

2007 No. 517

TRANSPORT AND WORKS

TRANSPORT

CANALS AND INLAND WATERWAYS

**The Transport and Works (Scotland) Act 2007 (Consequential
and Transitional Provisions) Order 2007**

Made - - - - - *20th November 2007*

Laid before the Scottish Parliament *21st November 2007*

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

The Scottish Ministers make the following Order in exercise of the powers conferred by section 28(6) and (7) of the Transport and Works (Scotland) Act 2007(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Transport and Works (Scotland) Act 2007 (Consequential and Transitional Provisions) Order 2007 and comes into force on 28th December 2007.

(2) In this Order, “the Act” means the Transport and Works (Scotland) Act 2007.

Waste Management Licensing Regulations 1994

2. In sub-paragraph (c) of the definition of “specified action” in paragraph 1 of Part 1 of Schedule 4 to the Waste Management Licensing Regulations 1994 (waste framework directive etc.)(b), after “1972” insert “; section 57(2A) of the Town and Country Planning (Scotland) Act 1997 (power to deem planning permission to be granted in certain cases where development is authorised by a government department)(c)”.

Conservation (Natural Habitats, &c.) Regulations 1994

3.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994(d) are amended in accordance with paragraphs (2) to (4).

(a) 2007 asp 8.

(b) S.I. 1994/1056 to which there are amendments not relevant to this Order.

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

(d) S.I. 1994/2716; relevant amending instruments are S.S.I. 2004/475, 2007/80 and 2007/349 and S.I. 2007/1843.

(2) In regulation 54(2)(d) (grant of planning permission), after “or under” insert “section 57(2A) of the Town and Country Planning (Scotland) Act 1997(a),”.

(3) In regulation 55(3) (planning permission: duty to review)–

(a) omit “or” at the end of sub-paragraph (d); and

(b) after sub-paragraph (e) insert–

“or

(f) a direction under section 57(2A) of the Town and Country Planning (Scotland) Act 1997 (which relates to development in pursuance of an order under section 1 of the Transport and Works (Scotland) Act 2007(b)),”.

(4) After regulation 82 (orders under the Transport and Works Act 1992) insert–

“Orders under the Transport and Works (Scotland) Act 2007: application of general requirements

82A.—(1) Regulations 48 and 49 apply in relation to the making of an order under section 1 of the Transport and Works (Scotland) Act 2007(c).

(2) Where in such a case the Scottish Ministers consider that any adverse effects of the plan or project on the integrity of a European site would be avoided by making modifications to the proposals, they may make an order subject to those modifications.

(3) Regulations 50 and 51 apply to an order under section 1 of the Transport and Works (Scotland) Act 2007 unless the works to which the order relates have been completed before the site became a European site.

(4) Where on the review of such an order the Scottish Ministers consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, they may vary it accordingly.

(5) In conjunction with the review of any such order the Scottish Ministers shall review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

Orders under the Transport and Works (Scotland) Act 2007: procedure on review

82B.—(1) Where the Scottish Ministers decide in pursuance of regulation 82A to revoke or vary an order under section 1 of the Transport and Works (Scotland) Act 2007, or a direction deeming planning permission to be granted, they shall serve notice on–

(a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made, and

(b) any other person who in their opinion will be affected by the revocation or variation,

informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the Scottish Ministers.

(2) Nothing in paragraph (1) shall be construed so as to require that the Scottish Ministers shall serve notice upon themselves.

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

(b) 2007 asp 8.

(c) 2007 asp 8.

- (3) The Scottish Ministers shall also serve notice on—
- (a) the planning authority for an area in which any works authorised by the order are to be, or have been, carried out,
 - (b) the National Park authority for a National Park in which any works authorised by the order are to be, or have been, carried out, and
 - (c) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(4) The Scottish Ministers shall consider whether to proceed with the revocation or variation, and shall have regard to any representations made to them in accordance with paragraph (1) or (3).

(5) If within the specified period a person on whom notice was served under paragraph (1) or (3)(a) or (b) so requires, the Scottish Ministers shall before deciding whether to proceed with the revocation or variation of the order or direction give—

- (a) to them, and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the Scottish Ministers for the purpose.

Orders under the Transport and Works (Scotland) Act 2007: effect of review

82C.—(1) The revocation or variation pursuant to regulation 82A of an order under section 1 of the Transport and Works (Scotland) Act 2007, or of a direction deeming planning permission to be granted, shall take effect upon—

- (a) service of the notices required by regulation 82B(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served, or
- (b) where no such notice falls to be served by virtue of regulation 82B(2), the Scottish Ministers' decision to revoke or vary the order or direction.

(2) Where the Scottish Ministers decide not to proceed with the revocation or variation, the order or direction shall have effect again from the time of that decision, and shall thereafter have effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired prior to the date identified in paragraph (1), were extended by a period equal to that during which the revocation or variation had effect, and
- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken, not being a date falling prior to the date identified in paragraph (1), such date as post-dates the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation pursuant to regulation 82A of an order under section 1 of the Transport and Works (Scotland) Act 2007, or of a direction deeming planning permission to be granted, shall not affect anything done under the order or direction prior to the revocation or variation taking effect.

Orders under the Transport and Works (Scotland) Act 2007: compensation for revocation or variation

82D.—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 82A, that permission shall be treated for the purposes of Part 4

of the Town and Country Planning (Scotland) Act 1997 (compensation) as having been revoked or modified by order under section 65 of that Act.

(2) Where an order under section 1 of the Transport and Works (Scotland) Act 2007 is revoked or varied pursuant to regulation 82A, Part 4 of the Town and Country Planning (Scotland) Act 1997 shall apply as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 65 of that Act, and
- (b) that Part provided that the Scottish Ministers were the person liable to pay any compensation provided for by that Part.

This paragraph shall not have effect to confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(3) Where the Scottish Ministers decide not to proceed with the revocation or variation of an order under section 1 of the Transport and Works (Scotland) Act 2007, or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation shall be limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 82C(1) and the Scottish Ministers deciding not to proceed with it.

(4) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation shall be referred to and determined by the Lands Tribunal for Scotland unless and to the extent that in any particular case the Scottish Ministers have indicated in writing that such a reference and determination may be dispensed with.”

Transitional provisions

4.—(1) Nothing in section 22 of the Act applies in relation to the making of an order by the Scottish Ministers under the Light Railways Act 1896(a) if the application for the order was made before 28th December 2007.

(2) Subject to paragraph (3), nothing in any of the provisions specified in paragraph (4) applies in relation to—

- (a) any proposed order under section 5, 75 or 77 of the Roads (Scotland) Act 1984(b) notice in respect of which has been published (or first published if published on two or more days), in accordance with paragraph 1 of Schedule 1 to that Act (procedures for making or confirming certain orders and schemes), before 28th December 2007; or
- (b) any scheme, or proposed scheme, under section 7 or 75 of that Act notice in respect of which has been published (or first published if published on two or more days), in accordance with paragraph 9 of Schedule 1 to that Act, before 28th December 2007.

(3) Special parliamentary procedure shall not apply (if it would otherwise do so) in relation to any proposed order, or any scheme or proposed scheme, as is mentioned in paragraph (2) where—

- (a) if that proposed order, or scheme or proposed scheme, as the case may be, were to be subsequently made or confirmed by the Scottish Ministers, the exercise of that power would be by statutory instrument(c); and
- (b) section 143A(3) of the Roads (Scotland) Act 1984 (“developments of national significance” etc: special procedure)(d) would apply to any such statutory instrument.

(4) The provisions are—

- (a) section 29 of the Act (modification and repeal of enactments) so far as relating to the provisions in sub-paragraphs (b) and (c);

(a) 1896 c.48 as continued and relevantly amended by the Light Railways Act 1912 (c.19) and the Railways Act 1921 (c.55), sections 68, 69, 71, 73 and 74. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1984 c.54.

(c) See section 143(1) of the Roads (Scotland) Act 1984 for the powers exercisable by statutory instrument.

(d) Section 143A of the Roads (Scotland) Act 1984 is inserted by the Transport and Works (Scotland) Act 2007, section 24(2).

- (b) paragraphs 1, 2 and 3 of Schedule 2 to the Act (which make modifications of the Roads (Scotland) Act 1984); and
- (c) the entries in Schedule 3 to the Act (repeals) relating to—
 - (i) the Roads (Scotland) Act 1984, other than the words “In Schedule 1, paragraph 14D” in column 2 of that Schedule; and
 - (ii) the Water Industry (Scotland) Act 2002^(a).

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th November 2007

^(a) 2002 asp 3.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential modifications and transitional provision in connection with the coming into force of provisions of the Transport and Works (Scotland) Act 2007 (“the Act”).

Part 1 of the Act provides the Scottish Ministers with a new order making power to authorise transport systems and inland waterways. Articles 2 and 3 of the order modify two enactments in consequence of provision made in Part 1 of the Act.

Article 4 sets out transitional provisions. By virtue of article 4(1) the Scottish Ministers will still be able (notwithstanding the commencement of section 22 of the Act) to make an order under the Light Railways Act 1896 to authorise a light railway provided an application for that order was made before section 22 of the Act came into force.

In terms of article 4(2) to (4), special parliamentary procedure will still apply, if triggered, in relation to any order or scheme under section 5, 7, 75 or 77 of the Roads (Scotland) Act 1984 where notice of that order or scheme has been given before the amendments and repeals in Schedules 2 and 3 to the Act to remove that procedure came into force. Special parliamentary procedure does not apply in respect of such an order or scheme which will be subject to affirmative resolution procedure in the Scottish Parliament pursuant to section 143A of the Roads (Scotland) Act 1984. (Section 143A is inserted by section 24(2) of the Act and provides for affirmative procedure where either the road project to which the instrument relates is a development designated as a national development (under section 3A(4)(b) of the Town and Country Planning (Scotland) Act 1997) or the Scottish Ministers direct that the instrument should be subject to such procedure).

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