

SCHEDULES

SCHEDULE 12

Section 36.

PROCEDURE IN CONNECTION WITH ORDERS UNDER SECTION 36

Consultation

- 1 Before making an order, the Secretary of State shall consult with such persons as he may consider appropriate.

Publicity for draft orders

- 2 (1) Before making an order, the Secretary of State shall prepare a draft of the order and give notice—
- (a) stating that he proposes to make the order and the general effect of it;
 - (b) naming a place in the area in which the land to which the draft order relates is situated where a copy of the draft order, and of any byelaws made or proposed to be made by a relevant authority for the protection of the area specified in the draft order, may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours; and
 - (c) specifying the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the draft order may be made.
- (2) Subject to sub-paragraph (3), the notice to be given under sub-paragraph (1) shall be given—
- (a) by publication in the Gazette and also at least one local newspaper circulating in the area in which the land to which the draft order relates is situated ;
 - (b) by serving a like notice on—
 - (i) every person in whom is vested an interest in or right over any of that land ;
 - (ii) every relevant authority whose area includes any of that land ; and
 - (iii) such other bodies as may be prescribed or as the Secretary of State may consider appropriate ; and
 - (c) by causing a copy of the notice to be displayed in a prominent position—
 - (i) at council offices in the locality of the land to which the draft order relates ; and
 - (ii) at such other places as the Secretary of State may consider appropriate.
- (3) The Secretary of State may, in any particular case, direct that it shall not be necessary to comply with sub-paragraph (2)(b)(i).
- (4) Subject to sub-paragraph (3), sub-paragraph (2)(b) and (c) shall be complied with not less than 28 days before the expiration of the time specified in the notice.

Status: This is the original version (as it was originally enacted).

Unopposed orders

- 3 If no representations or objections are duly made, or if any so made are withdrawn, the Secretary of State may make the order with or without modifications.

Opposed orders

- 4 (1) If any representation or objection duly made is not withdrawn the Secretary of State shall, before making the order, either—
- (a) cause a local inquiry to be held ; or
 - (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.
- (2) On considering any representations or objections duly made and the report of the person appointed to hold the inquiry or hear representations or objections, the Secretary of State may make the order with or without modifications.

Restriction on power to make orders with modifications

- 5 (1) The Secretary of State shall not make an order with modifications so as—
- (a) to affect land not affected by the draft order ; or
 - (b) to authorise the making of any byelaw not authorised by the draft order, except after complying with the requirements of sub-paragraph (2).
- (2) The said requirements are that the Secretary of State shall—
- (a) give such notice as appears to him requisite of his proposal so to modify the order, specifying the time (which shall not be less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the proposal may be made;
 - (b) hold a local inquiry or afford any person by whom any representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose ; and
 - (c) consider the report of the person appointed to hold the inquiry or to hear representations or objections.

Local inquiries

- 6 (1) The provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 or subsections (4) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local inquiries) shall apply in relation to any inquiry held under paragraph 4 or 5 as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (2) A local inquiry caused to be held under paragraph 4 or 5 before the making of an order may be held concurrently with any local inquiry caused to be held before the confirmation of byelaws made by a relevant authority for the protection of the area specified in the order.

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Notice of making of orders

- 7 (1) As soon as practicable after an order is made, the Secretary of State shall give notice—
- (a) describing the general effect of the order as made and stating the date on which it took effect; and
 - (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order as made may be inspected free of charge, and copies thereof may be obtained at a reasonable charge, at all reasonable hours.
- (2) A notice under sub-paragraph (1) shall be given—
- (a) by publication in the manner required by paragraph 2(2)(a);
 - (b) by serving a like notice on any persons on whom notices were required to be served under paragraph 2(2)(b) ; and
 - (c) by causing like notices to be displayed in the like manner as the notices required to be displayed under paragraph 2(2)(c).

Proceedings for questioning validity of orders

- 8 (1) If any person is aggrieved by an order which has taken effect and desires to question its validity on the ground that it is not within the powers of section 36 or that any of the requirements of this Schedule have not been complied with in relation to it, he may within 42 days from the date of publication of the notice under paragraph 7 make an application to the Court under this paragraph.
- (2) On any such application the Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with those requirements—
- (a) in England and Wales, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant; or
 - (b) in Scotland, make such declarator as seems to the Court to be appropriate.
- (3) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatever.
- (4) In this paragraph " the Court" means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.

Supplemental

- 9 (1) In this Schedule—
- " area " includes district;
 - " council offices " means offices or buildings acquired or provided by a local authority ;
 - " the Gazette " means—
- (a) if the order relates in whole or in part to England and Wales, the London Gazette ;
 - (b) if the order relates in whole or in part to Scotland, the Edinburgh Gazette ;
- " order " means an order under section 36 ;

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" prescribed " means prescribed by regulations made by the Secretary of State ;

and expressions to which a meaning is assigned by section 36 have the same meanings in this Schedule as in that section.

- (2) References in this Schedule to land include references to any waters covering it; and for the purposes of this Schedule any area in Great Britain which is bounded by tidal waters or parts of the sea shall be taken to include—
 - (a) the waters adjacent to that area up to the seaward limits of territorial waters ;
and
 - (b) the land covered by the said adjacent waters.
- (3) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.