will bring disproportionate benefits or have disproportionate effects on any particular groups. (Neither, for the reasons given above, will the new Rules have any race or gender equality impacts).

31.4 The changes in procedures are intended to benefit everyone involved in consideration of a TAWS application. As explained above more efficient procedures will be in the interests of applicants and all other interested parties, whether they be for or against the scheme, as prompt decisions will reduce delay and uncertainty - including the possible blighting effects of proposed schemes on local residents and businesses.

31.5 From the point of view of the wider public interest, TAWS decisions are likely in general to lead to quicker delivery of infrastructure projects which can be important to the economic, social and environmental well-being of the country. Quicker decisions may also, potentially, reduce the costs of implementing schemes (many of which are largely publicly funded).

31.6 It is estimated that, all other things being equal, the changes could lead to savings on decision times compared to the Private Bill process, although much will continue to depend upon the quality of applications.

31.7 At the same time, the rules and regulations will not in any way lessen the very careful consideration that is to be given to the economic, social and environmental impacts of each individual application. On the contrary, when compared to the previous Private Bill process the fuller information that will need to be provided with applications, and the increased provision for public participation, will help to ensure that such issues are fully examined.

31.8 It is therefore considered that, in overall terms, the measures under the TAWS process to improve the efficiency and effectiveness of the authorisation of developments are capable of bringing significant economic, social and environmental benefits. Although these benefits are likely to vary so much from case to case (depending upon the size and nature of the project, the savings achieved in a particular case and a range of other factors) that they cannot readily be quantified.

31.9 It is recognised that the measures contained within the Applications and Objections Rules are liable to result in some extra compliance cost for promoters at the front end of the application process, as they will need to provide fuller information at the early stage. However, as the provision of fuller information at the beginning of the process, as part of a more 'front-loaded' approach, is designed to reduce the need

for promoters to spend much time later on in responding to queries from the Scottish Government (or in clarifying matters with objectors) the impact of those measures on promoters should, in cost terms, be broadly neutral.

31.10 The measures should not result in any extra costs on objectors or other interested parties. Whether, and to what extent, objectors and others choose to involve themselves in the TAWS process is, of course, very much a matter for them. It should be noted that the £20 charge which was also applied to any person raising an objection to a Private Bill proposal will not apply under the rules.

31.11 It is acknowledged that under the Private Bill process charitable concerns were charged £1250 and other promoters £5000 for the making of an application with the possibility of additional charges being applied for such matters as publishing the Bill and the holding of an inquiry. The Applications and Objections Rules provide for a fee (payable to the Scottish Ministers) of £10,000 to be applied, in respect of an application for a TAWS order by a public or private sector body, and £1000 if they are a charity or are seeking to promote a project which relates to a heritage railway.

31.12 The purpose of a fee is twofold, firstly, to obtain, in part, recompense for administering a consent process and secondly to apply a financial hurdle so as to prevent ill-thought or vexatious applications from coming forward.

31.13 In the Financial Memorandum to the then Bill fee levels were not discussed; though it was stated that it was likely that promoters would be charged a fee that would meet the cost of holding an inquiry conducted by the reporter's unit.

31.14 The legislation reflects the policy position of applying an up-front fee rather than seeking reimbursement of costs at the conclusion of the process. By having an up-front fee there are two clear benefits: one, promoters know from the outset what the charges will be and can build them into their financial plans and, two, such an approach alleviates the need for a bureaucracy to seek re-imburement of any Scottish Government costs from the promoter.

31.15 It is acknowledged that such an approach could conceivably mean that actual costs borne by the Scottish Government may prove greater than the fee level which the promoter is expected to pay since the likely duration of an inquiry will not be known when the application is made. It is believed, however, that this is a pragmatic position in that it seeks to minimise administrative costs whilst maintaining the principle of having the promoter contributing, at least in part, to the expenses generated by the process.

31.16 In terms of the overall picture, when account is taken of the potential benefits of quicker decisions arising from the implementation of the rules and regulations, as referred to above, it is considered that the new procedures should bring significant net cost benefits. As previously mentioned, though, these cannot readily be quantified as the size and nature of TAWS cases and the time taken to go through the TAWS process are liable to vary enormously.

32. Small/Micro Firms Impact Test

32.1 Small businesses, in the form of heritage railway operators, are likely to be applicants for TAWS Orders, although such applications will probably be of a small scale and relatively uncontentious (for example, a heritage railway company may seek authority to have a disused railway line transferred to them and to carry out some consequential works). More typically, small businesses are likely to be involved in TAWS cases as objectors to schemes, because of concerns about the potential effect of the construction or operation of a scheme on their business.

32.2 As the Applications and Objections Rules will apply equally to all applicants and to all persons who wish to object to, or make other representations about, applications, the above appraisal of costs and benefits will similarly apply to small businesses. For those who wish to object to or support a scheme, the procedures will not in any way prevent the opportunity for them to make their views known. Indeed, the requirement for promoters to provide comprehensive information in support of their applications and to engage in extensive consultation should make them well-placed to make informed comments.

32.3 For those who are promoting a heritage railway interest or hold charitable status the cost impacts of the proposals will be in terms of (a) having to provide fuller information with an application but (b) lower application fees. In regard to (a), the amount of extra information required is likely to be relatively small for a heritage railway scheme. Moreover, the impact of any extra cost involved at the application stage will be outweighed by savings later and by the benefit of receiving prompt decisions. In regard to (b), there is a decrease in fees. Those promoting a heritage railway interest would have required a Light Railway Order, which applied a fee of £5000 plus £1000 for each 0.5 hectares, or part thereof, in excess of 0.5 hectares if compulsory purchase powers were required and £750 plus £250 for each 0.5 hectares, or part thereof in excess of 1 hectare where either land is owned by the applicant or an access arrangement is in place with the land owner. As advised in paragraph 5.11 charitable concerns were charged £1250 under the Private Bill process: an application under the TAWS by a charity or in respect of a heritage railway interest will be £1000.

33. Legal Aid Impact Test

33.1 Assistance by Way of Representation and Civil Legal Aid are not generally available for the type of inquiry that will be conducted under the TAWS and therefore there will be no impact on the Legal Aid fund.

34. "Test Run" of business forms

34.1 Copies of forms to be used under the TAWS procedure were included within the consultation exercise and met with approval. A minor modification to improve clarity on some forms has been made in the light of comments from consultees.

35. Competition assessment

35.1 It is not considered that the rules raise any competition issues as the rules apply equally to all applicants and any other persons engaged in the process.

36. Enforcement, sanctions and monitoring

36.1 Responsibility for ensuring compliance with statutory procedures rests with the TAWS Unit, established within the Transport Directorate.

36.2 There are no criminal sanctions for non-compliance with the procedure rules. However, a failure to comply with the statutory procedures could lead to a legal challenge in the Courts, if it resulted in substantial prejudice to a party's interests. Furthermore, promoters will be aware that any failure on their part to comply with the statutory requirements (such as those relating to the making of applications and serving of notices) could, if this results in corrective action having to be taken, lead to unnecessary delays in processing their application.

36.3 The operation of the new procedures will be closely monitored by the TAWS Unit and the rules and regulations will be subject to ongoing monitoring and review.

37. Implementation and delivery plan

37.1 The intention is that the rules and regulations will come into force on 28 December 2007. However, in order to ensure continuity, any outstanding applications which have not been determined under the Light Railways Order procedures at that date will continue to be subject to those procedures.

37.2 The Scottish Government has implemented the rules and regulations at the earliest practicable date in order to ensure that the desirable efficiency improvements over the Private Bill process are introduced as soon as possible.

37.3 Full guidance will be given on the new procedure on its introduction by way of comprehensive material, which is to be published and also made available on the Scottish Government's web site. The Scottish Government has also produced a much shorter, user-friendly guide to procedures, which is mainly for the benefit of potential objectors. The TAWS Unit will also be conducting workshops with key stakeholders prior to and shortly after commencement in order to familiarise those parties with the new procedure.

38. Post-implementation review

38.1 Under section 21 of the TAWS the Scottish Ministers are obligated to prepare a report by 1 October each year reviewing the operation of the preceding year up to an including 31 July.

38.2 That report will be published and a copy will be laid before the Scottish Parliament. It is also expected that the relevant Scottish Parliamentary committee will review the report and, if appropriate, call the Scottish Ministers to provide comment.

38.3 TAWS Unit administrators have included within their work programme the need to conduct a formal review at least every 3 years on the effectiveness and appropriateness of the rules although if there were any significant defects in the rules these would be addressed urgently.

39. Summary

39.1 The Applications and Objections Rules are intended to provide a welcome benefit to all parties concerned, whether they are promoters, objectors or those with other interests in schemes by strengthening consultation, the provision of relevant information and a straightforward approach to the making and handling of objections and representations.

39.2 The Inquiries and Hearings Procedure Rules seek to provide a swift, comprehensive and independent examination of issues raised by an application by means of an inquiry or hearing.

39.3 The Consents under Enactments Regulations ensure that permissions and consents that may be required for a particular development can as far as possible be considered and granted at the same time as the order for that particular development is being considered and approved and in so doing make for an efficient process.

In summary:

- There will be a modest increase in staff costs to the Scottish Government in administering the TAWS process and the provision of reporters to conduct inquiries and hearings. Additionally, Historic Scotland will be consulted on a promoter's environmental impact assessment as well, should it arise, providing an assessment to inform the granting of listed building consent or conservation area consent. The impact, however, on Historic Scotland will be minimal.
- There may be a modest increase in costs to promoters in having to engage more comprehensively in consultation and publicity of proposals, and provide a wider range of information than would have been the case under the Private Bill process. The increased investment at the start of the process ought to reduce the number of objections to an application, and generate greater certainty and direction around the formal examination and assessment of the proposal.
- The impact on Scottish Natural Heritage and the Scottish Environmental Protection Agency will be cost neutral. These bodies will be called on in relation to a promoter's environmental impact assessment. However the provision and scrutiny of the promoter's statement on environmental information in advance of the making of an application will reduce their engagement over the life-span of the project.
- The impact on other statutory bodies who must be consulted by the promoter according to the type of application will not be significant. The extent to which these bodies engage with the promoter can be largely determined by their own internal priorities and resources. Whilst the Scottish Government appreciates the limited resources of some of these bodies, particularly voluntary/membership-based bodies, because of their specific function, the Scottish Government does not expect their input to be required on a regular or frequent basis and therefore does not expect significant demands to be placed on them in terms of engaging with applicants.
- The impact on local authorities and National Park authorities will similarly not be significant for the various reasons as outlined above.
- In respect of the impact on the public the Scottish Government has provided a process that provides the public with meaningful opportunities to influence the design and development of the proposed project. Although the decision to pay for

legal representation is entirely voluntary, the Scottish Government expects that the conduct of inquiries and hearings as set out in the Inquiries and Hearings Procedure Rules will reduce the inclination to require or acquire legal representation.

40. Declaration and publication

'I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.'

Signed by the Responsible Minister

Minister for Transport, Infrastructure and
Climate Change

Date

Contact

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TRANSPOSITION NOTE

TRANSPORT AND WORKS (SCOTLAND) ACT 2007 ("The Act")

TRANSPORT AND WORKS (SCOTLAND) ACT 2007 (APPLICATIONS AND OBJECTIONS PROCEDURE) RULES 2007 ("The Rules")

The instrument implements provisions required to comply with Council Directive 85/337/EEC, as amended by Council Directive 97/11/EC and as further amended by Article 3 of Council Directive 2003/35/EC.

Council Directive 85/337/EEC, known as the Environmental Impact Assessment Directive, is a Directive "on the assessment of the effects of certain public and private projects on the environment".

Council Directive 97/11/EC amends 85/337/EEC to clarify, supplement and improve the rules on the environmental assessment procedure, in order to ensure that the Directive is applied in an increasingly harmonized and efficient manner.

Article 3 of Council Directive 2003/35/EC, known as the Public Participation Directive, amends the public participation and justice requirements of Council Directive 85/337/EEC.

The table shows how the articles of Council Directive 85/337/EEC, as amended, have been transposed to the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007.

ARTICLE	OBJECTIVE	IMPLEMENTATION
1.1	This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.	The Directive is transposed by virtue that the Transport and Works (Scotland) Act 2007 establishes a mechanism for the authorisation by the Scottish Ministers of orders related to, or to matters connected with, the construction or operation of railways, tramways, other guided transport systems, trolley vehicle systems and inland waterways.
1.2	For the purposes of this Directive: 'project' means: <ul style="list-style-type: none">• the execution of construction works or of other installations or schemes,• other interventions in the natural surroundings and	It is not considered necessary to define "project" within the Rules. The Act provides a definition of those transport systems and of an inland waterway, the operation or construction of which may be authorised by an order under the Act.

	<p>landscape including those involving the extraction of mineral resources;</p> <p>'developer' means:</p> <p>the applicant for authorization for a private project or the public authority which initiates a project;</p> <p>'development consent' means:</p> <p>the decision of the competent authority or authorities which entitles the developer to proceed with the project.</p> <p>“the public” means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;</p> <p>“the public concerned” means: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.</p>	<p>The Rules do not use the term “developer”, instead the term “applicant” is applied which within the context of the Rules is considered to be more appropriate for a person seeking an order authorising particular matters.</p> <p>The Act provides for consent to be given by means of an order by the Scottish Ministers, therefore the generic term “development consent” is not used.</p> <p>It is not considered necessary to define “the public” within the Rules. Whilst there is no specific definition the term “person” is read within legislation of the Scottish Parliament as being of “one or more natural or legal persons”.</p> <p>It is not considered necessary to define “the public concerned” within the Rules. Those whose interests are directly affected by the project proposed within the application are required to be notified under rule 13 or under rule 12(3).</p> <p>Provision has been made for relevant non-governmental organisations to be fully engaged in the process. Rules 5(7)(e), 6(4)(e) and Schedule 5, paragraph 5 to the Rules require the Scottish Ministers to consult relevant non-governmental bodies, provided that they are registered charities, when considering a screening decision or providing a scoping opinion in respect of an applicant’s environmental statement.</p>
1.3	<p>The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.</p>	<p>The Scottish Ministers are the competent authority in respect of the provisions under the Act. Section 11(2) to the Act provides for determination by the Scottish Ministers to make or refuse an order and section 12(2)(b)(ii) to the Act places a duty on the Scottish Ministers to state</p>

		publicly their reasons and the considerations, including if appropriate an environmental impact assessment, that they have taken into account.
1.4	Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.	The provision is fully transposed through the UK government's equivalent legislation as national defence is a reserved matter.
1.5	This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.	The Directive has accordingly been transposed to apply to applications for orders made under the Transport and Works (Scotland) Act 2007.
2.1	Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.	<p>Rule 5(1) ensures that any applicant for a project that is of a type mentioned in Annex I of the Directive shall be required to produce an environmental impact assessment before consideration can be given to the granting of an order.</p> <p>Rule 5(1) also ensures that any project that is of a type mentioned in Annex II of the Directive shall also be required to produce an environmental impact assessment before consideration can be given to the granting of an order unless the applicant under Rule 5(2) the applicant is advised by the Scottish Ministers that an environmental impact assessment is not required in relation to those works.</p> <p>Schedule 5, paragraph 4(a) to the Rules imposes a requirement for the Scottish Ministers to produce an environmental impact assessment in respect of a project that they are promoting which is of a type mentioned in Annex I of the Directive.</p> <p>Schedule 5, paragraph 4(b) to the Rules imposes a requirement for the Scottish</p>

		Ministers to produce an environmental impact assessment in respect of a project that they are promoting which is of a type mentioned in Annex II of the Directive and which they consider would be likely to have a significant effect on the environment.
2.2	The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.	Environmental impact assessment has been integrated within the rules applying to an application or proposal for an order made under section 1 of the Act.
2.2a	Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control.	The Rules do not make provision for this Article.
2.3	<p>Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.</p> <p>In this event, the Member States shall:</p> <p>(a) consider whether another form of assessment would be appropriate;</p> <p>(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;</p> <p>(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption</p>	It is unnecessary for the Rules to accommodate this article since they do not provide for an alternative form of assessment to the normal environmental impact assessment.

	<p>granted, and provide it with the information made available, where applicable, to their own nationals.</p> <p>The Commission shall immediately forward the documents received to the other Member States.</p> <p>The Commission shall report annually to the Council on the application of this paragraph.</p>	
3	<p>The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:</p> <ul style="list-style-type: none"> • human beings, fauna and flora; • soil, water, air, climate and the landscape; • material assets and the cultural heritage; • the interaction between the factors mentioned in the first, second and third indents. 	<p>Rule 9, in conjunction with Schedule 1 to the Rules, makes provision for the information that an applicant is required to include in the environmental statement. Schedule 1 provides a copy of the information at Annex IV of the Directive (which contains the information described in the indents in Article 3).</p> <p>Schedule 5 paragraph 16(f) to the Rules ensures that the Scottish Ministers, in respect of a project that they are promoting, take into account the selection criteria set out in Annex IV to the Directive.</p>
4.1	<p>Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.</p>	<p>Rule 5(1) ensures that an applicant shall be required to produce an environmental impact assessment, in respect of any project that is of a type mentioned in Annex I of the Directive, before consideration can be given to the granting of an order. Schedule 5, paragraph 4 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
4.2	<p>Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine</p>	<p>Rule 5(3) provides for a case-by-case examination of any proposed projects so as to determine whether the project should be subject to an assessment in</p>

	<p>through:</p> <p>(a) a case-by-case examination,</p> <p>or</p> <p>(b) thresholds or criteria set by the Member State</p> <p>whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.</p> <p>Member States may decide to apply both procedures referred to in (a) and (b).</p>	<p>accordance with the Directive. Schedule 5, paragraph 5 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
4.3	<p>When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.</p>	<p>Rule 5(11) places the Scottish Ministers under an explicit duty to take into account the selection criteria set out in Annex III to the Directive. Schedule 5, paragraph 7 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
4.4	<p>Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.</p>	<p>Rule 5(14) places the Scottish Ministers under a duty to publicise notice of their determination. That determination is also publicised under rule 8(2)(h). Schedule 5, paragraphs 8 and 16(f) to the Rules provide for equivalent provisions in respect of a proposal by the Scottish Ministers.</p>
5.1	<p>In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:</p> <p>(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific</p>	<p>Rule 9 (with Schedule 1 to the Rules) provides that applicants provide within their environmental statements the information as specified in Annex IV of the directive unless under Rule 9(3) the Scottish Ministers have given a “scoping opinion”. Schedule 5, paragraph 9 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>

	<p>characteristics of a particular project or type of project and of the environmental features likely to be affected;</p> <p>(b) the Member States consider that a developer may reasonably be required to compile this information having regard inter alia to current knowledge and methods of assessment.</p>	
5.2	<p>Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.</p> <p>Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.</p>	<p>Rule 6 provides for an applicant making a request for an opinion as to the information to be provided in the environmental statement. The Scottish Ministers, as the competent authority, may not give an opinion until they have consulted the applicant and the authorities as described in rule 6(4). Schedule 5, paragraph 9 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
5.3	<p>The information to be provided by the developer in accordance with paragraph 1 shall include at least:</p> <ul style="list-style-type: none"> • a description of the project comprising information on the site, design and size of the project, • a description of the measures envisaged in order to avoid, reduce and, if possible, remedy 	<p>Rule 9 transposes the Directive's requirements and describes the information that must be included within an environmental statement. Schedule 5, paragraph 16(f) to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>

	<p>significant adverse effects,</p> <ul style="list-style-type: none"> • the data required to identify and assess the main effects which the project is likely to have on the environment, • an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects, • a non-technical summary of the information mentioned in the previous indents. 	
5.4	<p>Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.</p>	<p>Scottish Public authorities, under regulation 5 of the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520), are under a duty to make available environmental information on request. Rule 4 provides for other persons who are not Scottish Public authorities but may hold relevant information to provide that information. Schedule 5, paragraph 41 to the Rules applies rule 4 in relation to a proposal by the Scottish Ministers to make an order.</p>
6.1	<p>Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be</p>	<p>Rule 11(3) and (4) applies Schedule 3, column 2 to the Rules and provides a list of those to be served copies of an application (which includes an environmental statement). Rule 19 provides for objections to be conveyed to the Scottish Ministers on the information supplied within the application. Rule 24 provides for representations to be conveyed to the Scottish Ministers on the information supplied within the application. Schedule 5, paragraph 18 to the Rules applies Schedule 3, column 2 to the Rules and provides a list of those to be served copies of an application (which includes an environmental statement) in respect of a proposal by the Scottish</p>

	<p>forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States</p>	<p>Ministers. Schedule 5, paragraph 19 to the Rules provides for any body not mentioned in column (2) of Schedule 3 to the Rules to be served copies of an application (which includes an environmental statement) in respect of a proposal by the Scottish Ministers.</p>
<p>6.2</p>	<p>The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:</p> <p>(a) the request for development consent;</p> <p>(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;</p> <p>(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time Schedule for transmitting comments or questions;</p> <p>(d) the nature of possible decisions or, where there is one, the draft decision;</p> <p>(e) an indication of the availability of the information gathered pursuant to Article 5;</p> <p>(f) an indication of the times and places where and means by which the relevant information</p>	<p>Section 4(3)(b) provides the power to the Scottish Ministers to make rules as to the publicity to be given to any environmental information provided in relation to an application.</p> <p>The Directive has been transposed into the Rules in the following manner:</p> <p>(a) Rule 12 provides for publicity arrangements in respect of an application for an order. Rule 12(1) provides for notification within the Edinburgh Gazette and rule 12(2) a notice within a newspaper. Rule 12(3) provides for specific bodies to receive a notice from the applicant informing them of the application. Rule 12(5) provides for information to be publicly available in a library or other such publicly accessible building.</p> <p>(b) Rule 12 provides for publicity arrangements advising whether the application is subject to an environmental assessment.</p> <p>(c) Rule 12 provides that the prescribed notices published under the rule contain all the information required by indent (c).</p> <p>(d) The draft order submitted by the applicant under rule 8(1)(a) is copied to parties as designated within rule 11 and is subject to the publicity regime as set out in rule 12.</p> <p>(e) Rule 12(9) requires an applicant to supply on request a copy of the application and any documents.</p> <p>(f) Rule 12(2) provides that a notice</p>

	<p>will be made available;</p> <p>(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.</p>	<p>within a newspaper should be in form of Form 1 of Schedule 1 to the Rules which provides details of the time and places where information will be made available. Rule 12(3) also provides that similar information should be provided to those named within column 2 of Schedule 4 to the Rules on whom an application has been served.</p> <p>(g) Rule 12(4)(f) requires that the notices provided include details of the procedure for making objections and representations. Schedule 5, paragraphs 11, 12 and 14 to the Rules provide for equivalent provision in respect of a proposal by the Scottish Ministers.</p>
6.3	<p>Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:</p> <p>(a) any information gathered pursuant to Article 5;</p> <p>(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;</p> <p>(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.</p>	<p>(a) Rule 11 and rule 12 ensure that relevant information is made available at or as soon as possible after the application is made. Schedule 5, paragraphs 11, 12 and 14 to the Rules provide for equivalent provision in respect of a proposal by the Scottish Ministers.</p> <p>(b) Rule 11 provides that the applicant's statement of environmental information is copied at the time of the application to specified parties and under rule 12 other persons are advised that the application and any document accompanying the application (such as the statement of environmental information) can be obtained from the applicant. Schedule 5, paragraphs 14 and 19 to the Rules provide for equivalent provision in respect of a proposal by the Scottish Ministers.</p> <p>(c) Rule 15 ensures that, where the Scottish Ministers consider it necessary, any further environmental information provided by the applicant or by any other person is publicised in the same way as the initial environmental information. Schedule 5, paragraph 31 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish</p>

		Ministers.
6.4	The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.	Section 8 provides the power to the Scottish Ministers to make rules as to the making of objections and representations to an application (including the statement of environmental information). The Directive has been transposed into the Rules at rule 12 which provides that the notice of application should include details of the timescales for the making of objections and representations and the address to which they should be sent. Schedule 5, paragraphs 11, 12, 13, 23 and 24 to the Rules provide for equivalent provision in respect of a proposal by the Scottish Ministers.
6.5	The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.	The arrangements for noticing are covered within rule 12, which provides the publicity arrangements in respect of an application. Schedule 5, paragraphs 23 and 24 to the Rules provide for equivalent provision in respect of a proposal by the Scottish Ministers.
6.6	Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.	It is considered that the time-frames within the Transport and Works (Scotland) Act 2007 (Inquiries and Hearings Procedure) Rules 2007 regulating the procedures prior to and the conduct of proceedings during an inquiry or hearing are reasonable. It is also considered that reasonable time-frames apply to the procedure under rule 22 applying to written representations.
7.1	Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is	It is considered that rule 14 meets the requirement of the Directive. Schedule 5, paragraph 30 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.

	<p>intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, <i>inter alia</i>:</p> <p>(a) a description of the project, together with any available information on its possible transboundary impact;</p> <p>(b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.</p>	
7.2	<p>If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).</p>	<p>It is considered that rule 14(6) meets the requirement of the Directive. Schedule 5, paragraph 30 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
7.3	<p>The Member States concerned, each insofar as it is concerned, shall also:</p> <p>(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly</p>	<p>(a) It is considered that rule 14(7)(a) meets the requirement of the Directive. Schedule 5, paragraph 30(2)(d) to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p> <p>(b) It is considered that rule 14(7)(b) meets the requirement of the Directive.</p>

	<p>affected; and</p> <p>(b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.</p>	<p>Schedule 5, paragraph 30 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.</p>
7.4	<p>The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.</p>	<p>It is considered that rule 14(7)(c) and (d) meets the requirement of the Directive.</p>
7.5	<p>The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision making procedures referred to in Article 2(2) for the project.</p>	<p>Compliance with this article is outside the scope of the rules.</p>
8	<p>The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.</p>	<p>It is considered that rule 12 meets the requirement of the Directive. Under rule 12(4) the Scottish Ministers are obliged to state publicly that they have considered the environment statement and under rule 12(2)(b)(ii) the reasons for their determination and the considerations upon which they based that determination.</p>
9.1	<p>When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make</p>	<p>It is considered that section 12(4) of the Act meets the requirement of the Directive. Section 12(2) of the Act requires decision notices to give (amongst other things) information about the public participation process. Under Section 12(6) of the Act any notice must contain,</p>

	<p>available to the public the following information:</p> <ul style="list-style-type: none"> - the content of the decision and any conditions attached thereto, — having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process, — a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects. 	<p>where necessary, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects.</p>
9.2	<p>The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article. The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.</p>	<p>It is considered that rule 14(8) meets the requirement of the Directive by placing the Scottish Ministers under a duty to inform the Member State consulted of their decision. Schedule 5, paragraph 30 to the Rules applies rule 14(8) to a proposal by the Scottish Ministers.</p>
10	<p>The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.</p> <p>Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be</p>	<p>Compliance with this article is outside the scope of the rules.</p>

	subject to the limitations in force in the Member State in which the project is proposed.	
10a	<p>Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:</p> <p>(a) having a sufficient interest, or alternatively,</p> <p>(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.</p> <p>Member States shall determine at what stage the decisions, acts or omissions may be challenged.</p> <p>What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice.</p> <p>To this end, the interest of any nongovernmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article.</p> <p>Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this</p>	<p>The procedures for challenging decisions are set out in section 16 of the Act.</p> <p>Section 12(2)(b) fulfils the requirement to ensure that practical information is made available to the public on access to administrative and judicial review procedures by obligating the Scottish Ministers to give information, within their decision notices, about the right to challenge the validity of the decision, and the procedures for doing so.</p> <p>Section 12(8) of the Act provides that for the purposes of challenging an order environmental non-governmental organisations are deemed to have an interest and to have rights capable of being impaired.</p>

	<p>Article.</p> <p>The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.</p> <p>Any such procedure shall be fair, equitable, timely and not prohibitively expensive.</p> <p>In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.</p>	
11.1	The Member States and the Commission shall exchange information on the experience gained in applying this Directive.	Compliance with this article is outside the scope of the rules.
11.2	In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).	Compliance with this article is outside the scope of the rules.
11.3	Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.	Compliance with this article is outside the scope of the rules.
11.4	On the basis of this exchange of information, the Commission shall submit to the Council	Compliance with this article is outside the scope of the rules.

	additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently coordinated manner.	
12.1	Member States shall take the measures necessary to comply with this Directive within three years of its notification .	Compliance with this article is outside the scope of the rules.
12.2	Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.	Compliance with this article is outside the scope of the rules.
Annex 1	Projects subject to Article 4(1)	It is considered that rule 5 meets the requirement of the Directive. Schedule 5, paragraph 4 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.
Annex 2	Projects subject to Article 4(2)	It is considered that rule 5 meets the requirement of the Directive. Schedule 5, paragraph 4 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.
Annex 3	Selection criteria referred to in Article 4(3)	It is considered that rule 5 meets the requirement of the Directive. Schedule 5, paragraph 4 to the Rules provides for an equivalent provision in respect of a proposal by the Scottish Ministers.
Annex 4	Information referred to in Article 5(1)	It is considered that Schedule 1 to the Rules applied by rule 9(2) meets the requirement to the Directive. Schedule 5, paragraph 16(f) to the Rules provides an equivalent provision in respect of a proposal by the Scottish Ministers.