



# Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997)

## 1972 CHAPTER 52

### PART X

#### HIGHWAYS

##### *Stopping up and diversion of highways*

#### **198 Highways affected by development: orders by Secretary of State.**

- (1) The Secretary of State may by order authorise the stopping up or diversion of any [<sup>F1</sup>road] if he is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part III of this Act, [<sup>F2</sup>or by virtue of Schedule 32 to the <sup>M1</sup>Local Government, Planning and Land Act 1980], or to be carried out by a government department.
- [<sup>F3</sup>(2) Any order under this section may make such provision as appears to the Secretary of State to be necessary or expedient for the construction or improvement of any other road, and may direct that the other road so constructed or improved—
  - (a) shall be entered by the local roads authority in the list of public roads kept by them under section 1 of the Roads (Scotland) Act 1984; or
  - (b) shall be deemed for the purposes of that Act to have been constructed by him under section 19 thereof,and in the case of a road so deemed, that it shall, on such date as may be specified in the order, become a trunk road within the meaning of that Act.]
- (3) Any order made under this section may contain such incidental and consequential provisions as appear to the Secretary of State to be necessary or expedient, including in particular—
  - (a) provision for authorising the Secretary of State, or requiring any other authority or person specified in the order—

*Status: Point in time view as at 01/02/1991.*

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- (i) to pay, or to make contributions in respect of, the cost of doing any work provided for by the order or any increased expenditure to be incurred which is attributable to the doing of any such work;<sup>F4</sup>
- (ii)
- <sup>F4</sup>(b) provision for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across the [<sup>F5</sup>road] to which the order relates.
- (4) An order may be made under this section authorising the stopping up or diversion of any [<sup>F6</sup>road] which is temporarily stopped up or diverted under any other enactment.
- (5) The provisions of this section shall have effect without prejudice to—
- (a) any power conferred on the Secretary of State by any other enactment to authorise the stopping up or diversion of a [<sup>F6</sup>road];
- (b) the provisions of section 3 of the <sup>M2</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; or
- (c) the provisions of section 203(1)(a) of this Act.

#### Textual Amendments

- F1** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(8)(a)** (with s. 128(1))
- F2** Words inserted by Local Government, Planning and Land Act 1980 (c. 65), **Sch. 32 para 19(4)**
- F3** S. 198(2) substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(8)(b)** (with s. 128(1))
- F4** S. 198(3)(a)(ii) and the word “or” immediately preceding that sub-paragraph repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1)(3), **Sch. 9 para. 70(8)(c)(i)**, Sch. 11 (with s. 128(1))
- F5** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(8)(c)(ii)**, Sch. 11 (with s. 128(1))
- F6** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(8)(d)** (with s. 128(1))

#### Modifications etc. (not altering text)

- C1** S. 198 extended by Mineral Workings Act 1951 (c. 60, SIF 86), s. 32 as substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 41(1)** (with ss. 128(1), 156(1), Sch. 9 para. 41(2))
- C2** S. 108(2), 117–119, 121, 138, 154(3), 170–172, 175, 181, 195(6), 198(3), 199(2), 202(3), 205, 211, 212, 214, 216–230, 233(7), 242, 259, 266(6)(b), 275(2), Sch. 8, Sch. 17 para. 1–3, Sch. 18 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxv) (with **Sch. 8 para. 33**)
- C3** S. 198(3) amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 2(7)(a)(9)** (with s. 112(3), Sch. 17 paras. 33, 35(1))
- C4** Ss. 198(3), 199(2), 202(3) extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(1)(xix)**; S.I. 1996/218, **art. 2**
- C5** S. 198(3)(b) extended by Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 4**

#### Marginal Citations

- M1** 1980 c. 65.
- M2** 1947 c. 42.

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*Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part X. (See end of Document for details)*

## [<sup>F7</sup>198A Highways affected by development: orders by planning authorities.

- (1) Subject to section 206 of this Act and to subsection (5) below, a planning authority may by order authorise the stopping up diversion of any [<sup>F8</sup>road] which is not—
- a trunk road within the meaning of [<sup>F9</sup>the Roads (Scotland) Act 1984]; or
  - a special road provided by the Secretary of State in pursuance of a scheme under [<sup>F10</sup>that Act],
- if they are satisfied as mentioned in section 198(1) of this Act.
- (2) An order under this section—
- may make such provision as appears to the planning authority to be necessary or expedient for the [<sup>F11</sup>construction] or improvement of any other [<sup>F11</sup>road] (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1) above) and may direct that [<sup>F11</sup>the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the Roads (Scotland) Act 1984];
  - may contain such incidental and consequential provisions as appear to the planning authority to be necessary or expedient, including in particular—
    - provision for authorising the planning authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in [<sup>F12</sup>paragraph (a) of subsection (3) of section 198 of this Act];
    - such provision as is mentioned in paragraph (b) of that subsection.
- (3) An order may be made under this section authorising the stopping up or diversion of any [<sup>F13</sup>road] (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of subsection (1) above) which is temporarily stopped up or diverted under any other enactment.
- (4) The provisions of this section shall have effect without prejudice to any power conferred on the planning authority by any other enactment to authorise the stopping up or diversion of a [<sup>F13</sup>road].
- (5) The planning authority shall not make an order under this section without consulting the [<sup>F14</sup>roads] authority (in a case where they are themselves not that authority).]

### Textual Amendments

- F7** S. 198A inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 2 para. 25](#)
- F8** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(9\)\(a\)\(i\)](#) (with s. 128(1))
- F9** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(9\)\(a\)\(ii\)](#)
- F10** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(9\)\(a\)\(iii\)](#) (with s. 128(1))
- F11** Word(s) substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(9\)\(b\)\(i\)](#) (with s. 128(1))
- F12** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), [Sch. 9 para. 70\(9\)\(b\)\(ii\)](#), Sch. 11 (with s. 128(1))
- F13** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(9\)\(c\)](#) (with s. 128(1))

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*Changes to legislation: There are currently no known outstanding effects for the Town and Country Planning (Scotland) Act 1972 (repealed 27.5.1997), Part X. (See end of Document for details)*

**F14** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(9)(d)** (with s. 128(1))

**Modifications etc. (not altering text)**

**C6** S. 198A extended by Mineral Workings Act 1951 (c. 60, SIF 86), s. 32 as substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 41(1)** (with ss. 128(1), 156(1), Sch. 9 para. 41(2))

**199 Footpaths and bridleways affected by development: orders by local planning authorities.**

- (1) Subject to section 206 of this Act, a <sup>F15</sup>planning authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied as mentioned in section 198(1) of this Act.
- (2) An order under this section may, if the <sup>F15</sup> planning authority are satisfied that it should do so, provide—
  - (a) for the creation of an alternative footpath or bridleway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing path or way for such use;
  - (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement, provision is made by the order;
  - (c) for the preservation of any rights of statutory undertakers in respect of apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;
  - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath or bridleway which is temporarily stopped up or diverted under any other enactment.

**Textual Amendments**

**F15** Word repealed by Local Government (Scotland) Act 1973 (c. 65), s. 172(2)

**Modifications etc. (not altering text)**

- C7** S. 199 extended by the Mineral Workings Act 1951 (c. 60, SIF 86), s. 32 as substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 41(1)** (with ss. 128(1), 156(1), Sch. 9 para. 41(2))
- C8** S. 108(2), 117–119, 121, 138, 154(3), 170–172, 175, 181, 195(6), 198(3), 199(2), 202(3), 205, 211, 212, 214, 216–230, 233(7), 242, 259, 266(6)(b), 275(2), Sch. 8, Sch. 17 para. 1–3, Sch. 18 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxv) (with **Sch. 8 para. 33**)
- C9** S. 199(2) amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 2(7)(a)(9)** (with s. 112(3), Sch. 17 paras. 33, 35(1))
- C10** S. 199(2) amended by British Telecommunications Act 1981 (c. 38), s. 87, **Sch. 3 para. 10(2)(d)**; extended by Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 4**
- C11** Ss. 198(3), 199(2), 202(3) extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(1)(xix)**; S.I. 1996/218, **art. 2**

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**200** <sup>F16</sup> .....

**Textual Amendments**

**F16** S. 200 repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11**

*Conversion of highway into footpath or bridleway*

**201 Order extinguishing right to use vehicles on highway.**

- (1) The provisions of this section shall have effect where a competent authority by resolution adopt a proposal for improving the amenity of part of their area, being a proposal which involves a [<sup>F17</sup>road] in that area (being a [<sup>F17</sup>road] over which the public have a right of way with vehicles, but not a trunk road or a road classified as a principal road for the purposes of advances under section [<sup>F183</sup> of the Roads (Scotland) Act 1984]) being changed to a footpath or bridleway
- (2) [<sup>F19</sup>Subject to section 206 of this Act and to subsection (9) of this section, the competent authority may] by order provide for the extinguishment of any right which persons may have to use vehicles on that [<sup>F20</sup>road].
- (3) An order made under subsection (2) of this section may include such provision as the [<sup>F21</sup>competent authority] (after consultation with the [<sup>F22</sup> planning authority and the [<sup>F23</sup>roads] authority, if different from the competent authority) thinks fit for permitting the use on the [<sup>F23</sup>road] of vehicles (whether mechanically propelled or not) in such cases as may be specified in the order, notwithstanding the extinguishment of any such right as is mentioned in that subsection; and any such provision may be framed by reference to particular descriptions of vehicles, or to particular persons by whom, or on whose authority, vehicles may be used, or to the circumstances in which, or the times at which, vehicles may be used for particular purposes.
- (4) No provision contained in, or having effect under, any enactment, being a provision prohibiting or restricting the use of footpaths or bridleways shall affect any use of a vehicle on a [<sup>F24</sup>road] in relation to which an order made under subsection (2) of this section has effect, where the use is permitted in accordance with provisions of the order included by virtue of subsection (3) of this section.
- (5) Any person who, at the time of an order under subsection (2) of this section coming into force, has an interest in land having lawful access to a [<sup>F24</sup>road] to which the order relates shall be entitled to be compensated by the competent authority in respect of any depreciation in the value of his interest which is directly attributable to the order and of any other loss or damage which is so attributable.

In this subsection “lawful access” means access authorised by planning permission granted under this Act or the Act of 1947, or access in respect of which no such permission is necessary.

- (6) A claim for compensation under subsection (5) of this section shall be made to the competent authority within the time and in the manner prescribed by regulations under this Act.

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- (7) Sections 167 and 168 of this Act shall have effect in relation to compensation under subsection (5) of this section as they have effect in relation to compensation to which those sections apply.
- (8) Without prejudice to section 273(3) of this Act, the [<sup>F25</sup>competent authority] may, subject to section 206 of this Act and to subsection (9) of this section] by order revoke an order made by [<sup>F25</sup>them] in relation to a [<sup>F24</sup>road] under subsection (2) of this section; and the effect of the order shall be to reinstate any right to use vehicles on the [<sup>F24</sup>road], being a right which was extinguished by virtue of the order under that subsection.
- (9) The competent authorities for the purposes of this section are [<sup>F26</sup>regional, islands and district] councils, and [<sup>F27</sup>a competent authority] shall not make an order under subsection (2) or (8) of this section—
- (a) if they are not the authority exercising district planning functions, without consulting that authority; and
  - (b) if they are not the [<sup>F28</sup>roads] authority, without obtaining the consent of that authority.]
- [<sup>F29</sup>(10) An order under this section—
- (a) may make such provision as appears to the competent authority to be necessary or expedient for the [<sup>F30</sup>construction] or improvement of any other [<sup>F30</sup>road] (not being a trunk road such as is mentioned in paragraph (a), or a special road such as is mentioned in paragraph (b), of section 189A(1) of this Act), and may direct that [<sup>F30</sup>the other road so constructed or improved shall be entered by the local roads authority in the list of public roads kept by the local roads authority under section 1 of the Roads (Scotland) Act 1984];
  - (b) may contain such incidental and consequential provisions as appear to the competent authority to be necessary or expedient, including in particular—
    - (i) provision for authorising the competent authority, or requiring any other authority or person specified in the order, to make such payments, repayments or contributions as are mentioned in <sup>F31</sup> paragraph (a) of subsection (3) of section 198 of this Act;
    - (ii) such provision as is mentioned in paragraph (b) of that subsection.
- (11) The provisions of this section shall have effect without prejudice to—
- (a) any power conferred on the competent authority by any other enactment to authorise the stopping up or diversion of a [<sup>F32</sup>road]
  - (b) the provisions of section 203(1)(b) of this Act.]

#### Textual Amendments

- F17** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(10)(a)(i)** (with s. 128(1))
- F18** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(10)(a)(ii)** (with s. 128(1))
- F19** Words substituted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), **Sch. 2 para. 27(1)(a)** except as regards the operation of s. 201 in relation to an extinguishment for which application was, before 11.6.1981, made to the Secretary of State under s. 201(2)
- F20** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(10)(b)** (with s. 128(1))



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- F21** Words substituted by [Local Government \(Miscellaneous Provisions \(Scotland\) Act 1981 \(c. 23, Sch. 2 para. 27\(1\)\(b\)\)](#), (2) except as regards the operation of s. 201 in relation to an extinguishment for which application was, before 11.6.1981, made to the Secretary of State under s. 201(2)
- F22** Word repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 172\(2\)](#)
- F23** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(10\)\(c\)\(i\)](#) (ii) (with s. 128(1))
- F24** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(10\)\(d\)](#) (with s. 128(1))
- F25** Words substituted by [Local Government \(Miscellaneous Provisions \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 27\(1\)\(c\)\)](#), (2) except as regards the operation of s. 201 in relation to an extinguishment for which application was, before 11.6.1981, made to the Secretary of State under s. 201(2)
- F26** Words substituted by [Local Government \(Scotland\) Act 1973 \(c. 65\), Sch. 23 para. 27](#)
- F27** Words substituted by [Local Government \(Miscellaneous Provisions \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 27\(1\)\(d\)\)](#), (2) except as regards the operation of s. 20 in relation to an extinguishment for which application was, before 11.6.1981, made to the Secretary of State under s. 201(2)
- F28** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(10\)\(e\)](#) (with s. 128(1))
- F29** [S. 201\(10\)\(11\)](#) substituted for s. 201(1) by [Local Government \(Miscellaneous Provisions \(Scotland\) Act 1981 \(c. 23\), Sch. 2 para. 27\(1\)\(e\)\)](#), (2) except as regards the operation of s. 201 in relation to an extinguishment for which application was, before 11.6.1981, made to the Secretary of State under s. 201(2)
- F30** Word(s) substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(10\)\(f\)\(i\)](#) (with s. 128(1))
- F31** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), [Sch. 9 para. 70\(10\)\(f\)\(ii\)](#), Sch. 11 (with s. 128(1))
- F32** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(10\)\(g\)](#) (with s. 128(1))

## 202 Provision of amenity for highway reserved to pedestrians.

- (1) Where in relation to a [<sup>F33</sup>road] an order has been made under section 201(2) of this Act, a competent authority may carry out and maintain any such works on or in the [<sup>F33</sup>road], or place on or in it any such objects or structures, as appear to them to be expedient for the purposes of giving effect to the order or of enhancing the amenity of the [<sup>F33</sup>road] and its immediate surroundings or to be otherwise desirable for a purpose beneficial to the public.
- (2) The powers exercisable by a competent authority under this section shall extend to laying out any part of the [<sup>F33</sup>road] with lawns, trees, shrubs and flower-beds and to providing facilities for recreation or refreshment.
- (3) A competent authority may so exercise their powers under this section as to restrict the access of the public to any part of the [<sup>F33</sup>road], but shall not so exercise them as—
  - (a) to prevent persons from entering the [<sup>F33</sup>road] at any place where they could enter it before the order under section 201 of this Act was made; or
  - (b) to prevent the passage of the public along the [<sup>F33</sup>road]; or
  - (c) to prevent normal access by pedestrians to premises adjoining the [<sup>F33</sup>road]; or
  - (d) to prevent any use of vehicles which is permitted by an order made under the said section 201 and applying to the [<sup>F33</sup>road]; or
  - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the [<sup>F33</sup>road]; [<sup>F34</sup>or

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- (f) to prevent the operator of any telecommunications code system from having access to any works of his under, in, on, over, along or across the [F33 road].]
- (4) An order under section 201(8) of this Act may make provision requiring the removal of any obstruction of the [F33 road] resulting from the exercise by a competent authority of their powers under this section.
- (5) The competent authorities for the purposes of this section are [F35 regional, islands and district] councils, but such an authority shall not exercise any powers conferred by this section unless they have obtained the consent of the F36 planning authority [F37 exercising district planning functions] and the [F38 roads] authority (in a case where they are themselves not that authority).

#### Textual Amendments

- F33** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(11)(a)** (with s. 128(1))
- F34** S. 201(3)(f) and the word “or” immediately preceding that paragraph inserted by Telecommunications Act 1984 (c. 12, SIF 96), Sch. 4 para. 54(7), **Sch. 5 para. 45**
- F35** Words substituted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 23 para. 28**
- F36** Word repealed by Local Government (Scotland) Act 1973 (c. 65), **s. 172(2)**
- F37** Words inserted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 23 para. 28**
- F38** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(11)(b)** (with s. 128(1))

#### Modifications etc. (not altering text)

- C12** S. 108(2), 117–119, 121, 138, 154(3), 170–172, 175, 181, 195(6), 198(3), 199(2), 202(3), 205, 211, 212, 214, 216–230, 233(7), 242, 259, 266(6)(b), 275(2), Sch. 8, Sch. 17 para. 1–3, Sch. 18 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxv) (with **Sch. 8 para. 33**)
- C13** S. 202(3), 205, 211, 212, 214–230, 233(7), 242, 266(6)(b), 275(2), Sch. 8, Sch. 17 paras. 1–3 amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), Sch. 16 para. 1(1)(xxiii) (with s. 112(3), Sch. 17 paras. 33, **35(1)**)
- C14** S. 202(3) extended by Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 4**; amended by British Telecommunications Act 1981 (c. 38), **Sch. 3 para. 10(2)(d)**
- C15** Ss. 198(3), 199(2), 202(3) extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(1)(xix)**; S.I. 1996/218, **art. 2**

### *Extinguishment of rights of way*

#### **203 Extinguishment of public rights of way over land held for planning purposes.**

- (1) Where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated—
- (a) the Secretary of State may by order extinguish any public right of way over the land if he is satisfied that an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required;
- (b) subject to section 206 of this Act, the local authority may by order extinguish any such right over the land F39 if they are satisfied as aforesaid.



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- (2) In this section any reference to the acquisition or appropriation of land for planning purposes shall be construed in accordance with section 122(1) of this Act as if this section were in Part VI of this Act.

#### Textual Amendments

**F39** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 4](#)

### *Procedure for making and confirming orders*

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

- (1) Before making an order under section 198, <sup>F40F41</sup> 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 [<sup>F42</sup>road] 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 [<sup>F42</sup>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 [<sup>F42</sup>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) 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.

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- (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 [<sup>F42</sup>road] or land to which the order relates is situated <sup>F43</sup>

#### Textual Amendments

- F40** Figure repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11** (with s. 128(1))
- F41** Words repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), **Sch. 4**
- F42** Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(12)** (with s. 128(1))
- F43** Words repealed by [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **Sch. 29**

#### Modifications etc. (not altering text)

- C16** S. 204 amended by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), **Sch. 16 para. 2(8)(9)** (with s. 112(3), [Sch. 17 paras. 33, 35\(1\)](#))
- C17** S. 204(2)(a) amended by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1)(3), **Sch. 7 para. 2(2)(d)** (with [Sch. 8 para. 33](#))
- S. 204(2)(a) amended (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), **Sch. 4 para. 2(2)(e)**; [S.I. 1996/218, art. 2](#)

## 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 <sup>F44</sup> of this Act authorising the stopping-up or diversion of a [<sup>F45</sup>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 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—
- that application is made by a local authority or statutory undertakers or the [<sup>F46</sup>British Coal Corporation]; or
  - that application stands referred to the Secretary of State in pursuance of a direction under section 32 of this Act; or
  - 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.

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- (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 [<sup>F47</sup>or], statutory undertakers <sup>F48</sup> 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 <sup>F48</sup>, 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 <sup>F49</sup> 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 [<sup>F50</sup>204(4)] of this Act shall not be construed as authorising the Secretary of State to make an order under section 198 <sup>F51</sup> 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.

#### Textual Amendments

- F44** Words repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11** (with s. 128(1))
- F45** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(13)** (with s. 128(1))
- F46** Words substituted by Coal Industry Act 1987 (c. 3, SIF 86), s. 1(2), **Sch. 1 para. 20**
- F47** Word inserted by Housing and Planning Act 1986 (c. 63, SIF 123:2), s. 53(1), **Sch. 11 Pt. II para. 48**
- F48** Words repealed by Housing and Planning Act 1986 (c. 63, SIF 123:2), s. 39(4), **Sch. 12 Pt. II**
- F49** Word repealed by Local Government (Scotland) Act 1973 (c. 65), s. 172(2)
- F50** Figure substituted by Housing and Planning Act 1986 (c. 63, SIF 123:2), s. 53(1), **Sch. 11 Pt. II para. 49**
- F51** Word(s) repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11** (with s. 128(1))

#### Modifications etc. (not altering text)

- C18** S. 108(2), 117–119, 121, 138, 154(3), 170–172, 175, 181, 195(6), 198(3), 199(2), 202(3), 205, 211, 212, 214, 216–230, 233(7), 242, 259, 266(6)(b), 275(2), Sch. 8, Sch. 17 para. 1–3, Sch. 18 extended by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), Sch. 7 para. 2(1)(xxv) (with **Sch. 8 para. 33**)
- C19** S. 202(3), 205, 211, 212, 214–230, 233(7), 242, 266(6)(b), 275(2), Sch. 8, Sch. 17 paras. 1–3 amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), Sch. 16 para. 1(1)(xxiii) (with s. 112(3), Sch. 17 paras. 33, **35(1)**)
- C20** S. 205 extended by Civil Aviation Act 1982 (c. 16), **Sch. 2 para. 4**

#### [<sup>F52</sup>205A Further procedure in anticipation of planning permission etc.

- (1) Where—
- (a) a planning authority would, if planning permission for any development had been granted under Part III of this Act, have power to make an order under section 198A of this Act authorising the stopping-up or diversion of a [<sup>F53</sup>road] in order to enable that development to be carried out; <sup>F54</sup>
  - (b) <sup>F54</sup>then, notwithstanding that such permission has not been granted, the <sup>F55</sup> authority 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 the provisions of Schedule 18

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to this Act; but nothing in the said schedule shall be construed as authorising the <sup>F55</sup> authority to make the order in anticipation of such permission.

- (2) The <sup>F55</sup> authority may publish such a notice as aforesaid where the <sup>F55</sup> development is the subject of an application for planning permission.
- (3) The <sup>F55</sup> authority may publish such a notice as aforesaid where—
  - (a) the <sup>F55</sup> development is to be carried out by a local authority [<sup>F56</sup>or], statutory undertakers <sup>F57</sup> 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 37 of this Act, <sup>F57</sup>, that planning permission be deemed to be granted for that development.
- (4) The planning authority may publish such a notice as aforesaid where 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 <sup>F55</sup> development.

(5<sup>F58</sup>]

#### Textual Amendments

- F52** S. 205A added by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), **Sch. 3 para. 16**
- F53** In s. 205A(1)(a) (in the amending Act referred to as s. 205(1)(a)) word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), **Sch. 9 para. 70(14)** (with s. 128(1))
- F54** S. 205(1)(b) and the word “or” immediately preceding it repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11** (with s. 128(1))
- F55** Word(s) repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11** (with s. 128(1))
- F56** Word inserted by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 53(1), **Sch. 11 Pt. II para. 48**
- F57** Words repealed by [Housing and Planning Act 1986 \(c. 63, SIF 123:2\)](#), s. 39(4), **Sch. 12 Pt. II**
- F58** S. 205A(5) repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), **Sch. 11** (with s. 128(1))

#### [<sup>F59</sup>206 Confirmation of orders made by other authorities.

- (1) An order made under section 198A or 199 of this Act by a planning authority <sup>F60</sup>, section 201 thereof by a competent authority or section 203(1)(b) thereof by a local authority, shall not take effect unless confirmed—
  - (a) by the Secretary of State in a case where the order is opposed;
  - (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 [<sup>F61</sup>198A <sup>F60</sup>] 199 or 203(1)(b) (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
  - [<sup>F62</sup>(aa) in an order under section 198A <sup>F60</sup> as the time from which a [<sup>F63</sup>road] is to be stopped up or diverted; or
  - (ab) in an order under section 201 as the time from which a right is to be extinguished; or]

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(b) in an order under section 203(1)(b) 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 [F64 198A, 199, F60, 201] or 203(1)(b) of this Act and the publicity for such orders after they are confirmed. [F65 The Schedule has no application as regards orders made by the Secretary of State.]

#### Textual Amendments

- F59 S. 206(1) substituted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 3 para. 17\(a\)](#)
- F60 Word(s) repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#) (with s. 128(1))
- F61 Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 3 para. 17\(b\)](#)
- F62 S. 206(3)(aa), (ab) inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 3 para. 17\(c\)](#)
- F63 Word substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(15\)](#) (with s. 128(1))
- F64 Words substituted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 3 para. 17\(d\)\(i\)](#)
- F65 Words added by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\)](#), [Sch. 3 para. 17\(d\)\(ii\)](#)

#### Supplementary provisions

207 <sup>F66</sup> .....

#### Textual Amendments

- F66 S. 207 repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(3), [Sch. 11](#) (with s. 128(1))

#### 208 Concurrent proceedings in connection with highways.

- (1) In relation to orders under sections 198, [F67 198A,] and 201 of this Act, regulations made under this Act may make provision for securing that any proceedings required to be taken for the purposes of the acquisition of land under section [F68 104(1)(b)(i) of the Roads (Scotland) Act 1984] may be taken concurrently with any proceedings required to be taken for the purposes of the order.
- (2) In relation to orders under section 203(1)(a) [F67 or (b)] of this Act, regulations made under this Act may make provision for securing—
  - (a) that any proceedings required to be taken for the purposes of such an order may be taken concurrently with any proceedings required to be taken for the purposes of the acquisition of the land over which the right of way is to be extinguished; or
  - (b) that any proceedings required to be taken for the purposes of the acquisition of any other land under section [F69 104(1)(b)(ii) of the Roads (Scotland)

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Act 1984] may be taken concurrently with either or both of the proceedings referred to in the preceding paragraph.

#### Textual Amendments

- F67** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23\), Sch. 3 para. 19](#)
- F68** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(1\), Sch. 9 para. 70\(16\)\(a\)](#) (with s. 128(1))
- F69** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\), s. 156\(1\), Sch. 9 para. 70\(16\)\(b\)](#) (with s. 128(1))

[<sup>F70</sup>209

- (1) Where in pursuance of an order under section 198, 198A <sup>F71</sup> or 201 of this Act a [<sup>F72</sup>road] is stopped up, diverted or changed and immediately before the date on which the order became operative there was under, in, on, over, along or across the [<sup>F72</sup>road] any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not become operative; but any person entitled to land over which the [<sup>F72</sup>road] subsisted shall be entitled to require the alteration of the apparatus.
- (2) Where any such order provides for the improvement of a [<sup>F73</sup>road], other than a trunk road, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the [<sup>F73</sup>road] any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the local [<sup>F73</sup>roads] authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority's works as defined in Part II of the Public Utilities Street Works Act <sup>M3</sup>1950.

- (3) Where an order under section 199 of this Act authorising the stopping up or diversion of any footpath or bridle-way is made by a planning authority or an order under section 203(1)(b) of this Act extinguishing a public right of way is made by a planning authority and at the time of the publication of the notice required by section 206(4) of, and Schedule 18 to, this Act any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—
- the power of the operator of the system to remove the apparatus shall, notwithstanding the making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the footpath or bridle-way is stopped up or diverted or, as the case may be, the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the authority which made the order of his intention to remove the apparatus or that part of it, as the case may be;
  - the operator of the system may by notice given in that behalf to the authority which made the order not later than the end of the said period of three months abandon the telecommunication apparatus or any part of it;
  - subject to paragraph (b) of this subsection, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus



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- which the operator has then neither removed nor given notice of his intention to remove;
- (d) the operator of the system shall be entitled to recover from the authority which made the order the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
  - (e) where under the preceding provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus that apparatus or that part of it shall vest in the authority which made the order and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (4) As soon as reasonably practicable after the making of any such order as is mentioned in subsection (3) above in circumstances in which that subsection applies in relation to the operator of any telecommunications code system, the authority which made the order shall give notice to the operator of the making of the order.
- (5) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (6) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.]

#### Textual Amendments

- F70** S. 209 substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 110(2), [Sch. 4 para. 54\(8\)](#), [Sch. 5 para. 45](#)
- F71** Words repealed by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1)(3), [Sch. 9 para. 70\(17\)\(a\)](#), [Sch. 11](#) (with s. 128(1))
- F72** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(17\)\(a\)](#) (with s. 128(1))
- F73** Words substituted by [Roads \(Scotland\) Act 1984 \(c. 54, SIF 108\)](#), s. 156(1), [Sch. 9 para. 70\(17\)\(b\)](#) (with s. 128(1))

#### Modifications etc. (not altering text)

- C21** S. 209(1)(2) extended by [Civil Aviation Act 1982 \(c. 16\)](#), [s. 48\(9\)\(b\)](#)

#### Marginal Citations

- M3** [1950 c.39\(108, 59\)](#).

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### Textual Amendments

**F74** S. 210 repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11** (with s. 128(1))

### [<sup>F75</sup>210A Recovery of costs of making orders relating to roads, paths etc.

- (1) Where, after the coming into force of this section, a person requests a local authority to make an order to which this subsection applies, the local authority may require him, as a condition of their compliance with the request, to make such provision as they consider reasonable as regards any costs to be incurred by them in so complying.
- (2) The orders to which subsection (1) above applies are orders under any of the following enactments—
  - (a) section 198A of this Act (orders authorising the stopping up or diversion of certain [<sup>F76</sup>roads]);
  - (b) section 199 of this Act (orders authorising the stopping up or diversion of footpaths or bridleways);
  - (c)
  - <sup>F77</sup>(d) section 201 of this Act (orders extinguishing the right to use vehicles on a [<sup>F78</sup>road]);
  - (e)
  - <sup>F77</sup>(f) section 34 of the <sup>M4</sup>Countryside (Scotland) Act 1967 (orders as regards the closure of public paths); and
  - (g) section 35 of the said Act of 1967 (orders as regards the diversion of public paths).]

### Textual Amendments

**F75** S. 210A inserted by Local Government and Planning (Scotland) Act 1982 (c. 43), s. 45

**F76** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(18)(a)** (with s. 128(1))

**F77** S. 210A(2)(c)(e) repealed by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(3), **Sch. 11** (with s. 128(1))

**F78** Word substituted by Roads (Scotland) Act 1984 (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 70(18)(b)** (with s. 128(1))

### Marginal Citations

**M4** 1967 c. 86.

**Status:**

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**Changes to legislation:**

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