



Town and Country Planning (Scotland) Act 1972

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 highway 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, or to be carried out by a government department.
- (2) Any order under this section may make such provision as appears to the Secretary of State to be necessary or expedient for the provision or improvement of any other highway, and may direct—
 - (a) that any highway so provided or improved shall be maintained and managed by the highway authority;
 - (b) that the Secretary of State, or any local authority specified in that behalf in the order, shall be the highway authority for that highway;
 - (c) in the case of a highway for which the Secretary of State is to be the highway authority, that the highway shall, on such date as may be specified in the order, become a trunk road within the meaning of the Trunk Roads Acts 1936 and 1946.
- (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—

- (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; or
 - (ii) to repay, or to make contributions in respect of, any compensation paid by the highway authority in respect of restrictions imposed under section 1 or 2 of the Restriction of Ribbon Development Act 1935 in relation to any highway stopped up or diverted under the order;
 - (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 highway to which the order relates.
- (4) An order may be made under this section authorising the stopping up or diversion of any highway 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 highway;
 - (b) the provisions of section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947; or
 - (c) the provisions of section 203(1)(a) of this Act.

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

- (1) Subject to section 206 of this Act, a local 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 local 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 under takers 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.

200 Highways crossing or entering route of proposed new highway, etc.

- (1) If planning permission is granted under Part III of this Act for constructing or improving, or the Secretary of State proposes to construct or improve, a highway (hereafter in this section referred to as " the main highway "), the Secretary of State may by order authorise the stopping up or diversion of any other highway which

crosses or enters the route of the main highway or which is, or will be, otherwise affected by the construction or improvement of the main highway, if it appears to the Secretary of State expedient to do so—

- (a) in the interests of the safety of users of the main highway ; or
 - (b) to facilitate the movement of traffic on the main highway.
- (2) Subsections (2) to (5) of section 198 of this Act shall apply to an order under this section as they apply to an order under that section.

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 highway in that area (being a highway 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 8 of the Development and Road Improvement Funds Act 1909) being changed to a footpath or bridleway.
- (2) The Secretary of State may, on an application made by a competent authority, by order provide for the extinguishment of any right which persons may have to use vehicles on that highway.
- (3) An order made under subsection (2) of this section may include such provision as the Secretary of State (after consultation with the local planning authority and the highway authority, if different from the competent authority) thinks fit for permitting the use on the highway 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 highway 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 highway 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.

- (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 Secretary of State may, on an application made by a competent authority, by order revoke an order made by him in relation to a highway under subsection (2) of this section; and the effect of the order shall be to reinstate any right to use vehicles on the highway, 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 county councils and town councils, and before making an application under subsection (2) or (8) of this section a competent authority shall consult with the local planning authority and the highway authority (in a case where they are themselves not that authority).
- (10) Subsections (2), (3) and (5) of section 198 of this Act shall apply to an order under this section as they apply to an order under that section.

202 Provision of amenity for highway reserved to pedestrians

- (1) Where in relation to a highway 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 highway, 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 highway 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 highway 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 highway, but shall not so exercise them as—
 - (a) to prevent persons from entering the highway 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 highway; or
 - (c) to prevent normal access by pedestrians to premises adjoining the highway ; or
 - (d) to prevent any use of vehicles which is permitted by an order made under the said section 201 and applying to the highway; or
 - (e) to prevent statutory undertakers from having access to any works of theirs under, in, on, over, along or across the highway.
- (4) An order under section 201(8) of this Act may make provision requiring the removal of any obstruction of the highway 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 county councils and town councils, but such an authority shall not exercise any powers conferred by this section unless they have obtained the consent of the local planning authority and the highway authority (in a case where they are themselves not that authority).

*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, being a footpath or bridleway, if they are satisfied as aforesaid.
- (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

*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.

Supplementary provisions

207 Compulsory acquisition of land in connection with highways

- (1) The Secretary of State or a local highway authority may be authorised to acquire land compulsorily—
 - (a) for the purpose of providing or improving any highway which is to be provided or improved in pursuance of an order under section 198, 200 or 201 of this Act or for any other purpose for which land is required in connection with such an order; or
 - (b) for the purpose of providing any public right of way which is to be provided as an alternative to a right of way extinguished under 203(1)(a) of this Act.
- (2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (other than section 2 thereof) shall apply to the acquisition of land under this section, and accordingly shall have effect—

- (a) as if this section had been in force immediately before the commencement of that Act; and
- (b) as if this section were included among the enactments specified in section 1(1)(b) of that Act.

208 Concurrent proceedings in connection with highways

- (1) In relation to orders under sections 198, 200 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 207 of this Act (as mentioned in subsection (1)(a) of that section) 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) 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 207 of this Act (as mentioned in subsection (1)(b) of that section) may be taken concurrently with either or both of the proceedings referred to in the preceding paragraph.

209 Provisions as to telegraphic lines

- (1) Where in pursuance of an order under section 198, 200 or 201 of this Act a highway is stopped up or diverted, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the highway a telegraphic line belonging to or used by the Post Office, the Post Office shall have the same powers in respect of that line as if the order had not become operative:

Provided that if any person entitled to land over which the highway subsisted requires that the telegraphic line should be altered, paragraphs (1) to (8) of section 7 of the Telegraph Act 1878 shall apply to the alteration, and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the person so requiring the line to be altered.

- (2) Where any such order provides for the improvement of a highway, 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 highway a telegraphic line belonging to or used by the Post Office, then if the local highway authority require that that line should be altered, paragraphs (1) to (8) of the said section 7 shall apply to the alteration, and accordingly shall have effect, subject to any necessary modifications, as if references therein to undertakers included references to the local highway authority:

Provided that those paragraphs shall not apply by virtue of this subsection to the alteration of a telegraphic line for the purpose of authority's works as defined in Part II of the Public Utilities Street Works Act 1950.

- (3) Where an order under section 203(1)(a) of this Act extinguishing a public right of way is made on the application of a local planning authority, and at the time of the publication of the notice required by section 204(1) of this Act there was under, in,

on, over, along or across the land over which the right of way subsisted a telegraphic line belonging to or used by the Post Office—

- (a) the power of the Post Office to remove the line 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 right of way is extinguished, and shall be exercisable in respect of the whole or any part of the line after the end of that period if before the end of that period the Post Office has given notice to the local planning authority of its intention to remove the line or that part thereof, as the case may be;
 - (b) the Post Office may by notice given in that behalf to the local planning authority not later than the end of the said period of three months abandon the telegraphic line or any part thereof;
 - (c) subject to paragraph (b) of this subsection, the Post Office shall be deemed at the end of that period to have abandoned any part of the line which it has then neither removed nor given notice of its intention to remove;
 - (d) the Post Office shall be entitled to recover from the local planning authority the expense of providing, in substitution for the line and any telegraphic line connected therewith which is rendered useless in consequence of the removal or abandonment of the line, a telegraphic line in such other place as the Post Office may require;
 - (e) where under the preceding provisions of this subsection the Post Office has abandoned the whole or any part of a telegraphic line, it shall vest in the local planning authority, and the provisions of the Telegraph Acts 1863 to 1916 shall not apply in relation to the line or that part thereof with respect to anything done or omitted after the abandonment thereof.
- (4) As soon as practicable after the making of an order under section 203(1)(a) of this Act extinguishing a public right of way in circumstances in which subsection (3) of this section applies, the Secretary of State shall give notice to the Post Office of the making of the order.
- (5) In this section " telegraphic line " and " alter " have the same meanings as in the Telegraph Act 1878.

210 Application of s. 32 of Mineral Workings Act 1951 to orders under Part X

- (1) In subsections (1) and (2) of section 32 of the Mineral Workings Act 1951 (temporary order for stopping up or diversion of highway)—
 - (a) references to section 198 of this Act (except the reference to subsection (3) of that section) shall include references to section 199 of this Act;
 - (b) the reference to the said subsection (3) shall include a reference to subsection (2) of the said section 199; and
 - (c) references to the Secretary of State shall include references to a local planning authority for the purposes of the said section 199.
- (2) In subsection (3) of the said section 32 (rights of statutory undertakers in respect of their apparatus where order is made under section 198 of this Act) the reference to section 198 of this Act shall include a reference to section 200 of this Act.
- (3) This section has effect in lieu of the amendments of the said section 32 made by sections 90(3) and 93(4) of the Act of 1969.