



# Planning Act 2008

## 2008 CHAPTER 29

### PART 7 **E+W+S**

#### ORDERS GRANTING DEVELOPMENT CONSENT

### CHAPTER 1 **E+W+S**

#### CONTENT OF ORDERS

##### *Miscellaneous*

#### 135 Orders: Crown land **E+W+S**

- (1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—
  - (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 order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if 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) For the purposes of this section “the Crown” includes—
  - (a) the Duchy of Lancaster;
  - (b) the Duchy of Cornwall;
  - (c) the Speaker of the House of Lords;
  - (d) the Speaker of the House of Commons;
  - (e) the Corporate Officer of the House of Lords;

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- (f) the Corporate Officer of the House of Commons.

**Commencement Information**

**I1** S. 135 in force at 1.3.2010 by S.I. 2010/101, art. 3(g) (with art. 6)

**136 Public rights of way E+W+S**

- (1) An order granting development consent may extinguish a public right of way over land only if the [<sup>F1</sup>Secretary of State] is 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 order granting development consent 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 granting development consent 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 granting development consent 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 [<sup>F2</sup>Secretary of State] that the proposal to acquire the land has been abandoned.
- (5) The [<sup>F3</sup>Secretary of State] must by order direct that the right is to revive.
- <sup>F4</sup>(6) .....
- (7) Nothing in subsection (5) prevents the making of a further order extinguishing the right of way.

**Textual Amendments**

- F1** Words in s. 136(1) substituted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 66(2); S.I. 2012/628, art. 7(a)
- F2** Words in s. 136(4)(b) substituted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 66(3); S.I. 2012/628, art. 7(a)
- F3** Words in s. 136(5) substituted (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 66(3); S.I. 2012/628, art. 7(a)
- F4** S. 136(6) repealed (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 66(4), Sch. 25 Pt. 20; S.I. 2012/628, art. 7

**Commencement Information**

**I2** S. 136 in force at 1.3.2010 by S.I. 2010/101, art. 3(g) (with art. 6)

*Status: Point in time view as at 06/11/2012.*

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### 137 Public rights of way: statutory undertakers' apparatus etc. **E+W+S**

- (1) The following provisions of this section apply if—
  - (a) an order granting development consent makes provision for the acquisition of land, compulsorily or by agreement,
  - (b) a public right of way exists over the land,
  - (c) the right of way is not a right enjoyable by vehicular traffic, and
  - (d) the right of way is over land falling within subsection (2).
- (2) Land falls within this subsection if it is land on, over or under which there is—
  - (a) apparatus belonging to statutory undertakers, or
  - (b) electronic communications apparatus kept installed for the purposes of an electronic communications code network.
- (3) The order granting development consent may include provision for the right of way to be extinguished only if the undertakers or the operator of the network (as the case may be) consent to the inclusion of the provision.
- (4) The consent referred to in subsection (3)—
  - (a) may be given subject to the condition that there are included in the order such provisions for the protection of the undertakers or the operator (as the case may be) as they may reasonably require, and
  - (b) must not be unreasonably withheld.
- (5) Any question arising under subsection (4) whether any requirement or refusal is reasonable is to be determined by the Secretary of State.
- (6) The question of which Secretary of State should make a determination under subsection (5) is to be determined by the Treasury, if it arises.
- (7) In this section and section 138 “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purposes of any provision of Part 11 of TCPA 1990.
- (8) In this section and section 138 the following terms have the meanings given in paragraph 1(1) of Schedule 17 to the Communications Act 2003 (c. 21)—
  - “electronic communications apparatus”;
  - “electronic communications code”;
  - “electronic communications code network”;
  - “operator”.

#### Commencement Information

**I3** S. 137 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(g\)](#) (with [art. 6](#))

### 138 Extinguishment of rights, and removal of apparatus, of statutory undertakers etc. **E+W+S**

- (1) This section applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and—
  - (a) there subsists over the land a relevant right, or
  - (b) there is on, under or over the land relevant apparatus.

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- (2) “Relevant right” means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which—
- (a) is vested in or belongs to statutory undertakers for the purpose of the carrying on of their undertaking, or
  - (b) is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.
- (3) “Relevant 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.
- (4) The order may include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, only if—
- (a) the [<sup>F5</sup>Secretary of State] is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates, and
  - (b) in a case within subsection (5), the Secretary of State has consented to the inclusion of the provision.
- (5) A case is within this subsection if a representation has been made about the application for the order granting development consent before the completion of the examination of the application—
- (a) in a case falling within subsection (2)(a) or (3)(a), by the statutory undertakers;
  - (b) in a case falling within subsection (2)(b) or (3)(b), by the operator of the electronic communications code network,
- and the representation has not been withdrawn.
- (6) The question of which Secretary of State should give consent under subsection (4)(b) is to be determined by the Treasury, if it arises.

#### Textual Amendments

**F5** Words in s. 138(4)(a) substituted (1.4.2012) by [Localism Act 2011 \(c. 20\), s. 240\(2\), Sch. 13 para. 67; S.I. 2012/628, art. 7\(a\)](#)

#### Commencement Information

**I4** S. 138 in force at 1.3.2010 by [S.I. 2010/101, art. 3\(g\)](#) (with art. 6)

### 139 Common land and rights of common E+W

- (1) An order granting development consent may not include provision the effect of which is to exclude or modify the application of a provision of or made under the Commons Act 2006, except in accordance with section 131 or 132.
- (2) For the purposes of section 38(6)(a) of the Commons Act 2006, works carried out under a power conferred by an order granting development consent are not to be taken to be carried out under a power conferred by or under an enactment, except in a case to which section 131 or 132 applies.

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- (3) An order granting development consent may not authorise the suspension of, or extinguishment or interference with, registered rights of common, except in accordance with section 131 or 132.
- (4) “Registered rights of common” means rights of common registered under—
- (a) the Commons Act 2006, or
  - (b) the Commons Registration Act 1965.

**Commencement Information**

**I5** S. 139 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**140 Operation of generating stations** **E+W**

An order granting development consent 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.

**Commencement Information**

**I6** S. 140 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**141 Keeping electric lines installed above ground** **E+W**

An order granting development consent 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.

**Commencement Information**

**I7** S. 141 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**142 Use of underground gas storage facilities** **E+W**

An order granting development consent may include provision authorising the use of underground gas storage facilities only if the development to which the order relates is or includes development within section 17(2), (3) or (5).

**Commencement Information**

**I8** S. 142 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**143 Diversion of watercourses** **E+W**

- (1) An order granting development consent may include provision authorising the diversion of any part of a navigable watercourse only if the condition in subsection (2) is met.

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- (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 order granting development consent.
- (4) If an order granting development consent 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.

**Commencement Information**

**I9** S. 143 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**144 Highways** E+W

- (1) An order granting development consent 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 order granting development consent 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).
- (3) An order granting development consent may include provision authorising—
  - (a) the appropriation of a highway by a person, or
  - (b) the transfer of a highway to a person,
 only if the appropriation or transfer is connected with the construction or improvement by the person of a highway which is designated by the order as a special road.

**Commencement Information**

**I10** S. 144 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**145 Harbours** E+W

- (1) An order granting development consent 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 order granting development consent 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.

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- (3) An order granting development consent may include provision authorising the transfer of property, rights or liabilities from one harbour authority to another only if—
- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
  - (b) the order makes provision for the payment of compensation of an amount—
    - (i) determined in accordance with the order, or
    - (ii) agreed between the parties to the transfer.
- (4) An order granting development consent 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.

This is subject to subsection (6).

- (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 provision—
- (a) which, by virtue of any other provision of this Act, is not permitted to be included in an order granting development consent;
  - (b) conferring power on a harbour authority to delegate, or makes 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.

#### Commencement Information

**III** S. 145 in force at 1.3.2010 by S.I. 2010/101, art. 4(e) (with art. 6)

## 146 Discharge of water **E+W**

- (1) This section applies if—
- (a) an order granting development consent includes provision authorising the discharge of water into inland waters or underground strata, and
  - (b) but for the order, the person to whom development 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.

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**Commencement Information**

**I12** S. 146 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**147 Development of Green Belt land** **E+W**

- (1) This section applies if an order granting development consent includes provision—
  - (a) authorising the acquisition of Green Belt land, compulsorily or by agreement,
  - (b) authorising the sale, exchange or appropriation of Green Belt land, or
  - (c) freeing land from any restriction imposed upon it by or under the Green Belt (London and Home Counties) Act 1938 (c. xciii), or by a covenant or other agreement entered into for the purposes of that Act.
- (2) The [<sup>F6</sup>Secretary of State] must notify the relevant local authorities of the provision made by the order.
- <sup>F7</sup>(3) .....
- (4) The relevant local authorities are—
  - (a) each local authority in whose area all or part of the land is situated,
  - (b) any local authority in whom all or part of the land is vested, and
  - (c) each contributing local authority.
- (5) In this section “local authority” and “contributing local authority” have the same meanings as in the Green Belt (London and Home Counties) Act 1938 (c. xciii) (see section 2(1) of that Act).

**Textual Amendments**

- F6** Words in [s. 147\(2\)](#) substituted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), [s. 240\(2\)](#), [Sch. 13 para. 68\(2\)](#); [S.I. 2012/628](#), [art. 7\(a\)](#)
- F7** [S. 147\(3\)](#) repealed (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), [s. 240\(2\)](#), [Sch. 13 para. 68\(3\)](#), [Sch. 25 Pt. 20](#); [S.I. 2012/628](#), [art. 7](#)

**Commencement Information**

**I13** S. 147 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))

**<sup>F8</sup>148 Deemed consent under section 34 of the Coast Protection Act 1949** **E+W**

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**Textual Amendments**

- F8** S. 148 repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [s. 324\(3\)](#), [Sch. 8 para. 4\(7\)\(a\)](#), [22 Pt. 2](#) (with [s. 111](#)); [S.I. 2011/556](#), [art. 3\(2\)\(a\)\(d\)](#)

**Commencement Information**

**I14** S. 148 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 4\(e\)](#) (with [art. 6](#))



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**F<sup>9</sup> 149 Deemed licences under Part 2 of the Food and Environment Protection Act 1985** **E+W**

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**Textual Amendments**

**F9** S. 149 repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 8 para. 4(7)(b), **22 Pt. 2** (with s. 111); S.I. 2011/556, art. 3(2)(a)(d)

**Commencement Information**

**I15** S. 149 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 4(e)** (with art. 6)

**[F<sup>10</sup> 149A Deemed consent under a marine licence** **E+W+S**

- (1) An order granting development consent may include provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (marine licensing) for any activity only if the activity is to be carried out wholly in one or more of the areas specified in subsection (2).
- (2) The areas are—
  - (a) England,
  - (b) waters adjacent to England up to the seaward limits of the territorial sea,
  - (c) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions,
  - (d) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions,
  - (e) 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.
- (3) Subsections (4) and (5) apply if an order granting development consent includes provision—
  - (a) deeming a marine licence to have been granted under Part 4 of the Marine and Coastal Access Act 2009 subject to specified conditions, and
  - (b) deeming those conditions to have been attached to the marine licence by the Secretary of State under that Part.
- (4) A person who fails to comply with such a condition does not commit an offence under section 161 of this Act.
- (5) 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.]

**Textual Amendments**

**F10** S. 149A inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 8 para. 4(2)** (with s. 111); S.I. 2011/556, art. 3(2)(a)

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## 150 Removal of consent requirements **E+W+S**

- (1) An order granting development consent may include provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, only if the relevant body has consented to the inclusion of the provision.
- (2) “The relevant body” is the person or body which would otherwise be required to grant the prescribed consent or authorisation.

### Commencement Information

- I16** S. 150 partly in force; s. 150 in force for certain purposes at Royal Assent see s. 241
- I17** S. 150 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(h\)](#) (with [art. 6](#))

## 151 Liability under existing regimes **E+W+S**

An order granting development consent may not include provision the effect of which is to exclude or modify the application of—

- (a) any provision of the Nuclear Installations Act 1965 (c. 57);
- (b) section 28 of, and Schedule 2 to, the Reservoirs Act 1975 (c. 23) (liability for damage and injury due to escape of water from a reservoir constructed after 1930);
- (c) section 209 of the Water Industry Act 1991 (c. 56) (civil liability of water undertakers for escapes of water from pipes);
- (d) section 48A of the Water Resources Act 1991 (c. 57) (civil remedies for loss or damage due to water abstraction).

### Commencement Information

- I18** S. 151 in force at 1.3.2010 by [S.I. 2010/101](#), [art. 3\(h\)](#) (with [art. 6](#))

## 152 Compensation in case where no right to claim in nuisance **E+W+S**

- (1) This section applies if, by virtue of section 158 or an order granting development consent, 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 consent is granted by an order granting development consent;
  - (b) anything else authorised by an order granting development consent.
- (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<sup>[F11]</sup>Upper Tribunal.
- (5) Subsection (2) of section 10 of the Compulsory Purchase Act 1965 (c. 56) (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 that 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 any authorised works;
  - (b) references in that Part to the responsible authority were to the person for whose benefit the order granting development consent has effect for the time being;
  - (c) sections 1(6) and 17 were omitted.
- (8) An order granting development consent may not include provision the effect of which is to remove or modify the application of any of subsections (1) to (7).

#### **Textual Amendments**

**F11** Words in s. 152(4) 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. 293** (with Sch. 5)

#### **Modifications etc. (not altering text)**

**C1** S. 152 applied (26.9.2012) by [The Network Rail \(Ipswich Chord\) Order 2012 \(S.I. 2012/2284\)](#), arts. 1, **19(5)** (with art. 26(2))

**C2** S. 152 applied (6.11.2012) by [The Network Rail \(North Doncaster Chord\) Order 2012 \(S.I. 2012/2635\)](#), arts. 1, **25(5)** (with art. 35(2))

#### **Commencement Information**

**I19** S. 152 in force at 1.3.2010 by [S.I. 2010/101](#), **art. 3(h)** (with art. 6)

**Status:**

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**Changes to legislation:**

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