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## SCHEDULES

### SCHEDULE 16 **S**

Section 209.

#### PROCEDURE FOR MAKING AND CONFIRMING ORDERS RELATING TO ROADS AND RIGHTS OF WAY

#### PART I **S**

##### MAKING ORDERS

###### *Procedure for making of orders by Secretary of State*

- 1 (1) Before making an order under section 202 or 206(1)(a) the Secretary of State shall publish in at least one local newspaper circulating in the relevant area, and in the Edinburgh Gazette, a notice—
- (a) stating the general effect of the order,
  - (b) specifying a place in the relevant area where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the last day on which publication of the notice has taken place, and
  - (c) stating that, within the period, any person may by notice to the Secretary of State object to the making of the order.
- (2) Not later than the last day on which publication has taken place in accordance with sub-paragraph (1), the Secretary of State—
- (a) shall serve a copy of the notice, together with a copy of the draft order and of any relevant map or plan, on every local authority in whose area any road or, as the case may be, any land to which the order relates is situated, and on any water, hydraulic power or electricity undertakers or public gas transporter having any cables, mains, pipes or wires laid along, across, under or over any road to be stopped up or diverted or, as the case may be, any land over which a right of way is to be extinguished, under the order, and
  - (b) shall cause a copy of the notice to be displayed in a prominent position at the ends of so much of any road as is proposed to be stopped up or diverted or, as the case may be, of the right of way proposed to be extinguished under the order.
- (3) Subject to sub-paragraph (4), if before the end of the said period of 28 days an objection is received by the Secretary of State from any local authority, undertakers or transporter on whom a notice is required to be served under sub-paragraph (2), or from any other person appearing to him to be affected by the order, and the objection is not withdrawn, the Secretary of State shall cause a local inquiry to be held.
- (4) If the objection is made by a person other than such a local authority, undertakers or transporter, the Secretary of State may dispense with such an inquiry if he is

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satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary.

- (5) After considering any objections to the order which are not withdrawn and, where a local inquiry is held, the report of the person who held the inquiry, the Secretary of State (subject to sub-paragraph (6)) may make the order either without modification or subject to such modifications as he thinks fit.
- (6) Where the order contains a provision requiring any such payment, repayment or contribution as is mentioned in section 202(4)(a), and objection to that provision is duly made, in accordance with sub-paragraph (3), by an authority or person who would be required by it to make such a payment, repayment or contribution, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- (7) Immediately after the order has been made, the Secretary of State shall publish, in the manner specified in sub-paragraph (1), a notice stating that the order has been made, and naming a place where a copy of the order may be seen at all reasonable hours; and sub-paragraph (2) shall have effect in relation to any such notice as it has effect in relation to a notice under sub-paragraph (1).
- (8) In this paragraph “the relevant area”, in relation to an order, means the area in which any road or land to which the order relates is situated.

*Procedure in anticipation of planning permission, etc.*

- 2 (1) Where the Secretary of State would, if planning permission for any development had been granted under Part III [<sup>F1</sup>or section 242A], have power to make an order under section 202 authorising the stopping-up or diversion of a road in order to enable that development to be carried out, then, notwithstanding that such permission has not been granted, the Secretary of State may, in the circumstances specified in sub-paragraphs (2) to (4), publish notice of the draft of such an order in accordance with paragraph 1.
- (2) The Secretary of State may publish such a notice where the relevant development is the subject of an application for planning permission and either—
  - (a) that application is made by a local authority or statutory undertakers,
  - [<sup>F2</sup>(aa) that application is made under section 242A;]
  - (b) that application stands referred to the Secretary of State in pursuance of a direction under section 46, or
  - (c) the applicant has appealed to the Secretary of State under section 47 against a refusal of planning permission or of approval required under a development order, or against a condition of any such permission or approval.
- (3) The Secretary of State may publish such a notice where—
  - (a) the relevant development is to be carried out by a local authority or statutory undertakers and requires, by virtue of an enactment, the authorisation of a government department, and
  - (b) the developers have made application to the department for that authorisation and also requested a direction under section 57 that planning permission be deemed to be granted for that development.
- (4) The Secretary of State may publish such a notice where the planning authority certify that they have begun to take such steps, in accordance with regulations made by virtue

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of section 263, as are requisite in order to enable them to obtain planning permission for the relevant development.

- (5) Paragraph 1(5) shall not be construed as authorising the Secretary of State to make an order under section 202 of which notice has been published by virtue of sub-paragraph (1) until planning permission is granted for the development which occasions the making of the order.

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**Textual Amendments**

- F1** Words in Sch. 16 para. 2(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(14)(a)**
- F2** Sch. 16 para. 2(2)(aa) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(14)(b)**

*Further procedure in anticipation of planning permission, etc.*

- 3 (1) Where a planning authority would, if planning permission for any development had been granted under Part III [<sup>F3</sup>or section 242A], have power to make an order under section 207 authorising the stopping-up or diversion of a road in order to enable that development to be carried out, then, notwithstanding that such permission has not been granted, the authority may, in the circumstances specified in sub-paragraphs (3) to (5), publish notice of the draft of such an order in accordance with the following provisions of this Schedule.
- (2) Nothing in those provisions shall be construed as authorising the authority to make the order in anticipation of such permission.
- (3) The authority may publish such a notice where the development is the subject of an application for planning permission.
- (4) The authority may publish such a notice where—
- (a) the development is to be carried out by a local authority or statutory undertakers and requires, by virtue of an enactment, the authorisation of a government department, and
  - (b) the developers have made an application to the department for that authorisation and also requested a direction under section 57 that planning permission be deemed to be granted for that development.
- (5) The planning authority may publish such a notice where they have begun to take such steps, in accordance with regulations made by virtue of section 263, as are requisite in order to enable them to obtain planning permission for the development.

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**Textual Amendments**

- F3** Words in Sch. 16 para. 3(1) inserted (11.5.2006) by [Planning and Compulsory Purchase Act 2004 \(Commencement No.2 and Consequential Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/243\)](#), arts. 1(1), **4(14)(c)**

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## PART II **S**

### CONFIRMATION OF ORDERS

#### *Application*

- 4 (1) This Part shall have effect with respect to the confirmation of orders under section 203, 206(1)(b), 207 and 208 and the publicity for such orders after they are confirmed.
- (2) This Part has no application as regards orders made by the Secretary of State.

#### *Confirmation of orders made by other authorities*

- 5 (1) An order made under section 203 by a competent authority, section 206(1)(b) by a local authority or section 207 or 208 by a planning authority shall not take effect unless confirmed—
- (a) by the Secretary of State in a case where the order is opposed, and
  - (b) in any other case by the authority making the order.
- (2) The Secretary of State shall not confirm any such order unless satisfied as to every matter of which the authority making the order are required under section 206(1)(b), 207 or 208 (as the case may be) to be satisfied.
- (3) The time specified—
- (a) in an order under section 203 as the time from which a right is to be extinguished,
  - (b) in an order under section 206(1)(b) as the time from which a right of way is to be extinguished,
  - (c) in an order under section 207 as the time from which a road is to be stopped up or diverted, or
  - (d) in an order under section 208 as the time from which a footpath or bridleway is to be stopped up or diverted,
- shall not be earlier than confirmation of the order.
- 6 (1) Before an order under section 203, 206(1)(b), 207 or 208 is submitted to the Secretary of State for confirmation or confirmed as an unopposed order, the authority by whom the order was made shall give notice in the prescribed form—
- (a) stating the general effect of the order and that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order,
  - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours, and
  - (c) specifying the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
- (2) Subject to sub-paragraph (3), the notice to be given under sub-paragraph (1) shall be given—
- (a) by publication in the Edinburgh Gazette and in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and
  - (b) by serving a similar notice on—

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- (i) every owner, occupier and lessee (except tenants for a month or a period less than a month and statutory tenants within the meaning of the <sup>M1</sup>Rent (Scotland) Act 1984) of any of that land,
  - (ii) every local authority whose area includes any of that land,
  - (iii) any statutory undertakers to whom there belongs, or by whom there is used, for the purposes of their undertaking, any apparatus under, in, on, over, along or across that land, and
  - (iv) any person named in the order by virtue of section 208(2)(d), and
- (c) by causing a copy of the notice to be displayed in a prominent position at the ends of so much of any footpath or bridleway as is to be stopped up, diverted or extinguished by virtue of the order.
- (3) Except in the case of an owner, occupier or lessee being a local authority or statutory undertakers, the Secretary of State may in any particular case direct that it shall not be necessary to comply with sub-paragraph (2)(b)(i).
- (4) If he so directs in the case of any land, then in addition to publication—
- (a) the notice shall be addressed to “the owners and any occupiers” of the land (describing it), and
  - (b) a copy or copies of the notice shall be affixed to some conspicuous object or objects on the land.

#### Marginal Citations

M1 1984 c. 58.

- 7 If no representations or objections are duly made, or if any so made are withdrawn, the authority by whom the order was made may, instead of submitting the order to the Secretary of State themselves confirm the order (but without any modification).
- 8 (1) This paragraph applies where any representation or objection duly made is not withdrawn.
- (2) If the objection is made by a local authority, the Secretary of State shall, before confirming the order, cause a local inquiry to be held.
- (3) If the representation or objection is made by a person other than a local authority, the Secretary of State shall, before confirming the order, either—
- (a) cause a local inquiry to be held, or
  - (b) give any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.
- (4) After considering the report of the person appointed under sub-paragraph (2) or (3) to hold the inquiry or hear representations or objections, the Secretary of State may confirm the order, with or without modifications.
- (5) In the case of an order under section 207 or 208, if objection is made by statutory undertakers on the ground that the order provides for the creation of a public right of way over land covered by works used for the purpose of their undertaking, or over the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

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- (6) Notwithstanding anything in the previous provisions of this paragraph, the Secretary of State shall not confirm an order so as to affect land not affected by the order as submitted to him, except after—
- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which must not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal may be made,
  - (b) holding a local inquiry or affording to any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose, and
  - (c) considering the report of the person appointed to hold the inquiry or, as the case may be, to hear representations or objections.
- (7) In the case of an order under section 207 or 208, if objection is made by statutory undertakers on the ground that the order as modified would provide for the creation of a public right of way over land covered by works used for the purposes of their undertaking, or over the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- 9 (1) The Secretary of State shall not confirm an order under section 203, 207 or 208 which extinguishes a right of way over land under, in, on, over, along or across which there is any apparatus belonging to or used by statutory undertakers for the purposes of their undertaking, unless the undertakers have consented to the confirmation of the order.
- (2) Any such consent may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers as they may reasonably require.
  - (3) The consent of statutory undertakers to any such order shall not be unreasonably withheld.
  - (4) Any question arising under this paragraph whether the withholding of consent is unreasonable, or whether any requirement is reasonable, shall be determined by [<sup>F4</sup>the Scottish Ministers].

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**Textual Amendments**

**F4** Words in Sch. 16 para. 9(4) substituted by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 127(24); S.I. 1998/3178, art. 3

- 10 Regulations may, subject to this Part, make such provision as the Secretary of State thinks expedient as to the procedure on the making, submission and confirmation of orders under sections 203, 206(1)(b), 207 and 208.

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### PART III S

#### PUBLICITY FOR ORDERS AFTER CONFIRMATION

- 11 (1) As soon as may be after an order under sections 203, 206(1)(b), 207 and 208 has been confirmed by the Secretary of State or confirmed as an unopposed order, the authority by whom the order was made shall—
- (a) publish, in the manner required by paragraph 6(2), a notice in the prescribed form—
    - (i) describing the general effect of the order,
    - (ii) stating that it has been confirmed, and
    - (iii) naming a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge at all reasonable hours,
  - (b) serve a similar notice and a copy of the order as confirmed on any persons on whom notices were required to be served under paragraph 6(2), and
  - (c) cause a similar notice to be displayed in the similar manner as the notice required to be displayed under paragraph 6(2).
- (2) No such notice or copy need be served on a person unless he has sent to the authority a request in that behalf, specifying an address for service.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)