
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

**The Transport and Works (Scotland) Act 2007
(Access to Land on Application) Order 2008**

Consideration of the application

9.—(1) The Scottish Ministers shall, after consideration of the application, any representations, any comments pursuant to article 7 and paragraph (5) and the report of any person appointed under article 8(1), determine—

- (a) to grant authorisation to the applicant to take entry to the relevant land to which an application relates and, if so, the purposes in article 3(2) for which entry is permitted; or
- (b) to refuse to authorise entry to that relevant land.

(2) A determination under paragraph (1) may authorise entry to part of the relevant land to which an application relates and refuse it to the remainder.

(3) The Scottish Ministers may attach such conditions and limitations to an authorisation as they consider appropriate.

(4) Without prejudice to the generality of paragraph (3) the conditions and limitations which the Scottish Ministers may attach to an authorisation include—

- (a) requiring prior notice before entry is taken;
- (b) the duration of the authorisation to take entry and restrictions as to the timing of entry including as to the days on which it may be taken;
- (c) restrictions as to the timing of undertaking any activity including as to the days on which it may be undertaken;
- (d) restrictions on entry to particular parts of the authorised land or for particular purposes;
- (e) requirements applying before, during or after entry is taken;
- (f) enabling the attendance of the owner or any tenant or occupier or their representative, if the owner or any tenant or occupier should wish it, at all times or at certain times or when performing a particular activity;
- (g) requiring notice to, and the agreement of, specified persons before undertaking a particular activity;
- (h) provision as regards the persons, vehicles, plant, materials and apparatus to which article 3(3) applies;
- (i) requiring a survey or audit of the condition of the authorised land to be completed and recorded prior to entry for the purposes permitted by the authorisation, or to entry for any specified purpose, commencing; and
- (j) requiring the making good of any damage done in entering or in consequence of entering the authorised land.

(5) Where the Scottish Ministers propose to attach conditions or limitations to an authorisation in the event of it being granted, they may, where they consider it appropriate to do so—

- (a) serve a copy of those conditions or limitations on the applicant and other persons likely to be concerned; and
 - (b) invite comments, in writing, from the applicant and those other persons within such period as the Scottish Ministers may specify.
- (6) As soon as practicable after making a determination under paragraph (1), the Scottish Ministers shall give notice of the determination, together with the reasons for it, to—
- (a) the applicant; and
 - (b) the owner and every tenant and occupier of the land to which the authorisation relates or would have related in the case of a refusal to authorise entry to land.
- (7) Where the determination is to grant an authorisation to the applicant to enter all or part of the relevant land to which their application relates—
- (a) the notice under paragraph (6)(a) shall include the authorisation (including any conditions or limitations attaching to it); and
 - (b) the notice under paragraph (6)(b) shall—
 - (i) include a copy of the authorisation (including any conditions or limitations attaching to it);
 - (ii) give information regarding the right of appeal to the sheriff under article 10; and
 - (iii) state that an offence may be committed if entry is obstructed and the sheriff has by warrant authorised the applicant to enter the authorised land.
- (8) An authorisation shall have no effect—
- (a) before the expiry of the period within which an appeal to the sheriff under article 10(1) may be made; or
 - (b) where an appeal under that article has been made, before the appeal is withdrawn or otherwise disposed of.