



Planning Act 2008

2008 CHAPTER 29

PART 4

REQUIREMENT FOR DEVELOPMENT CONSENT

31 When development consent is required

Consent under this Act (“development consent”) is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.

Commencement Information

II S. 31 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(c\)](#) (with [art. 6](#))

32 Meaning of “development”

(1) In this Act (except in Part 11) “development” has the same meaning as it has in TCPA 1990.

This is subject to subsections (2) and (3).

(2) For the purposes of this Act (except Part 11)—

- (a) the conversion of a generating station with a view to its being fuelled by crude liquid petroleum, a petroleum product or natural gas is treated as a material change in the use of the generating station;
- (b) starting to use a cavity or strata for the underground storage of gas is treated as a material change in the use of the cavity or strata;
- (c) an increase in the permitted use of an airport is treated as a material change in the use of the airport.

(3) For the purposes of this Act (except Part 11) the following works are taken to be development (to the extent that they would not be otherwise)—

Status: Point in time view as at 14/04/2020.

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- (a) works for the demolition of a listed building or its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest;
- (b) demolition of a building in a conservation area;
- (c) works resulting in the demolition or destruction of or any damage to a scheduled monument;
- (d) works for the purpose of removing or repairing a scheduled monument or any part of it;
- (e) works for the purpose of making any alterations or additions to a scheduled monument;
- (f) flooding or tipping operations on land in, on or under which there is a scheduled monument.

(4) In this section—

“conservation area” has the meaning given by section 91(1) of the Listed Buildings Act;

“flooding operations” has the meaning given by section 61(1) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);

“listed building” has the meaning given by section 1(5) of the Listed Buildings Act;

“permitted” means permitted by planning permission or development consent;

“petroleum products” has the meaning given by section 21 of the Energy Act 1976 (c. 76);

“scheduled monument” has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46);

“tipping operations” has the meaning given by section 61(1) of that Act.

Commencement Information

I2 S. 32 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(c\)](#) (with [art. 6](#))

33 Effect of requirement for development consent on other consent regimes

(1) To the extent that development consent is required for development, none of the following is required to be obtained for the development or given in relation to it—

- (a) planning permission;
- (b) consent under section 10(1), 11(1) or 12(1) of the Green Belt (London and Home Counties) Act 1938 (c. xciii) (erection of buildings and construction of sewer main pipes, watercourses and electric lines etc. on Green Belt land);
- (c) a pipe-line construction authorisation under section 1(1) of the Pipe-lines Act 1962 (c. 58) (authorisation for construction of cross-country pipe-lines);
- (d) authorisation by an order under section 4(1) of the Gas Act 1965 (c. 36) (storage of gas in underground strata);
- ^{F1}(e)
- (f) to the extent that the development relates to land in England, consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979;

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- (g) to the extent that the development relates to land in England, notice under section 35 of the Ancient Monuments and Archaeological Areas Act 1979;
 - (h) consent under section 36 or 37 of the Electricity Act 1989 (c. 29) (construction etc. of generating stations and installation of overhead lines);
 - (i) to the extent that the development relates to land in England, consent under section 8(1), (2) or (3) of the Listed Buildings Act;
 - (j) to the extent that the development relates to land in England, consent under section 74(1) of the Listed Buildings Act.
- (2) To the extent that development consent is required for development, the development may not be authorised by any of the following—
- (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 4(1) of the Gas Act 1965 (order authorising storage of gas in underground strata);
 - (c) an order under section 1 or 3 of the Transport and Works Act 1992 (c. 42) (orders as to railways, tramways, inland waterways etc.).
- (3) Subsection (2) is subject to section 34.
- (4) If development consent is required for the construction, improvement or alteration of a highway, none of the following may be made or confirmed in relation to the highway or in connection with the construction, improvement or alteration of the highway—
- (a) an order under section 10 of the Highways Act 1980 (c. 66) (general provisions as to trunk roads) directing that the highway should become a trunk road;
 - (b) an order under section 14 of that Act (supplementary orders relating to trunk roads and classified roads);
 - (c) a scheme under section 16 of that Act (schemes authorising the provision of special roads);
 - (d) an order under section 18 of that Act (supplementary orders relating to special roads);
 - (e) an order or scheme under section 106 of that Act (orders and schemes providing for construction of bridges over or tunnels under navigable waters);
 - (f) an order under section 108 or 110 of that Act (orders authorising the diversion of navigable and non-navigable watercourses);
 - (g) an order under section 6 of the New Roads and Street Works Act 1991 (c. 22) (toll orders).
- [^{F2}(5) The Secretary of State may by order—
- (a) amend subsection (1) or (2)—
 - (i) to add or remove a type of consent, or
 - (ii) to vary the cases in relation to which a type of consent is within that subsection;
 - (b) make further provision, or amend or repeal provision, about—
 - (i) the types of consent that are, and are not, within subsection (1) or (2), or
 - (ii) the cases in relation to which a type of consent is, or is not, within either of those subsections.
- (6) In this section “consent” means—

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- (a) a consent or authorisation that is required, under legislation, to be obtained for development,
 - (b) a consent, or authorisation, that—
 - (i) may authorise development, and
 - (ii) is given under legislation, or
 - (c) a notice that is required by legislation to be given in relation to development.
- (7) In subsection (6) “legislation” means an Act or an instrument made under an Act.
- (8) An order under subsection (5) may not affect—
- (a) a requirement for a devolved consent to be obtained for, or given in relation to, development, or
 - (b) whether development may be authorised by a devolved consent.
- (9) A consent is “devolved” for the purposes of subsection (8) if—
- (a) provision for the consent would be within the legislative competence of the National Assembly for Wales if the provision were contained in an Act of the Assembly,
 - (b) provision for the consent is, or could be, made by the Welsh Ministers in an instrument made under an Act,
 - (c) the consent is not within subsection (6)(c) and the Welsh Ministers have a power or duty—
 - (i) to decide, or give directions as to how to decide, whether the consent is given,
 - (ii) to decide, or give directions as to how to decide, some or all of the terms on which the consent is given, or
 - (iii) to revoke or vary the consent, or
 - (d) the consent is within subsection (6)(c) and the notice has to be given to the Welsh Ministers or otherwise brought to their attention.
- (10) An order under subsection (5)(b) may amend this Act.]

Textual Amendments

- F1** S. 33(1)(e) omitted (25.6.2013) by virtue of [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 18(3)(a), 35(3)**
- F2** S. 33(5)-(10) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 131(2), 240(2)** (with s. 144); S.I. 2012/628, **art. 7(a)**

Commencement Information

- I3** S. 33 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(c)** (with **art. 6**)

34 Welsh offshore generating stations

- (1) Section 33(2) does not prevent an order under section 3 of the Transport and Works Act 1992 (c. 42) from authorising the carrying out of works consisting of the construction or extension of a generating station that is or (when constructed or extended) will be a Welsh offshore generating station.
- (2) A “Welsh offshore generating station” is a generating station that is in waters in or adjacent to Wales up to the seaward limits of the territorial sea.

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- (3) If, by virtue of subsection (1), an order under section 3 of the Transport and Works Act 1992 authorises the carrying out of any works, development consent is treated as not being required for the carrying out of those works.

Commencement Information

I4 S. 34 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(c\)](#) (with [art. 6](#))

[^{F3}35] Directions in relation to projects of national significance

- (1) The Secretary of State may give a direction for development to be treated as development for which development consent is required.

This is subject to the following provisions of this section and section 35ZA.

- (2) The Secretary of State may give a direction under subsection (1) only if—
- (a) the development is or forms part of—
 - (i) a project (or proposed project) in the field of energy, transport, water, waste water or waste, or
 - (ii) a business or commercial project (or proposed project) of a prescribed description,
 - (b) the development will (when completed) be wholly in one or more of the areas specified in subsection (3), and
 - (c) the Secretary of State thinks the project (or proposed project) is of national significance, either by itself or when considered with—
 - (i) in a case within paragraph (a)(i), one or more other projects (or proposed projects) in the same field;
 - (ii) in a case within paragraph (a)(ii), one or more other business or commercial projects (or proposed projects) of a description prescribed under paragraph (a)(ii).
- (3) The areas are—
- (a) England or waters adjacent to England up to the seaward limits of the territorial sea;
 - (b) in the case of a project for the carrying out of works in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.
- (4) The Secretary of State may give a direction under subsection (1) only with the consent of the Mayor of London if—
- (a) all or part of the development is or will be in Greater London, and
 - (b) the development is or forms part of a business or commercial project (or proposed project) of a description prescribed under subsection (2)(a)(ii).
- (5) Regulations under subsection (2)(a)(ii) may not prescribe a description of project which includes the construction of one or more dwellings.

Textual Amendments

F3 Ss. 35, 35A substituted for s. 35 (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 26\(2\)](#), [35\(2\)](#)

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Commencement Information

I5 S. 35 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(c\)](#) (with [art. 6](#))

35ZA Directions under sections 35: procedural matters

- (1) The power in section 35(1) to give a direction in a case within section 35(2)(a)(i) (projects in the field of energy etc) is exercisable only in response to a qualifying request if no application for a consent or authorisation mentioned in section 33(1) or (2) has been made in relation to the development to which the request relates.
- (2) The power in section 35(1) to give a direction in a case within section 35(2)(a)(ii) (business or commercial projects of prescribed description) is exercisable only in response to a qualifying request made by one or more of the following—
 - (a) a person who proposes to carry out any of the development to which the request relates;
 - (b) a person who has applied, or proposes to apply, for a consent or authorisation mentioned in section 33(1) or (2) in relation to any of that development;
 - (c) a person who, if a direction under section 35(1) is given in relation to that development, proposes to apply for an order granting development consent for any of that development.
- (3) If the Secretary of State gives a direction under section 35(1) in relation to development, the Secretary of State may—
 - (a) if an application for a consent or authorisation mentioned in section 33(1) or (2) has been made in relation to the development, direct the application to be treated as an application for an order granting development consent;
 - (b) if a person proposes to make an application for such a consent or authorisation in relation to the development, direct the proposed application to be treated as a proposed application for development consent.
- (4) A direction under section 35(1), or subsection (3) of this section, may be given so as to apply for specified purposes or generally.
- (5) A direction under subsection (3) may provide for specified provisions of or made under this or any other Act—
 - (a) to have effect in relation to the application, or proposed application, with any specified modifications, or
 - (b) to be treated as having been complied with in relation to the application or proposed application.
- (6) If the Secretary of State gives a direction under subsection (3), the relevant authority must refer the application, or proposed application, to the Secretary of State instead of dealing with it themselves.
- (7) If the Secretary of State is considering whether to give a direction under subsection (3), the Secretary of State may direct the relevant authority to take no further action in relation to the application, or proposed application, until the Secretary of State has decided whether to give the direction.
- (8) The Secretary of State may require an authority within subsection (9) to provide any information required by the Secretary of State for the purpose of enabling the Secretary of State to decide—
 - (a) whether to give a direction under section 35(1), and

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- (b) the terms in which such a direction should be given.
- (9) An authority is within this subsection if an application for a consent or authorisation mentioned in section 33(1) or (2) in relation to the development has been, or may be, made to it.
- (10) If the Secretary of State decides to give a direction under section 35(1), the Secretary of State must give reasons for the decision.
- (11) In this section—
 - “qualifying request” means a written request, for a direction under section 35(1) or subsection (3) of this section, that—
 - (a) specifies the development to which it relates, and
 - (b) explains why the conditions in section 35(2)(a) and (b) are met in relation to the development;
 - “relevant authority”—
 - (a) in relation to an application for a consent or authorisation mentioned in section 33(1) or (2) that has been made, means the authority to which the application was made, and
 - (b) in relation to such an application that a person proposes to make, means the authority to which the person proposes to make the application.]

Textual Amendments

- F3** Ss. 35, 35A substituted for s. 35 (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 26(2), 35(2)**

[^{F4}35A Timetable for deciding request for direction under section 35

- (1) This section applies if the Secretary of State receives a qualifying request from a person (“R”).
- (2) The Secretary of State must make a decision on the qualifying request before the primary deadline, subject to subsection (3).
- (3) Subsection (2) does not apply if, before the primary deadline, the Secretary of State asks R to provide the Secretary of State with information for the purpose of enabling the Secretary of State to decide—
 - (a) whether to give the direction requested, and
 - (b) the terms in which it should be given.
- (4) If R—
 - (a) is asked under subsection (3) to provide information, and
 - (b) provides the information sought within the period of 14 days beginning with the day on which R is asked to do so,the Secretary of State must make a decision on the qualifying request before the end of the period of 28 days beginning with the day the Secretary of State receives the information.
- (5) In this section—
 - “the primary deadline” means the end of the period of 28 days beginning with the day on which the Secretary of State receives the qualifying request;

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“qualifying request” has the meaning given by section [^{F5}35ZA(11)] .]

Textual Amendments

- F4** S. 35A inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), **ss. 132(10)**, 240(2) (with s. 144); S.I. 2012/628, **art. 7(a)**
- F5** Word in s. 35A(5) substituted (25.4.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 26(3)**, 35(2)

36 Amendments consequential on development consent regime

Schedule 2 makes amendments consequential on the development consent regime.

Commencement Information

- I6** S. 36 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 2** (with **art. 6**)

Status:

Point in time view as at 14/04/2020.

Changes to legislation:

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