



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART X

HIGHWAYS

Procedure for making and confirming orders

204 Procedure for making of orders by Secretary of State

- (1) Before making an order under section 198, 200, 201 or 203(1)(a) of this Act 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 twenty-eight days from the date of the publication of the notice; and
 - (c) stating that, within that period, any person may by notice to the Secretary of State object to the making of the order.
- (2) Not later than the date on which that notice is so published, 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 highway or, as the case may be, any land to which the order relates is situated, and on any water, hydraulic power, gas or electricity undertakers having any cables, mains, pipes or wires laid along, across, under or over any highway 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 highway 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) If before the end of the said period of twenty-eight days an objection is received by the Secretary of State from any local authority or undertakers on whom a notice is required to be served under subsection (2) of this section, or from any other person appearing to him to be affected by the order, and the objection is not withdrawn, the Secretary of State shall cause a local inquiry to be held:

Provided that, if the objection is made by a person other than such a local authority or undertakers, the Secretary of State may dispense with such an inquiry if he is satisfied that in the special circumstances of the case the holding of such an inquiry is unnecessary.

- (4) After considering any objections to the order which are not withdrawn, and, where a local inquiry is held, the report of the person who held the inquiry, the Secretary of State (subject to subsection (5) of this section) may make the order either without modification or subject to such modifications as he thinks fit.
- (5) Where the order contains a provision requiring any such payment, repayment or contribution as is mentioned in section 198(3)(a) of this Act, and objection to that provision is duly made, in accordance with subsection (3) of this section, by an authority or person who would be required thereby to make such a payment, repayment or contribution, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.
- (6) Immediately after the order has been made, the Secretary of State shall publish, in the manner specified in subsection (1) of this section, 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 the provisions of subsection (2) of this section shall have effect in relation to any such notice as they have effect in relation to a notice under subsection (1) of this section.
- (7) In this section " the relevant area ", in relation to an order, means the area in which any highway or land to which the order relates is situated, and " local authority " means a county council, town council or district council.

205 Procedure in anticipation of planning permission, etc.

- (1) Where the Secretary of State would, if planning permission for any development had been granted under Part III of this Act, have power to make an order under section 198 or 200 of this Act authorising the stopping-up or diversion of a highway 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 subsections (2) to (4) of this section, publish notice of the draft of such an order in accordance with section 204 of this Act.
- (2) The Secretary of State may publish such a notice as aforesaid 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 or the National Coal Board ; or
 - (b) that application stands referred to the Secretary of State in pursuance of a direction under section 32 of this Act; or

- (c) the applicant has appealed to the Secretary of State under section 33 of this Act 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 as aforesaid where—
- (a) the relevant development is to be carried out by a local authority, statutory undertakers or the National Coal Board 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 37 of this Act or, in the case of the National Coal Board, under section 2 of the Opencast Coal Act 1958, that planning permission be deemed to be granted for that development.
- (4) The Secretary of State may publish such a notice as aforesaid where the local planning authority certify that they have begun to take such steps, in accordance with regulations made by virtue of section 256 of this Act, as are requisite in order to enable them to obtain planning permission for the relevant development.
- (5) Section 204(5) of this Act shall not be construed as authorising the Secretary of State to make an order under section 198 or 200 of this Act of which notice has been published by virtue of subsection (1) of this section until planning permission is granted for the development which occasions the making of the order.

206 Confirmation of orders made by other authorities

- (1) An order made under section 199 or 203(1) of this Act shall not take effect unless confirmed by the Secretary of State, or unless confirmed, as an unopposed order, by the authority who made it.
- (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 199 or 203(1) (as the case may be) to be satisfied.
- (3) The time specified—
- (a) in an order under section 199 as the time from which a footpath or bridleway is to be stopped up or diverted; or
 - (b) in an order under section 203(1) as the time from which a right of way is to be extinguished,
- shall not be earlier than confirmation of the order.
- (4) Schedule 18 to this Act shall have effect with respect to the confirmation of orders under section 199 or 203(1)(b) of this Act and the publicity for such orders after they are confirmed.