



Town and Country Planning (Scotland) Act 1959

1959 CHAPTER 70

PART III

ADMINISTRATIVE PROCEDURES AND RELATED PROCEEDINGS

31 Proceedings for challenging validity of certain orders and decisions

(1) If any person—

- (a) is aggrieved by any order to which this section applies and desires to question the validity of that order, on the grounds that the order is not within the powers of the Act of 1947, or that any of the relevant requirements have not been complied with in relation to that order, or
- (b) is aggrieved by any action on the part of the Secretary of State to which this section applies and desires to question the validity of that action, on the grounds that the action is not within the powers of the Act of 1947, of the Act of 1954, or of this Act, as the case may be, or that any of the relevant requirements have not been complied with in relation to that action,

he may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the Court of Session under this section.

(2) Without prejudice to the preceding subsection, if—

- (a) the authority directly concerned with any order to which this section applies desire to question the validity of that order on any of the grounds mentioned in paragraph (a) of the preceding subsection, or
- (b) the authority directly concerned with any action on the part of the Secretary of State to which this section applies desire to question the validity of that action on any of the grounds mentioned in paragraph (b) of the preceding subsection,

the authority may, within six weeks from the date on which the order is confirmed or the action is taken, as the case may be, make an application to the Court of Session under this section.

Status: This is the original version (as it was originally enacted).

- (3) This section applies to the following orders made after the commencement of this Act, that is to say—
- (a) any order under section nineteen of the Act of 1947 (which relates to the revocation or modification of planning permission) or under the provisions of that section as applied by or under any other provision of that Act;
 - (b) any order under section twenty-four of that Act (which relates to orders requiring a use of land to be discontinued, or imposing conditions on the continuance of such a use);
 - (c) any order under section twenty-six of that Act (which relates to the preservation of trees and woodlands);
 - (d) any order under section twenty-seven of that Act (which relates to the preservation of buildings of special architectural or historic interest);
 - (e) any order made in pursuance of subsection (4) of section twenty-nine of that Act (which relates to the definition of areas of special control for the purposes of the control of advertisements).
- (4) This section applies to action on the part of the Secretary of State, taken after the commencement of this Act, of any of the following descriptions, that is to say—
- (a) any decision of the Secretary of State on an application for planning permission referred to him under section thirteen of the Act of 1947 ;
 - (b) any decision of the Secretary of State on an appeal under section fourteen of that Act (which relates to appeals against planning decisions of local planning authorities);
 - (c) any decision of the Secretary of State to confirm a notice under section seventeen of that Act (which relates to notices requiring the purchase of land by a local authority where permission to develop is refused) or under the provisions of that section as applied by or under any other provision of that Act or of the Act of 1954, and any decision of the Secretary of State not to confirm such a notice (including any decision not to confirm such a notice in respect of part of the land to which it relates, and including any decision to grant any permission, or give any direction, in lieu of confirming such a notice, either wholly or in part);
 - (d) any decision of the Secretary of State relating to an application for consent under an order made by virtue of section twenty-six or section twenty-seven of the Act of 1947 or under any regulations made under that Act in accordance with section twenty-nine of that Act, or relating to any certificate or direction under such an order or under any such regulations, being either a decision of the Secretary of State on appeal or a decision on an application referred to him for determination in the first instance;
 - (e) the giving by the Secretary of State of any direction under section twenty-three of the Act of 1954 (which relates to the review of planning decisions where compensation is claimed) or under subsection (3) or subsection (4) of section forty-seven of that Act (which relates to the review of past planning decisions and orders);
 - (f) any decision of the Secretary of State on an appeal under section six of this Act.
- (5) On any application under this section the Court of Session—
- (a) may by interim order suspend the operation of the order or action, the validity whereof is questioned by the application, until the final determination of the proceedings;

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- (b) if satisfied that the order or action in question is not within the powers of the Act of 1947, of the Act of 1954, or of this Act, as the case may be, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation thereto, may quash that order or action:

Provided that paragraph (a) of this subsection shall not apply to applications questioning the validity of orders under section twenty-six or section twenty-seven of the Act of 1947.

- (6) In relation to any such order as is mentioned in paragraph (c) or paragraph (e) of subsection (3) of this section, the powers conferred on the Court of Session by the last preceding subsection shall be exercisable by way of quashing or (where applicable) suspending the operation of the order either in whole or in part, as the court may determine.
- (7) Subject to the preceding provisions of this section, the validity of an order to which this section applies, whether before or after it has been confirmed, and the validity of any action on the part of the Secretary of State to which this section applies, shall not be questioned in any legal proceedings whatsoever.
- (8) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any action to which this section applies.
- (9) In relation to any action which—
 - (a) apart from the provisions of the Fifth Schedule to the Act of 1947 (which contains special provisions relating to development by statutory undertakers) would fall to be taken by the Secretary of State and, if so taken, would be action to which this section applies, but
 - (b) by virtue of that Schedule is required to be taken by the Secretary of State and the appropriate Minister,

the preceding provisions of this section shall have effect as if any reference in those provisions to the Secretary of State were a reference to the Secretary of State and the appropriate Minister:

Provided that where, by virtue of that Schedule, any such action is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—

- (i) if the order in which the action is embodied is confirmed by Act of Parliament under subsection (4) of section two, or under section six, of the Statutory Orders (Special Procedure) Act, 1945, the preceding provisions of this section shall not apply ;
 - (ii) in any other case, subsections (1) and (2) of this section shall apply with the substitution, for any reference to the date on which the action is taken, of a reference to the date on which the order becomes operative under the said Act of 1945.
- (10) References in this section to the confirmation of an order do not include the provisional confirmation of an order in pursuance of the proviso to subsection (5) of section twenty-six or the proviso to subsection (4) of section twenty-seven of the Act of 1947, but (with that exception) include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made.

- (11) In this section "the relevant requirements", in relation to any order or action to which this section applies, means any requirements of the Act of 1947, the Act of 1954, the Tribunals and Inquiries Act, 1958, or this Act, or of any order, regulations or rules made under any of those Acts, which are applicable to that order or action; and any reference to the authority directly concerned with any order or action to which this section applies is a reference to the local planning authority, and, in relation to any such decision as is mentioned in paragraph (c) of subsection (4) of this section, being a decision confirming the notice in question subject to the substitution of another local authority or statutory undertakers for the local planning authority, shall be construed as including a reference to that other local authority or those statutory undertakers.

32 Appeals from certain decisions under Town and Country Planning Acts

- (1) Subsections (1) and (6) of section nine of the Tribunals and Inquiries Act, 1958 (which relates to appeals from certain tribunals), shall have effect in relation to any decision of the Secretary of State to which this section applies as they have effect in relation to a decision of any of the tribunals mentioned in that subsection, but with the substitution, for the reference to a party to proceedings before such a tribunal, of a reference to either of the following, that is to say, the person who made the application to which the Secretary of State's decision relates and the local planning authority.
- (2) This section applies to any decision of the Secretary of State made after the commencement of this Act—
- (a) on an application under section fifteen of the Act of 1947 (which relates to applications to determine whether proposed operations or changes of use involve development) which is referred to the Secretary of State under the provisions of section thirteen of that Act as applied by that section; or
 - (b) on an appeal from a decision of the local planning authority under the said section fifteen, being an appeal brought under the provisions of section fourteen of that Act as so applied.
- (3) Where an application under section fifteen of the Act of 1947 is made as part of an application for planning permission, the preceding provisions of this section shall have effect in relation to that application in so far as it is an application under the said section fifteen, but not in so far as it is an application for planning permission.
- (4) Subsection (3) of section nine of the said Act of 1958 (which relates to the power to make rules of court) shall have effect in relation to proceedings brought by virtue of subsections (1) and (6) of that section as applied by this section, as if in the said subsection (3) any reference to the tribunal were a reference to the Secretary of State.
- (5) Without prejudice to the last preceding subsection, the power to make rules of court in relation to proceedings in the Court of Session brought by virtue of the said subsections (1) and (6) as applied by this section shall include power to make rules providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

33 Procedure in connection with statutory inquiries

In the Tribunals and Inquiries Act, 1958, the following section shall be inserted after section seven:—

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- (1) The Lord Chancellor, after consultation with the Council, may make rules for regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of the Ministers ; and different provision may be made by any such rules in relation to different classes of such inquiries.
- (2) Any rules made by the Lord Chancellor under this section shall have effect, in relation to any statutory inquiry, subject to the provisions of the enactment under which the inquiry is held, and of any rules or regulations made under that enactment.
- (3) Subject to the last foregoing subsection, rules made under this section may regulate procedure in connection with matters preparatory to such statutory inquiries as are mentioned in subsection (1) of this section, and in connection with matters subsequent to such inquiries, as well as in connection with the conduct of proceedings at such inquiries,
- (4) The power to make rules under this section shall be exercisable by statutory instrument; and any instrument containing any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In the application of this section to inquiries held in Scotland, for any reference to the Lord Chancellor there shall be substituted a reference to the Lord President of the Court of Session, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules made by the Lord President of the Court of Session under this section in like manner as if the Lord President of the Court of Session were a Minister of the Crown; and the Council, in exercising their functions under this section in relation to rules to be made by the Lord President of the Court of Session, shall consult with the Scottish Committee.”

34 Provisions as to purchase notices

- (1) Section seventeen of the Act of 1947 (which relates to purchase notices) shall have effect, in relation to any purchase notice served after the commencement of this Act, as if the following subsections were inserted after subsection (1) of that section:—
 - “(1A) The local planning authority on whom a purchase notice is served under this section shall, before the end of the period of three months beginning with the date of service of that notice, serve on the owner by whom the purchase notice was served a notice stating either—
 - (a) that the local planning authority are willing to comply with the purchase notice ; or
 - (b) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place; or
 - (c) that, for reasons specified in the notice under this subsection, the local planning authority are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place, and that they have transmitted a copy of the purchase notice to the Secretary of State, on a date specified in the notice under this subsection, together with a statement of the reasons so specified.

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- (1B) Where the local planning authority upon whom a purchase notice is served under this section have served on the owner by whom the purchase notice was served a notice in accordance with paragraph (a) or paragraph (b) of the last foregoing subsection, the local planning authority, or the other local authority or statutory undertakers specified in the notice, as the case may be, shall be deemed to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of Part III of this Act, and to have served a notice to treat in respect thereof on the date of service of the notice under the last foregoing subsection.”
- (2) In its application to purchase notices served after the commencement of this Act, the said section seventeen shall have effect as if, after subsection (5) of that section, there were added the following subsections:—
- “(6) In the last foregoing subsection, any reference to the taking of action in lieu of confirming a purchase notice includes a reference to the taking of a decision not to confirm the notice on the grounds that any of the conditions specified in paragraphs (a) to (c) of subsection (1) of this section are not fulfilled.
- (7) Where the Secretary of State has given notice under subsection (5) of this section of his proposed action, and any of the persons, authorities and statutory undertakers concerned have appeared before and been heard by a person appointed by the Secretary of State for the purpose, and it then appears to the Secretary of State to be expedient to take action under this section otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.”
- (3) Where the Secretary of State has notified the owner by whom a purchase notice has been served of any such decision on his part as is mentioned in paragraph (c) of subsection (4) of section thirty-one of this Act, and that decision of the Secretary of State is quashed under that section, the purchase notice shall be, treated as cancelled, but the owner may serve a further purchase notice in its place.
- (4) For the purposes of any regulations made under the Act of 1947 as to the time within which a purchase notice may be served, the service of a purchase notice under the last preceding subsection shall not be treated as out of time if the notice is served within the period which would be applicable in accordance with those regulations if the planning decision, in consequence of which the notice is served, had been made on the date on which the decision of the Secretary of State was quashed as mentioned in the last preceding subsection.

35 Publication of notice of applications for planning permission

- (1) An application made after the commencement of this Act for planning permission for development of any class to which this section applies—
- (a) shall not be entertained by the local planning authority unless it is accompanied by a copy of a notice of the application, in such form as may be prescribed by a development order, and by such evidence as may be so prescribed that the notice has been published in a local newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) shall not be determined by the local planning authority before the end of the period of twenty-one days beginning with the date appearing from the

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evidence accompanying the application to be the date on which the notice was published as mentioned in the preceding paragraph.

- (2) Any such notice as is mentioned in paragraph (a) of the preceding subsection shall (in addition to any other matters required to be contained therein) name a place within the locality where a copy of the application, and of all plans and other documents submitted therewith, will be open to inspection by the public at all reasonable hours during such period (not being less than twenty-one days, beginning with the date of publication of the notice) as may be specified in the notice.
- (3) Provision may be made by a development order for designating the classes of development to which this section applies, and this section shall apply accordingly to any class of development which is for the time being so designated.
- (4) In determining any such application for planning permission as is mentioned in subsection (1) of this section, the local planning authority shall take into account any representations relating to that application which are received by them before the end of the period of twenty-one days mentioned in paragraph (b) of subsection (1) of this section.
- (5) Subsection (1) of this section and the last preceding subsection shall apply, with the necessary modifications, in relation to applications referred to the Secretary of State under section thirteen of the Act of 1947 or made to the Secretary of State in pursuance of regulations made under subsection (3) of section thirty-two of that Act (which relates to applications for planning permission by local planning authorities) as they apply in relation to applications for planning permission which fall to be determined by the local planning authority.

36 Notification of applications for planning permission to owners and agricultural tenants

- (1) Without prejudice to the last preceding section, a local planning authority shall not entertain any application for planning permission made after the commencement of this Act unless it is accompanied by one or other of the following certificates signed by or on behalf of the applicant, that is to say—
 - (a) a certificate stating that in respect of every part of the land to which the application relates the applicant is the proprietor of the dominium utile or is the lessee under a lease thereof;
 - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice ;
 - (c) a certificate stating that the applicant is unable to issue a certificate in accordance with either of the preceding paragraphs, that he has given the requisite notice of the application to such one or more of the persons mentioned in the last preceding paragraph as are specified in the certificate (setting out their names, the addresses at which the notice of the application was given to them respectively, and the date of the service of each such notice) and that he does not know the names and addresses of the remainder of those persons;

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- (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) of this subsection, and that he does not know the names and addresses of any of the persons mentioned in paragraph (b) of this subsection.
- (2) Any such certificate as is mentioned in paragraph (c) or paragraph (d) of the preceding subsection shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period mentioned in paragraph (b) of the preceding subsection) been published in a local newspaper circulating in the locality in which the land in question is situated.
- (3) In addition to any other matters required to be contained in a certificate issued for the purposes of this section, every such certificate shall contain one or other of the following statements, that is to say.—
- (a) a statement that none of the land to which the application relates constitutes or forms part of an agricultural holding;
- (b) a statement that the applicant has given the requisite notice of the application to every person who, at the beginning of the period of twenty-one days ending with the date of the application, was a tenant of any agricultural holding any part of which was comprised in the land to which the application relates, and setting out the name of each such person, the address at which notice of the application was given to him, and the date of service of that notice.
- (4) Where an application for planning permission is accompanied by such a certificate as is mentioned in paragraph (b), paragraph (c) or paragraph (a) of subsection (1) of this section, or by a certificate containing a statement in accordance with paragraph (b) of the last preceding subsection.—
- (a) the local planning authority shall not determine the application before the end of the period of twenty-one days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later;
- (b) the local planning authority, in determining the application, shall take into account any representations relating thereto which are made to them, before the end of the period specified in the preceding paragraph, by any person who satisfies them that he is an owner of any of the land to which the application relates or that he is the tenant of an agricultural holding any part of which is comprised in that land;
- (c) the local planning authority shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with the last preceding paragraph.
- (5) The preceding provisions of this section shall apply, with the necessary modifications.
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- (a) in relation to an application for planning permission which is referred to the Secretary of State under section thirteen of the Act of 1947, or is made to the Secretary of State in pursuance of regulations made under subsection (3) of section thirty-two of that Act, and
- (b) in relation to an appeal to the Secretary of State under section fourteen of that Act from a decision of the local planning authority,
- as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.

- (6) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.
- (7) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by a development order; and any reference in any provision of this section to the requisite notice, where a form of notice is prescribed by a development order for the purposes of that provision, is a reference to a notice in that form.
- (8) In this section " owner " in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and any person entitled to possession of the land as lessee under a lease the unexpired period of which is not less than ten years, and " agricultural holding " has the same meaning as in the Agricultural Holdings (Scotland) Act, 1949.

37 Enforcement of limitations imposed by development orders

- (1) Where by a development order (whether made before or after the commencement of this Act) permission is granted for any development subject to limitations specified in the order, sections twenty-one and twenty-two of the Act of 1947 (which relate to the enforcement of planning control) shall, subject to the provisions of this section, have effect in relation to any non-compliance with those limitations as they have effect in relation to non-compliance with any conditions subject to which permission is granted for any development.
- (2) For the purposes of this section and of the Act of 1947, any provision of a development order (whether made before or after the commencement of this Act) whereby permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references to limitations in this section or in that Act) be taken to be a provision granting permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that permission on more than that number of days in that period.
- (3) The validity of a notice purporting to be an enforcement notice under the said section twenty-one (whether served before or after the commencement of this Act) shall not depend on whether any non-compliance to which the notice relates was a non-compliance with conditions, or with limitations, or with both; and any reference in such a notice to non-compliance with conditions or limitations (whether both expressions are used in the notice or only one of them) shall be construed as a reference to non-compliance with conditions, or with limitations, or both with conditions and limitations, as the case may require.