

Status: Point in time view as at 01/04/1991.

Changes to legislation: There are currently no known outstanding effects for the Countryside (Scotland) Act 1967, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Sections 14, 31, 34 and 35.

PROVISIONS AS TO MAKING CONFIRMATION, COMING INTO OPERATION AND VALIDITY OF CERTAIN ORDERS

Modifications etc. (not altering text)

- C1** Sch. 3 extended by [Post Office Act 1969 \(c. 48\)](#), [Sch. 4 para. 93\(1\)\(xxvii\)](#) and [Civil Aviation Act 1971 \(c. 75\)](#), [Sch. 5 para. 5\(x\)](#)

PART I

PROVISIONS FOR MAKING AND CONFIRMING ACCESS ORDERS AND CERTAIN ORDERS RELATING TO PUBLIC PATHS

- 1 (1) Before [^{F1}a body makes] an access order, a public path creation order, a public path extinguishment order or a public path diversion order [^{F2}it] shall give notice in the prescribed form—
- [^{F3}(a) stating the general effect of the order and that it is about to be made and, subject to paragraph 2(1A) of this Schedule, submitted for confirmation,]
 - (b) naming a place in the area in which the land to which the order relates is situated where a [^{F4}draft] of the order and of the map referred to therein may be inspected free of charge at all reasonable hours, and
 - (c) specifying the time (not being less than twenty-eight 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 [^{F5}draft] order may be made.
- (2) ^{F6}
- (3) The notices to be given under [^{F7}sub-paragraph (1) above] shall be given—
- (a) in the case of an access order or a public path creation order, by publication in at least one local newspaper circulating in the area in which the land to which the order relates is situated, and by serving a like notice on every owner, occupier and tenant (except tenants for a month or any period less than a month and statutory tenants within the meaning of [^{F8}the ^{M1}Rent (Scotland) Act 1971] of any of that land, so however that—
 - (i) except in the case of an owner, occupier or tenant being a local authority, local planning authority or statutory undertaker, the Secretary of State may in any particular case direct that it shall not be necessary to serve notice as aforesaid if in his opinion it is not reasonably practicable to do so, but
 - (ii) if the Secretary of State so directs in the case of any land, then in addition to publication the notice shall be addressed to “the owners

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- and any occupiers” of the land (describing it) and a copy or copies of it shall be affixed to some conspicuous object or objects on the land;
- (b) in the case of a public path extinguishment order or a public path diversion order, by publication and the service of notices as mentioned in head (a) of this sub-paragraph and also—
- (i) by serving such a notice as is therein mentioned on every local authority and local planning authority whose area includes any of the land to which the order relates, and
- (ii) by causing a copy of the notice to be displayed in a prominent position at the ends of so much of any public path as is to be closed or diverted by virtue of the order.
- 2 [F9(1A) If an authority have given notice under paragraph 1(1) above as regards a public path creation order, a public path extinguishment order of a public path diversion order, and no representations or objections are duly made in terms of paragraph 1(1)(c) of this Schedule or if any so made are withdrawn, then, subject to the provisions of Part II of this Schedule, the order shall on being made by them have effect without their having to submit it to the Secretary of State and without his confirmation.]
- [F10(1) In the case of an order other than one which has effect under sub-paragraph (1A) above, if] no representations or objections are duly made [F11 in terms of sub-paragraph (1)(c) of paragraph 1 of this Schedule], or if any so made are withdrawn, the Secretary of State may, if he thinks fit, confirm . . . F12 the order . . . F12 with or without modifications or conditions.
- (2) If any representation or objection duly made is not withdrawn, the Secretary of State shall, before confirming . . . F12 the order, either—
- (a) cause a local inquiry to be held, or
- (b) afford 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 him for the purpose.
- and, after considering the report of the person appointed to hold the inquiry or to hear representations or objections, may confirm . . . F12 the order . . . F12 with or without modifications or conditions:
- Provided that [F13, where objection is made by statutory undertakers to a public path creation order or a public path diversion order,] on the ground that the order provides for the creation of a right of way over land covered by works used for the purposes of their undertaking or the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- (3) Notwithstanding anything in the foregoing provisions of this paragraph, the Secretary of State shall not confirm . . . F12 an order so as to affect land not affected by the order as submitted to him . . . F12 except after—
- (a) giving such notice as appears to him requisite of his proposal so to modify the order, specifying the time (not being less than twenty-eight 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 him for the purpose, and

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- (c) considering the report of the person appointed to hold the inquiry or to hear representations or objections, as the case may be,
and ^{F14}, where objection is made by statutory undertakers to a public path creation order or a public path diversion order,] on the ground that the order as modified would provide for the creation of a right of way over land covered by works used for the purposes of their undertaking or the curtilage of such land, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

Textual Amendments

- F9** Sch. 3 para. 2(1A) added by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 3 para. 11(d)(i)**
- F10** Words substituted by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 3 para. 11(d)(ii)**
- F11** Words inserted by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 3 para. 11(d)(ii)**
- F12** Words repealed by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 4 Pt. 1**
- F13** Words substituted by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 3 para. 11(d)(v)**
- F14** Words substituted by Local Government and Planning (Scotland) Act 1982 (c. 43, SIF 81:2), **Sch. 3 para. 11(d)(v)**

- 3 (1) Subject to the provisions of this Part of this Schedule, the procedure on the submission and confirmation of orders to which this Schedule applies shall be such as may be prescribed.
- (2) Provision may be prescribed for enabling proceedings preliminary to the confirmation of a public path extinguishment order to be taken concurrently with proceedings preliminary to the confirmation of a public path creation or a public path diversion order.

PART II

VALIDITY AND DATE OF OPERATION OF ORDERS TO WHICH THIS SCHEDULE APPLIES

- 4 As soon as may be after an order to which this Schedule applies has been confirmed . . . ^{F15} by the Secretary of State [^{F16}or, in the case of an order which has effect under paragraph 2(1A) of this Schedule, has made by an authority], the authority by whom the order was made, . . . ^{F15} shall publish, in the manner required in relation to the class of order in question by paragraph 1(3) of this Schedule, a notice in the prescribed form describing the general effect of the order, stating that it has been confirmed or made, and naming a place where a copy thereof as confirmed or made may be inspected free of charge at all reasonable hours, and—
- (a) where under the said sub-paragraph (3) notice was required to be served, shall serve a like notice and a copy of the order as confirmed or made on any persons on whom notices were required to be served under that sub-paragraph; and
- (b) where under the said sub-paragraph (3) a notice was required to be displayed, shall cause a like notice to be displayed in the like manner as the notice required to be displayed under that sub-paragraph:

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Provided that no such notice or copy need be served on a person unless he has sent to the authority . . . ^{F15} a request in that behalf specifying an address for service.

Textual Amendments

- F15** Words repealed by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 4 Pt. I](#)
- F16** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43, SIF 81:2\)](#), [Sch. 3 para. 11\(e\)\(ii\)](#)

- 5 If a person aggrieved by an order to which this Schedule applies desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of this Act or on the ground that any requirement of this Act or of regulations made thereunder has not been complied with in relation thereto, he may, within six weeks from the date on which the notice required by the last foregoing paragraph is first published, make an application for the purpose to the Court of Session.
- 6 On any such application as aforesaid, the Court—
- (a) may by interim order suspend the operation of the order, or of any provision contained therein, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
 - (b) if satisfied that the order, or any provision contained therein, is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by failure to comply with any such requirement as aforesaid, may quash the order or any provision contained therein, either generally or in so far as it affects any property of the applicant.
- 7 Subject to the provisions of the last foregoing paragraph, an order to which this Schedule applies shall not, either before or after it has been made or confirmed, be questioned in any legal proceedings whatever, and shall become operative on the date on which the notice required by paragraph 4 above is first published, or on such later date as may be specified in the order.
- 8 In relation to any order to which this Schedule applies, being an order which is subject to special parliamentary procedure, the foregoing provisions of this Schedule shall have effect subject to the following modifications—
- (a) if the order is confirmed by Act of Parliament under section six of the ^{M2}Statutory Orders (Special Procedure) Act 1945, paragraphs 5 to 7 shall not apply; and
 - (b) in any other case, paragraph 5 shall have effect as if, for the reference therein to the date on which the notice required by paragraph 4 is first published, there were substituted a reference to the date on which the order becomes operative under the said Act of 1945, and paragraph 7 shall have effect as if the words from “and shall become operative” to the end of the paragraph were omitted.

Marginal Citations

- M2** 1945 c. 18.

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