

# **TRANSPORT AND WORKS (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

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

##### **Miscellaneous**

##### ***Section 16: Validity of orders under section 1***

55. This section provides details of how orders may be challenged. Subsection (1) sets out the grounds of challenge and the period of time within which a challenge can be made. Subsection (2) provides details of when the challenge period starts to run. Subsection (3) describes how the Court of Session may act in relation to any challenge made and subsection (4) confirms that any challenge can only be made within the designated 42 day period as described in subsections (1) and (2).

##### ***Section 17: Power of certain bodies to apply for, or object to, order under section 1***

56. This section clarifies the powers of certain bodies to apply for or object to an order. Subsection (1) confirms that any body which has a current power to promote or oppose a Bill whether in the Scottish Parliament or the Parliament of the United Kingdom will also have a similar power in respect of an order made under the Act. This ensures that there is no gap in the powers of such bodies.
57. Section 17 of the Transport Act 1962 was amended by the insertion of subsection (1A) by the Scotland Act 1998 (Cross Border Public Authorities)(Adaption of Functions etc.) (No 2) Order 2000 and provides that the British Waterways Board may, with the consent of the Scottish Ministers, promote Bills in the Scottish Parliament and may oppose Bills in the Scottish Parliament. Section 17(1) makes equivalent provision in respect of the UK Parliament. Section 17(3) of the Act enables the British Waterways Board to promote or object to an order without the consent of the Scottish Ministers.
58. Subsection (4) states that any other person may apply for or object to an order. The statement clarifies that the section is merely enabling in respect of the bodies covered by it and so it does not limit the powers of other persons to apply for or oppose an order.

##### ***Section 18: Access to land***

59. Subsection (1)(a) permits the Scottish Ministers to set up a regime to authorise prospective applicants to access land for the purposes of informing an application for an order.
60. There are a number of matters described in a non-exhaustive list at subsection (2) that the Scottish Ministers may cover in an order providing the access regime. These matters might include establishing criteria as to whether the prospective applicant is a fit and proper person that is acting in good faith and has a genuine reason for wishing to seek

access to the land; the manner and notification of application; and permitting the person who wishes to enter the land and the person whose land may be entered an opportunity to make representations.

61. The Scottish Ministers may consider under subsection (2)(a)(vi) attaching conditions and limitations to any authorisation. That is so as to ensure that the person entering land conducts their business in a safe and secure manner and that entry is planned in a manner that takes full cognisance of the interests that prevail on that land i.e. on agricultural land cropping and lambing times for instance would need to be factored into the times and duration of entry, similarly entry to land on which rail or other operations are conducted might mean that particular conditions of entry will apply. The Scottish Ministers may make provision within the rules for statutory undertakers who are considered worthy of special protection against the prospective promoter taking access to land on which the undertakers have apparatus.
62. Under subsection (2)(a)(x) and (b)(vii) provision may be made that if the person whose land is affected refuses entry a prospective promoter may make an application to a Sheriff for a warrant to enter the land.
63. Subsection (1)(b) permits also the Scottish Ministers by order to enter land and subsection (2)(b) describes in a non-exhaustive list matters that the Scottish Ministers may contain within an order providing such an access regime.

### ***Section 19: Acquisition of land by agreement***

64. This section enables a promoter, which includes the Scottish Ministers, of an order under section 1 to acquire a third party's land, provided that the third party enjoys a qualifying interest and where the use of the third party's land is or will be seriously affected by the carrying out of the construction or operation of the works authorised by the section 1 order.
65. Subsection (2) gives power to a promoter to acquire land by agreement in advance of works authorised by an order, whereas subsection (1) gives power once works or operations have commenced. Subsection (3) provides details of a qualifying interest which comprises not only an interest in domestic property but also in relevant agricultural and limited business premises. Subsection (4) states that the power to acquire land which is seriously affected by the construction of works cannot be exercised unless the acquisition begins before the project is brought into use and the power to acquire land which is affected by the use of the project cannot be exercised unless the acquisition is begun within one year of the project being brought into use.
66. Subsection (5) states that the power provided by section 19 only applies if a promoter does not already have the necessary power to acquire land by agreement.

### ***Section 20: Service of notices and other documents***

67. This section provides details of how a notice or a document can be served and on whom it should be served. Subsections (1)(c) and (2) set the context within which documents can be communicated electronically. Subsection (4) describes the proper address for the serving of notices by post. In those instances where the proper address cannot be ascertained and the matter relates to an interest in, or to the occupier of, land, subsection (5) provides for a notice to be addressed to either the owner or as the case may be the occupier and left with a person resident or employed on the land or affixed to a building or object on the land.

### ***Section 21 : Annual report***

68. The section places the Scottish Ministers under a duty to prepare an annual report, by 1<sup>st</sup> October each year, of the operation of the order-making process. Subsection (2) provides details of some of the matters that are to be contained within the report. Under

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

subsection (3) a copy of the report is to be laid in the Scottish Parliament as well as being published.

***Section 22: Orders under the Light Railway Act 1896***

69. The section ensures that an order for the purposes of constructing or operating a light railway that previously would have been made under the Light Railways Act 1896 can no longer be made by the Scottish Ministers under that Act.

***Section 23: Interpretation***

70. The section defines terms used within Part 1.