

SCHEDULES

SCHEDULE 16

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

PART II

CONFIRMATION OF ORDERS

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—
 - (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 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.
- 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

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over the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

- (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 whichever Minister is the appropriate Minister in relation to the statutory undertakers concerned.
- 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.