



# Infrastructure (Wales) Act 2024

2024 asc 3

## PART 6

### INFRASTRUCTURE CONSENT ORDERS

*Provision in orders: general*

#### **63 What may be included in an infrastructure consent order**

- (1) An infrastructure consent order may impose requirements relating to the development for which consent is granted.
- (2) The requirements may, among other things, include—
  - (a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice which but for section 20(1) or provision made under section 84(1) would have been required for the development;
  - (b) requirements to obtain the approval of the Welsh Ministers or any other person, so far as not within paragraph (a).
- (3) An infrastructure consent order may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- (4) The provision that may be made under subsection (3) includes, among other things, provision relating to any of the matters listed in Part 1 of Schedule 1.
- (5) Regulations may—
  - (a) add a matter to Part 1 of Schedule 1;
  - (b) remove or vary a matter listed in Part 1 of Schedule 1.
- (6) An infrastructure consent order may—
  - (a) apply, modify or exclude an enactment which relates to any matter for which provision may be made in the order;

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- (b) make amendments, repeals or revocations of enactments of local application that appear to the Welsh Ministers to be appropriate in consequence of a provision of the order or in connection with the order;
  - (c) include any provision that appears to the Welsh Ministers to be appropriate for giving full effect to any other provision of the order;
  - (d) include incidental, consequential, supplementary, transitional or saving provision.
- (7) With the exception of provision made under subsection (3) relating to any of the matters listed in paragraph 29 of Schedule 1, an infrastructure consent order may not include—
- (a) provision creating offences,
  - (b) provision conferring power to create offences, or
  - (c) provision changing an existing power to create offences.
- (8) To the extent that provision for or relating to a matter may be included in an infrastructure consent order, none of the following may include provision of the same kind—
- (a) an order under section 14 or 16 of the Harbours Act 1964 (c. 40) (orders in relation to harbours, docks and wharves);
  - (b) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).

*Provision in orders authorising compulsory acquisition*

**64 Purpose for which compulsory acquisition may be authorised**

- (1) An infrastructure consent order may include provision authorising the compulsory acquisition of land only if the Welsh Ministers are satisfied that the conditions in subsections (2) and (3) are met.
- (2) The condition is that the land—
  - (a) is required for the development to which the development consent relates,
  - (b) is required to facilitate or is incidental to that development, or
  - (c) is replacement land which is to be given in exchange for the order land under section 70 or 71.
- (3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

**65 Land to which authorisation of compulsory acquisition can relate**

- (1) An infrastructure consent order may include provision authorising the compulsory acquisition of land only if—
  - (a) the land is in Wales or the Welsh marine area, and
  - (b) the Welsh Ministers are satisfied that one of the conditions in subsections (2) to (4) is met.
- (2) The condition is that the application for infrastructure consent included a request for compulsory acquisition of the land to be authorised.

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- (3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
- (4) The condition is that the procedure specified in regulations for the purpose of this section has been followed in relation to the land.

## **66 Application of compulsory acquisition provisions**

- (1) This section applies in relation to an infrastructure consent order that includes provision authorising the compulsory acquisition of land.
- (2) Part 1 of the Compulsory Purchase Act 1965 (c. 56) (procedure for compulsory purchase) applies to the compulsory acquisition of land under the order—
  - (a) as it applies to a compulsory purchase to which Part 2 of the Acquisition of Land Act 1981 (c. 67) applies, and
  - (b) as if the order were a compulsory purchase order under that Act.
- (3) Part 1 of the Compulsory Purchase Act 1965, as applied by subsection (2), has effect with the omission of the following provisions—
  - (a) section 4 (time limit for exercise of compulsory purchase powers);
  - (b) section 10 (compensation for injurious affection).
- (4) Subsections (2) and (3) are subject to any contrary provision made by the infrastructure consent order.

## **67 Compensation for compulsory acquisition**

- (1) This section applies in relation to an infrastructure consent order that includes provision authorising the compulsory acquisition of land.
- (2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.
- (3) The order may not include provision the effect of which is to exclude the application of a compensation provision.
- (4) A “compensation provision” is an enactment that relates to compensation for the compulsory acquisition of land.

## **68 Statutory undertakers’ land**

- (1) This section applies in relation to land (“statutory undertakers’ land”) if—
  - (a) the land has been acquired by statutory undertakers for the purposes of their undertaking,
  - (b) a representation has been made about an application for infrastructure consent before the completion of the examination of the application, and the representation has not been withdrawn, and
  - (c) as a result of the representation the Welsh Ministers are satisfied that—
    - (i) the land is used for the purposes of carrying on the statutory undertakers’ undertaking, or
    - (ii) an interest in the land is held for those purposes.

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- (2) An infrastructure consent order may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Welsh Ministers are satisfied of the matters set out in subsection (3).
- (3) The matters are that the nature and situation of the land are such that—
  - (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
  - (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
- (4) Subsections (2) and (3) do not apply in a case within subsection (5).
- (5) An infrastructure consent order may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Welsh Ministers are satisfied of the matters set out in subsection (6).
- (6) The matters are that the nature and situation of the land are such that—
  - (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
  - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- (7) In this section, “statutory undertakers” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—
  - (a) that are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
  - (b) that are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).
- (8) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Welsh Ministers for use or occupation by the body.

## **69 National Trust land**

- (1) This section applies to land belonging to the National Trust which is held by the Trust inalienably.
- (2) An infrastructure consent order is subject to special Senedd procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.
- (3) The condition is that—
  - (a) a representation has been made by the National Trust about the application for the infrastructure consent order before the completion of the examination of the application,
  - (b) the representation contains an objection to the compulsory acquisition of the land, and

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- (c) the objection has not been withdrawn.
- (4) In a case to which this section applies and to which section 70 or 71 also applies, special Senedd procedure—
  - (a) may be required by subsection (2) whether or not also required by section 70(3) or 71(2), and
  - (b) may be required by section 70(3) or 71(2) whether or not also required by subsection (2).
- (5) In this section, “held inalienably”, in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the [National Trust Act 1907 \(c. cxxxvi\)](#) or section 8 of the [National Trust Act 1939 \(c. lxxxvi\)](#).

## **70 Commons, open spaces etc: compulsory acquisition of land**

- (1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.
- (2) This section does not apply in a case to which section 71 applies.
- (3) An infrastructure consent order is subject to special Senedd procedure to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless—
  - (a) the Welsh Ministers are satisfied that one of subsections (4) to (7) applies, and
  - (b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.
- (4) This subsection applies if—
  - (a) replacement land has been or will be given in exchange for the order land, and
  - (b) the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.
- (5) This subsection applies if—
  - (a) the order land is, or forms part of, an open space,
  - (b) none of the order land is of any of the other descriptions in subsection (1),
  - (c) either—
    - (i) there is no suitable land available to be given in exchange for the order land, or
    - (ii) any suitable land available to be given in exchange is available only at prohibitive cost, and
  - (d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special Senedd procedure.
- (6) This subsection applies if—
  - (a) the order land is, or forms part of, an open space,
  - (b) none of the order land is of any of the other descriptions in subsection (1), and
  - (c) the order land is being acquired for a temporary (although possibly long-lived) purpose.
- (7) This subsection applies if—

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- (a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and
  - (b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- (8) If an infrastructure consent order authorises the compulsory acquisition of land to which this section applies, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)
    - (a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
    - (b) for discharging the order land from all rights, trusts and incidents to which it is subject.
- (9) In this section—
- “common” (“*tir comin*”), “fuel or field garden allotment” (“*rhandir tanwydd neu ardd gae*”) and “open space” (“*man agored*”) have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
  - “the order land” (“*tir y gorchymyn*”) means the land authorised to be compulsorily acquired;
  - “the prospective seller” (“*y darpar werthwr*”) means the person or persons in whom the order land is vested;
  - “replacement land” (“*tir amnewid*”) means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

## **71 Commons, open spaces etc: compulsory acquisition of rights over land**

- (1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.
- (2) An infrastructure consent order is subject to special Senedd procedure to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless—
- (a) the Welsh Ministers are satisfied that one of subsections (3) to (7) applies, and
  - (b) that fact, and the subsection concerned, are recorded in the order or otherwise in the instrument or other document containing the order.
- (3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—
- (a) the persons in whom it is vested,
  - (b) other persons, if any, entitled to rights of common or other rights, and
  - (c) the public.
- (4) This subsection applies if—
- (a) replacement land has been or will be given in exchange for the order right, and
  - (b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the infrastructure consent order).
- (5) This subsection applies if—

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- (a) the order land is, or forms part of, an open space,
  - (b) none of the order land is of any of the other descriptions in subsection (1),
  - (c) either—
    - (i) there is no suitable land available to be given in exchange for the order right, or
    - (ii) any suitable land available to be given in exchange is available only at prohibitive cost, and
  - (d) it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special Senedd procedure.
- (6) This subsection applies if—
- (a) the order land is, or forms part of, an open space,
  - (b) none of the order land is of any of the other descriptions in subsection (1), and
  - (c) the order right is being acquired for a temporary (although possibly long-lived) purpose.
- (7) This subsection applies if—
- (a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and
  - (b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- (8) If an infrastructure consent order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)
    - (a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
  - (b) for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.
- (9) In this section—
- “common” (*“tir comin”*), “fuel or field garden allotment” (*“rhandir tanwydd neu ardd gae”*) and “open space” (*“man agored”*) have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
  - “the order land” (*“tir y gorchymyn”*) means the land to which this section applies over which the order right is to be exercisable;
  - “the order right” (*“hawl y gorchymyn”*) means the right authorised to be compulsorily acquired;
  - “replacement land” (*“tir amnewid”*) means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—
    - (a) the persons in whom the order land is vested,
    - (b) the persons, if any, entitled to rights of common or other rights over the order land, and
    - (c) the public.

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## 72 Notice of authorisation of compulsory acquisition

- (1) Regulations must make provision imposing requirements on a prospective purchaser—
- (a) to give, publish or display a compulsory acquisition notice;
  - (b) to provide the public with access to a copy of the infrastructure consent order to which the notice relates.
- (2) A compulsory acquisition notice is a notice in the form specified in regulations—
- (a) describing the order land,
  - (b) in a case where the infrastructure consent order authorises the compulsory acquisition of a right over land by the creation of a new right, describing the right,
  - (c) stating that the infrastructure consent order includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land,
  - (d) in a case where the order applies Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66)—
    - (i) containing a statement specified in regulations about the effect of those Parts, and
    - (ii) inviting any person who would be entitled to claim compensation if a declaration were executed under section 4 of that Act to give the prospective purchaser information about the person’s name, address and interest in land, using a form specified in regulations,
  - (e) stating where and when a copy of the order is available for inspection in accordance with regulations under subsection (1)(b), and
  - (f) stating that a person aggrieved by the order may challenge the order only in accordance with section 96.
- (3) In this section—
- “the order land” (“*tir y gorchymyn*”) means—
- (a) in a case where the infrastructure consent order authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable or (in the case of a restrictive covenant) to which it applies;
  - (b) in any other case where the infrastructure consent order authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;
- “the prospective purchaser” (“*y darpar brynwr*”) means—
- (a) in a case where the infrastructure consent order authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;
  - (b) in any other case where the infrastructure consent order authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.
- (4) The prospective purchaser must send a compulsory acquisition notice to the Chief Land Registrar and it is to be a local land charge in respect of the land to which it relates.



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*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.

**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

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- (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.

## 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.

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## **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.
- (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—

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- (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;
  - (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.

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- (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.
- (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.

#### *Procedure for infrastructure consent orders*

#### **85 Infrastructure consent orders: publication and procedure**

- (1) This section applies in relation to an infrastructure consent order.
- (2) The Welsh Ministers must publish the order in such manner as the Welsh Ministers think appropriate, except in a case within subsection (3).

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- (3) If the order includes provision—
- (a) made under section 63(3) relating to any of the matters listed in paragraphs 28 and 29 of Schedule 1, or
  - (b) made in the exercise of any of the powers conferred by section 63(6)(a) or 63(6)(b),
- the order must be contained in a statutory instrument.
- (4) As soon as practicable after the instrument containing the order is made, the Welsh Ministers must lay before Senedd Cymru a copy of—
- (a) the instrument,
  - (b) the latest version of any plan supplied by the applicant in connection with the application for the order contained in the instrument, and
  - (c) statement of reasons prepared under section 62.

*Changing and revoking infrastructure consent orders etc.*

## **86 Meaning of “decision documents” and “error”**

- (1) This section applies for the purposes of sections 87 and 88.
- (2) “Decision document” means—
- (a) in the case of a grant of infrastructure consent, the infrastructure consent order;
  - (b) in the case of a refusal of infrastructure consent, the notice of refusal given to the applicant.
- (3) “Error” includes omission.

## **87 Power to correct errors in decision documents**

- (1) This section applies where a decision document is issued which contains an error.
- (2) The Welsh Ministers may correct the error in the decision document.
- (3) The power conferred by subsection (2) may be exercised—
- (a) on receipt of a request in writing to correct the error from any person, or
  - (b) without such request being made.
- (4) If the decision document is an infrastructure consent order—
- (a) the power conferred by subsection (2) must be exercised by order, and
  - (b) if the order to be corrected is contained in a statutory instrument, the power conferred by subsection (2) is to be exercised by statutory instrument.
- (5) If the decision document is a notice of refusal given to the applicant, the power conferred by subsection (2) must be exercised by giving the applicant a notice.

## **88 Correcting errors: regulations**

- (1) Regulations may make provision for or in connection with the procedure for correcting an error in a decision document and may (among other things) make provision about—
- (a) any consultation that must take place;

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- (b) the circumstances in which the Welsh Ministers must publish a statement explaining the reason for correcting the error.
- (2) Regulations may make provision about—
- (a) the effect of making a correction under section 87(2) and not making a correction;
  - (b) when a correction made under section 87(2) takes effect.

*Making changes to, and revoking, infrastructure consent orders*

**89 Definitions**

- (1) This section applies for the purposes of sections 90 and 91.
- (2) “The applicant”, in relation to an infrastructure consent order, means the person who applied for the order.
- (3) “A successor in title of the applicant” means a person who—
  - (a) derives title to the land from the applicant (whether directly or indirectly), and
  - (b) has an interest in the land.
- (4) “The land”, in relation to an infrastructure consent order, means the land to which the order relates or any part of that land.

**90 Power to change or revoke infrastructure consent orders**

- (1) The Welsh Ministers may by order make a change to, or revoke, an infrastructure consent order.
- (2) The provision that may be made by way of a change to an infrastructure consent order includes provision that may be made under section 63, subject to this section.
- (3) The power conferred by subsection (1) may be exercised on an application made by—
  - (a) the applicant or a successor in title of the applicant;
  - (b) a person with an interest in the land;
  - (c) any other person for whose benefit the infrastructure consent order has effect.
- (4) The power to revoke an infrastructure consent order conferred by subsection (1) may be exercised on an application made by a planning authority if the Welsh Ministers are satisfied that—
  - (a) the infrastructure consent order grants infrastructure consent for development on land all or part of which is in the planning authority’s area,
  - (b) the development has begun but has been abandoned, and
  - (c) the amenity of other land in the planning authority’s area or an adjoining area is adversely affected by the condition of the land.
- (5) The Welsh Ministers may refuse to exercise the power on an application made under subsection (3) or (4) if, in particular, the Welsh Ministers consider that the development that would be authorised as a result of the change should properly be the subject of an application under section 32 for infrastructure consent.
- (6) The power conferred by subsection (1) may be exercised by the Welsh Ministers without an application being made under subsection (3) or (4).

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- (7) The power conferred by subsection (1) includes power to—
- (a) require the removal or alteration of building works;
  - (b) require the discontinuance of a use of land;
  - (c) impose specified requirements in connection with the continuance of a use of land;
  - (d) impose new requirements in connection with the development for which consent is granted by the infrastructure consent order;
  - (e) remove or vary existing requirements;
  - (f) make new provision relating to, or to matters ancillary to, the development for which consent is granted;
  - (g) remove or vary existing provision of that kind.
- (8) Subject to subsection (7)(a), the exercise of the power does not affect any building or other operations carried out in pursuance of the infrastructure consent order before the power is exercised.
- (9) The power conferred by subsection (1) may not be exercised in relation to provision included in an infrastructure consent order by virtue of paragraph 24 or 25 of Schedule 1 (deemed marine licence under Marine and Coastal Access Act 2009 (c. 23)).

## **91 Procedure: changing and revoking infrastructure consent orders**

- (1) An application under section 90 must—
- (a) be made in the form specified by regulations;
  - (b) be made in the way specified in the regulations;
  - (c) be accompanied by information of a kind specified by regulations.
- (2) Where a person has an interest in some, but not all, of the land to which an infrastructure consent order relates, the person may make an application under section 90 only in respect of as much of the consent as order as affects the land in which the person has an interest.
- (3) Regulations may make provision about the procedure for changing or revoking an infrastructure consent order and may (among other things) make provision about—
- (a) the procedure to be followed before an application under section 90 is made;
  - (b) the making of such application;
  - (c) the decision-making process in relation to the exercise of the power conferred by section 90(1);
  - (d) the making of the decision as to whether to exercise the power conferred by section 90(1);
  - (e) the effect of a decision to exercise the power in section 90(1).
- (4) Paragraphs (c) to (e) of subsection (3) apply in relation to the exercise of the power conferred by section 90(1)—
- (a) on an application under section 90, or
  - (b) without an application being made (see section 90(6)).
- (5) Regulations under subsection (3) may confer a function, including a function involving the exercise of a discretion, on any person.



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- (6) If an infrastructure consent order is changed or revoked in the exercise of the power conferred by section 90(1), the Welsh Ministers must give notice of the change or revocation to—
- (a) the applicant or a successor in title of the applicant,
  - (b) the person who made the application under section 90 (if different to the person mentioned in paragraph (a)), and
  - (c) any person or person of a description specified in regulations.
- (7) If an infrastructure consent order was required to be contained in a statutory instrument, an order changing or revoking the infrastructure consent order made in the exercise of the power conferred by section 90(1) must also be contained in a statutory instrument.

## **92 Changing and revoking infrastructure consent orders: formalities**

- (1) This section applies to—
- (a) an order made under section 87;
  - (b) a notice issued under section 87;
  - (c) an order made under section 90.
- (2) The Welsh Ministers must publish the order or the notice (as the case may be) in such manner as they think appropriate.
- (3) But if the order is required to be contained in a statutory instrument (by virtue of section 87(4) or section 91(7)), as soon as practicable after the instrument containing the order is made, the Welsh Ministers must lay before Senedd Cymru a copy of the instrument.

## **93 Changing or revoking an infrastructure consent order: compensation**

Schedule 2 makes provision about compensation for changing or revoking an infrastructure consent order.

### *Effect of infrastructure consent orders*

## **94 Duration of infrastructure consent order**

- (1) Development for which infrastructure consent is granted must be begun before the end of—
- (a) the specified period, or
  - (b) such other period (whether longer or shorter than the specified period) as is specified in the order granting the consent.
- (2) If the development is not begun before the end of the period applicable under subsection (1), the infrastructure consent order ceases to have effect at the end of that period.
- (3) Where an infrastructure consent order authorises the compulsory acquisition of land, steps of a kind specified in regulations must be taken in relation to the compulsory acquisition before the end of—
- (a) the specified period, or

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- (b) such other period (whether longer or shorter than the specified period) as is specified in the order.
- (4) If steps of the description specified in regulations are not taken before the end of the period applicable under subsection (3), the authority to compulsorily acquire the land under the order ceases to have effect.
- (5) In this section, “specified period” means a period specified in regulations.

## 95 When development begins

- (1) For the purposes of sections 90 and 94 development is taken to begin on the earliest date on which any material operation comprised in, or carried out for the purposes of, the development begins to be carried out.
- (2) “Material operation” means any operation except an operation of a kind specified in regulations.

## 96 Legal challenges

- (1) A court may entertain proceedings for questioning an infrastructure consent order only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day—
    - (i) on which the order is published, or
    - (ii) if later, the day on which the statement of reasons for making the order is published.
- (2) A court may entertain proceedings for questioning a refusal of infrastructure consent only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the statement of reasons for the refusal is published.
- (3) A court may entertain proceedings for questioning a decision under section 33 not to accept an application as a valid application for infrastructure consent only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the applicant is notified as required by subsection (4) of that section.
- (4) A court may entertain proceedings for questioning a decision under section 87 in relation to an error in a decision document only if—
  - (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which a notice is given to the applicant under section 87(5) or, if the correction is required to be made by order contained in a statutory instrument, the day after the day on which the order is published.
- (5) A court may entertain proceedings for questioning a decision under section 90(1) to make a change to or revoke an infrastructure consent order only if—

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- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which notice of the change is given under section 91(6) or, if the change or revocation is required to be made by order contained in a statutory instrument, the day after the day on which the order making the change or revocation is published.
- (6) A court may entertain proceedings for questioning anything else done, or omitted to be done, by an examining authority or the Welsh Ministers in relation to an application for infrastructure consent or an application to change or revoke an infrastructure consent order only if—
- (a) the proceedings are brought by a claim for judicial review, and
  - (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the relevant day.
- (7) “The relevant day” means—
- (a) in relation to an application for infrastructure consent, the day on which—
    - (i) the application is withdrawn,
    - (ii) the infrastructure consent order is published or (if later) the statement of reasons for making the order is published, or
    - (iii) the statement of reasons for the refusal of infrastructure consent is published;
  - (b) in relation to an application for change or revocation of an infrastructure consent order, a day specified in regulations.
- (8) Subsections (6) and (7) do not apply in relation to—
- (a) a failure to decide an application for infrastructure consent or an application to change or revoke an infrastructure consent order, or
  - (b) anything which delays (or is likely to delay) the decision on such an application.

## **97 Benefit of infrastructure consent order**

- (1) If an infrastructure consent order is made in respect of any land, the order has effect for the benefit of the land and all persons for the time being interested in the land.
- (2) Subsection (1) is subject to any contrary provision made in the order.

## **98 Planning obligations**

- (1) The TCPA 1990 is amended as follows.
- (2) In section 106 (planning obligations)—
  - (a) after subsection (1A) insert—

“(1B) In the case of an infrastructure consent obligation, the reference to development in subsection (1)(a) includes anything that constitutes development for the purposes of the Infrastructure (Wales) Act 2024.”;
  - (b) in subsection (9) after paragraph (aa) insert—

“(ab) if the obligation is an infrastructure consent obligation, contains a statement to that effect;”;

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(c) after subsection (14) insert—

“(15) In this section and section 106A “infrastructure consent obligation means a planning obligation entered into in connection with an application (or a proposed application) for an infrastructure consent order.”

(3) In section 106A(11) (modification and discharge of planning obligations: meaning of “the appropriate authority”) after paragraph (a) insert—

“(zaa) the Welsh Ministers, in the case of any infrastructure consent obligation.”

(4) In section 106B(1) (appeals) after “Secretary of State” insert “or the Welsh Ministers”.

(5) After section 106C insert—

**“106D Legal challenges relating to infrastructure consent obligations**

(1) This section applies where an application has been made to the Welsh Ministers under section 106A.

(2) A court may entertain proceedings for questioning a failure by the Welsh Ministers to give notice as mentioned in section 106A(7) only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the period prescribed under section 106A(7) ends.

(3) A court may entertain proceedings for questioning a determination by the Welsh Ministers that a planning obligation is to continue to have effect without modification only if—

- (a) the proceedings are brought by a claim for judicial review, and
- (b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which notice of the determination is given under section 106A(7).”

**99 Blighted land**

(1) TCPA 1990 is amended as follows.

(2) In Schedule 13 (blighted land)—

(a) after paragraph 24 insert—

“24ZA Land falls within this paragraph if—

- (a) the compulsory acquisition of the land is authorised by an infrastructure consent order, or
- (b) the land falls within the limits of deviation within which powers of compulsory acquisition conferred by an infrastructure consent order are exercisable, or
- (c) an application for infrastructure consent seeks authority to compulsorily acquire the land.”;

(b) after paragraph 25 insert—

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*“Land identified in infrastructure policy statements*

- 26 (1) Land falls within this paragraph if the land is in a location identified in an infrastructure policy statement as suitable (or potentially suitable) for a specified kind of development.
- (2) Land ceases to fall within this paragraph when the infrastructure policy statement—
- (a) ceases to have effect, or
  - (b) ceases to identify the land as suitable or potentially suitable for that kind of development.”
- (3) In section 150(1)(b) (notices requiring purchase of blighted land)—
- (a) for “or paragraph 24 ” substitute “, paragraph 24 or paragraph 24ZA”;
  - (b) after “within paragraph 24(c)” insert “or 24ZA(c)”.
- (4) In section 151 (counter-notices objecting to blight notices) after subsection (7A) insert—
- “(7B) The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of paragraph 26 of Schedule 13 do not include those mentioned in subsection (4)(b).”
- (5) After section 165A (power of Secretary of State to acquire land identified in national policy statements where blight notice served) insert—

**““165B Power of Welsh Ministers to acquire land identified in infrastructure policy statements where blight notice served**

Where a blight notice has been served in respect of land falling within paragraph 26 of Schedule 13, the Welsh Ministers have power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that paragraph.”

- (6) In section 169 (meaning of “the appropriate authority” for purposes of Chapter 2 of Part 6)—
- (a) after subsection (7) insert—
- “(7A) In relation to land falling within paragraph 26 of Schedule 13, “the appropriate authority” is—
- (a) if the infrastructure policy statement identifies a statutory undertaker as an appropriate person to carry out the specified description of development in the location, the statutory undertaker;
  - (b) in any other case, the Welsh Ministers.
- (7B) If any question arises by virtue of subsection (7A)—
- (a) whether the appropriate authority in relation to any land for the purposes of this Chapter is the Welsh Ministers or a statutory undertaker; or
  - (b) which of two or more statutory undertakers is the appropriate authority in relation to any land for those purposes, that

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question must be referred to the Welsh Ministers, whose decision is final.”;

(b) in subsection (8), for “and (7)” substitute “, (7), (7A) and (7B)”.

(7) In section 170 (“appropriate enactment” for purposes of Chapter 2) after subsection (8C) insert—

“(8D) In relation to land falling within paragraph 24ZA(a) or (b) of that Schedule, “the appropriate enactment” is the infrastructure consent order.

(8E) In relation to land falling within paragraph 24ZA(c) of that Schedule, “the appropriate enactment” is an infrastructure consent order in the terms of the order applied for.

(8F) In relation to land falling within paragraph 26 of that Schedule, “the appropriate enactment is section 165B.”

(8) In section 171(1) (general interpretation of Chapter 2 of Part 6) at the appropriate place insert—

““infrastructure policy statement has the meaning given by section 127(2) of the Infrastructure (Wales) Act 2024;”.

## **100 Nuisance: statutory authority**

(1) This subsection confers statutory authority for—

- (a) carrying out development for which infrastructure consent is granted;
- (b) doing anything else authorised by an infrastructure consent order.

(2) Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.

(3) Subsections (1) and (2) are subject to any contrary provision made in an infrastructure consent order.

## **101 Compensation in case where defence of statutory authority applies**

(1) This section applies if, by virtue of section 100, or an infrastructure consent order, there is a defence of statutory authority in civil or criminal proceedings for nuisance in respect of any authorised works.

(2) “Authorised works” are—

- (a) development for which infrastructure consent is granted;
- (b) anything else authorised by an infrastructure consent order.

(3) A person by whom or on whose behalf any authorised works are carried out must pay compensation to any person whose land is injuriously affected by the carrying out of the works.

(4) A dispute as to whether compensation under subsection (3) is payable, or as to the amount of the compensation, must be referred to the Upper Tribunal.

(5) Subsection (2) of section 10 of the Compulsory Purchase Act 1965 (c. 56) (“the 1965 Act”) (limitation on compensation) applies to subsection (3) of this section as it applies to that section.

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- (6) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of subsection (3) of this section (with any necessary modifications).
- (7) Part 1 of the Land Compensation Act 1973 (c. 26) (compensation for depreciation of land value by physical factors caused by use of public works) applies in relation to authorised works as if—
  - (a) references in that Part to any public works were to authorised works;
  - (b) references in that Part to the responsible authority were to the person for whose benefit the infrastructure order has effect for the time being;
  - (c) sections 1(6) and 17 were omitted.
- (8) An infrastructure consent order may not include provision the effect of which is to remove or modify the application of any of subsections (1) to (7).

#### *Interpretation*

### **102 Meaning of “land”**

In this Part, “land” includes any interest in or right over land.