

Status: Point in time view as at 01/04/2001.

Changes to legislation: There are currently no known outstanding effects for the Civil Aviation Act 1982, SCHEDULE 7. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Sections 44, 45 and 51 and Schedules 8
and 9.

PROVISIONS RELATING TO CERTAIN ORDERS UNDER PART II

Modifications etc. (not altering text)

C1 Schs. 7–10 extended with modifications by Airports Act 1986 (c. 31, SIF 9), s. 59(3)(4)

PART I

- 1 (1) Before making the order, the Secretary of State shall, unless the order is to be made on the application of [^{F1}the CAA or a licence holder]—
- (a) publish in one or more newspapers circulating in the locality in which the land is situated, and
 - (b) serve on every owner, lessee and occupier of any of the land and upon every local authority within whose area any of the land is situated,
- a notice stating that the Secretary of State proposes to make the order and the effect thereof, and specifying the time (not being less than 28 days from the service of the notice) within which, and the manner in which, objections to the making of the order may be made.
- (2) Before making an application for an order, [^{F1}the CAA or a licence holder] shall—
- (a) publish in one or more newspapers circulating in the locality in which the land is situated, and
 - (b) serve on every owner, lessee and occupier of any of the land and upon every local authority within whose area any of the land is situated,
- a notice stating that [^{F2}the CAA or the licence holder] proposes to apply for the order and the effect thereof and specifying the time (not being less than 42 days from service of the notice) within which, and the manner in which, objections to the making of the order may be made.

Textual Amendments

- F1** Words in Sch. 7 para. 1(1)(2) substituted (1.4.2001) by 2000 c. 38, s. 36, Sch. 4 para. 16(2)(a) (with s. 106); S.I. 2001/869, art. 2
- F2** Words in Sch. 7 para. 1(2) substituted (1.4.2001) by 2000 c. 38, s. 36, Sch. 4 para. 16(2)(b) (with s. 106); S.I. 2001/869, art. 2

- 2 If no objection is duly made by any such local authority, owner, lessee or occupier as is mentioned in paragraph 1 above or if all objections so made are withdrawn, the Secretary of State may, if he thinks fit, make the order.

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- 3 If any objection duly made as aforesaid is not withdrawn, the Secretary of State shall, before making the order, either cause a public local inquiry to be held or afford to any person by whom any objection has been duly made as aforesaid and not withdrawn an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and after considering the objection and the report of the person who held the inquiry or the person appointed as aforesaid, may, if he thinks fit, make the order.
- 4 Notwithstanding anything in paragraphs 2 and 3 above, the Secretary of State may require any person who has made an objection to state in writing the grounds of his objection, and may disregard the objection for the purposes of those paragraphs if he is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom the compensation is to be assessed.
- 5 (1) Immediately after the order has been made the appropriate person shall publish in one or more newspapers circulating in the locality in which the land is situated 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 shall serve a like notice on every person who, having duly objected to the order, has not withdrawn his objection.
- (2) In this paragraph “the appropriate person” means—
- (a) the CAA in the case of an order under section 44 of this Act made in favour of the CAA or in the case of an order under section 45 of this Act made in respect of an aerodrome owned or managed by the CAA; ^{F3} . . .
- [^{F4}(aa) the licence holder in the case of an order under section 44 of this Act made in favour of a licence holder;]
- (b) the Secretary of State in any other case.

Textual Amendments

- F3** Word in Sch. 7 para. 5(2)(a) repealed (1.4.2001) by 2000 c. 38, s. 274, Sch. 31 Pt. I(4) (with s. 106); S.I. 2001/869, art. 2
- F4** Sch. 7 para. 5(2)(aa) inserted (1.4.2001) by 2000 c. 38, s. 36, Sch. 4 para. 16(3) (with s. 106); S.I. 2001/869, art. 2

- 6 In this Part of this Schedule “owner” has the same meaning as in section 56 of this Act.

PART II

- 7 If any person aggrieved by the order desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Secretary of State or that any requirement of this Act has not been complied with in relation to the order, he may, within six weeks from the time when notice that the order has been made is first published in accordance with the requirements of this Act, make an application to the High Court or in Scotland to the Court of Session; and on any such application the court—
- (a) may by interim order suspend the operation of the order or of any provision contained therein, either generally or in so far as it affects the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the order or any provision contained therein is not within the powers of the Secretary of State, or that the interests of the applicant

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have been substantially prejudiced by any requirement of this Act not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects the applicant.

- 8 Subject to the provisions of paragraph 7 above, the order shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the expiration of six weeks from the date on which notice of the making of the order is first published in accordance with the requirements of this Act.
- 9 (1) Subject to sub-paragraph (2) below, this Part of this Schedule shall have effect in relation to an order to which the ^{MI}Statutory Orders (Special Procedure) Act 1945 applies—
- (a) as if in paragraph 7, for the reference to the time when notice that the order has been made is first published in accordance with the requirements of this Act there were substituted a reference to the time when the order becomes operative under that Act; and
 - (b) as if in paragraph 8, the words from “and shall become operative” to the end were omitted.
- (2) This Part of this Schedule shall not apply to an order which is confirmed by Act of Parliament under—
- (a) section 6 of the said Act of 1945; or
 - (b) under section 2(4) of that Act in its application (as set out in section 10 of that Act) to orders extending to Scotland only.

Marginal Citations

MI 1945 c. 18.

PART III

- 10 (1) Any person having an interest in land the value of which is diminished in consequence of the coming into operation of the order shall be entitled to recover compensation for the diminution from the appropriate person; and the provisions of the Land Compensation Act shall have effect accordingly.
- (2) In this paragraph “the appropriate person” has the same meaning as in paragraph 5 above.
- 11 (1) Where any interest in land is subject to a mortgage or, in Scotland, to a heritable security—
- (a) any compensation payable under the preceding provisions of this Schedule in respect of the diminution in the value of the interest shall be assessed as if the interest were not subject to the mortgage or heritable security;
 - (b) a claim for any such compensation may be made by any mortgagee of the interest or, in Scotland, by any creditor in a heritable security of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
 - (c) a mortgagee or, in Scotland, a creditor in a heritable security shall not be entitled to claim compensation under the said provisions in respect of his interest as such; and

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- (d) the compensation payable in respect of the interest subject to the mortgage or heritable security may be paid to such of the claimants as the Secretary of State thinks proper, and shall be applied by that claimant in such manner as the parties interested may agree, or, in default of such agreement, as may be determined by arbitration.

- (2) In this paragraph—

“mortgage” includes an equitable charge and any other encumbrance, and includes a sub-mortgage, and the expression “mortgagee” shall be construed accordingly;

“heritable security” means a heritable security within the meaning of the ^{M2}Conveyancing (Scotland) Act 1924, exclusive of a security by way of ground annual and a real burden ad factum praestandum, but inclusive of a security constituted by ex facie absolute disposition.

Marginal Citations

M2 1924 c. 27.

- 12 (1) Where the order provides for the creation of any easement or servitude over land in England and Wales or Scotland held by a statutory undertaker for the purposes of the carrying on of his undertaking, or of any right in or in relation to such land, the undertaker shall be entitled to recover compensation in accordance with the special provisions of Part II of this Act relating to statutory undertakers in any case in which those provisions apply; and shall not, in any such case, be entitled to recover compensation under the preceding paragraphs of this Schedule.
- (2) Compensation recoverable by virtue of sub-paragraph (1) above shall be recoverable—
- (a) from the Secretary of State in the case of an order made otherwise than in favour of [^{F5}the CAA or a licence holder];
- (b) from the CAA in the case of an order made in favour of the CAA.
- [^{F6}(c) from the licence holder in the case of an order made in favour of a licence holder.]

Textual Amendments

F5 Words in Sch. 7 para. 12(2)(a) substituted (1.4.2001) by 2000 c. 38, s. 36, Sch. 4 para. 16(2)(a) (with s. 106); S.I. 2001/869, art. 2

F6 Sch. 7 para. 12(2)(c) inserted (1.4.2001) by 2000 c. 38, s. 36, Sch. 4 para. 16(4) (with s. 106); S.I. 2001/869, art. 2

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