

SCHEDULE 5

Rule 18

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(1) 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(2) 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(3) as the case may require, duly completed and signed by or on behalf of the Scottish Ministers,

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

(2) 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.

(3) S.I.1993/323 as relevantly amended by [S.S.I. 2000/179](#).

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

- (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.