

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

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

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### **EXPLANATORY NOTES**

#### *Transposition Note*

#### **TRANSPOSITION OF DIRECTIVE 2003/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PUBLIC PARTICIPATION ON THE EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT.**

#### *Harbours*

This transposition note concerns only the requirements under Article 3 of the Public Participation Directive relating to the assessment of the environmental effects of those projects which are likely to have significant effects on the environment as per Article 1 of the Environmental Impact Assessment Directive (Council Directive [85/337/EEC](#) as amended by [97/11/EC](#)).

The table shows how provisions of Article 3 of the Public Participation Directive have been transposed by the Transport and Works (Scotland) Act 2007 into the Harbours Act 1984.

<i>Relevant Articles of the Public Participation Directive</i>	<i>Provision of the Transport and Works Act 2007</i>	<i>Effect of New Provision</i>
Article 3(1) contains the definition of “the public” for the purposes of Article 3, being “one or more natural or legal persons, and in accordance with national legislation or practice, their associations, organisations and groups”.	It is not considered necessary to define “the public” in the terms of the Article 3(1). The distinction has already existed in the Directive even though the terms have not been previously defined. This therefore does not require transposition.	No new provision required.
Article 3(1) also contains the definition of “the public concerned” for the purposes of Article 3, being “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		

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protection and meeting any requirements under national law shall be deemed to have an interest”.		
Article 3(2) requires Member States to decide, on a case by case basis, if so provided under 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 to be fully transposed through the UK government’s equivalent legislation as national defence is a reserved matter.	No provision required
Article 3(3)(a) requires Member States to consider whether another form of assessment would be appropriate where a project may be exempted under Article 3(2).	The Harbours Act 1964 makes no provision for exemption from EIA so it is not necessary to transpose these amendments.	No provision required
Article 3(3)(b) requires Member States to make available to the public concerned the information obtained under other forms of assessment referred to in 3(3) (a), the information relating to the exemption decision and the reasons for granting it.		
Article 3(4) replaces Article 6, paragraphs 2 and 3 of the EIA Directive by requiring that: “4(2) the public shall be informed, whether by public notices or other 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: (a) the request for development consent	Section 25(5) inserts new paragraphs 10(2) (ca) and 10A and amends 10(2)(f) and 10(4) and 15(b) of Schedule 3 to the Harbours Act 1964 to give effect to the Directive.	Section 25(5) amends the existing provisions in the Harbours Act 1964 relating to environmental assessment of harbour projects by providing for information to be included in the notice of the environmental statement. New paragraph 10(2)(ca) of Schedule 3 makes provision for information to be made available to the public concerned. Paragraph 10(2)(f) and new paragraph 10(2)(g) of Schedule 3 make provision for public participation. Paragraph 10(4) of Schedule 3 is amended so as to specify the time-period that documents, including the environmental statement,

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<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</p>		<p>are to be made publicly available.</p> <p>New paragraph 10A of Schedule 3 adds provisions concerning the receipt of further information and places on a statutory footing the requirement that any environmental information relevant to the decision on the environmental statement which is received by Scottish Ministers after the initial publicity of information about the environmental statement has taken place, should also be publicised.</p> <p>Paragraph 15(b) of Schedule 3 is amended so that consultation bodies are provided with further information that may be received under the provisions of paragraph 10A of Schedule 3.</p>

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<p style="text-align: center;">relevant information will be made available;</p> <p style="text-align: center;">(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.</p> <p><b>4 (3)</b> Member States shall ensure that, within reasonable time frames, the following is made available to the public concerned;</p> <p style="text-align: center;">(a) any information gathered pursuant to Article 5;</p> <p style="text-align: center;">(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 style="text-align: center;">(c) in accordance with the provisions of Directive <a href="#">2003/4/EC</a> of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information</p>		

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<p style="text-align: center;">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><b>4 (4)</b> that 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.</p> <p><b>4 (5)</b> that 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 public enquiry)</p>		

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<p>shall be determined by the Member States.</p> <p><b>4</b> (6) that reasonable timeframes for the different phases shall be provided, allowing sufficient time in informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article”</p>		
<p>Article 3(5) amends Article 7 of the EIA Directive</p> <p>(a) replacing paragraphs 1 and 2 with the following:</p> <p>“<b>1</b> 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 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</p>	<p>Section 25(5) amends paragraph 16 of Schedule 3 to the Harbours Act 1964 to give effect to the Directive.</p>	<p>Paragraph 16(4)(b) of Schedule 3 is amended so that the other Member State is provided with further information that may be received under the provisions of paragraph 10A of Schedule 3 in respect of the contents of the notice of environmental statement to transboundary cases.</p>

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<p style="text-align: center;">with any available information on its possible transboundary impact;</p> <p style="text-align: center;">(b) information on the nature of the decision which may be taken,</p> <p style="text-align: center;">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> <p><b>2</b> If a Member State which receives information pursuant to paragraph 1 indicates that is 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</p>		

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<p>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>(b) paragraph 5 shall be replaced by the following:</p> <p>“5 The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such 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>Article 3(6) amends Article 9 as follows:</p> <p>(a) Paragraph 1 shall be replaced by the following:</p> <p>“1 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 available to the</p>	<p>Section 25(5)(c) amends paragraph 20(2) of Schedule 3 of the Harbours Act 1964 to give effect to Article 9(1) of the Directive.</p> <p>Section 25(5)(f) amends paragraph 16(7) of Schedule 3 of the Harbours Act 1964 to give effect to Article 9(2) of the Directive.</p>	<p>Paragraph 20(2) of Schedule 3 is amended to provide for how information shall be published (i.e. by Gazette and local advertisement) and further details as to the content of the information, particularly in respect of the extent of public participation in the making of the decision. New paragraph 16(7)(ba) is inserted to Schedule 3 so as to provide information to consulted Member States as to the extent of public participation in the making of the decision.</p>



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<p>public the following information: — 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> <p>(b) Paragraph 2 shall be replaced by the following;</p> <p>“2 The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information</p>		

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<p>referred to in paragraph 1 of this Article.</p> <p>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>Article 3(7) requires the insertion of a new Article into the Directive, Article 10a.</p> <p style="text-align: center;"><i>“Article 10a</i></p> <p>Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:</p> <ul style="list-style-type: none"> <li>(a) having a sufficient interest, or alternatively,</li> <li>(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this is a precondition,</li> </ul> <p>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 omission 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. To</p>	<p>Section 25(2) inserts new subsections (6) to (8) to section 44 of the Harbours Act 1964 to give effect to Article 3(7).</p>	<p>Section 24(2) inserts new subsections (6) to (8) to section 44 of the Harbours Act 1964 to introduce a new requirement on the decision making authority, to make available practical information concerning access to the courts/judicial review procedures when informing the public of final decisions. The new subsection (6) gives environmental non-governmental organizations (NGOs) an interest in seeking review before a court. .</p>

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<p>this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this 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, 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>		
<p>Article 3(8) amends Annex I by adding:</p> <p>“<b>22</b> Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.”;</p>	<p>Section 25(5)(a) amends paragraph 1 of Schedule 3 of the Harbours Act 1964 to update the definition of ‘the Directive’.</p>	<p>Paragraph 1 of Schedule 3 is amended so that definition of ‘the Directive’ takes account of the further amendment to Annex I made by Directive <a href="#">2003/35/EC</a>.</p>
<p>Article 3(9) amends Annex II, No 13, first indent, by adding at the end:</p> <p>“(change or extension not included in Annex I)”.</p>	<p>Section 25(5)(a) amends paragraph 1 of Schedule 3 of the Harbours Act 1964 to update the definition of ‘the Directive’.</p>	<p>Paragraph 1 of Schedule 3 is amended so that definition of ‘the Directive’ takes account of the further amendment to Annex II made by Directive <a href="#">2003/35/EC</a>.</p>