

*Draft Rules laid before the Scottish Parliament under section 28(4) and (5) of the Transport and Works (Scotland) Act 2007, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2007 No.**

**TRANSPORT AND WORKS**

**TRANSPORT**

**CANALS AND INLAND WATERWAYS**

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

*Made* - - - - - *2007*  
*Coming into force* - - - - - *28th December 2007*

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The Scottish Ministers make the following Rules 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(a) and all other powers enabling them to do so.

In accordance with section 28(4) and (5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

#### **Citation and commencement**

1. These Rules may be cited as the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 and come into force on 28th December 2007.

#### **Interpretation**

2.—(1) In these Rules (unless the context otherwise requires)—

“the Act” means the Transport and Works (Scotland) Act 2007;

“applicant” means a person making, or proposing to make, an application;

“application” means an application under section 4 of the Act;

“the appropriate authority” has the same meaning as in section 3(4) of the Act (Crown land);

“benefited property” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003 (interpretation)(b);

“bridleway” has the same meaning as in section 47 of the Countryside (Scotland) Act 1967 (interpretation)(c);

“Crown interest” has the same meaning as in section 3(3) of the Act;

“cycle track” has the same meaning as in section 151 of the Roads (Scotland) Act 1984 (interpretation)(d);

“development management scheme” has the same meaning as in section 71(3) of the Title Conditions (Scotland) Act 2003;

“the Directive” means Council Directive 85/337/EEC(e) on the assessment of the effects of certain public and private projects on the environment;

“documents” includes photographs, drawings, maps and plans;

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(a) 2007 asp 8. See section 6(4) for the meaning of “prescribed” in section 6(3).

(b) 2003 asp 9.

(c) 1967 c.86; section 47 was relevantly amended by the Land Reform (Scotland) Act 2003 (asp 2), schedule 2, paragraph 5.

(d) 1984 c.54.

(e) O.J. L 175, 5.7.85, p.40, as amended by Council Directive 97/11/EC (O.J. L 073, 14.3.97, p.5) and Council Directive 2003/35/EC (O.J. L 156, 25.6.03, p.17).

“environmental impact assessment” means an assessment, in accordance with Articles 5 to 10 of the Directive, of the likely impact upon the environment of the implementation of the works included in any order in respect of which an application is being, or is to be, made;

“environmental statement” means a statement that contains–

- (a) the information referred to in rule 9(1); and
- (b) such of the information referred to in Schedule 1 as may reasonably be required in order to assess the environmental effects of the proposed works and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile,

and “the applicant’s statement of environmental information” means a statement submitted by an applicant as the environmental statement in relation to that applicant’s application;

“equipment” includes apparatus and any structure for the lodging in it of equipment or for gaining access to equipment;

“expiry date for objections” means the date, being a date not less than 42 days after the date on which the application in question is made, which the applicant specifies in the notice published pursuant to rule 12(1) as the final date for making objections;

“footpath” has the same meaning as in section 151 of the Roads (Scotland) Act 1984;

“holder”, in relation to a personal real burden, has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003(a);

“in writing” includes electronic transmission;

“Member State” has the same meaning as in section 5(3) of the Act;

“navigation authority” has the same meaning as in section 9(5) of the Act;

“occupier” includes–

- (a) statutory undertakers (not being an owner) having a right to keep equipment on, in or over land; and
- (b) a person having the right to construct or maintain, at a specific position on an inland waterway, a mooring post, gangway, landing stage or other erection or installation for a vessel (not being anything which when not in use is normally carried on the vessel);

“operative date” means the date falling 21 days after the expiry date for objections or such later date as the Scottish Ministers may specify;

“operator”–

- (a) in relation to a transport system, means any person carrying on an undertaking which includes the system, or any part of it, or the provision of transport services on the system; and
- (b) in relation to an inland waterway, means any person authorised by any enactment to work, maintain, conserve, improve or control the inland waterway;

“owner”, in relation to any land, means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes a lessee under a lease the unexpired period of which exceeds three years;

“personal real burden” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003;

“planning authority” has the same meaning as for the purposes of Part 3 of the Town and Country Planning (Scotland) Act 1997 (control over development)(b);

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(a) The definition of “holder” was amended by S.S.I. 2003/503.

(b) 1997 c.8. See section 1 of that Act for the meaning of “planning authority”. The functions of a local authority under Part 3 of that Act have been transferred to and are exercisable by the Loch Lomond and The Trossachs National Park Authority by virtue of S.S.I. 2002/201 in respect of the National Park designated by that instrument.

“regional Transport Partnership” means a Transport Partnership created under section 1(1)(b) of the Transport (Scotland) Act 2005(a);

“river” means any river (including any part of a river which is tidal or which has been canalised), loch, lake, stream, burn, ditch, culvert, drain, sluice, weir or any other passage by which water drains, but does not include—

- (a) a canal or inland navigation which is not a canalised part of a river;
- (b) a public sewer or a sewer or pipe used primarily for the drainage of a building or any premises appurtenant to a building, or of a road;

“road managers” has the same meaning as in section 108(4) of the New Roads and Street Works Act 1991 (b);

“roads authority” has the same meaning as in section 151(1) of the Roads (Scotland) Act 1984(c);

“scoping opinion” has the meaning given in rule 6(1);

“screening decision” has the meaning given in rule 5(3);

“statutory undertakers” has the same meaning as in section 214 of the Town and Country Planning (Scotland) Act 1997(d) except that it includes a public communications provider within the meaning of section 151(1) of the Communications Act 2003 (interpretation)(e);

“tidal waters” means such part of—

- (a) the territorial sea of the United Kingdom as is adjacent to Scotland; and
- (b) the internal waters of the United Kingdom as are in or adjacent to Scotland insofar as they are tidal or constitute part of the sea;

“title condition” has the same meaning as in section 122(1) of the Title Conditions (Scotland) Act 2003;

“transport system” means a railway, tramway or trolley vehicle system or any system (other than a railway or tramway) using a mode of guided transport;

“works” means any works that may be authorised by an order made under section 1 of the Act but in rules 5, 6, 9 and 14, Schedule 1 and in paragraphs 6, 9, 16(f), 29 and 30 of Schedule 5, shall also include any matter that may be authorised by such an order; and

“works affecting”, in relation to any land, means works proposed to be carried out in, on, over or adjacent to that land.

(2) Where these Rules require that notice be served, published or displayed in a prescribed form, the notice shall be served, published or displayed (as the case may be) duly completed—

- (a) in that form;
- (b) in a version of that form adapted to meet the circumstances of the particular case; or
- (c) in a form which has substantially the same effect as that form (whether the form is adapted or not),

and, except where these Rules require that the notice in question be published in a newspaper, duly signed by or on behalf of the person required to serve the notice.

### **Pre-application documentation**

3.—(1) The applicant shall send to the Scottish Ministers not later than 42 days before making an application a draft of—

- (a) the proposed order under section 1 of the Act;
- (b) the explanatory memorandum to the order; and

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(a) 2005 asp 12.

(b) 1991 c.22.

(c) The definition of “roads authority” was relevantly amended by the Local Government etc. (Scotland) Act 1984 (c.39), Schedule 13, paragraph 135 and S.I. 2001/1400.

(d) Section 214 was amended by the Transport Act 2000 (c.38), Schedule 5, paragraph 10 and S.I. 2001/1149.

(e) 2003 c.21.

(c) the statement and memorandum in respect of legislative competence,  
that the applicant intends to submit in pursuance of rule 8(2).

(2) Where an applicant has sent drafts to the Scottish Ministers in accordance with the provisions of paragraph (1) but subsequently amends any of those drafts the applicant shall not be required to send any amended drafts to the Scottish Ministers before making an application unless the applicant is of the opinion that any amendment substantially alters the nature or effect of the proposed order.

(3) The applicant shall, not later than 42 days before making the application, send a draft of the applicant's statement of environmental information to—

- (a) the Scottish Ministers;
- (b) the Scottish Environment Protection Agency; and
- (c) Scottish Natural Heritage.

### **Provision of environmental information**

4.—(1) Where an applicant at any time serves notice in writing on any person who is not a Scottish public authority within the meaning of regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (interpretation)(a) that for the purposes of the proposed application the applicant wishes to be provided with environmental information, the recipient of the notice so served shall, within 28 days of the request, provide to the applicant any information which the recipient has and which either the recipient or the applicant considers relevant to a screening decision (if that decision has not yet been made) or to the preparation of the environmental statement.

(2) The recipient of the notice may seek reimbursement from the applicant of any reasonable costs associated with the provision of information.

### **The requirement for environmental statement and screening decision**

5.—(1) An applicant shall when making an application submit an applicant's statement of environmental information with that application in relation to any proposed works which are to be covered by that application, if those works constitute a project which is of a type mentioned in Annex I or, subject to paragraph (2), Annex II to the Directive.

(2) Where the proposed works constitute a project of a type mentioned in Annex II to the Directive, an applicant is not required to submit an applicant's statement of environmental information if the Scottish Ministers have, under paragraph (13), notified the applicant that an environmental impact assessment is not required in relation to those works.

(3) Before making an application (other than an application relating to works constituting a project which is of a type mentioned in Annex I to the Directive), an applicant may make a request in writing to the Scottish Ministers for a decision as to whether or not an environmental impact assessment of the proposed works covered by the application is required ("a screening decision").

(4) A request made pursuant to paragraph (3) shall be accompanied by—

- (a) a plan sufficient to identify the land affected by the works in question;
- (b) a brief description of the nature and purpose of the proposed works; and
- (c) a brief description of the possible effects on the environment of the works,

and may include such other information as the applicant wishes to provide.

(5) If the Scottish Ministers consider that the information provided by an applicant in or with a request made under paragraph (3) is insufficient to enable the Scottish Ministers to make a screening decision the Scottish Ministers may, not later than 28 days after receiving the request, notify the applicant in writing of the additional information that the Scottish Ministers consider they require in order to make that decision.

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(a) S.S.I. 2004/520.

(6) On receiving notification under paragraph (5), the applicant shall provide the Scottish Ministers with such of the additional information specified in that notification as the applicant is reasonably able to supply and, where any of the additional information so specified is not provided, a written explanation as to why the applicant is unable to provide the information.

(7) The Scottish Ministers shall not give a screening decision in response to a request under paragraph (3) until they have given notice of the request to, and invited the views of, the following bodies—

- (a) every local authority in whose area the works would be carried out were the order for which the applicant proposes to apply to be made;
- (b) every National Park authority for a National Park in which the works would be carried out were the order for which the applicant proposes to apply to be made;
- (c) the Scottish Environment Protection Agency;
- (d) Scottish Natural Heritage; and
- (e) any other body promoting environmental protection which is a charity registered under the Charities and Trustee Investment (Scotland) Act 2005(a) which the Scottish Ministers consider is likely to have an interest in the application,

and shall include in each such notice the information to be provided in or with a request under paragraph (3).

(8) Any body falling within paragraph (7)(a) to (d) which is the recipient of a notice served under paragraph (7) shall, not later than 28 days after receiving that notice, provide the Scottish Ministers with a written opinion as to whether or not, in the view of the recipient, the works in question should be the subject of an environmental impact assessment.

(9) Any body falling within paragraph (7)(e) which is the recipient of a notice served under paragraph (7) may, not later than 28 days after receiving that notice, provide the Scottish Ministers with a written opinion as to whether or not, in the view of the recipient, the works in question should be the subject of an environmental impact assessment.

(10) Where a request for a screening decision relates to an order which would, if made, authorise works which for the purposes of the Directive could constitute two or more projects which are not interdependent, the Scottish Ministers may, if they consider it expedient, treat each such project separately for the purposes of this rule and, in such a case, the references in this rule to works shall be construed as relating to each such project separately, and the references to the screening decision shall be construed as relating to such a decision in relation to each such project.

(11) In making a screening decision, the Scottish Ministers shall take into account the selection criteria set out in Annex III to the Directive.

(12) If the Scottish Ministers consider that the works in question would be likely to have a significant effect on the environment if carried out, their screening decision shall be that an environmental impact assessment of the works is required.

(13) The Scottish Ministers shall notify the applicant in writing of their screening decision and shall give reasons for that decision not later than 42 days after receipt of the request made pursuant to paragraph (3) or, where a notification has been given under paragraph (5), not later than 42 days after receiving the further information that the applicant is required to supply by virtue of paragraph (6).

(14) Following a screening decision the Scottish Ministers shall publicise notice of their screening decision in the Edinburgh Gazette and in such newspaper as they consider appropriate.

### **Scoping opinion**

**6.—**(1) Before submitting an application in relation to works for which an environmental impact assessment is or may be required, the applicant may make a request in writing to ask the Scottish Ministers for an opinion as to the information to be provided in the environmental statement (a “scoping opinion”).

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(a) 2005 asp 10.

- (2) A request under paragraph (1) shall be accompanied by—
- (a) a plan sufficient to identify the land affected by the works in question;
  - (b) a brief description of the nature and purpose of the proposed works; and
  - (c) a brief description of the possible effects on the environment of the works,
- and may include such other information as the applicant wishes to provide.
- (3) On receiving a request under paragraph (1), if the Scottish Ministers consider that the applicant has not provided sufficient information to enable them to give a scoping opinion, they shall not later than 28 days after receiving the request notify the applicant in writing of the additional information that they consider necessary to enable them to give that opinion.
- (4) The Scottish Ministers shall not give a scoping opinion in response to a request under paragraph (1) until they have consulted the applicant and the following bodies—
- (a) every local authority in whose area the works would be carried out were the order for which the applicant proposes to apply to be made;
  - (b) every National Park authority for a National Park in which the works would be carried out were the order for which the applicant proposes to apply to be made;
  - (c) the Scottish Environment Protection Agency;
  - (d) Scottish Natural Heritage; and
  - (e) any other body promoting environmental protection which is a charity registered under the Charities and Trustee Investments (Scotland) Act 2005 which the Scottish Ministers consider is likely to have an interest in the application.
- (5) In forming a scoping opinion the Scottish Ministers shall take into account—
- (a) the specific characteristics of the works in question;
  - (b) the specific characteristics of works of the type concerned; and
  - (c) the environmental features likely to be affected by the works.
- (6) Subject to paragraph (7), the Scottish Ministers shall notify the applicant who made the request under paragraph (1) of the Scottish Ministers' scoping opinion, in writing, not later than 42 days after receipt of that request or, where the Scottish Ministers have given a notification under paragraph (3), 42 days after receipt of the additional information mentioned in that notification.
- (7) Where an applicant makes a request for a scoping opinion under paragraph (1) at the same time as the making of a request for a screening decision pursuant to rule 5(3) in relation to the same proposed works, or after the applicant has made a request for such a screening decision but before the Scottish Ministers have notified the applicant of the screening decision in relation to the works, the Scottish Ministers shall notify the applicant, in writing, of the Scottish Ministers' scoping opinion not later than 42 days after the date on which the Scottish Ministers notify the applicant of the Scottish Ministers' screening decision.
- (8) Where the Scottish Ministers have given a scoping opinion to an applicant they shall not be precluded from requiring that applicant to provide further information in connection with any applicant's statement of environmental information that may be submitted by that applicant in connection with an application relating to the same, or substantially the same, works as were referred to in that scoping opinion.
- (9) Following a scoping opinion the Scottish Ministers shall publish that scoping opinion in the Edinburgh Gazette and in such newspaper as they consider appropriate.

### **Form of application**

7.—(1) An application for an order to be made under section 1 of the Act shall be made in writing, dated and addressed to the Scottish Ministers.

(2) In the application, the applicant shall give the name and the address to which all requests for further information, notices or other documents required to be served upon the applicant under the Act or these Rules are to be sent.

(3) The application shall be signed by the applicant or by the duly authorised agent of the applicant (details of the authorisation must be appended to the application).

### **Documents accompanying application**

- 8.—(1) The applicant shall submit with an application 3 copies of that application.
- (2) The applicant shall submit with the application 4 copies of each of the following documents—
- (a) a draft of the proposed order under section 1 of the Act;
  - (b) an explanatory memorandum that explains the purpose and effect of each article of and Schedule to the draft order;
  - (c) a memorandum setting out the aims of the proposals to which the application relates including any alternative approach considered and the reason for rejection;
  - (d) a statement that, in the view of the applicant, the provisions in the proposed order are within the legislative competence of the Scottish Parliament together with a memorandum setting out the reasons for that view;
  - (e) a report summarising the consultations that have been undertaken, including confirmation that the applicant has consulted all those named in column (2) of the tables in Schedules 3 and 4 where authority is sought for works or other matters described in column (1) of those tables, or if not, an explanation of why not;
  - (f) if the applicant is not an individual or a company regulated by the Companies Act 1985<sup>(a)</sup> a declaration as to the status of the applicant;
  - (g) a list of all consents, permissions or licences required under other enactments for the purposes of the powers sought in the application, which at the date of the application are being sought or which have been obtained or refused, specifying for each relevant consent, permission or licence—
    - (i) from whom the consent, permission or licence is or was required;
    - (ii) the date of the application, or of the grant or refusal of the consent, permission or licence (as the case may be); and
    - (iii) the reference number (if any) of the application;
  - (h) any screening decision made by the Scottish Ministers under rule 5, any scoping opinion given by the Scottish Ministers under rule 6 and, in a case where the proposed works are to be subject to an environmental impact assessment, the applicant's statement of environmental information;
  - (i) confirmation that a draft of the applicant's statement of environmental information has been sent to the persons specified in rule 3(3) together with a memorandum setting out any comments that any such person might have made in respect of that draft; and
  - (j) any direction given under rule 16.
- (3) When making an application for an order the applicant shall submit with the application—
- (a) the applicant's proposals for funding the cost of implementing the order; and
  - (b) where the application is for an order containing proposals to carry out works—
    - (i) the plans and sections described in paragraphs (1) and (4) of rule 10; and
    - (ii) an estimate of the cost of carrying out the works provided for in the proposed order.
- (4) Subject to paragraph (5), in the case of an application for an order authorising the compulsory acquisition of land, or the right to use land, or to carry out protective works to buildings or structures, or the compulsory extinguishment, variation or disapplication of a title condition or development management scheme or the compulsory extinguishment of other private rights over land, the applicant shall submit with the application the plan and the book of reference respectively described in paragraphs (5) and (7) of rule 10.

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(a) 1985 c.6.



(5) In the case of an application for an order providing for the extinguishment or diversion of rights of way or passage over a footpath, bridleway or cycle track, the applicant shall submit with the application a map of a scale not smaller than 1:2500 on which the path, way or track concerned and, in the case of a diversion, the new path, way or track, is clearly delineated.

(6) Where the applicant seeks a direction from the Scottish Ministers under section 57(2A) of the Town and Country Planning (Scotland) Act 1997(a) that planning permission shall be deemed to be granted for the development provided for in the proposed order, the applicant shall submit with the application—

- (a) a request in writing specifying the development for which the direction for such permission is sought;
- (b) a statement of any proposed planning conditions;
- (c) a statement of any matters which are intended to be reserved for subsequent approval by the planning authority; and
- (d) in respect of those matters not intended to be reserved for subsequent approval by the planning authority, such further documents as have not otherwise been submitted with the application and which are necessary to support the request for the direction.

(7) Where the applicant seeks a direction from the Scottish Ministers under section 10(2A) of the Planning (Hazardous Substances) (Scotland) Act 1997(b) that hazardous substances consent shall be deemed to be granted for the development provided for in the proposed order, the applicant shall submit with the application—

- (a) an application for hazardous substances consent in either Form 1 or 2 of the forms prescribed in Schedule 2 to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993(c) as the case may require; and
- (b) the information and documentation specified in such one or more of regulations 5(1)(b), 5(2)(b) and 5(3)(b) of those Regulations (applications for hazardous substances consent) as the case may require.

(8) The applicant shall, as soon as practicable after the date of the application, submit to the Scottish Ministers a statement of compliance with the provisions of rules 11, 12(1) to (7) and 13 together with—

- (a) copies of the notices placed in newspapers and the Edinburgh Gazette in accordance with rule 12; and
- (b) confirmation of the date on which the notices required by rule 13 were served.

(9) Where the Scottish Ministers are of the opinion that any of the information submitted pursuant to this rule, other than the applicant's statement of environmental information, is not adequate for its purpose the Scottish Ministers may within 21 days of receipt of an application—

- (a) direct the applicant to provide further information; and
- (b) where the Scottish Ministers make such a direction they may require the applicant to comply with any of the provisions of rules 11 and 12 in respect of the further information required.

#### **Environmental statements: provision of information**

9.—(1) An environmental statement submitted in connection with an application shall include—

- (a) a description of the project comprising information on the site, design and size of the proposed works;
- (b) a description of the measures proposed to be taken in order to avoid, reduce and, if possible, remedy any significant adverse effects on the environment of the proposed works;

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(a) 1997 c.8; section 57(2A) was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 15(1).

(b) 1997 c.10; section 10(2A) was inserted by the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 (S.S.I. 2007/[ ]), regulation 4.

(c) S.I. 1993/323 as relevantly amended by S.S.I. 2000/179.

- (c) the data required to identify and assess the main effects which the proposed works are likely to have on the environment;
- (d) an outline of the main alternatives to the proposed works studied by the applicant and an indication of the main reason for the applicant's choice, taking into account the environmental effects; and
- (e) a non-technical summary of the information provided under sub-paragraphs (a) to (d).

(2) An environmental statement submitted in connection with an application shall, subject to paragraph (3), also include so much of the information specified in Schedule 1 as is relevant to the proposed works.

(3) Where the Scottish Ministers have given a scoping opinion in relation to the application, the environmental statement in relation to that application need include only the information specified in that scoping opinion.

### **Plans, sections and book of reference**

**10.**—(1) Subject to paragraphs (6) and (8), the plans referred to in rule 8(3)(b) are—

- (a) a plan drawn to a suitable scale not smaller than 1:50000 showing clearly the location of any works and, if provision is made for such works in the proposed order, in particular the general line of the route of any works that are of a linear nature and which exceed 2 kilometres in length; and
- (b) a plan drawn to a suitable scale not smaller than 1:2500 showing clearly in relation to existing features, the location, the alignment, if any, and limits of deviation of the works described or for which provision is made in the proposed order.

(2) All plans and sections described in this rule may be submitted in black and white and shall be stated in metric units.

(3) All plans described in this rule shall contain a reference to the National Grid base or, where this is not practicable, to the latitude and longitude of the site of the proposed works.

(4) Subject to paragraphs (6) and (8), the sections referred to in rule 8(3)(b) are sections having a suitable vertical scale not smaller than 1:500 and showing by reference to Ordnance Survey or Chart datum—

- (a) on the same horizontal scale as the plan described at paragraph (1)(b) the levels of the proposed works, including in particular where relevant—
  - (i) ground levels;
  - (ii) the height of every intended bridge, aqueduct, viaduct, embankment and elevated guideway;
  - (iii) the depth of every intended cutting and tunnel;
  - (iv) the levels of the bed of any tidal waters or inland waterway where works are proposed; and
  - (v) the height of every structure or device intended to be erected above, on or below the surface of, or on or beneath the bed of tidal waters or an inland waterway;
- (b) on a horizontal scale not smaller than 1:500 the span and vertical clearance of every intended bridge, aqueduct, viaduct, gantry and other structure or device above ground level for which provision is made in the proposed order;
- (c) in cross-section on a horizontal scale not smaller than 1:500 the depths and water levels of every intended inland waterway for which provision is made in the proposed order;
- (d) in cross-section on a horizontal scale not smaller than 1:500 every intended tunnel for which provision is made in the proposed order; and
- (e) on a horizontal scale not smaller than 1:500 any altered gradient of a carriageway or a way forming part of a railway, tramway or other guided transport system on either side of every level crossing, bridge, tunnel or underpass which would carry the carriageway or way or through which it would pass, for which provision is made in the proposed order.

(5) Subject to paragraph (6) the plan referred to in rule 8(4) is a plan drawn to a suitable scale not smaller than 1:2500 (and which may be the plan described in paragraph (1)(b)) showing clearly any land—

- (a) over which it is proposed to acquire powers of compulsory acquisition, or any right to use the land or to carry out protective works to any building or structure;
- (b) which is—
  - (i) affected by a personal real burden which it is proposed shall be varied or extinguished;
  - (ii) affected by a title condition which it is proposed shall be varied or extinguished; or
  - (iii) a development to which a development management scheme applies where it is proposed to disapply that scheme;
- (c) in relation to which it is proposed that other private rights (including private rights of navigation over water) shall be extinguished;
- (d) of which the applicant is the sole owner and occupier and which it is proposed shall be used for the purposes of the order for which application is being made; or
- (e) in which there subsists a Crown interest, whether or not there are other interests in such land, and which it is proposed shall be used for the purposes of the proposed order.

(6) An applicant may in writing request the Scottish Ministers to direct that the scale for the plans and sections referred to in paragraph (1), (4) or (5) be varied and the Scottish Ministers may so direct where they are satisfied that such a request is reasonable and appropriate.

(7) The book of reference referred to in rule 8(4) is a book which refers to the plan described in paragraph (5) and which (subject to the provisions of paragraph (9))—

- (a) contains the names (and addresses) of every owner, lessee (whatever the period of the lease) and occupier of any land which it is proposed shall be subject to—
  - (i) powers of compulsory acquisition;
  - (ii) rights to use land, including the rights to attach equipment to buildings or structures; or
  - (iii) rights to carry out protective works to buildings or structures;
- (b) contains the names (and addresses) of every holder of any personal real burden which it is proposed shall be varied or extinguished;
- (c) contains the names (and addresses) of every owner of land which is a benefited property in relation to a title condition which it is proposed to vary or extinguish;
- (d) contains the names (and addresses) of every owners' association of a development to which a development management scheme applies where it is proposed to disapply that scheme;
- (e) contains the names (and addresses) of all those entitled to enjoy other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished;
- (f) where there is a Crown interest in land, which it is proposed shall be used for the purposes of the order for which application is being made, specifies the appropriate authority in relation to that interest;
- (g) specifies land—
  - (i) which is common (as defined in section 7(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (interpretation)(a)) or open space (as also defined in section 7(1) of that Act);
  - (ii) which is land held by the National Trust for Scotland for Places of Historic Interest or Natural Beauty;

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(a) 1947 c.42.

- (iii) which is within, or is within 3 kilometres of, an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000(a);
  - (iv) which has been notified under section 23 of the National Parks and Access to the Countryside Act 1949(b) or section 3(1) or 5(1) of the Nature Conservation (Scotland) Act 2004(c) as a site of special scientific interest or which is within 3 kilometres of any such site;
  - (v) which is within, or is within 3 kilometres of, an European site or an European marine site as those expressions are defined in regulations 2(1) and 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994 (interpretation)(d);
  - (vi) which is property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of World Cultural and Natural Heritage(e) or which is within 3 kilometres of any such property;
  - (vii) in respect of which a declaration has been made under section 19 of the National Parks and Access to the Countryside Act 1949 (declarations that areas are nature reserves)(f) or which is declared to be a national nature reserve under section 35 of the Wildlife and Countryside Act 1981(g) or which is within 3 kilometres of any such land;
  - (viii) which is provided as a nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949(h) or which is within 3 kilometres of any such nature reserve;
  - (ix) in respect of which a nature conservation order or land management order made under section 23 or 30 respectively of the Nature Conservation (Scotland) Act 2004 has effect or which is within 3 kilometres of any such land;
  - (x) which is an area designated as a national scenic area under section 263A of the Town and Country Planning (Scotland) Act 1997(i) or which is within 3 kilometres of any such area;
  - (xi) which is a garden or designed landscape identified in “An Inventory of Gardens and Designed Landscapes in Scotland – List of Sites 2007”, published by the Scottish Ministers in 2007(j) or which is within 3 kilometres of any such garden or landscape;
  - (xii) which is a scheduled monument within the meaning of section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(k);
  - (xiii) on which there is a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(l);
  - (xiv) for which other land is to be given in exchange;
  - (xv) that is to be given in exchange for other land; and
- (h) specifies, for each plot of land identified in it and within which it is intended that all or part of the proposed works shall be carried out, the area in square metres of that plot.

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(a) 2000 asp 10.

(b) 1949 c.97; section 23 was repealed by the Wildlife and Countryside Act 1981 (c.69), Schedule 17, but notifications under section 23 can continue to have effect by virtue of the Nature Conservation (Scotland) Act 2004 (asp 6), schedule 5, paragraphs 8 to 10.

(c) 2004 asp 6.

(d) S.I. 1994/2716; the relevant amending instruments are S.S.I. 2004/475 and 2007/80.

(e) See Cmnd Paper 9424.

(f) Section 19 was amended by the Nature Conservancy Council Act 1973 (c.54), Schedule 1, paragraph 1.

(g) 1981 c.69.

(h) Section 21 was amended by the Local Government (Scotland) Act 1973 (c.65), Schedule 27, paragraph 100 and Schedule 29, the Nature Conservancy Council Act 1973 (c.54), Schedule 1, paragraph 1, the Local Government and Planning (Scotland) Act 1982 (c.43), section 10, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 14, and the National Parks (Scotland) Act 2000 (asp 10), schedule 3, paragraph 2.

(i) 1997 c.8; section 263A is inserted by the Planning etc. (Scotland) Act 2006 (asp 17), section 50.

(j) ISBN 978 1 904966 44 9. A copy is available at [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk).

(k) 1979 c.46.

(l) 1997 c.9.

- (8) Where provision is made in the proposed order for any works which are—
- (a) proposed to be formed or constructed for the accommodation of an owner or occupier of land adjacent to a proposed transport system or inland waterway; or
  - (b) ancillary to a proposed transport system or inland waterway,

the applicant shall not be obliged to show them as required by paragraphs (1) and (4) but shall give such indication of them as is reasonably practicable.

(9) The requirements of paragraph (7)(a) to (f) shall extend only to including those names (and addresses) which have been ascertained by the applicant, after making reasonable inquiry, at the beginning of a period of 28 days ending with the date of the application but where the applicant has reason to believe that relevant names (or addresses) have, or might have, been omitted the applicant must clearly indicate this in the book of reference.

(10) Subject to paragraph (9), where the applicant has made reasonable inquiry in order to attempt to obtain the information mentioned in paragraph (7) the application shall not be invalidated by reason only of an error in, or the omission of information from, the book of reference.

### **Deposit of copy application etc. with others**

11.—(1) The applicant shall serve a copy of the application and of every document that these Rules require shall accompany it upon every—

- (a) local authority for an area;
- (b) regional Transport Partnership for a region; and
- (c) National Park authority for a National Park,

in which all or any part of a transport system, inland waterway or other works to which the application relates is or are (or is or are to be) situated.

(2) The applicant shall deposit copies of the application and of every such document in the Scottish Parliament Information Centre.

(3) In the case of an application for an order authorising the works or other matters specified in any of the categories in column (1) of the table in Schedule 3, the applicant shall serve upon those named against each such category in column (2) of that table a copy of the application and of every such document.

(4) The applicant shall serve a copy of the application and of every such document on any body not mentioned in column (2) of the table in Schedule 3 which the Scottish Ministers consider is likely to have an interest in the application by reason of that body's specific environmental responsibilities.

(5) The applicant shall not be obliged by virtue of this rule to serve upon anyone more than one copy of the same document unless the recipients are the Scottish Ministers who shall be separately served in respect of each interest identified in column (2) of the table in Schedule 3 where that arises pursuant to paragraph (3).

(6) Where any person has confirmed to the applicant in writing that they do not wish to be served with a copy of, or a copy of any part of, a document that the applicant is required to serve on that person by virtue of this rule, the applicant shall not be required to serve upon that person that document or the relevant part of it.

(7) All documents required to be served upon anyone, or deposited, by virtue of this rule shall be so served, or deposited, as soon as possible after the making of the application and the applicant shall in a covering letter specify—

- (a) the capacity (or, if there is more than one, the capacities) in which the recipient is served, or that the documents are being deposited pursuant to paragraph (2), as the case may require;
- (b) the expiry date for objections; and
- (c) the address to which objections or representations are to be sent.

## Publicity for application

12.—(1) The applicant shall, as soon as possible after the application has been made, publish in the Edinburgh Gazette a notice of the application, which shall—

- (a) state the name of the applicant and the address given pursuant to rule 7(2);
- (b) state that the application has been made to the Scottish Ministers;
- (c) state whether the application is subject to an environmental impact assessment;
- (d) summarise the main proposals and specify the location of the proposed works (if any);  
and
- (e) state the address to which objections or representations are to be sent and the expiry date for objections.

(2) The applicant shall publish, in at least one newspaper circulating in each area in which the proposals contained in the application are intended to have effect, a notice in the form of Form 1 in Schedule 2, such notice to be published on at least two separate occasions, the first publication of which may not be made earlier than 14 days before, and not later than, the date of the application and the second or if more than two, the last, to be not more than 7 days after the date of the application.

(3) In the case of an application for an order authorising the works or other matters specified in any of the categories in column (1) of the table in Schedule 4, the applicant shall, as soon as possible after the application has been made, serve upon those named against each such category in column (2) of that table a notice containing the information specified in paragraph (4), and every notice served under the provisions of this paragraph shall state the capacity (or, if there is more than one, the capacities) in which the recipient of the notice is served.

(4) The information referred to in paragraph (3) is—

- (a) the name of the applicant;
- (b) the date when the application was made to the Scottish Ministers and the address to which objections or representations are to be sent;
- (c) a statement as to whether the application is subject to an environmental impact assessment;
- (d) a summary of the matters for which provision is to be made in the order for which application has been made (including, in a case to which paragraph (6) or (7) of rule 8 applies, a statement that planning permission or deemed hazardous substances consent, as the case may be, has been sought);
- (e) the names of all places, which shall be places within the area to which the proposals in the proposed order relate (or as close as reasonably practicable to that area), where a copy of the application and of the documents which are required by these Rules to accompany it may be inspected free of charge at all reasonable hours until the expiry date for objections; and
- (f) a statement that, until that date, any objection to the making of the order, or any representations in relation to it, may be made in writing, stating the grounds for the objection or representations, to the Scottish Ministers at the address specified pursuant to sub-paragraph (b).

(5) The places referred to in paragraph (4)(e) shall include a library or libraries, or such other publicly accessible buildings as the Scottish Ministers may direct, which shall in each case be situated within the area to which the proposals in the proposed order relate (or as close as reasonably practicable to that area).

(6) In the case of an application for an order authorising works the applicant shall, as soon as possible after the application has been made, display a notice in the form of Form 2 in Schedule 2 upon, or as close as reasonably practicable to, the proposed sites of those works at a place accessible to the public and, where the order for which application has been made would include linear works exceeding 5 kilometres in length, such a notice shall be displayed at intervals of not

more than 5 kilometres along the whole of the proposed route of the works except where this is impracticable due to the land in question being covered by water.

(7) Where an order for which application has been made would authorise—

- (a) the extinguishment or diversion (whether such diversion would be permanent or temporary) of a public right of way; or
- (b) the stopping-up or diversion of a road, or a restriction on the use of the road by any person or traffic, whether such stopping-up, diversion or restriction would be permanent or, in the case of a road specifically named in the proposed order, temporary,

the applicant shall, as soon as possible after the application has been made, display a notice in the form of Form 3 in Schedule 2 upon the right of way or road at, or as close as is reasonably practicable to, each point of extinguishment, diversion, stopping-up or restriction.

(8) The applicant shall take all reasonable steps to ensure that every notice displayed under the provisions of paragraphs (6) and (7) shall continue to be displayed in a legible form until the expiry date for objections.

(9) The applicant shall supply a copy of the application, or of any document that these Rules require shall accompany an application, to any person who requests such a copy, subject to the payment by that person of a reasonable charge for the provision of that copy, and the applicant shall ensure that information as to how such copies may be obtained is displayed at every place at which copies of the application and those documents are made available for inspection.

#### **Notices to owners, occupiers etc.**

**13.—**(1) The applicant shall, as soon as possible after the application has been made, serve a notice in the form of Form 4 in Schedule 2 upon all those, other than the applicant and the appropriate authority in relation to any Crown interest, named in the book of reference described in rule 10(7).

(2) In every case where, pursuant to rule 10(9), the applicant has indicated in the book of reference that relevant names have or might have been omitted, the applicant shall, as soon as possible after the application has been made, serve a notice in the form of Form 4 in Schedule 2—

- (a) where the omission relates to the holder of any personal real burden, by—
  - (i) addressing it to the holder of the personal real burden by name or by the description of “holder of personal real burden”; and
  - (ii) leaving it conspicuously affixed to some building or object on the land affected by the personal real burden;
- (b) where the omission relates to the owner of land which is a benefited property in relation to a title condition, by—
  - (i) addressing it to the owner of the land which is a benefited property by name or by the description of “owner of land which is a benefited property”; and
  - (ii) leaving it conspicuously affixed to some building or object on the benefited property;
- (c) where the omission relates to the owners’ association of a development to which a development management scheme applies, by—
  - (i) addressing it to the owners’ association of the development in question by name or by the description of “owners’ association under a development management scheme”; and
  - (ii) leaving it conspicuously affixed to some building or object on the land to which the development management scheme applies; and
- (d) in any other case, in the manner provided by section 20(5) of the Act.

**Developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states**

14.—(1) This rule applies where an application for an order under section 1 of the Act has been made and—

- (a) it appears to the Scottish Ministers that the application relates to proposed works which would be likely to have significant effects on the environment in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) it appears to the Scottish Ministers that the application relates to proposed works which would be likely to have significant effects on the environment of another Member State; or
- (c) another Member State whose environment is likely to be affected significantly by the proposed works to which the application relates requests information relating to the application.

(2) In a case falling within paragraph (1)(a) the applicant shall publish, if so directed by the Scottish Ministers, the information specified in paragraphs (1)(a) to (e) and (4)(d) and (e) of rule 12 in such newspapers circulating in the place in question as the Scottish Ministers may specify.

(3) In a case falling within paragraph (1)(b) or (c), the Scottish Ministers shall—

- (a) send the information mentioned in paragraph (5) to the Member State in question as soon as reasonably practicable and in any event—
  - (i) no later than the date of the publication of a notice in the Edinburgh Gazette pursuant to rule 12(1); or
  - (ii) in a case falling within paragraph (1)(c), no later than 7 days after receiving a request from the Member State in question; and
- (b) give the Member State in question a reasonable time in which to indicate whether it wishes to participate in the procedure for consideration of the application.

(4) The Scottish Ministers shall direct the applicant to take such steps as the Scottish Ministers consider necessary to ensure that the public is informed that the project is likely to have significant effects on the environment of another Member State and that the provisions of this rule apply.

(5) The information referred to in paragraph (3)(a) is—

- (a) a description of the proposed works, together with any information the Scottish Ministers have in connection with the application as to the possible significant effects of the works on the environment of the Member State in question; and
- (b) information on the nature of the decision which may be taken.

(6) Where a Member State has indicated, in accordance with paragraph (3)(b), that it wishes to participate in the procedure for the consideration of the application the Scottish Ministers shall, as soon as reasonably possible, send to the State in question (in so far as these documents and information have not already been supplied to that State)—

- (a) a copy of the application;
- (b) a copy of the applicant's statement of environmental information; and
- (c) any relevant information regarding the procedure for the consideration of the application and for undertaking an environmental impact assessment of the proposed works in question.

(7) In a case falling within paragraph (1)(b) or (c), the Scottish Ministers shall also—

- (a) arrange for the documents and other information referred to in paragraphs (5) and (6) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and to the members of the public in the territory of the Member State which is likely to be significantly affected;



- (b) ensure that those authorities and members of the public concerned are given an opportunity, before any order is made authorising the works in question, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied;
- (c) enter into consultations with the Member State in question, regarding any potential significant effects of the proposed works on the environment of that Member State, the measures envisaged to reduce or eliminate such effects and such other matters relating to the proposed works as may be relevant to that Member State; and
- (d) provide, in agreement with the Member State in question, a reasonable period of time for such consultations to take place before taking any decision as to whether or not to make the order in question.

(8) Where a Member State has been consulted in accordance with paragraph (7)(c), the Scottish Ministers shall inform that Member State of their decision as to whether or not the order in question should be made and shall send to that Member State a statement of—

- (a) the content of the decision and any conditions attached to the decision;
- (b) the main reasons for the decision and considerations on which it is based including the public participation process; and
- (c) a description, where relevant, of the main measures that the applicant is to be required to take in order to avoid, reduce and, if possible, remedy any major adverse environmental effects of the works.

#### **Further information and notices**

**15.—**(1) Where, in the opinion of the Scottish Ministers, the applicant’s statement of environmental information should contain any additional information in order to constitute an environmental statement for the purposes of the application in question, the Scottish Ministers shall direct the applicant to supply that information.

(2) Without prejudice to paragraph (1), the Scottish Ministers, when considering an application in relation to which an applicant’s statement of environmental information has been provided, may direct the applicant to provide such further information as they may specify concerning any matter which is required to be, or may be, dealt with in the environmental statement.

(3) Where any such direction as is mentioned in paragraph (1) or (2) has been given by the Scottish Ministers, the applicant shall comply with the requirements of that direction within such period as may be specified in that direction by the Scottish Ministers or if no such period is specified as soon as is reasonably practicable to do so.

(4) Where information is provided by the applicant pursuant to paragraphs (1) to (3), the applicant shall—

- (a) publish, in at least one newspaper circulating in the areas to which the information is relevant, a notice in the form of Form 5 in Schedule 2;
- (b) serve a copy of the information on each person on whom, in accordance with these Rules, a copy of the applicant’s statement of environmental information was served together with a notice in the form of Form 5 in Schedule 2;
- (c) provide a copy or an additional copy of the information, or any part of the information, to any person who requests it, subject to the payment by that person of a reasonable charge for the provision of any such copy or additional copy; and
- (d) provide the Scottish Ministers with 4 copies of the information.

(5) The Scottish Ministers may direct an applicant to produce such evidence, to verify any information in the applicant’s statement of environmental information or in any further information provided as a consequence of a direction given under paragraph (1) or (2), as the Scottish Ministers may require.

(6) Where, after making an application—

(a) an applicant submits to the Scottish Ministers further environmental information in relation to that application otherwise than in pursuance of a direction under paragraph (1) or (2); or

(b) any other person submits further environmental information relevant to that application, the Scottish Ministers may require the applicant to comply with the steps set out in paragraph (4) in respect of that further information.

(7) Where further information is provided or submitted as mentioned in this rule in a case falling within rule 14(1)(b) or (c), the Scottish Ministers may send that further information to the Member State in question as soon as reasonably practicable and may comply with the requirements of rule 14(7), on the basis that the documents and information mentioned in that rule shall be the further information provided or submitted.

### **Waiver of requirements in relation to applications**

**16.**—(1) An applicant may at any time before or after making an application submit a request in writing to the Scottish Ministers for a direction that any provision contained in rules 3, 7, 8 (other than paragraph (2)(h) of rule 8) and 10 to 13 shall not apply (or shall apply in part only) to an application the applicant has made or proposes to make.

(2) A request made under paragraph (1) shall give reasons for the request.

(3) Where a request is made under paragraph (1) the Scottish Ministers may, being satisfied of the reasons of the applicant not to comply with any provision contained in the rules mentioned in paragraph (1)—

(a) direct that the provision in question shall not apply, or shall apply in part only, to the application in question; and

(b) whether or not a direction has been given pursuant to sub-paragraph (a), direct that the applicant shall comply with the provision in question, or any part of it, at such later date as may be specified in the direction.

### **Fees for applications**

**17.**—(1) The fee for an application is—

(a) £10,000; or

(b) £1,000 where either—

(i) the primary object of the proposed order to which the application relates is the construction or operation of a heritage railway; or

(ii) the applicant is a body which may refer to itself as a “charity” in terms of section 13 or 14 of the Charities and Trustee Investment (Scotland) Act 2005 (references to charitable status)(a).

(2) In paragraph (1), “heritage railway” means a railway which is operated to—

(a) preserve, re-create or simulate railways of the past; or

(b) demonstrate or operate historical or special types of motive power or rolling stock,

and which is exclusively or primarily used for tourist, educational or recreational purposes.

(3) The fee for an application shall be paid to the Scottish Ministers when the application is made.

(4) Where an application is withdrawn before the expiration of the time limit specified in paragraph (5) an applicant may make a request in writing to the Scottish Ministers for the repayment of any part of the fee paid when that application was made.

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(a) 2005 asp 10.

(5) The time limit is—

- (a) in the case of an application in relation to which, pursuant to rules made under section 10 of the Act, the Scottish Ministers have given notice of their intention to hold a public local inquiry, the expiration of the period of 14 days commencing with the date on which any such inquiry is closed;
- (b) in the case of an application in relation to which, pursuant to rules made under section 10 of the Act, the Scottish Ministers have given notice of their intention to hold a hearing under section 9(2) of the Act, the expiration of the period of 14 days commencing with the date on which any such hearing is closed;
- (c) in the case of an application to which the provisions of rule 22 apply, the end of the day on which is completed the latest of such of the time periods specified in or pursuant to paragraphs (2) to (10) of that rule as shall apply to that application; or
- (d) in any other case, the end of the operative date.

(6) Where a request is made pursuant to paragraph (4), the Scottish Ministers shall repay to the applicant such portion (if any) of the fee paid as the Scottish Ministers shall consider appropriate.

### **Orders made by the Scottish Ministers by virtue of section 6**

18. Schedule 5 (which imposes duties and powers on the Scottish Ministers where they propose to make an order by virtue of section 6 of the Act) shall have effect.

### **Objections: general**

19.—(1) Subject to paragraph (2), an objection made in relation to an application shall only be an objection for the purposes of these Rules if it—

- (a) is received by the Scottish Ministers on or before the expiry date for objections;
- (b) is made in writing;
- (c) states the grounds of the objection;
- (d) indicates who is making the objection; and
- (e) provides an address to which any correspondence relating to that objection may be sent.

(2) Where an objection relates to information provided or submitted as mentioned in rule 15 after the application has been made, that objection will be an objection for the purposes of these Rules, even where it is made after the expiry date for objections, if it is made not later than 42 days after the date on which the information is provided or submitted to the Scottish Ministers or the last date on which a notice relating to the information is published in a newspaper pursuant to rule 15(4), whichever date is the later.

(3) In this rule and in rules 20 to 23, a reference to an objection includes a reference to any document submitted with an objection.

### **Notice of objections**

20.—(1) The Scottish Ministers shall, as soon as reasonably practicable after they have received an objection, provide the applicant with a copy of that objection.

(2) As soon as reasonably practicable after the expiry date for objections the Scottish Ministers shall provide the applicant with a list of the objections that the Scottish Ministers have received stating, in each case—

- (a) the name and address of the objector; and
- (b) the reference number given to the objection.

(3) The Scottish Ministers may, upon request, provide any person with a copy of any objections made by others.

### **Application of written representations procedure**

**21.**—(1) Subject to paragraphs (2) to (4), rule 22 shall apply to an objection unless, on or before the operative date, the Scottish Ministers have—

- (a) given notice in accordance with rules made under section 10(1) of the Act (procedure at inquiries and hearings) that they will cause a public local inquiry to be held;
- (b) given notice to the applicant and every objector who made the objection in question that the objection will be dealt with in accordance with section 9(2) of the Act (inquiries and hearings); or
- (c) informed the objector in question and the applicant that it appears to the Scottish Ministers that the objection is of a type mentioned in paragraph (a) or (b) of section 8(3) of the Act (frivolous or trivial objections or objections relating to compensation).

(2) Rule 22 shall not apply in relation to an objection if, not later than the operative date, a statutory objector informs the Scottish Ministers in writing of the statutory objector's wish for the objection to be referred to a public local inquiry or dealt with in accordance with section 9(2) of the Act.

(3) Rule 22 shall cease to apply to an objection if after the operative date either the Scottish Ministers or a statutory objector, as the case may be, takes in relation to that objection one of the steps mentioned in paragraph (1) or (2) above.

(4) Notwithstanding that one of the steps mentioned in paragraph (1) or (2) has been taken, the Scottish Ministers may, with the consent of the applicant and every statutory objector, and after consulting such other persons as they think fit, direct that rule 22 shall thereafter apply to all objections that have not been withdrawn; provided that, where any of the steps required to be taken under that rule have been taken before the date of that direction, they need not be taken again.

(5) In this rule “statutory objector” means a person within section 9(4) of the Act who has made an objection which—

- (a) has not been withdrawn; and
- (b) does not appear to the Scottish Ministers to be of a type mentioned in paragraph (a) or (b) of section 8(3) of the Act.

### **Procedure by written representations**

**22.**—(1) Where none of the steps mentioned in paragraphs (1) and (2) of rule 21 has been taken by the operative date the provisions of this rule shall apply and the Scottish Ministers shall notify the applicant and all those who have made, and not withdrawn, an objection pursuant to rule 19 that this is the case.

(2) The applicant shall, not later than 28 days of being notified pursuant to paragraph (1), send to the Scottish Ministers representations upon each objection.

(3) The Scottish Ministers shall, within 7 days of receiving representations from the applicant pursuant to paragraph (2), send to each objector a copy of any of those representations that relate to their objection and shall inform them of their rights under paragraph (4).

(4) An objector may, within 21 days of being sent a copy of the applicant's representations pursuant to paragraph (3), reply in writing to the Scottish Ministers.

(5) Where the Scottish Ministers receive no reply from an objector within the period specified in paragraph (4) they may proceed to make a determination under section 11 of the Act, unless they consider that they do not have sufficient information to enable them to make a determination.

(6) Where the Scottish Ministers receive a reply from an objector pursuant to paragraph (4) they shall, within 7 days of receipt, send a copy of such reply to the applicant.

(7) An applicant who wishes to send any further representations to the Scottish Ministers shall do so within 14 days of being sent a copy of any reply pursuant to paragraph (6).

(8) Subject to paragraph (9), the Scottish Ministers may, upon expiry of the period specified in paragraph (7), proceed to make a determination under section 11 of the Act, unless they consider that—

- (a) they do not have sufficient information to enable them to make such a determination; or
- (b) any further representations received from the applicant pursuant to paragraph (7) raise a new matter which, in the opinion of the Scottish Ministers, may affect their determination and upon which an objector should be given the opportunity to comment.

(9) Where, pursuant to paragraph (5) or (8)(a), the Scottish Ministers consider that they require further information from the applicant or an objector to enable them to make a determination under section 11 of the Act or where, pursuant to paragraph (8)(b), the Scottish Ministers decide to give an objector a further opportunity to comment, they shall write to the applicant and objector accordingly and shall specify the period during which any further information or comments, as the case may be, shall be submitted to the Scottish Ministers.

(10) Where paragraph (9) applies, the Scottish Ministers shall consider, upon receipt of any further information or comments within the specified period, whether or not a further opportunity to comment should be given to the applicant or to an objector and, if so, they shall specify a period for making any further comments.

(11) The Scottish Ministers may, upon request, provide any person with a copy of any written representations or other material that have been sent to them pursuant to this rule.

(12) In making a determination under section 11 of the Act, the Scottish Ministers may disregard any written representations or other material that have not been sent to them within any time limit specified under or pursuant to this rule.

### **Submission of objections to inquiry or hearing**

23. Where the Scottish Ministers cause a public local inquiry or hearing to be held under section 9 of the Act, the Scottish Ministers shall submit every objection made pursuant to rule 19 to the person appointed to hold the inquiry or hearing, as soon as it is reasonably practicable to do so.

### **Making of representations**

24.—(1) Rules 19, 20 and 23 shall apply to the making of representations as regards an application under section 4 of the Act (applications) as they apply to the making of objections to such an application, as if—

- (a) each reference to “an objection” in those rules was a reference to “representations”;
- (b) each reference to “that objection” in those rules was a reference to “those representations”;
- (c) subject to paragraph (2)—
  - (i) other references to “objection”; and
  - (ii) references to “objections”,in those rules were references to “representations”;
- (d) the reference in rule 19(3) to “this rule and in rules 20 to 23” was a reference to rules 19, 20 and 23 as applied by this rule;
- (e) the reference in rule 20(2)(a) to “objector” was a reference to “maker of the representations”; and
- (f) the reference in rule 23 to rule 19 was a reference to that rule as applied by this rule.

(2) Paragraph (1)(c) does not apply to the references to “objections” where they occur in rule 19(1)(a) and (2) and where it occurs the first time in rule 20(2).

(3) References in these Rules to the “expiry date for objections” shall apply, where the context requires, as if in the definition of that expression in rule 2(1) the words “and representations” were inserted after the words “making objections”.

(4) Where none of the steps mentioned in paragraphs (1) and (2) of rule 21 have been taken by the operative date, so that the provisions of rule 22 shall apply to an objection, the Scottish Ministers shall also notify all those who have made representations pursuant to rule 19, as that rule is applied by this rule, that this is the case.

**Power to set later time limits**

**25.** The Scottish Ministers may at any time in any particular case allow further time for the taking of any step (including a step which they are required or enabled to take themselves) which may or must be taken pursuant to these Rules and any reference to a date by which or a period within which any step is required to be taken shall be construed accordingly.

St Andrew's House,  
Edinburgh

2007

Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Rules 2(1) and 9(2)

### INFORMATION TO BE INCLUDED IN ENVIRONMENTAL STATEMENT

1. A description of the proposed project, including in particular—
  - (a) a description of the physical characteristics of all the works covered by the application and the land-use requirements during the construction and operational phases;
  - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
  - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation and any others) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project, resulting from—
  - (a) the existence of the project;
  - (b) the use of natural resources; and
  - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and the description by the applicant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible remedy any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

## SCHEDULE 2

Rules 12, 13 and 15 and  
rule 18 (with Schedule 5)

### FORMS OF NOTICE

Form 1

Rule 12(2)

#### **The Transport and Works (Scotland) Act 2007**

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

#### **[Order title]**

#### **NOTICE OF APPLICATION FOR AN ORDER**

[Name and address of applicant] \*[is to apply] [has applied] to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for the above-mentioned order under section 1 of that Act.

The draft order makes provision for (a).

\*[The application [is] [is not] to be made subject to an environmental impact assessment.] or  
\*[The Scottish Ministers have determined that the application [is] [is not] to be made subject to an environmental impact assessment.]

\*[The application will contain/contains a statement that [a direction for deemed planning permission] [and] [a hazardous substances consent] is/are being applied for.]

A copy of the application, and of all plans and other documents submitted with it, may be inspected free of charge between the hours of (b) and (b) on (b) to (b) at (c) until (d). Copies of that information may be obtained from (e). A charge may be payable.

Any objections to, or representations about, the proposals in the application should be sent to the Scottish Ministers, c/o Transport and Works Unit [postal and e-mail address]. An objection or representations MUST (i) be received by the Scottish Ministers on or before [expiry date for objections], (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).

The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.

Signed: \_\_\_\_\_

\*On behalf of: \_\_\_\_\_

Date: \_\_\_\_\_

Name and status of signatory: \_\_\_\_\_

\*Delete or amend as appropriate.

\_\_\_\_\_



## **Notes**

- (a)* Summarise the provisions in the draft order which are relevant to the area in which the newspaper circulates. For orders authorising works, a brief description and location of the works relevant to the area should be included.
- (b)* Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.
- (c)* Place where the application etc. may be inspected.
- (d)* Date not earlier than the expiry date for objections.
- (e)* Address where copies of the information may be obtained.

**The Transport and Works (Scotland) Act 2007****The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007****[Order title]****NOTICE OF PROPOSED WORKS**

[Name and address of applicant] has applied to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for an order authorising the following works [description of works and their location].(a)

\*[The application [is] [is not] to be made subject to an environmental impact assessment.] or  
\*[The Scottish Ministers have determined that the application [is] [is not] to be made subject to an environmental impact assessment.]

A copy of the application, and of all plans and other documents submitted with it, may be inspected free of charge between the hours of (b) and (b) on (b) to (b) at (c) until (d). Copies of that information may be obtained from (e). A charge may be payable.

Any objections to, or representations about, the proposals in the application should be sent to the Scottish Ministers, c/o Transport and Works Unit [postal and e-mail address]. An objection or representations MUST (i) be received by the Scottish Ministers on or before [expiry date for objections], (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).

The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.

Signed: \_\_\_\_\_

\*On behalf of: \_\_\_\_\_

Date: \_\_\_\_\_

Name and status of signatory: \_\_\_\_\_

\*Delete or amend as appropriate.

**Notes**

(a) Description and location may vary for linear works to suit siting of each notice but must be clear. A plan may be helpful.

(b) Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.

(c) Place where the application etc. may be inspected.

(d) Date not earlier than the expiry date for objections.

(e) Address where copies of the information may be obtained.

**The Transport and Works (Scotland) Act 2007****The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007****[Order title]****NOTICE OF APPLICATION FOR AN ORDER WHICH WOULD \*[EXTINGUISH] [DIVERT] [TEMPORARILY] [PUBLIC RIGHTS OF WAY OVER] [STOP UP] [DIVERT] [TEMPORARILY] [RESTRICT USE OF] A [ROAD] [FOOTPATH/ETC.]**

[Name and address of applicant] has applied to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for the [name of draft order] to [brief description of works]. The order would authorise the \*[extinguishment] [diversion] of rights on foot/with vehicles etc. over (a) ] [stopping up] [diversion] [restriction on use] [of] the \*[road] [footpath/bridleway] [No.] [known as (b)] between (c) and (c) \*[to a line of route extending between (d) and (d)].

\*[The period of the [stopping up] [diversion] [restriction of use] applied for is [\*months/years.]]

\*[The application [is] [is not] to be made subject to an environmental impact assessment.] or

\*[The Scottish Ministers have determined that the application [is] [is not] to be made subject to an environmental impact assessment.]

A copy of the application, and of all plans and other documents submitted with it, may be inspected free of charge between the hours of (e) and (e) on (e) to (e) at (f) until (g). Copies of that information may be obtained from (h). A charge may be payable.

Any objections to, or representations about, the proposals in the application should be sent to the Scottish Ministers, c/o Transport and Works Unit [postal and e-mail address]. An objection or representations MUST (i) be received by the Scottish Ministers on or before [expiry date for objections], (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).

The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.

Signed: \_\_\_\_\_

\*On behalf of: \_\_\_\_\_

Date: \_\_\_\_\_

Name and status of signatory: \_\_\_\_\_

\*Delete or amend as appropriate.

\_\_\_\_\_

## **Notes**

- (a)* Provide sufficient detail to identify right of way (e.g. number of footpath or bridleway on definitive map or name of road) and indicate extent of proposed extinguishment if limited to type of use (e.g. on foot).
- (b)* Provide sufficient detail to identify the right of way or road.
- (c)* Points between which the road is to be stopped up, diverted or restricted.
- (d)* Give line of route of diverted road.
- (e)* Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.
- (f)* Place where the application etc. may be inspected.
- (g)* Date not earlier than the expiry date for objections.
- (h)* Address where copies of the information may be obtained.

**The Transport and Works (Scotland) Act 2007****The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure)  
Rules 2007****[Order title]****NOTICE OF APPLICATION \*[TO ACQUIRE LAND/RIGHTS IN LAND COMPULSORILY] [TO USE LAND] [FOR POWERS TO CARRY OUT PROTECTIVE WORKS TO BUILDINGS OR STRUCTURES] [TO EXTINGUISH/VARY REAL BURDENS/SERVITUDE] [TO DISAPPLY DEVELOPMENT MANAGEMENT SCHEME] [TO EXTINGUISH RIGHTS OVER LAND]**

To: [Name and address of recipient]

[Name and address of applicant] has applied to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for an order authorising the following works [brief description of works and their location].

The draft order provides for the \*[compulsory purchase of the] [extinguishment of the] \*[lands] [rights in lands] [rights to use land] [rights to carry out protective works to buildings or structures], described in the Schedule below, in which it is believed you have an interest. \*[If the order is made it may [vary or extinguish rights to enforce [real burdens] and [servitudes]] [disapply a development management scheme] [extinguish other private rights] affecting the land].

\*[The application [is] [is not] to be made subject to an environmental impact assessment.] or  
\*[The Scottish Ministers have determined that the application [is] [is not] to be made subject to an environmental impact assessment.]

A copy of the application, and of all plans and other documents submitted with it, may be inspected free of charge between the hours of (a) and (a) on (a) to (a) at (b) until (c). Copies of that information may be obtained from (d). A charge may be payable.

Any objections to, or representations about, the proposals in the application should be sent to the Scottish Ministers, c/o Transport and Works Unit [postal and e-mail address]. An objection or representations MUST (i) be received by the Scottish Ministers on or before [expiry date for objections], (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).

Where an objection is made (and not withdrawn) by a person who is—

- (a) an owner, lessee or occupier (except a tenant for a month or any period less than a month) of any land which is subject to compulsory purchase in the draft order;
- (b) the holder of a personal real burden or the owner of land which is a benefited property in relation to a real burden or servitude where it is proposed to vary or extinguish the right to enforce any such burden or servitude; or
- (c) an owners' association of a development to which a development management scheme applies which it is proposed to disapply,

and any such person so requests in writing, the Scottish Ministers must hold a public local inquiry or otherwise give that person an opportunity to be heard. However, this rule will not apply where the objection appears to the Scottish Ministers to be frivolous or trivial, or to relate to matters concerned with the assessment of compensation which fall to be determined by the Lands Tribunal for Scotland.

The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.

Signed: \_\_\_\_\_

\*On behalf of: \_\_\_\_\_

Date: \_\_\_\_\_

Name and status of signatory: \_\_\_\_\_

\*Delete or amend as appropriate.

#### Schedule

Description of lands and/or buildings or structures affected by the proposed compulsory powers.

[Description should be such as to show in clear terms which land or building or structure is affected and how and a plan may be attached where this would be helpful. Where land is to be acquired, a plan drawn to a suitable scale should be attached if this will help the recipient of the notice to understand precisely what land would be acquired.]

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#### Notes

- (a) Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.
- (b) Place where the application etc. may be inspected.
- (c) Date not earlier than the expiry date for objections.
- (d) Address where copies of the information may be obtained.

**The Transport and Works (Scotland) Act 2007****The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007****[Order title]****NOTICE OF FURTHER ENVIRONMENTAL INFORMATION**

On [date] [Name and address of applicant] applied to the Scottish Ministers under section 4 of the Transport and Works (Scotland) Act 2007 for the above-mentioned order under section 1 of that Act.

The draft order makes provision for (a).

The application is subject to an environmental impact assessment and further information is available in relation to the environmental statement which was provided with the application. A copy of that information may be inspected free of charge between the hours of (b) and (b) on (b) to (b) at (c) until (d). Copies of that information may be obtained from (e) for \*£ [free of charge].

Objections or representations about the further information should be sent to the Scottish Ministers c/o Transport and Works Unit [postal and e-mail address]. Any such objection or representations MUST (i) be received by the Scottish Ministers on or before (d), (ii) be made in writing (whether sent by post or e-mail), (iii) state the grounds of the objection or representations, (iv) indicate who is making the objection or representations, and (v) give an address to which correspondence relating to the objection or representations may be sent. (If you are sending your objection or representations by e-mail, please provide a postal address).

The Scottish Ministers may make complete copies of the objections and representations public and will copy them to the applicant for the order.

Signed: \_\_\_\_\_

\*On behalf of: \_\_\_\_\_

Date: \_\_\_\_\_

Name and status of signatory: \_\_\_\_\_

\*Delete or amend as appropriate.

**Notes**

- (a) Summarise the provisions in the draft order which are relevant to the area in which the newspaper circulates. A brief description of the works relevant to the area should be included and their location indicated.
- (b) Times of inspection (hours of the day and days of the week) must give the general public a reasonable opportunity to inspect, and the addresses for inspection should include at least one address in each area where inspection is possible on Saturday or Sunday.
- (c) Address in the locality where the further information may be inspected.

- (d) Date 42 days from the date of service of the further information on the Scottish Ministers or 42 days after a notice is published pursuant to rule 15(4), whichever date is later (see rule 19(2)).
- (e) Address where copies of the information may be obtained.



## SCHEDULE 3

Rules 8(2) and 11 and rule 18  
(with paragraphs 16(d), 18 and  
19 of Schedule 5)

### THOSE TO BE SERVED WITH A COPY OF THE APPLICATION AND DOCUMENTS

| <i>Column (1)</i><br><i>Authority sought for—</i>  | <i>Column (2)</i><br><i>Documents to be served on—</i>  |
|--|---|
| 1. Works or other matters.   | 1. The relevant constituency member, and each relevant regional member, of the Scottish Parliament.   |
| 2. Works affecting the foreshore below mean high water spring tides, or tidal waters, or the bed of, or the subsoil beneath tidal waters.  | 2. The Crown Estate Commissioners; the Commissioners of Northern Lighthouses; Scottish Natural Heritage; the Scottish Ministers (marked “for the attention of the Scottish Government Transport Directorate”); the Secretary of State for Transport (marked “for the attention of Maritime and Coastguard Agency”); the Scottish Environment Protection Agency; the Royal Yachting Association. |
| 3. Works affecting the banks or the bed of, or the subsoil beneath, a river.   | 3. The Scottish Environment Protection Agency; the relevant district salmon fishery board.  |
| 4. Works affecting the banks or the bed of, or the subsoil beneath, an inland waterway comprised in the undertaking of the British Waterways Board or any reservoirs, feeders, sluices, locks, lifts, drains and other works comprised in or serving the undertaking.          | 4. The British Waterways Board; the Inland Waterways Advisory Council; Scottish Natural Heritage; the Scottish Environment Protection Agency; Scottish Water.   |
| 5. Works affecting the banks or the bed of, or the subsoil beneath, an inland waterway not comprised in the undertaking of the British Waterways Board or any reservoirs, feeders, sluices, locks, lifts, drains and other works comprised in or serving that inland waterway. | 5. The Inland Waterways Advisory Council; the Scottish Environment Protection Agency; Scottish Natural Heritage; Scottish Water; the operator of the relevant inland waterway.  |
| 6. Works causing or likely to cause an obstruction to the passage of fish in a river.  | 6. Scottish Natural Heritage; the Scottish Environment Protection Agency; the relevant district salmon fishery board.   |
| 7. Works involving tunnelling or excavation deeper than 3 metres below the surface of the land, other than for piling or making soil test.   | 7. The Scottish Environment Protection Agency.  |
| 8. Works affecting an area under the control of a harbour authority as defined in section 57(1) of the Harbours Act 1964 (interpretation)(a).  | 8. The relevant harbour authority and the relevant navigation authority (if different).   |

(a) 1964 c.40.

| <i>Column (1)</i><br><i>Authority sought for–</i>  | <i>Column (2)</i><br><i>Documents to be served on–</i>  |
|--|---|
| 9. Works affecting a site protected under section 1 of the Protection of Wrecks Act 1973 (protection of sites of historic wrecks)(a).  | 9. The Scottish Ministers (marked “for the attention of Historic Scotland”).  |
| 10. Works affecting, or involving the stopping-up or diversion of, a road or affecting a proposed road.  | 10. The relevant roads authority or, where the road is not maintainable at the public expense, the road managers.   |
| 11. The stopping-up or diversion of a footpath, a bridleway or a cycle track.  | 11. The relevant community council; the Scottish Public Rights of Way Society; the Ramblers Association Scotland; the British Horse Society; Sustrans Scotland; Cycling Scotland. |
| 12. The construction of a transport system involving the placing of equipment in or over a road.   | 12. The relevant roads authority or, where the road is not maintainable at the public expense, the road managers.   |
| 13. Works affecting land in, on or over which is installed the equipment of a statutory undertaker.  | 13. The relevant statutory undertaker.  |
| 14. Works in an area of coal working notified to the planning authority by the British Coal Corporation or the Coal Authority.   | 14. The Coal Authority.   |
| 15. Works affecting–<br>(i) a building listed under Part 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(b) or its setting;<br>(ii) a conservation area designated under Part 2 of that Act; or<br>(iii) a scheduled monument within the meaning of section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(c). | 15. The Scottish Ministers (marked “for the attention of Historic Scotland”).   |
| 16. Works affecting a garden or other designed landscape identified in “An Inventory of Gardens and Designed Landscapes in Scotland – List of Sites 2007”, published by the Scottish Ministers in 2007(d).   | 16. The Scottish Ministers (marked “for the attention of Historic Scotland”).   |
| 17. Works affecting–<br>(i) a site of special scientific interest notified under section 23 of the National Parks and Access to the Countryside Act 1949(e) or section 3(1) or 5(1) of the Nature Conservation (Scotland) Act 2004(f) or land within 3 kilometres of any such site;  | 17. Scottish Natural Heritage; the Scottish Environment Protection Agency.  |

(a) 1973 c.33.

(b) 1997 c.9.

(c) 1979 c.46.

(d) ISBN 978 1 904966 44 9. A copy is available at [www.historic-scotland.gov.uk](http://www.historic-scotland.gov.uk).

(e) 1949 c.97; section 23 was repealed by the Wildlife and Countryside Act 1981 (c.69), Schedule 17, but notifications under section 23 can continue to have effect by virtue of the Nature Conservation (Scotland) Act 2004 (asp 6), schedule 5, paragraphs 8 to 10.

(f) 2004 asp 6.

| <i>Column (1)</i><br><i>Authority sought for–</i>  | <i>Column (2)</i><br><i>Documents to be served on–</i> |
|--|--|
| <ul style="list-style-type: none"> <li>(ii) an European site or an European marine site as those expressions are defined in regulations 2(1) and 10(1) of the Conservation (Natural Habitats, &amp;c.) Regulations 1994(a) or land within 3 kilometres of any such site;</li> <li>(iii) a national scenic area designated under section 263A of the Town and Country Planning (Scotland) Act 1997(b) or land within 3 kilometres of any such area;</li> <li>(iv) land in respect of which a declaration has been made under section 19 of the National Parks and Access to the Countryside Act 1949 (declarations that areas are nature reserves)(c) or land declared to be a national nature reserve under section 35 of the Wildlife and Countryside Act 1981(d) or other land within 3 kilometres of any such land; or</li> <li>(v) a site designated for inclusion in the list of wetlands of international importance pursuant to the Convention on Wetlands of International Importance signed at Ramsar, Iran on 2nd February 1971, as amended by– <ul style="list-style-type: none"> <li>(a) the Protocol known as the Paris Protocol done at Paris on 3rd December 1982; and</li> <li>(b) the amendments known as the Regina Amendments adopted at the Extraordinary Conference of the Contracting Parties held at Regina, Saskatchewan, Canada, between 28th May and 3rd June 1987,</li> </ul> or land within 3 kilometres of any such site. </li> </ul> |  |
| 18. Works affecting land used, or last used, as a playing field.   | 18. Sportscotland.                                     |
| 19. Works affecting amenity in the area of a community council.  | 19. The relevant community council.                    |

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(a) S.I. 1994/2716; the relevant amending instruments are S.S.I. 2004/475 and 2007/80.  
(b) 1997 c.8; section 263A is inserted by the Planning etc. (Scotland) Act 2006 (asp 17), section 50.  
(c) Section 19 was amended by the Nature Conservancy Council Act 1973 (c.54), Schedule 1, paragraph 1.  
(d) 1981 c.69.

| <i>Column (1)</i><br><i>Authority sought for–</i>  | <i>Column (2)</i><br><i>Documents to be served on–</i>   |
|--|--|
| 20. Works affecting a National Park designated by an order made under section 6(1) of the National Parks (Scotland) Act 2000(a).   | 20. The relevant National Park authority; Scottish Natural Heritage.   |
| 21. Works which are within 250 metres of land that is or has been used for the deposit of refuse or waste.   | 21. The Scottish Environment Protection Agency.  |
| 22. The carrying out of an operation requiring hazardous substances consent under the Planning (Hazardous Substances) (Scotland) Act 1997(b).                                      | 22. The relevant local authority; the relevant National Park authority; all those referred to as consultees in regulation 11(1) of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (consultation before grant of hazardous substances consent)(c).                  |
| 23. Works which would affect the operation of any existing railway or tramway services provided under statutory powers or the construction of a new railway or of any new tramway. | 23. The Scottish Ministers (marked “for the attention of Transport Scotland”); the Office of Rail Regulation; Network Rail; the Rail Passengers’ Council; the Public Transport Users’ Committee for Scotland; the British Transport Police Authority; the operator of the relevant transport system. |
| 24. The right for a person providing transport services to use a transport system belonging to another or works to alter or demolish a transport system.                           | 24. The operator of the relevant transport system.   |
| 25. Works affecting land in which there is a Crown interest.   | 25. The appropriate authority for the land.  |
| 26. Works.   | 26. The relevant local authority; Scottish Environmental Link (Company Number SC250899).   |

(a) 2000 asp 10.

(b) 1997 c.10.

(c) S.I. 1993/323 as amended by S.I. 1994/2567 and 1996/252 and S.S.I. 2000/179 and 2003/1.

SCHEDULE 4      Rules 8(2) and 12(3) and rule 18  
(with paragraphs 16(d) and 21  
of Schedule 5)

THOSE TO BE SERVED WITH NOTICE OF APPLICATION

| <i>Column (1)</i><br><i>Authority sought for—</i>  | <i>Column (2)</i><br><i>Those to be served—</i>   |
|--|---|
| 1. Works affecting the banks or the bed of, or the subsoil beneath, a river.   | 1. The Crown Estate Commissioners.  |
| 2. Works affecting the banks or the bed of, or the subsoil beneath, an inland waterway or any reservoirs, feeders, sluices, locks, lifts, drains and other works comprised in or serving that inland waterway.   | 2. The Scottish Inland Waterways Association;<br>the Association of Inland Navigation Authorities;<br>the Waterways Trust for Scotland;<br>the National Association of Boat Owners.   |
| 3. Works affecting an area under the control of a harbour authority as defined in section 57(1) of the Harbours Act 1964.  | 3. The navigation authority for any adjoining waterway (if different from the navigation authority for the harbour area).   |
| 4. Any activity which is a controlled activity within the meaning of regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (interpretation)(a).   | 4. The Scottish Environment Protection Agency.  |
| 5. Works likely to affect the volume or character of traffic entering or leaving a special road, a trunk road or any other classified road.  | 5. The relevant roads authority.  |
| 6. The construction of a transport system involving the placing of equipment in or over a road (except a level crossing).  | 6. Owners and occupiers of all buildings which have a frontage on, or a private means of access which first meets the road at, the part of the road in or over which equipment is to be placed, other than those on whom a notice has been served pursuant to rule 13(1). |
| 7. Works affecting any land on which there is a theatre as defined in section 5 of the Theatres Trust Act 1976 (interpretation)(b).  | 7. The Theatres Trust.  |
| 8. The modification, exclusion, amendment, repeal or revocation of a provision of an enactment or statutory instrument conferring protection or benefit upon any person (whether in his capacity as the owner of designated land or otherwise) specifically named therein. | 8. The person upon whom such protection or benefit is conferred, or the person currently entitled to that protection or benefit.  |

(a) S.S.I. 2005/348.

(b) 1976 c.27.

| <i>Column (1)</i><br><i>Authority sought for–</i>   | <i>Column (2)</i><br><i>Those to be served–</i>  |
|---|--|
| 9. Works or traffic management measures that would affect services provided by a universal service provider (within the meaning of section 4 of the Postal Services Act 2000 <sup>(a)</sup> ) in connection with the provision of a universal postal service (within the meaning of section 4 of that Act) and relating to the delivery or collection of letters. | 9. Every universal service provider affected.  |
| 10. Works in an area of coal working notified to the planning authority by the British Coal Corporation or the Coal Authority.  | 10. The holder of the current licence under section 36(2) of the Coal Industry Nationalisation Act 1946 (savings as to certain coal) <sup>(b)</sup> or under Part 2 of the Coal Industry Act 1994 (licensing of coal mining operations) <sup>(c)</sup> . |

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(a) 2000 c.26.  
(b) 1946 c.59.  
(c) 1994 c.21.

## PROPOSALS FOR ORDERS BY VIRTUE OF SECTION 6

1. In this Schedule “the publication date” means the date of publication of the notice required by paragraph 11.

2. Where by virtue of this Schedule any provisions of these Rules apply in relation to a proposal of the Scottish Ministers to make an order by virtue of section 6 of the Act, any reference in those provisions to—

- (a) “applicant” shall be construed as references to the Scottish Ministers; and
- (b) “application” shall be construed as references to the publication by the Scottish Ministers of the notice required by paragraph 11.

3. When the Scottish Ministers propose to make an order by virtue of section 6 of the Act which would authorise a project within the meaning of the Directive, the Scottish Ministers shall determine whether an environmental impact assessment is necessary.

4. If the project is of a type mentioned in—

- (a) Annex I to the Directive; or
- (b) Annex II to the Directive and the Scottish Ministers consider that it would be likely to have a significant effect on the environment,

the Scottish Ministers shall determine that an environmental impact assessment is required.

5. Where the project is of a type mentioned in Annex II to the Directive the Scottish Ministers shall, for the purposes of determining whether an environmental impact assessment is necessary, consult those mentioned in rule 5(7) and provide them with the information described in rule 5(4), unless the Scottish Ministers have already formed the view that the project would be likely to have a significant effect on the environment.

6. Any body—

- (a) falling within rule 5(7)(a) to (d), consulted pursuant to paragraph 5 shall, not later than 28 days after being consulted, provide the Scottish Ministers with a written opinion as to whether or not, in their opinion, the works in question should be the subject of an environmental impact assessment; and
- (b) falling within rule 5(7)(e), consulted pursuant to paragraph 5 may, not later than 28 days after being consulted, provide the Scottish Ministers with a written opinion as to whether or not, in their opinion, the works in question should be the subject of an environmental impact assessment.

7. In reaching a determination as to whether an environmental impact assessment is necessary, the Scottish Ministers shall take into account the selection criteria set out in Annex III to the Directive.

8. Any determination by the Scottish Ministers as to whether an environmental impact assessment is necessary, together with the reasons for that determination, shall be published in the Edinburgh Gazette and in such newspaper as they consider appropriate within 14 days of such a determination being reached.

9. Where the Scottish Ministers have determined that an environmental impact assessment of the proposed works is necessary the Scottish Ministers shall consult those bodies mentioned in rule 6(4) before reaching an opinion as to the information to be provided in the environmental statement.

**10.** Where any body consulted pursuant to paragraph 9 wishes to provide the Scottish Ministers with a written opinion as to the information to be provided in the environmental statement that body or person shall do so no later than 28 days after being consulted.

**11.** Where, following completion of any necessary action pursuant to paragraphs 3 to 10, the Scottish Ministers propose to make an order by virtue of section 6 of the Act, the Scottish Ministers shall publish a notice of the proposals in the Edinburgh Gazette, which notice shall include—

- (a) the title of the proposed order, a summary of the matters provided for in the proposed order and the location of any proposed works;
- (b) if applicable, a statement that the Scottish Ministers propose to direct that planning permission or hazardous substances consent, as the case may be, shall be deemed to be granted;
- (c) a statement as to whether or not the proposals are subject to an environmental impact assessment;
- (d) the address to which objections and representations are to be sent and the date of expiry of the period within which they must be made (being not less than 42 days from the date of the notice); and
- (e) the address, if different, to which requests may be made for further information about the proposed order (and, if applicable, any proposed direction for deemed planning permission or deemed hazardous substances consent).

**12.** The Scottish Ministers shall publish, in at least one newspaper circulating in each area in which the proposals are intended to have effect, a notice containing—

- (a) the information specified in paragraph 11; and
- (b) the names of all places, which shall be places within the area to which the proposals relate (or as close as reasonably practicable to that area), where copies of the documents referred to in paragraph 16 may be inspected free of charge at all reasonable hours during the period specified in pursuance of paragraph 11(d),

such notice to be published not less than on two separate occasions, the first publication of which may not be made earlier than 14 days before, and not later than, the publication date and the second or if more than two, the last, to be not more than 7 days after the publication date.

**13.** The places referred to in paragraph 12(b) shall include a library or libraries, or such other publicly accessible buildings as the Scottish Ministers consider appropriate, which shall in each case be situated within the area to which the proposals in the proposed order relate (or as close as reasonably practicable to that area).

**14.** The Scottish Ministers shall, as soon as possible after the publication date, serve a copy of the documents mentioned in paragraph 16 upon every—

- (a) local authority for an area;
- (b) regional Transport Partnership for a region; and
- (c) National Park authority for a National Park,

in which all or any part of a transport system, inland waterway or other works to which the proposals relate is or are (or is or are to be) situated.

**15.** The Scottish Ministers shall, as soon as possible after the publication date, deposit a copy of the documents mentioned in paragraph 16 in the Scottish Parliament Information Centre.

**16.** The documents to be served by virtue of paragraph 14, or deposited by virtue of paragraph 15, are—

- (a) a draft of the proposed order under section 1 of the Act;
- (b) an explanatory memorandum that explains the purpose and effect of each article of and Schedule to the draft order;



- (c) a memorandum setting out the aims of the proposals including any alternative approach considered and the reason for rejection;
- (d) a report summarising the consultations that have been undertaken including confirmation that the Scottish Ministers have consulted all those named in column (2) of the tables in Schedules 3 and 4 where authority is sought for works or other matters described in column (1) of those tables, or if not, an explanation of why not;
- (e) a list of all consents, permissions or licences required under other enactments in connection with the proposals which, at the publication date, are being sought or which have been obtained or refused, specifying for each relevant consent, permission or licence the information referred to in rule 8(2)(g)(i), (ii) and (iii);
- (f) where the proposed works are to be subject to an environmental impact assessment, an environmental statement which shall include the information referred to in rule 9, confirmation that a draft of the environmental statement has been sent to the persons specified in rule 3(3)(b) and (c) and a memorandum setting out any comments that either such person might have made in respect of the draft;
- (g) a copy of any waiver statement made under paragraph 34;
- (h) where the proposed order would authorise the carrying out of works–
  - (i) subject to paragraph 17, the plans and sections described in paragraphs (1) and (4) of rule 10; and
  - (ii) an estimate of the cost of carrying out the works provided for in the proposed order.
- (i) subject to sub-paragraph (j) and paragraph 17, where the proposed order would authorise the compulsory acquisition of land, or the right to use land, or to carry out protective works to buildings or structures, or the compulsory extinguishment, variation or disapplication of a title condition or development management scheme or the compulsory extinguishment of other private rights over land, the plan and book of reference respectively described in paragraphs (5) and (7) of rule 10 (subject however to paragraphs (9) and (10) of that rule);
- (j) where the proposed order would provide for the extinguishment or diversion of rights of way or passage over a footpath, bridleway or cycle track, a map of a scale not smaller than 1:2500 on which the path, way or track concerned, and, in the case of diversion, the new path, way or track is clearly delineated;
- (k) where the Scottish Ministers propose to direct under section 57(2A) of the Town and Country Planning (Scotland) Act 1997<sup>(a)</sup> that planning permission shall be deemed to be granted, a statement signed by or on behalf of the Scottish Ministers specifying–
  - (i) the development to which the direction would apply;
  - (ii) any proposed conditions attaching to it;
  - (iii) a list of any matters which are intended to be reserved for subsequent approval by the planning authority; and
  - (iv) in respect of those matters not intended to be so reserved, such further documents and information as may be necessary to support the making of the direction;
- (l) where the Scottish Ministers propose to direct under section 10(2A) of the Planning (Hazardous Substances) (Scotland) Act 1997<sup>(b)</sup> that hazardous substances consent shall be deemed to be granted, Form 1 or Form 2 of the forms prescribed in Schedule 2 to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993<sup>(c)</sup> as the case may require, duly completed and signed by or on behalf of the Scottish Ministers, and the information and documentation specified in one or both of regulations 5(1)(b) and 5(3)(b) of those Regulations (applications for hazardous substances consent) as the case may require; and

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(a) 1997 c.8; section 57(2A) was inserted by the Transport and Works (Scotland) Act 2007 (asp 8), section 15(1).

(b) 1997 c.10; section 10(2A) was inserted by the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 (S.S.I. 2007/[            ]), regulation 4.

(c) S.I. 1993/323 as relevantly amended by S.S.I. 2000/179.

- (m) a statement specifying the capacity (or, if more than one, the capacities) in which the recipient is served, or that the documents are being deposited pursuant to paragraph 15, as the case may require, the date of expiry of the period within which objections or representations must be made (being not less than 42 days from the publication date), and the address to which objections and representations are to be sent.

**17.** The Scottish Ministers may, if the Scottish Ministers consider it reasonable and appropriate, vary the scale for the plans and sections referred to in sub-paragraph (h) or (i) of paragraph 16.

**18.** Where the proposed order would authorise the works or other matters specified in any of the categories in column (1) of the table in Schedule 3, the Scottish Ministers shall, as soon as possible after the publication date, serve upon those named against each such category in column (2) of that table a copy of the documents mentioned in paragraph 16.

**19.** The Scottish Ministers shall, as soon as possible after the publication date, serve a copy of the documents mentioned in paragraph 16 on any body not mentioned in column (2) of the table in Schedule 3 which the Scottish Ministers consider is likely to have an interest in the application by reason of that body's specific environmental responsibilities.

**20.** The Scottish Ministers shall not be obliged by virtue of paragraph 14 or 18 to serve upon any person more than one copy of the same document; and where any person has confirmed in writing to the Scottish Ministers that they do not wish to be served with a copy of, or a copy of any part of, a document that the Scottish Ministers are required to serve on that person by virtue of those paragraphs, the Scottish Ministers shall not be required to serve upon that person that document or the relevant part of it.

**21.** Where the proposed order includes works or other matters specified in any of the categories in column (1) of the table in Schedule 4, the Scottish Ministers shall, as soon as possible after the publication date, serve upon those named against each such category in column (2) of that table a notice containing the information specified in paragraph 12, which notice shall state the capacity (or, if more than one, the capacities) in which the recipient of the notice is served.

**22.** Where the proposed order makes any provision—

- (a) for the purpose of suspending or discontinuing any operations; or
- (b) in consequence of the abandonment or neglect of any works,

the Scottish Ministers shall, as soon as possible after the publication date, serve upon every operator affected or likely to be affected a notice containing the information specified in paragraph 12, which notice shall state the capacity in which the recipient of the notice is served.

**23.** Where the proposed order would authorise works, the Scottish Ministers shall, as soon as possible after the publication date, display one or more notices in the form of Form 2 in Schedule 2 in accordance with the requirements of rule 12(6).

**24.** Where the proposed order would authorise any of the matters described in rule 12(7)(a) or (b), the Scottish Ministers shall, as soon as possible after the publication date, display one or more of the notices in the form of Form 3 in Schedule 2 in accordance with the requirements of rule 12(7).

**25.** The Scottish Ministers shall take all reasonable steps to ensure that every notice displayed under the provisions of paragraphs 23 and 24 shall continue to be displayed in a legible form until the expiry date for objections and representations specified under paragraph 11(d).

**26.** The Scottish Ministers shall supply a copy of any document referred to in paragraph 16 to any person who requests such a copy, subject to the payment by that person of a reasonable charge for the provision of the copy, and the Scottish Ministers shall ensure that the information as to how such copies may be obtained is displayed at every place at which copies of those documents are made available for inspection.

**27.** Where paragraph 16(i) applies, the Scottish Ministers shall, as soon as possible after the publication date serve a notice in the form of Form 4 in Schedule 2 upon all those named in the book of reference other than the appropriate authority in relation to a Crown interest.

**28.** Where pursuant to rule 10(9), as applied by paragraph 16(i), the Scottish Ministers have indicated in the book of reference that relevant names (or addresses) have or might have been omitted, the Scottish Ministers shall, as soon as possible after the publication date, serve a notice in the form of Form 4 in Schedule 2 in accordance with the provisions of rule 13(2).

**29.** Where it appears to the Scottish Ministers that the proposed order relates to works which would be likely to have significant effects on the environment in England, Wales, Northern Ireland, the Isle of Man or the Channel Islands, the Scottish Ministers shall publish the information specified in paragraph 12 in such newspapers circulating in the place in question as the Scottish Ministers may consider appropriate.

**30.—**(1) This paragraph shall apply where—

- (a) it appears to the Scottish Ministers that the proposed order relates to works which would be likely to have significant effects on the environment of another Member State; or
- (b) another Member State whose environment is likely to be significantly affected by the works to which the proposed order relates, requests information relating to the proposed order.

(2) Where this paragraph applies, the Scottish Ministers shall—

- (a) send the information mentioned in rule 14(5) to the Member State in question as soon as reasonably practicable and in any event no later than the publication date or, in a case falling within sub-paragraph (1)(b), no later than 7 days after receiving a request from the Member State in question;
- (b) give the Member State in question a reasonable time in which to indicate whether it wishes to participate in the procedure for consideration of the proposed order;
- (c) take such steps as they consider necessary to ensure that the public is informed that the project is likely to have significant effects on the environment of another Member State and that the provisions of this paragraph apply;
- (d) where a Member State has indicated that it wishes to participate in the procedure for considering the proposed order, send to the State in question (in so far as these documents and information have not already been supplied to that State) a copy of the proposed order and of the environmental statement and any other relevant information regarding the procedure for considering the proposed order and for undertaking an environmental impact assessment of the proposed works; and
- (e) comply with the requirements of rule 14(7) and (8), on the basis that the documents and information to be made available under rule 14(7)(a) shall be the documents and information referred to in rule 14(5) and sub-paragraph (2)(d) of this paragraph.

**31.—**(1) Where after serving a copy of any environmental statement under paragraph 14 the Scottish Ministers produce further environmental information for the purposes of the proposed order, the Scottish Ministers shall—

- (a) publish a notice of that further environmental information in at least one newspaper circulating in the areas to which the information is relevant in the form of Form 5 of Schedule 2;
- (b) serve a copy of the information on each person on whom, in accordance with this Schedule, a copy of their environmental statement was served together with a notice in the form of Form 5 in Schedule 2; and
- (c) provide a copy of the information (or any part of it) to any other person who so requests, subject to the payment by that person of a reasonable charge.

(2) Where after service by the Scottish Ministers of a copy of any environmental statement under paragraph 14 any person submits further environmental information relevant to the

proposed order, the Scottish Minister may take the steps set out in paragraphs (a) to (c) of sub-paragraph (1).

(3) Where further information is produced or submitted as mentioned in this paragraph in a case falling within paragraph 30(1)(a) or (b), the Scottish Ministers may send that further information to the Member State in question as soon as reasonably practicable and may comply with the requirements of rule 14(7), on the basis that the documents and information mentioned in that rule should be the further information produced or submitted.

**32.** Subject to paragraphs 33 and 34, the Scottish Ministers may, following consultation with all those they consider would be likely to be affected, waive any provision of this Schedule, in whole or in part, where they consider that it is impossible, impracticable or unnecessary for them to comply with that provision or to comply in full.

**33.** The Scottish Ministers shall not waive any provisions of paragraphs 3 to 10, 16(f), 19, 29, 30 and 31(1).

**34.** Where the Scottish Ministers decide to waive any provisions of this Schedule in accordance with paragraph 32, they shall send a statement to that effect to all those that they have consulted.

**35.—(1)** Subject to sub-paragraph (2), an objection made in relation to a proposed order shall only be an objection for the purposes of these Rules if it—

- (a) is received by the Scottish Ministers on or before the expiry of the period specified in pursuance of paragraph 11(d);
- (b) is made in writing;
- (c) states the grounds of the objection;
- (d) indicates who is making the objection; and
- (e) provides an address to which any correspondence relating to that objection may be sent.

(2) Where an objection relates to information produced or submitted as mentioned in paragraph 31 after the Scottish Ministers have served a copy of any environmental statement under paragraph 14, that objection will be an objection for the purposes of these Rules, even where it is made after the expiry of the period specified in pursuance of paragraph 11(d), if it is made not later than 42 days after the date on which the information is produced by, or submitted to, the Scottish Ministers or the last date on which a notice relating to the information is published in a newspaper pursuant to paragraph 31(1), whichever date is the later.

(3) In this paragraph and in paragraphs 36, 37 and 39, a reference to an objection includes a reference to any document submitted with an objection.

**36.** The Scottish Ministers may, upon request, provide any person with a copy of any objections made by others.

**37.** The Scottish Ministers may, for the purpose of determining whether or not to make the proposed order, send any objection they have received to any other person and invite comments from that person within such period as they may specify.

**38.** The Scottish Ministers may disregard any comments that are not sent to the Scottish Ministers within the period specified pursuant to paragraph 37 and, except where paragraph 39 applies, they may, upon expiry of the specified period, proceed to a determination under section 11 of the Act.

**39.** Where the Scottish Ministers cause a public local inquiry or hearing to be held under section 9 of the Act for the purposes of the proposed order, the Scottish Ministers shall submit every objection that they have received to the person appointed to hold the inquiry or hearing, as soon as it is reasonably practicable to do so.

**40.** Paragraphs 35, 36 and 39 shall apply to the making of representations as regards a proposal to make an order by virtue of section 6 as they apply to the making of objections to such a proposal, as if–

- (a) each reference to “an objection” in those paragraphs was a reference to “representations”;
- (b) each reference to “that objection” in those paragraphs was a reference to “those representations”;
- (c) other references to “objection”, and the reference to “objections”, in those paragraphs were references to “representations”; and
- (d) the reference in paragraph 35(3) to “this paragraph and in paragraphs 36, 37 and 39” was a reference to paragraphs 35, 36 and 39 as applied by this rule.

**41.** The following provisions of these Rules shall also have effect in relation to the Scottish Ministers’ proposal to make an order–

- (a) rule 3(3), with–
  - (i) the substitution of the words “environmental statement” for the words “applicant’s statement of environmental information”; and
  - (ii) the exception of sub-paragraph (a); and
- (b) rule 4.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules set out the procedures in connection with–

- (a) the making of an application for an order under section 1 of the Transport and Works (Scotland) Act 2007 (“the Act”) to authorise a transport system or inland waterway;
- (b) a proposal for such an order by the Scottish Ministers by virtue of section 6 of the Act; and
- (c) the making of objections and representations relating to such an application or proposal.

They also set out the procedures for the handling of objections where the Scottish Ministers decide not to hold a public local inquiry or hearing under section 9 of the Act.

The rules include provision in rules 4, 5, 6, 8(2)(h), 9 (with Schedule 1), 11, 12 (with Schedule 3), 14 and 15 and paragraphs 4 to 7, 9, 11, 12, 14, 16(f), 19, 30, 31 and 41 of Schedule 5 to implement Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. L 175, 5.7.85, p.40) as amended by Council Directives 97/11/EC (O.J. L 73, 14.3.97, p.5) and 2003/35/EC (O.J. L 156, 25.6.03, p.17). Those provisions, along with the provision made by sections 4, 5, 6, 8 and 12 of the Act, implement that Directive in respect of a project for a transport system or inland waterway authorised by an order under section 1 of the Act.

Rule 3 requires a prospective applicant to send drafts of the–

- order and explanatory material to the Scottish Minister; and
- environmental statement for the project to bodies responsible for environmental matters,

in advance of its application.

Rule 4 enables the applicant to obtain environmental information where this is not already provided for by the Environmental Information (Scotland) Regulations 2004.

Rules 5 and 6 enable a prospective applicant to obtain a prior view from the Scottish Ministers as to whether the project requires an environmental impact assessment (a screening decision), or if it does, the information to be included in its environmental statement (a scoping opinion).

Rules 7, 8, 9 and 10 (with Schedules 1, 3 and 4) provide for the form of the application and the documentation which must be submitted in support of it.

Rule 11 (with Schedule 3) provides for the service by the applicant of copies of the application and supporting documents on the interested persons or bodies listed in this rule or that Schedule.

Rules 12 and 13 (with Schedules 2 and 4) provide for the service by the applicant of notice of the application on other persons and bodies, including those with an interest in land affected by the proposal if it proceeds, and publicity for the application. This includes the publication of notice of the application in local newspapers and the Edinburgh Gazette, and the posting of notices at the site of proposed works.

Rule 14 provides for the notification of other jurisdictions of the United Kingdom, the Isle of Man, the Channel Islands or Member States of the European Economic Area of applications for proposed works that may have a significant effect on the environment of that jurisdiction or state.

Rule 15 empowers the Scottish Ministers to require the applicant to supply further environmental information. It also makes provision for public notification where further environmental information is provided pursuant to this rule, or is submitted, after the application.

Rule 16 provides a mechanism for an applicant, or prospective applicant, to seek to obtain a waiver in respect of all or part of the rules identified in this rule.

Rule 17 prescribes the fees payable on the making of an application. The fee is £10,000, unless the primary object of the proposed order relates to a heritage railway, or the applicant is a charity, when the fee is £1,000.

Rule 18 (with Schedule 5) prescribes the procedure that will apply when the Scottish Ministers make a proposal for an order by virtue of section 6 of the Act.

Rules 19, 20 and 21 make general provision relating to objections including the validity of objections and the service of copies of objections upon other persons. Provision is also made for determining when objections are to be dealt with by the written representations procedure.

Rule 22 sets out the procedure for dealing with objections by written representations where the objections do not warrant the holding of an inquiry or hearing.

Rule 23 imposes requirements on the Scottish Ministers where a public inquiry or hearing is called.

Rule 24 applies provisions relating to objections to any representations made in relation to an application, other than the provisions for consideration of objections by written representations procedure.

Rule 25 provides for the extension of time limits for the taking of steps prescribed by these Rules.

A Regulatory Impact Assessment has been prepared in respect of these Rules. A copy can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh EH6 6QQ.

**2007 No.**

**TRANSPORT AND WORKS**

**TRANSPORT**

**CANALS AND INLAND WATERWAYS**

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

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