



Infrastructure (Wales) Act 2024

2024 asc 3

PART 6

INFRASTRUCTURE CONSENT ORDERS

Provision in orders: specific limitations and powers

73 Public rights of way

- (1) An infrastructure consent order may extinguish a public right of way over land only if the Welsh Ministers are satisfied that—
 - (a) an alternative right of way has been or will be provided, or
 - (b) the provision of an alternative right of way is not required.
- (2) The following provisions of this section apply if—
 - (a) an infrastructure consent order makes provision for the acquisition of land, compulsorily or by agreement,
 - (b) the order extinguishes a public right of way over the land, and
 - (c) the right of way is not a right enjoyable by vehicular traffic.
- (3) The order may not provide for the right of way to be extinguished from a date which is earlier than the date on which the order is published.
- (4) Subsection (5) applies if—
 - (a) the order extinguishes the right of way from a date (“the extinguishment date”) which is earlier than the date on which the acquisition of the land is completed, and
 - (b) at any time after the extinguishment date it appears to the Welsh Ministers that the proposal to acquire the land has been abandoned.
- (5) The Welsh Ministers must by order direct that the right is to revive.
- (6) Nothing in subsection (5) prevents the making of a further order extinguishing the right of way.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

74 Power to override easements and other rights

In section 205(1) of the Housing and Planning Act 2016 (c. 22) (interpretation of sections 203 and 204), in the definition of “planning consent”—

- (a) in paragraph (a), omit “or”;
- (b) at the end insert “, or
- (c) infrastructure consent under the Infrastructure (Wales) Act 2024”.

75 Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.

- (1) This section applies if an infrastructure consent order authorises the acquisition of land (compulsorily or by agreement) and—
 - (a) there subsists over the land a relevant right,
 - (b) a relevant restrictive covenant applies to the land, or
 - (c) there is on, under or over the land relevant apparatus.
- (2) “Relevant right” means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—
 - (a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or
 - (b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.
- (3) “Relevant restrictive covenant” means a restrictive covenant that benefits statutory undertakers in carrying on their undertaking.
- (4) “Relevant apparatus” means—
 - (a) apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, or
 - (b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.
- (5) The order may include provision for the extinguishment of the relevant right or relevant restrictive covenant, or the removal of the relevant apparatus, only if the Welsh Ministers are satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates
- (6) In this section, “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purpose of any provision of Part 11 of TCPA 1990.
- (7) In this section—

“electronic communications apparatus” (*“cyfarfpar cyfarthrebu electronig”*) has the meaning given in paragraph 5 of the electronic communications code;

“electronic communications code” (*“cod cyfarthrebu electronig”*) means the code set out in Schedule 3A to the Communications Act 2003 (c. 21);

“operator of an electronic communications code network” (*“gweithredwr rhwydwaith cod cyfarthrebu electronig”*) has the meaning given in paragraph 1(1) of Schedule 17 to the Communications Act 2003.

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76 Crown land

- (1) An infrastructure consent order may not include provision authorising the compulsory acquisition of an interest in Crown land unless—
 - (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and
 - (b) the appropriate Crown authority consents to the acquisition.
- (2) An infrastructure consent order may not include any other provision applying in relation to Crown land, or rights benefiting the Crown, unless the appropriate Crown authority consents to the inclusion of the provision.
- (3) The reference in subsection (2) to rights benefiting the Crown does not include rights which benefit the general public.
- (4) In this section, “the Crown” includes the Duchy of Lancaster and the Duchy of Cornwall.

77 Operation of generating stations

An infrastructure consent order may include provision authorising the operation of a generating station only if the development to which the order relates is or includes the construction or extension of the generating station.

78 Keeping electric lines installed above ground

An infrastructure consent order may include provision authorising an electric line to be kept installed above ground only if the development to which the order relates is or includes the installation of the line above ground.

79 Diversion of watercourses

- (1) An infrastructure consent order may include provision authorising the diversion of any part of a navigable watercourse only if the condition in subsection (2) is met.
- (2) The new length of watercourse must be navigable in a reasonably convenient manner by vessels of a kind that are accustomed to using the part of the watercourse which is to be diverted.
- (3) In deciding whether the condition in subsection (2) is met, the effect of any bridge or tunnel must be ignored if the construction of the bridge or tunnel is part of the development for which consent is granted by the infrastructure consent order.
- (4) If an infrastructure consent order includes provision authorising the diversion of any part of a navigable watercourse, the order is also to be taken to authorise the diversion of any tow path or other way adjacent to that part.

80 Highways

- (1) An infrastructure consent order may include provision authorising the charging of tolls in relation to a highway only if a request to that effect has been included in the application for the order.

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- (2) If an infrastructure consent order includes provision authorising the charging of tolls in relation to a highway, the order is treated as a toll order for the purposes of sections 7 to 18 of the New Roads and Street Works Act 1991 (c. 22).

81 Harbours

- (1) An infrastructure consent order may include provision for the creation of a harbour authority only if—
- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
 - (b) the creation of a harbour authority is necessary or expedient for the purposes of the development.
- (2) An infrastructure consent order may include provision changing the powers or duties of a harbour authority only if—
- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
 - (b) the authority has requested the inclusion of the provision or has consented in writing to its inclusion.
- (3) An infrastructure consent order may include provision authorising the transfer of property, rights or liabilities from one harbour authority to another only if—
- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
 - (b) the order makes provision for the payment of compensation of an amount—
 - (i) determined in accordance with the order, or
 - (ii) agreed between the parties to the transfer.
- (4) Subject to subsection (6), an infrastructure consent order which includes provision for the creation of a harbour authority, or changing the powers or duties of a harbour authority, may also make other provision in relation to the authority.
- (5) Subject to subsection (6), the provision which may be included in relation to a harbour authority includes in particular—
- (a) any provision in relation to a harbour authority which could be included in a harbour revision order under section 14 of the Harbours Act 1964 (c. 40) by virtue of any provision of Schedule 2 to that Act;
 - (b) provision conferring power on the authority to change provision made in relation to it (by the order or by virtue of this paragraph), where the provision is about—
 - (i) the procedures (including financial procedures) of the authority;
 - (ii) the power of the authority to impose charges;
 - (iii) the power of the authority to delegate any of its functions;
 - (iv) the welfare of officers and employees of the authority and financial and other provision made for them.
- (6) The order may not include provisions—
- (a) which, by virtue of any other provision of this Act, are not permitted to be included in an infrastructure consent order;

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- (b) conferring power on a harbour authority to delegate, or make changes to its powers so as to permit the delegation of, any of the functions mentioned in paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964.

82 Discharge of water

- (1) This section applies if—
 - (a) an infrastructure consent order includes provision authorising the discharge of water into inland waters or underground strata, and
 - (b) but for the order, the person to whom infrastructure consent is granted would have had no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made.
- (2) The order does not have the effect of conferring any such power on that person.

83 Deemed consent under a marine licence

- (1) An infrastructure consent order may include provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (c. 23) for any activity for which the Welsh Ministers are the appropriate licensing authority.
- (2) Subsections (3) and (4) apply if an infrastructure consent order includes provision—
 - (a) deeming a marine licence to have been granted under Part 4 of the Marine and Coastal Access Act 2009 subject to conditions specified in the order, and
 - (b) deeming those conditions to have been attached to the marine licence by the Welsh Ministers under that Part.
- (3) A person who fails to comply with a condition of the kind mentioned in subsection (2) does not commit an offence under section 104 of this Act.
- (4) Sections 68 (notice of applications) and 69(3) and (5) (representations) of the Marine and Coastal Access Act 2009 do not apply in relation to the deemed marine licence.
- (5) No provision in or made under or by virtue of this Act prevents a deemed marine licence from being varied, suspended, revoked or transferred in accordance with section 72 of the Marine and Coastal Access Act 2009.
- (6) In this section, “the appropriate licensing authority” has the meaning given by section 113 of the Marine and Coastal Access Act 2009.

84 Removing consent requirements and deeming consents

- (1) If a condition in subsection (2) or (3) is met, an infrastructure consent order may include provision that—
 - (a) removes a requirement for a specified consent of a relevant authority to be granted;
 - (b) deems a specified consent of a relevant authority to have been granted.
- (2) The condition is that the relevant authority has consented to the inclusion of the provision before the end of the specified period.
- (3) The condition is that the relevant authority has not refused to give consent for the provision to be included before the end of the specified period.

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(4) Regulations may provide exceptions to the requirement to meet the conditions in subsections (2) and (3).

(5) In this section—

“consent” (“*cydsyniad*”) means—

- (a) a consent or authorisation that is required, under an enactment, to be obtained for development,
- (b) a consent or authorisation, that—
 - (i) may authorise development, and
 - (ii) is given under an enactment, or
- (c) a notice that is required by an enactment to be given in relation to development;

“relevant authority” (“*awdurdod perthnasol*”) means the authority that would otherwise have the function of deciding whether to grant the specified consent;

“specified” (“*penodedig*”) means specified in regulations.