

# TRANSPORT AND WORKS (SCOTLAND) ACT 2007

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### **Part 1 – Orders Authorising Works Etc.**

##### **Power to make orders**

##### *Section 1: Orders as to transport systems and inland waterways*

8. **Section 1(1)(a)** gives the Scottish Ministers a power to authorise, by order, the construction and operation, or matters connected with the construction and operation, of the transport systems specified in the section. Section 23 provides a definition for each of the transport systems.
9. **Section 1(1)(b)** gives the Scottish Ministers a power to authorise, by order, the construction and operation of an inland waterway. An inland waterway is defined in section 23 as including both natural and artificial waterways and therefore may include rivers, lochs and canals.

##### *Section 2: Subject-matter of orders under sections 1*

10. **Section 2** provides details of the matters that can be contained within an order to provide the necessary authority to give effect to a proposed development.
11. Subsection (1) introduces schedule 1 which contains a non-exhaustive list of matters that may be contained within an order. Any matter within the proposed order would have to fall within the legislative competence of the Scottish Parliament (see section 29 of the Scotland Act 1998).
12. Subsection (2) allows an order to be made in relation to more than one scheme, system or mode of transport. This means that an order could contain details of matters that might need to take place at a number of locations in order for, for example, the creation of a system. The subsection also permits an order to contain provisions relating to more than one mode of transport.
13. In order to give effect to a particular proposal in a particular location it may be necessary to modify or amend other legislation. Subsection (3) provides the power to modify, amend or exclude any enactment relating to the purpose of the order. The provision in question under an order must be within devolved competence (see section 54 of the Scotland Act 1998) and therefore it may not be possible to modify the law on reserved matters such as the law relating to health and safety.
14. Subsection (4) enables the Scottish Ministers to include within an order any provision that they believe is necessary or expedient to give effect to an order or relevant earlier legislation.

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

15. Subsection (5) confirms that provision can be made in respect of fixed penalty notices for discharging liability for offences. Subsection (6) provides a definition of “fixed penalty notice”.
16. Subsection (7) means that a right of way cannot be extinguished unless either an alternative right of way has been or will be created, or there is no requirement for an alternative right of way.

***Section 3: Crown land***

17. **Section 3(1)(a)** enables a right over or in Crown land (not in itself being a Crown right) to be acquired through the order by compulsion with agreement from the appropriate authority. The right over or in Crown land may, for example, relate to a third party right of access over Crown land to provide access to a private dwelling. A right in Crown land can be acquired compulsorily if the interest is owned other than by the Crown as stipulated under subsection (3) and if the relevant Crown interest agrees, as set out in subsection (4).
18. Subsection (1)(b) allows a right belonging to the Crown to be affected by any provision in the Act or an order made under the Act with agreement from the appropriate authority (excluding compulsory acquisition). Subsection (1)(c) enables a third party right in land in which there is a Crown interest to be affected by section 18 of the Act which enables the Scottish Ministers to grant promoters access to land for surveying purposes in relation to a transport proposal with agreement from the appropriate authority.