
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 200

**The Transport and Works (Scotland) Act 2007
(Access to Land by the Scottish Ministers) Order 2008**

Consideration of the proposal

8.—(1) The Scottish Ministers shall, after consideration of any representations, any comments pursuant to article 6 and paragraph (5) and the report of any person appointed under article 7(1), determine—

- (a) to take entry to the relevant land to which their proposal to enter relates and, if so, the purposes in article 3(2) for which entry may be taken; or
- (b) not to take entry to that relevant land.

(2) A determination under paragraph (1) may determine to take entry to part of the relevant land to which the proposal to enter relates but not to take entry to the remainder.

(3) A determination may be subject to such conditions and limitations as the Scottish Ministers consider appropriate.

(4) Without prejudice to the generality of paragraph (3) the conditions and limitations to which a determination may be subject include—

- (a) requiring prior notice before entry is taken;
- (b) the period during which entry may be taken and restrictions as to the timing of entry including as to the days on which it may be taken;
- (c) restrictions as to the timing of undertaking any activity including as to the days on which it may be undertaken;
- (d) restrictions on entry to particular parts of the authorised land or for particular purposes;
- (e) requirements applying before, during or after entry is taken;
- (f) enabling the attendance of the owner or any tenant or occupier or their representative, if the owner or any tenant or occupier should wish it, at all times or at certain times or when performing a particular activity;
- (g) requiring notice to, and the agreement of, specified persons before undertaking a particular activity;
- (h) provision as regards the persons, vehicles, plant, materials and apparatus to which article 3(3) applies;
- (i) requiring a survey or audit of the condition of the authorised land to be completed and recorded prior to entry for the purposes permitted by the determination, or to entry for any specified purpose, commencing; and
- (j) requiring the making good of any damage done in entering or in consequence of entering the authorised land.

(5) Where a determination may be subject to conditions or limitations in the event of the determination being made, the Scottish Ministers may, where they consider it appropriate to do so—

- (a) serve a copy of those conditions or limitations on the persons likely to be concerned; and

(b) invite comments, in writing, from those persons within such period as the Scottish Ministers may specify.

(6) As soon as practicable after making a determination under paragraph (1) (including for these purposes where the Scottish Ministers determine not to take entry to all or part of the relevant land), the Scottish Ministers shall give notice of the determination, together with the reasons for it, to the owner and every tenant and occupier of the land to which the determination relates or would have related in the case of the Scottish Ministers determining not to take entry to land.

(7) Where the determination is to enter all or part of the relevant land the notice under paragraph (6) shall—

- (a) include a copy of the determination (including any conditions or limitations in relation to it);
- (b) give information regarding the right of appeal to the sheriff under article 9; and
- (c) state that an offence may be committed if entry is obstructed and the sheriff has by warrant authorised the Scottish Ministers to enter the authorised land.

(8) A determination shall have no effect—

- (a) before the expiry of the period within which an appeal to the sheriff under article 9(1) may be made; or
- (b) where an appeal under that article has been made, before the appeal is withdrawn or otherwise disposed of.