



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART IX

#### ROADS, FOOTPATHS AND RIGHTS OF WAY

##### *Stopping up and diversion of roads by Secretary of State*

#### **202 Roads affected by development: orders by Secretary of State**

- (1) The Secretary of State may by order authorise the stopping up or diversion of any road if he is satisfied that it is necessary to do so in order to enable development to be carried out—
  - (a) in accordance with planning permission granted under Part III, or
  - (b) by a government department.
- (2) Such an order may make such provision as appears to the Secretary of State to be necessary or expedient for the construction or improvement of any other road.
- (3) Such an order may direct that the other road so constructed or improved—
  - (a) shall be entered by the local roads authority in the list of public roads kept by them under section 1 of the Roads (Scotland) Act 1984, or
  - (b) shall be deemed for the purposes of that Act to have been constructed by the Secretary of State under section 19 of that Act and shall, on such date as may be specified in the order, become a trunk road within the meaning of that Act.
- (4) Any order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State to be necessary or expedient, including in particular—
  - (a) provision for authorising the Secretary of State, or requiring any other authority or person specified in the order to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any

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- increased expenditure to be incurred which is attributable to the doing of any such work;
- (b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the road to which the order relates.
- (5) An order may be made under this section authorising the stopping up or diversion of any road which is temporarily stopped up or diverted under any other enactment.
- (6) This section is without prejudice to—
- (a) any power conferred on the Secretary of State by any other enactment to authorise the stopping up or diversion of a road,
  - (b) section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, or
  - (c) section 206(1)(a).

*Powers of local authorities to extinguish certain rights*

**203 Order extinguishing right to use vehicles on road**

- (1) This section applies where—
- (a) a competent authority by resolution adopt a proposal for improving the amenity of part of their area, and
  - (b) the proposal involves a road in that area (being a road over which the public have a right of way with vehicles, but not a trunk road or a road classified as a principal road for the purposes of advances under section 3 of the Roads (Scotland) Act 1984) being changed to a footpath or bridleway.
- (2) Subject to paragraph 5 of Schedule 16 and to subsection (9), the competent authority may by order provide for the extinguishment of any right which persons may have to use vehicles on that road.
- (3) An order made under subsection (2) may include such provision as the competent authority (after consultation with the planning authority and the roads authority, if different from the competent authority) think fit for permitting the use on the road of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that subsection.
- (4) Such provision as is mentioned in subsection (3) may be framed by reference to—
- (a) particular descriptions of vehicles,
  - (b) particular persons by whom, or on whose authority, vehicles may be used, or
  - (c) the circumstances in which, or the times at which, vehicles may be used for particular purposes.
- (5) No provision contained in, or having effect under, any enactment, being a provision prohibiting or restricting the use of footpaths or bridleways, shall affect any use of a vehicle on a road in relation to which an order made under subsection (2) has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsections (3) and (4).
- (6) Without prejudice to section 275(7), the competent authority may, subject to paragraph 5 of Schedule 16 and to subsection (9), by order revoke an order made by them in

relation to a road under subsection (2); and if they do so, any right to use vehicles on the road in relation to which the order was made which was extinguished by virtue of the order under subsection (2) shall be reinstated.

- (7) An order under this section—
- (a) may make such provision as appears to the competent authority to be necessary or expedient for the construction or improvement of any other road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of section 207(1)) and may direct that the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the Roads (Scotland) Act 1984, and
  - (b) may contain such incidental and consequential provisions as appear to the competent authority to be necessary or expedient, including in particular—
    - (i) provision for authorising the competent authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in section 202(4)(a), and
    - (ii) such provision as is mentioned in section 202(4)(b).
- (8) This section is without prejudice to—
- (a) any power conferred on the competent authority by any other enactment to authorise the stopping up or diversion of a road, or
  - (b) section 206(1)(b).
- (9) The competent authorities for the purposes of this section and section 204 are local authorities, and a competent authority shall not make an order under subsection (2) or (6), if they are not the roads authority, without obtaining the consent of that authority.

## **204 Compensation for orders under section 203**

- (1) Any person who, at the time of an order under section 203(2) coming into force, has an interest in land having lawful access to a road to which the order relates shall be entitled to be compensated by the competent authority in respect of—
- (a) any depreciation in the value of his interest which is directly attributable to the order, and
  - (b) any other loss or damage which is so attributable.
- (2) A claim for compensation under subsection (1) shall be made to the competent authority within the prescribed time and in the prescribed manner.
- (3) For the purpose of assessing any such compensation the rules set out in section 12 of the Land Compensation (Scotland) Act 1963 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (4) Where an interest in land is subject to a heritable security—
- (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the security,
  - (b) a claim for any such compensation may be made by any creditor in a heritable security over the interest, but without prejudice to the making of a claim by the person entitled to the interest,

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- (c) no compensation to which this section applies shall be payable in respect of the interest of the creditor in the heritable security (as distinct from the interest which is subject to the security), and
  - (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the heritable security shall be paid to the creditor in the security, or if there is more than one such creditor, to the creditor whose security ranks first, and shall in either case be applied by him as if it were proceeds of sale by him under the powers competent to creditors in heritable securities.
- (5) Except in so far as may be provided by any regulations made under this Act, any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal.
- (6) In relation to the determination of any such question, the provisions of sections 9 and 11 of the Land Compensation (Scotland) Act 1963 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

## **205 Provision of amenity for road reserved to pedestrians**

- (1) Where an order has been made under section 203(2) in relation to a road, a competent authority may carry out and maintain any such works on or in the road, or place on or in it any such objects or structures, as appear to them—
- (a) to be expedient for the purposes of—
    - (i) giving effect to the order, or
    - (ii) enhancing the amenity of the road and its immediate surroundings, or
  - (b) to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by a competent authority under this section include—
- (a) laying out any part of the road with lawns, trees, shrubs and flowerbeds, and
  - (b) providing facilities for recreation or refreshment.
- (3) A competent authority may so exercise their powers under this section as to restrict the access of the public to any part of the road, but shall not so exercise them as—
- (a) to prevent persons from entering the road at any place where they could enter it before the order under section 203 was made,
  - (b) to prevent the passage of the public along the road,
  - (c) to prevent normal access by pedestrians to premises adjoining the road,
  - (d) to prevent any use of vehicles which is permitted by an order made under section 203 and applying to the road,
  - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the road, or
  - (f) to prevent the operator of any telecommunications code system from having access to any works of his under, in, on, over, along or across the road.
- (4) An order under section 203(6) may make provision requiring the removal of any obstruction of the road resulting from the exercise by a competent authority of their powers under this section.
- (5) The competent authorities for the purposes of this section are local authorities, and a competent authority shall not exercise any powers conferred by this section, if they are not the roads authority, without obtaining the consent of that authority.

## **206 Extinguishment of public rights of way over land held for planning purposes**

- (1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated—
  - (a) the Secretary of State may by order extinguish any public right of way over the land if he is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required;
  - (b) subject to paragraph 5 of Schedule 16, the local authority may by order extinguish any such right over the land if they are so satisfied.
- (2) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 201 as if this section were in Part VIII.

*Powers of planning authorities to stop up roads, etc.*

## **207 Roads affected by development: orders by planning authorities**

- (1) Subject to paragraph 5 of Schedule 16 and to subsection (5), a planning authority may by order authorise the stopping up or diversion of any road which is not—
  - (a) a trunk road within the meaning of the Roads (Scotland) Act 1984, or
  - (b) a special road provided by the Secretary of State in pursuance of a scheme under that Act,if they are satisfied that it is necessary to do so in order to enable the development to be carried out in accordance with planning permission granted under Part III, or by a government department.
- (2) An order under this section—
  - (a) may make such provision as appears to the planning authority to be necessary or expedient for the construction or improvement of any other road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1)) and may direct that the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the Roads (Scotland) Act 1984, and
  - (b) may contain such incidental and consequential provisions as appear to the planning authority to be necessary or expedient, including in particular—
    - (i) provision for authorising the planning authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in section 202(4)(a), and
    - (ii) such provision as is mentioned in section 202(4)(b).
- (3) An order may be made under this section authorising the stopping up or diversion of any road (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1)) which is temporarily stopped up or diverted under any other enactment.
- (4) This section is without prejudice to any power conferred on the planning authority by any other enactment to authorise the stopping up or diversion of a road.

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- (5) The planning authority shall not make an order under this section without consulting the roads authority (in a case where they are themselves not that authority).

**208 Footpaths and bridleways affected by development: orders by planning authorities**

- (1) Subject to paragraph 5 of Schedule 16, a planning authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable the development to be carried out—
- (a) in accordance with planning permission granted under Part III, or
  - (b) by a government department.
- (2) An order under this section may, if the planning authority are satisfied that it should do so, provide—
- (a) for the creation of an alternative footpath or bridleway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing path or way for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement, provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.

*Procedure*

**209 Procedure for making and confirming orders by Secretary of State and planning authorities**

Schedule 16 shall have effect in relation to the procedure for the making and confirming of orders under this Part by the Secretary of State and planning authorities.

**210 Recovery of costs of making orders**

- (1) Where a person requests a local authority to make an order to which this subsection applies, the local authority may require him, as a condition of their compliance with the request, to make such provision as they consider reasonable as regards any costs to be incurred by them in so complying.
- (2) The orders to which subsection (1) applies are orders under any of the following enactments—
- (a) section 203 (orders extinguishing the right to use vehicles on a road);
  - (b) section 207 (orders authorising the stopping up or diversion of certain roads);
  - (c) section 208 (orders authorising the stopping up or diversion of footpaths or bridleways);

- (d) section 34 of the Countryside (Scotland) Act 1967 (orders as regards the closure of public paths); and
- (e) section 35 of that Act (orders as regards the diversion of public paths).

### *Supplementary provisions*

## **211 Concurrent proceedings in connection with roads**

- (1) In relation to orders under sections 202, 203 and 207, regulations made under this Act may make provision for securing that any proceedings required to be taken for the purposes of the acquisition of land under section 104(1)(b)(i) of the Roads (Scotland) Act 1984 may be taken concurrently with any proceedings required to be taken for the purposes of the order.
- (2) In relation to orders under section 206(1)(a) or (b), regulations may make provision for securing—
  - (a) that any proceedings required to be taken for the purposes of such an order may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished, or
  - (b) that any proceedings required to be taken for the purposes of the acquisition of any other land under section 104(1)(b)(ii) of the Roads (Scotland) 1984 Act may be taken concurrently with either or both of the proceedings referred to in the preceding paragraph.

## **212 Telecommunication apparatus**

- (1) Where in pursuance of an order under section 202, 203 or 207 a road is stopped up, diverted or changed and immediately before the date on which the order became operative there was under, in, on, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not come into force.
- (2) Notwithstanding subsection (1), any person entitled to land over which the road subsisted shall be entitled to require the alteration of the apparatus.
- (3) Where—
  - (a) any such order provides for the improvement of a road for which the Secretary of State is not the roads authority, and
  - (b) immediately before the date on which the order came into force, there was under, in, on, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system,the local roads authority shall be entitled to require the alteration of the apparatus.
- (4) Subsection (3) does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority's works within the meaning of Part IV of the New Roads and Street Works Act 1991.
- (5) Where an order under section 206(1)(b) extinguishing a public right of way or an order under section 208 authorising the stopping up or diversion of any footpath or bridleway is made by a planning authority and, at the time of the publication of the

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notice required by paragraph 6 of Schedule 16, any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—

- (a) the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of 3 months from the date on which the right of way is extinguished or, as the case may be, the footpath or bridleway is stopped up or diverted and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the authority which made the order of his intention to remove the apparatus or that part of it, as the case may be;
  - (b) the operator of the system may by notice given to the authority which made the order not later than the end of the said period of 3 months abandon the telecommunication apparatus or any part of it;
  - (c) subject to paragraph (b), the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove;
  - (d) the operator of the system shall be entitled to recover from the authority which made the order the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require; and
  - (e) where under the preceding provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus that apparatus or that part of it shall vest in the authority which made the order and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (6) As soon as reasonably practicable after the making of any such order as is mentioned in subsection (5) in circumstances in which that subsection applies in relation to the operator of any telecommunications code system, the authority which made the order shall give notice to the operator of the making of the order.
- (7) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (8) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.

*Temporary road orders: mineral workings*

**213 Temporary stopping up of roads, footpaths and bridleways for mineral workings**

- (1) Where the Secretary of State is satisfied—
- (a) that an order under section 202 for the stopping up or diversion of a public road is required for the purpose of enabling minerals to be worked by surface working, and



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- (b) that the road can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,  
the order may provide for the stopping up or diversion of the road during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.
- (2) Where a planning authority are so satisfied in respect of an order under section 207, the order may so provide.
- (3) Where a planning authority are satisfied—
- (a) that an order under section 208 for the stopping up or diversion of a footpath or bridleway is required for the purpose of enabling minerals to be worked by surface working, and
- (b) that the footpath or bridleway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,  
the order may provide for the stopping up or diversion of the footpath or bridleway during such period as may be prescribed by or under the order and for its restoration at the expiration of that period.
- (4) Without prejudice to the provisions of section 202, 207 or 208, where provision is made in any order by virtue of subsection (1), (2) or (3) that order may also contain such provisions as appear to the Secretary of State or, as the case may be, the planning authority to be expedient—
- (a) for imposing upon persons who, apart from the order, would be subject to any liability with respect to the repair of the original road, footpath or bridleway during the period prescribed by or under the order a corresponding liability in respect of any road, footpath or bridleway provided in pursuance of the order;
- (b) for the stopping up at the expiry of that period of any road, footpath or bridleway so provided and for the reconstruction and maintenance of the original road, footpath or bridleway;
- and any provision included in the order in accordance with section 202(4), section 207(2) or section 208(2) requiring payment to be made in respect of any cost or expenditure under the order may provide for the payment of a capital sum in respect of the estimated amount of that cost or expenditure.
- (5) In relation to any road which is stopped up or diverted by virtue of an order under section 202 or 207, sections 224 and 225 shall have effect as if—
- (a) for references to land which has been acquired as there mentioned and to the purchasing authority there were substituted respectively references to land over which the road subsisted and to the person entitled to possession of that land, and
- (b) references in subsection (6) of each of those sections to a planning authority or statutory undertaker included references to any person (other than the Secretary of State) who is entitled to possession of that land,
- and sections 228 to 231 shall have effect accordingly.