



Planning Act 2008

2008 CHAPTER 29

PART 5

APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

APPLICATIONS

37 Applications for orders granting development consent

- (1) An order granting development consent may be made only if an application is made for it.
- (2) An application for an order granting development consent must be made to the Commission.
- (3) An application for an order granting development consent must—
 - (a) specify the development to which it relates,
 - (b) be made in the prescribed form,
 - (c) be accompanied by the consultation report, and
 - (d) be accompanied by documents and information of a prescribed description.
- (4) The Commission may give guidance about how the requirements under subsection (3) are to be complied with.
- (5) The Commission may set standards for—
 - (a) the preparation of a document required by subsection (3)(d);
 - (b) the coverage in such a document of a matter falling to be dealt with in it;
 - (c) all or any of the collection, sources, verification, processing and presentation of information required by subsection (3)(d).
- (6) The Commission must publish, in such manner as it thinks appropriate, any guidance given under subsection (4) and any standards set under subsection (5).

Status: Point in time view as at 06/04/2011.

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- (7) In subsection (3)(c) “the consultation report” means a report giving details of—
- (a) what has been done in compliance with sections 42, 47 and 48 in relation to a proposed application that has become the application,
 - (b) any relevant responses, and
 - (c) the account taken of any relevant responses.
- (8) In subsection (7) “relevant response” has the meaning given by section 49(3).

Commencement Information

I1 S. 37 in force at 1.10.2009 by [S.I. 2009/2260](#), **art. 2(b)**

38 Model provisions

- (1) The Secretary of State may by order prescribe model provisions for incorporation in a draft order which may be required (in accordance with regulations made under section 37(3)(d)) to accompany an application for an order granting development consent.
- (2) The Commission must have regard to any model provisions prescribed by an order under subsection (1) when exercising its power to make an order granting development consent.
- (3) The fact that a model provision has been prescribed by an order under subsection (1) does not make it mandatory for a provision in the terms of the model to be included in—
 - (a) a draft order, or
 - (b) an order granting development consent.

Commencement Information

I2 S. 38 partly in force; s. 38 in force for certain purposes at Royal Assent see s. 241

I3 S. 38 in force at 1.10.2009 in so far as not already in force by [S.I. 2009/2260](#), **art. 2(b)**

39 Register of applications

- (1) The Commission is to maintain a register of applications received by it for orders granting development consent (“the register”).
- (2) Where the Commission receives an application for an order granting development consent, it must cause details of the application to be entered in the register.
- (3) The Commission must publish the register or make arrangements for inspection of the register by the public.
- (4) The Commission must make arrangements for inspection by the public of—
 - (a) applications received by the Commission for orders granting development consent,
 - (b) consultation reports received by the Commission under section 37(3)(c), and
 - (c) accompanying documents and information received by the Commission under section 37(3)(d).

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Commencement Information

I4 S. 39 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

40 Applications by the Crown for orders granting development consent

- (1) This section applies to an application for an order granting development consent made by or on behalf of the Crown.
- (2) The Secretary of State may by regulations modify or exclude any statutory provision relating to—
 - (a) the procedure to be followed before such an application is made;
 - (b) the making of such an application;
 - (c) the decision-making process for such an application.
- (3) A statutory provision is a provision contained in or having effect under this Act or any other enactment.

Commencement Information

I5 S. 40 in force at 1.10.2009 in so far as not already in force by S.I. 2009/2260, art. 2(b)

CHAPTER 2

PRE-APPLICATION PROCEDURE

41 Chapter applies before application is made

- (1) This Chapter applies where a person (“the applicant”) proposes to make an application for an order granting development consent.
- (2) In the following provisions of this Chapter—
 - “the proposed application” means the proposed application mentioned in subsection (1);
 - “the land” means the land to which the proposed application relates or any part of that land;
 - “the proposed development” means the development for which the proposed application (if made) would seek development consent.

Commencement Information

I6 S. 41 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

42 Duty to consult

- [^{F1}(1)] The applicant must consult the following about the proposed application—
- (a) such persons as may be prescribed,

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- [^{F2}(aa) the Marine Management Organisation, in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),]
- (b) each local authority that is within section 43,
 - (c) the Greater London Authority if the land is in Greater London, and
 - (d) each person who is within one or more of the categories set out in section 44.

[^{F3}(2) The areas are—

- (a) waters in or adjacent to England up to the seaward limits of the territorial sea;
- (b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
- (c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- (d) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.]

Textual Amendments

- F1** S. 42(1): s. 42 renumbered as s. 42(1) (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 23(2)(a)**, 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 6
- F2** S. 42(1)(aa) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 23(2)(b)**, 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 6
- F3** S. 42(2) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 23(2)(c)**, 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 6

Commencement Information

- I7** S. 42 partly in force; s. 42 in force for certain purposes at Royal Assent see s. 241
- I8** S. 42 in force at 1.10.2009 by [S.I. 2009/2260](#), **art. 2(b)**

43 [^{F4}Local authorities for purposes of section 42(1)(b)]

- (1) A local authority is within this section if the land is in the authority's area.
- (2) A local authority (“A”) is within this section if—
 - (a) the land is in the area of another local authority (“B”), and
 - (b) any part of the boundary of A's area is also a part of the boundary of B's area.
- (3) In this section “local authority” means—
 - (a) a county council, or district council, in England;
 - (b) a London borough council;
 - (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a county council, or county borough council, in Wales;
 - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - (g) a National Park authority;
 - (h) the Broads Authority.

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Textual Amendments

- F4** S. 43 heading substituted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 23(3)(a)**, 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 6

Commencement Information

- I9** S. 43 in force at 1.10.2009 by [S.I. 2009/2260](#), **art. 2(b)**

44 [F5 Categories for purposes of section 42(1)(d)]

- (1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.
- (2) A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—
 - (a) is interested in the land, or
 - (b) has power—
 - (i) to sell and convey the land, or
 - (ii) to release the land.
- (3) An expression, other than “the land”, that appears in subsection (2) of this section and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in subsection (2) the meaning that it has in section 5(1) of that Act.
- (4) A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled—
 - (a) as a result of the implementing of the order,
 - (b) as a result of the order having been implemented, or
 - (c) as a result of use of the land once the order has been implemented,to make a relevant claim.
This is subject to subsection (5).
- (5) A person is within Category 3 only if the person is known to the applicant after making diligent inquiry.
- (6) In subsection (4) “relevant claim” means—
 - (a) a claim under section 10 of the Compulsory Purchase Act 1965 (c. 56) (compensation where satisfaction not made for the taking, or injurious affection, of land subject to compulsory purchase);
 - (b) a claim under 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).

Textual Amendments

- F5** S. 44 heading substituted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 23(3)(b)**, 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 6

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Commencement Information

I10 S. 44 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

45 Timetable for consultation under section 42

- (1) The applicant must, when consulting a person under section 42, notify the person of the deadline for the receipt by the applicant of the person's response to the consultation.
- (2) A deadline notified under subsection (1) must not be earlier than the end of the period of 28 days that begins with the day after the day on which the person receives the consultation documents.
- (3) In subsection (2) “the consultation documents” means the documents supplied to the person by the applicant for the purpose of consulting the person.

Commencement Information

I11 S. 45 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

46 Duty to notify Commission of proposed application

- (1) The applicant must supply the Commission with such information in relation to the proposed application as the applicant would supply to the Commission for the purpose of complying with section 42 if the applicant were required by that section to consult the Commission about the proposed application.
- (2) The applicant must comply with subsection (1) on or before commencing consultation under section 42.

Commencement Information

I12 S. 46 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

47 Duty to consult local community

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.
- (2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.
- (3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.
- (4) In subsection (3) “the consultation documents” means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).
- (5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).

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- (6) Once the applicant has prepared the statement, the applicant must publish it—
 - (a) in a newspaper circulating in the vicinity of the land, and
 - (b) in such other manner as may be prescribed.
- (7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

Commencement Information

- I13** S. 47 partly in force; s. 47 in force for certain purposes at Royal Assent see s. 241
I14 S. 47 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(b\)](#)

48 Duty to publicise

- (1) The applicant must publicise the proposed application in the prescribed manner.
- (2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity.

Commencement Information

- I15** S. 48 partly in force; s. 48 in force for certain purposes at Royal Assent see s. 241
I16 S. 48 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(b\)](#)

49 Duty to take account of responses to consultation and publicity

- (1) Subsection (2) applies where the applicant—
 - (a) has complied with sections 42, 47 and 48, and
 - (b) proposes to go ahead with making an application for an order granting development consent (whether or not in the same terms as the proposed application).
- (2) The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.
- (3) In subsection (2) “relevant response” means—
 - (a) a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,
 - (b) a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47, or
 - (c) a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.

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Commencement Information

I17 S. 49 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

50 Guidance about pre-application procedure

- (1) Guidance may be issued about how to comply with the requirements of this Chapter.
- (2) Guidance under this section may be issued by the Commission or the Secretary of State.
- (3) The applicant must have regard to any guidance under this section.

Commencement Information

I18 S. 50 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

CHAPTER 3

ASSISTANCE FOR APPLICANTS AND OTHERS

51 Advice for potential applicants and others

- (1) The Commission may give advice to an applicant or potential applicant, or to others, about—
 - (a) applying for an order granting development consent;
 - (b) making representations about an application, or a proposed application, for such an order.
- (2) The Commission may not under subsection (1) give advice about the merits of any particular application, or proposed application, for such an order.
- (3) The Secretary of State may, if the Secretary of State thinks it appropriate to do so in connection with securing propriety in the giving of advice under subsection (1), by regulations make provision about the giving of advice under that subsection (but not about what the advice is to be).
- (4) In particular, regulations under subsection (3) may make provision that has the effect that—
 - (a) a person's request for advice under subsection (1), or
 - (b) advice given under subsection (1) to a person,
 must be, or may be, disclosed by the Commission to persons other than that person or to the public generally.

Commencement Information

I19 S. 51 partly in force; s. 51 in force for certain purposes at Royal Assent see s. 241

I20 S. 51 in force at 1.10.2009 in so far as not already in force by S.I. 2009/2260, art. 2(b)

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52 Obtaining information about interests in land

- (1) Where a person is applying, or proposes to apply, for an order granting development consent, subsection (2) applies for the purpose of enabling the person (“the applicant”) to comply with provisions of, or made under, Chapter 2 of this Part or Chapter 1 of Part 6.
- (2) The Commission may authorise the applicant to serve a notice on a person mentioned in subsection (3) requiring the person (“the recipient”) to give to the applicant in writing the name and address of any person the recipient believes is one or more of the following—
 - (a) an owner, lessee, tenant (whatever the tenancy period) or occupier of the land;
 - (b) a person interested in the land;
 - (c) a person having power—
 - (i) to sell and convey the land, or
 - (ii) to release the land.
- (3) The persons are—
 - (a) an occupier of the land;
 - (b) a person who has an interest in the land as freeholder, mortgagee or lessee;
 - (c) a person who directly or indirectly receives rent for the land;
 - (d) a person who, in pursuance of an agreement between that person and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.
- (4) A notice under subsection (2) must—
 - (a) be in writing,
 - (b) state that the Commission has authorised the applicant to serve the notice,
 - (c) specify or describe the land to which the application, or proposed application, relates,
 - (d) specify the deadline by which the recipient must give the required information to the applicant, and
 - (e) draw attention to the provisions in subsections (6) to (9).
- (5) A deadline specified under subsection (4)(d) in a notice must not be earlier than the end of the 14 days beginning with the day after the day on which the notice is served on the recipient of the notice.
- (6) A person commits an offence if the person fails without reasonable excuse to comply with a notice under subsection (2) served on the person.
- (7) A person commits an offence if, in response to a notice under subsection (2) served on the person—
 - (a) the person gives information which is false in a material particular, and
 - (b) when the person does so, the person knows or ought reasonably to know that the information is false.
- (8) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a director, manager, secretary or other similar officer of the body,
 - (b) a person purporting to act in any such capacity, or

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- (c) in a case where the affairs of the body are managed by its members, a member of the body,
that person, as well as the body, is guilty of that offence and liable to be proceeded against accordingly.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) In subsections (2) and (3) “the land” means—
 - (a) the land to which the application, or proposed application, relates, or
 - (b) any part of that land.
- (11) Any other expression that appears in either of paragraphs (b) and (c) of subsection (2) and also in section 5(1) of the Compulsory Purchase Act 1965 (c. 56) has in those paragraphs the meaning that it has in section 5(1) of that Act.

Commencement Information

I21 S. 52 in force at 1.10.2009 by [S.I. 2009/2260](#), [art. 2\(b\)](#)

53 Rights of entry

- (1) Any person duly authorised in writing by the Commission may at any reasonable time enter any land for the purpose of surveying and taking levels of it in connection with—
 - (a) an application for an order granting development consent, whether in relation to that or any other land, that has been accepted by the Commission,
 - (b) a proposed application for an order granting development consent, or
 - (c) an order granting development consent that includes provision authorising the compulsory acquisition of that land or of an interest in it or right over it.
- (2) Authorisation may be given by the Commission under subsection (1)(b) in relation to any land only if it appears to the Commission that—
 - (a) the proposed applicant is considering a distinct project of real substance genuinely requiring entry onto the land,
 - (b) the proposed application is likely to seek authority to compulsorily acquire the land or an interest in it or right over it, and
 - (c) the proposed applicant has complied with section 42 in relation to the proposed application.
- (3) Subject to subsections (9) and (10), power conferred by subsection (1) to survey land includes power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals or other matter in it.
- (4) A person authorised under subsection (1) to enter any land—
 - (a) must, if so required, produce evidence of the person's authority, and state the purpose of the person's entry, before so entering,
 - (b) may not demand admission as of right to any land which is occupied unless 14 days' notice of the intended entry has been given to the occupier, and
 - (c) must comply with any other conditions subject to which the Commission's authorisation is given.

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- (5) A person commits an offence if the person wilfully obstructs a person acting in the exercise of power under subsection (1).
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where any damage is caused to land or chattels—
 - (a) in the exercise of a right of entry conferred under subsection (1), or
 - (b) in the making of any survey for the purpose of which any such right of entry has been conferred,compensation may be recovered by any person suffering the damage from the person exercising the right of entry.
- (8) Any question of disputed compensation under subsection (7) must be referred to and determined by the [^{F6}Upper Tribunal].
- (9) No person may carry out under subsection (1) any works authorised by virtue of subsection (3) unless notice of the person's intention to do so was included in the notice required by subsection (4)(b).
- (10) The authority of the appropriate Minister is required for the carrying out under subsection (1) of works authorised by virtue of subsection (3) if—
 - (a) the land in question is held by statutory undertakers, and
 - (b) they object to the proposed works on the ground that execution of the works would be seriously detrimental to the carrying-on of their undertaking.
- (11) In subsection (10)—

“the appropriate Minister” means—

 - (a) in the case of land in Wales held by water or sewerage undertakers, the Welsh Ministers, and
 - (b) in any other case, the Secretary of State;

“statutory undertakers” means persons who are, or who are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.

Textual Amendments

- F6** Words in s. 53(8) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 292** (with Sch. 5)

Commencement Information

- I22** S. 53 in force at 1.10.2009 by [S.I. 2009/2260](#), **art. 2(b)**

54 Rights of entry: Crown land

- (1) Subsections (1) to (3) of section 53 apply to Crown land subject to subsections (2) and (3) of this section.
- (2) A person must not enter Crown land unless the person (“P”) has the permission of—
 - (a) a person appearing to P to be entitled to give it, or
 - (b) the appropriate Crown authority.

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- (3) In section 53(3), the words “Subject to subsections (9) and (10)” must be ignored.
- (4) Subsections (4) to (6) and (9) to (11) of section 53 do not apply to anything done by virtue of subsections (1) to (3) of this section.

Commencement Information

I23 S. 54 in force at 1.10.2009 by S.I. 2009/2260, art. 2(b)

Status:

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Changes to legislation:

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