

EXECUTIVE NOTE

THE TRANSPORT AND WORKS (SCOTLAND) ACT 2007 (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) ORDER 2007 SSI 2007/ 517

1. The above instrument was made in exercise of the powers conferred by section 28(6) and (7) of the Transport and Works (Scotland) Act 2007 (asp 8) (“the Act”). The instrument is subject to negative resolution procedure.

Policy

2. Part 1 of the Act provides for an order-making process that enables the Scottish Ministers to authorise the construction or operation, or matters connected with the construction and operation of a guided transport system, trolley vehicle system or an inland waterway.

3. The policy is to ensure that the provisions of the Act operate smoothly on commencement and to that end this order makes necessary modifications in respect of other legislation consequent on the provisions within this Act.

4. The order also makes transitional provision to facilitate the change from existing statutory regimes to those that will apply following the coming into force of the Act. That change is achieved by making special provision for the application of legislation to circumstances which exist at a time when the Act comes into force. The operation of the transitional provision is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal with have been dealt.

5. Schedule 4 to the Waste Management Licensing Regs 1994, referenced in article 2, contains provisions which implement Council Directive 75/442/EEC on waste (as amended and now subsequently codified in Council Directive 2006/12/EC) (“the Waste Framework Directive”). The insertion to those regulations of the provision at article 2, which widens the definition of “specified action”, requires certain functions provided for under section 57(2A) of the Town and Country Planning (Scotland) Act 1997 to be discharged with the objectives set out in the Waste Framework Directive. This therefore ensures that appropriate activities authorised by virtue of an order under the Act will be compliant with the Directive.

6. Article 3 makes consequential amendments to the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Regulations”). Those regulations implement Council Directive 92/43/EEC (“the Habitats Directive”) on the conservation of natural habitats and of wild fauna and flora. Part IV of the Habitats Directive makes provision for the adaptation of planning and certain other controls for the protection of European sites. Regulations 48, 49 and 54 of the 1994 Regulations require the effect on a European site to be considered before a grant of planning permission and, subject to certain exceptions, restrict the grant of planning permission where the integrity of the European site would be adversely affected. Regulations 50 and 51 and 55 to 58 of the 1994 Regulations require planning permissions granted before the date on which a site becomes a European site to be reviewed and in certain circumstances revoked where the integrity of the site would be adversely affected.

7. The insertion by article 3(4) of regulations 82A to 82D to the 1994 Regulations makes provision applying regulations 48, 49, 50 and 51 and in so doing provides for the requirement to consider the effect on a European site and for review in respect of an order made under the Act.

8. Article 4(1) is a transitional provision which provides for any application for a Light Railway Order received by the Scottish Ministers prior to 28 December 2007 (the commencement of the provisions of the Act) to be determined under the existing provisions of the Light Railways Act 1896. This approach ensures that ongoing work is not undone by the change of the statutory regime. Any application, however, made after 28 December will be subject to the provisions of the Act.

9. In terms of article 4(2) to (4) special parliamentary procedure will still apply, if triggered, in relation to any order or scheme under particular sections of the Roads (Scotland) Act 1984 where notice of that order or scheme has been given before 28 December 2007.

10. It should be noted that special parliamentary procedure only applies in a limited number of specific instances, most usually where one statutory body has an unresolved objection to the proposal of another statutory body. An example of such an instance might arise if a harbour authority objects to the construction of a road within its harbour area by a roads authority.

11. We have made provision, however, that special parliamentary procedure will not apply to any order or scheme where notice has been given before 28 December, which would be subject to affirmative procedure by virtue of being within the National Planning Framework or because the Scottish Ministers so direct.

12. There can be a substantial time delay between notice of an order or scheme and a consequent order being made particularly for a major scheme such as those relating to a motorway or a bypass. We therefore believe that it would be inappropriate to provide for such schemes to retain special parliamentary procedure when the Parliament has already stated its will to dispense with special parliamentary procedure and apply an affirmative procedure to such schemes.

13. Whilst we believe that it is important, to those promoting and those objecting to an order or scheme, to provide continuity of approach for an order or scheme for which notice has been given we have adopted what we consider to be a pragmatic position: a scheme of national significance, or a scheme that the Scottish Ministers so direct, for which notice is given before 28 December will be subject to affirmative procedure; for all other orders and schemes for which notice is given before 28 December special parliamentary procedure will be available, if required though we believe that the likelihood of that occurring is slight (there have been no Confirmation Acts within the Scottish Parliament to date).

Consultation

14. No formal consultation was deemed necessary with external parties in respect of consequential or transitional provisions. However, in respect of article 4(1) the Heritage Railway Association (the body representing many light railway interests) was advised in the summer that transitional provisions would apply so as to enable its members to determine

which regime they would wish to apply to their proposals and therefore consider the timing of their proposals. The Heritage Railway Association were content with this proposal.

Financial Effects

15. Regulation 82D of the 1994 Regulations, inserted by article 3(4), makes provision for compensation, following a review where a site affected by works to which an order under section 1 of the Act relates becomes a European site where deemed planning permission or the is revoked or varied. That provision applies a standard regime for compensation (which in this instance will be payable by planning authorities and the Scottish Ministers) which applies in respect of other authorisations in similar circumstances (such as on a review under the 1994 Regulations of a grant of planning permission under the Town and Country Planning legislation).

16. The likely instances of compensation being payable and the level of that compensation is unknown however there is a presumption that developments should not occur within European sites (unless there is no alternative and the development must be carried out for imperative reasons of overriding public interest) and on that basis such instances should be infrequent (if at all).

17. The other provisions are not considered to have any material, financial effect.

Transport Directorate
November 2007