



Town and Country Planning (Scotland) Act 1972

1972 CHAPTER 52

PART XII

VALIDITY OF PLANNING INSTRUMENTS AND DECISIONS AND PROCEEDINGS RELATING THERETO

231 Validity of development plans and certain orders, decisions and directions

- (1) Except as provided by the following provisions of this Part of this Act, the validity of—
- (a) a structure plan, a local plan or any alteration, repeal or replacement of any such plan, whether before or after the plan, alteration, repeal or replacement has been approved or adopted; or
 - (b) an order under any provision of Part X of this Act, except section 203(1)(a), whether before or after the order has been made; or
 - (c) an order under section 224 of this Act, whether before or after the order has been made; or
 - (d) any such order as is mentioned in subsection (2) of this section, whether before or after it has been confirmed; or
 - (e) any such action on the part of the Secretary of State as is mentioned in subsection (3) of this section,
- shall not be questioned in any legal proceedings whatsoever.
- (2) The orders referred to in subsection (1)(d) of this section are orders of any of the following descriptions, that is to say—
- (a) any order under section 42 of this Act or under the provisions of that section as applied by or under any other provision of this Act;
 - (b) any order under section 49 of this Act;
 - (c) any tree preservation order;
 - (d) any order made in pursuance of section 61(4) of this Act;

Status: This is the original version (as it was originally enacted).

- (e) any order under section 203(1)(a) of this Act;
 - (f) any order under Part II of Schedule 10 to this Act.
- (3) The action referred to in subsection (1)(e) of this section is action on the part of the Secretary of State 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 32 of this Act;
 - (b) any decision of the Secretary of State on an appeal under section 33 of this Act;
 - (c) the giving by the Secretary of State of any direction under section 35 of this Act;
 - (d) any decision by the Secretary of State to confirm a completion notice under section 41 of this Act;
 - (e) any decision of the Secretary of State relating to an application for consent under a tree preservation order, or relating to an application for consent under any regulations made in accordance with section 61 of this Act, or relating to any certificate or direction under any such order or regulations, whether it is a decision of the Secretary of State on appeal or a decision on an application referred to him for determination in the first instance;
 - (f) any decision of the Secretary of State on an appeal to him under section 85(1)(a), (f) or (g) of this Act against any enforcement notice;
 - (g) any decision of the Secretary of State on an application for an established use certificate referred to him under subsection (1) of section 91 of this Act or on an appeal under subsection (2) of that section;
 - (h) any decision of the Secretary of State under subsection (5)(a) of section 93 of this Act to grant listed building consent for any works or under subsection (5)(b) of that section to grant planning permission in respect of any works;
 - (i) any decision of the Secretary of State to confirm a purchase notice or listed building purchase notice;
 - (j) any decision of the Secretary of State not to confirm a purchase notice or listed building purchase 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;
 - (k) any decision of the Secretary of State on an application referred to him under paragraph 4 of Schedule 10 to this Act (being an application for listed building consent for any works) or on an appeal under paragraph 8 of that Schedule or section 93 of this Act.
- (4) 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 such action as is mentioned in subsection (3) of this section.

232 Proceedings for questioning validity of structure plans, etc.

- (1) If any person aggrieved by a structure plan or local plan or by any alteration, repeal or replacement of any such plan desires to question the validity of the plan, alteration, repeal or replacement on the ground that it is not within the powers conferred by Part II of this Act, or that any requirement of the said Part II or of any regulations made thereunder has not been complied with in relation to the approval or adoption of the plan, alteration, repeal or replacement, he may, within six weeks from the date of the publication of the first notice of the approval or adoption of the plan, alteration,

repeal or replacement required by regulations under section 16(1) of this Act, make an application to the Court of Session under this section.

- (2) On any application under this section the Court of Session—
- (a) may by interim order wholly or in part suspend the operation of the plan, alteration, repeal or replacement, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;
 - (b) if satisfied that the plan, alteration, repeal or replacement is wholly or to any extent outside the powers conferred by Part II of this Act, or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of the said Part II or of any regulations made thereunder, may wholly or in part quash the plan, alteration, repeal or replacement, as the case may be, either generally or in so far as it affects any property of the applicant.

233 Proceedings for questioning validity of other orders, decisions and directions

- (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 this Act, 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 this Act, 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 subsection (1) of this section, if the authority directly concerned with any order to which this section applies, or with any action on the part of the Secretary of State to which this section applies, desire to question the validity of that order or action on any of the grounds mentioned in subsection (1) of this section, 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.
- (3) This section applies to any such order as is mentioned in subsection (2) of section 231 of this Act (other than an order under section 203(1)(a) of this Act) and to any such action on the part of the Secretary of State as is mentioned in subsection (3) of the said section 231.
- (4) 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;
 - (b) if satisfied that the order or action in question is not within the powers of this Act, 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 tree preservation orders.

- (5) In relation to a tree preservation order, or to an order made in pursuance of section 61(4) of this Act, the powers conferred on the Court of Session by subsection (4) of this section 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.
- (6) References in this section to the confirmation of an order 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.
- (7) In this section "the relevant requirements", in relation to any order or action to which this section applies, means any requirements of this Act or of the Tribunals and Inquiries Act 1971 (or any enactment replaced thereby), or of any order, regulations or rules made under this Act or under that Act (or any such enactment), 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 section 231(3)(i) or (j) of this Act, 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.

234 Appeals to Court of Session against decisions under s. 51

- (1) If, in the case of any decision to which this section applies, the person who made the application to which the decision relates, or the local planning authority, is dissatisfied with the decision in point of law, that person or the local planning authority (as the case may be) may, according as rules of court may provide, either appeal against the decision to the Court of Session or require the Secretary of State to state and sign a case for the opinion of the Court of Session.
- (2) This section applies to any decision of the Secretary of State-
 - (a) on an application under section 51 of this Act which is referred to the Secretary of State under the provisions of section 32 of this Act as applied by that section; or
 - (b) on an appeal from a decision of the local planning authority under section 51 of this Act, being an appeal brought under the provisions of section 33 of this Act as so applied.
- (3) Where an application under section 51 of this Act 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 51, but not in so far as it is an application for planning permission.
- (4) In relation to proceedings in the Court of Session brought by virtue of this section, the power to make rules of court shall include power to make rules prescribing the powers of the Court of Session with respect to—
 - (a) the giving of any decision which might have been given by the Secretary of State;

- (b) the remitting of the matter, with the opinion or direction of the court, for re-hearing and determination by the Secretary of State;
 - (c) the giving of directions to the Secretary of State.
- (5) Without prejudice to the preceding provisions of this section, the power to make rules of court in relation to proceedings in the Court of Session brought by virtue of 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.

235 Special provisions as to decisions relating to statutory undertakers

In relation to any action which—

- (a) apart from the provisions of Part XI of this Act, would fall to be taken by the Secretary of State, and, if so taken, would be action falling within section 231(3) of this Act; but
- (b) by virtue of Part XI of this Act, is required to be taken by the Secretary of State and the appropriate Minister.

the provisions of sections 231 and 233 of this Act shall have effect (subject to section 236 of this Act) as if any reference in those provisions to the Secretary of State were a reference to the Secretary of State and the appropriate Minister.

236 Special provisions as to orders subject to special parliamentary procedure

- (1) Where an order under section 198, 200, 201 or 224 of this Act is subject to special parliamentary procedure, then—
- (a) if the order is confirmed by Act of Parliament under section 2(4), as read with section 10, of the Statutory Orders (Special Procedure) Act 1945, or under section 6 of that Act, the provisions of sections 231 and 232 of this Act shall not apply to the order;
 - (b) in any other case, section 232 of this Act shall have effect in relation to the order as if, in subsection (1) of that section, for the reference to the date therein mentioned there were substituted a reference to the date on which the order becomes operative under the said Act of 1945.
- (2) Where by virtue of Part XI of this Act any such action as is mentioned in section 235 of this Act is required to be embodied in an order, and that order is subject to special parliamentary procedure, then—
- (a) if the order in which the action is embodied is confirmed by Act of Parliament under the said Act of 1945, the provisions of sections 231 and 233 of this Act shall not apply;
 - (b) in any other case, the provisions of section 233 of this Act 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.