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# Planning Act 2008

## 2008 CHAPTER 29

### PART 7

#### ORDERS GRANTING DEVELOPMENT CONSENT

#### CHAPTER 1

#### CONTENT OF ORDERS

VALID FROM 01/03/2010

#### *General*

#### **120 What may be included in order granting development consent**

- (1) An order granting development consent may impose requirements in connection with the development for which consent is granted.
- (2) The requirements may in particular include 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 33(1)) would have been required for the development.
- (3) An order granting development consent 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 in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.
- (5) An order granting development consent may—
  - (a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;

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- (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order;
  - (c) include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order;
  - (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.
- (6) In subsection (5) “statutory provision” means a provision of an Act or of an instrument made under an Act.
- (7) Subsections (3) to (6) are subject to subsection (8) and the following provisions of this Chapter.
- (8) An order granting development consent may not include provision—
- (a) making byelaws or conferring power to make byelaws;
  - (b) creating offences or conferring power to create offences;
  - (c) changing an existing power to make byelaws or create offences.
- (9) To the extent that provision for or relating to a matter may be included in an order granting development consent, none of the following may include any such provision—
- (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 (c. 36) (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.).

## **121 Proposed exercise of powers in relation to legislation**

- (1) This section applies if a Panel, or the Council, proposes to make an order granting development consent which includes provision made in exercise of any of the powers conferred by section 120(5)(a) and (b) (“the legislation powers”).
- (2) Before making the order, the Panel or Council must send a draft of it to the Secretary of State.
- (3) If the Secretary of State thinks that any provision which the Panel or Council proposes to include in the order in exercise of the legislation powers would contravene Community law or any of the Convention rights, the Secretary of State may give a direction requiring the Panel or Council to make specified changes to the draft order.
- (4) The changes that may be specified in a direction under subsection (3) are limited to those that the Secretary of State thinks are required in order to prevent the contravention from arising.
- (5) The power of the Secretary of State to give a direction under subsection (3) is not exercisable after the end of the period of 28 days beginning with the day on which the Secretary of State receives the draft order.
- (6) In this section—

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“Community law” means—

- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and
- (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;

“the Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42).

### *Compulsory acquisition*

VALID FROM 01/03/2010

#### **122 Purpose for which compulsory acquisition may be authorised**

- (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is 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 131 or 132.
- (3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

#### **123 Land to which authorisation of compulsory acquisition can relate**

- (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that one of the conditions in subsections (2) to (4) is met.
- (2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
- (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 prescribed procedure has been followed in relation to the land.

#### **Commencement Information**

**II** S. 123 partly in force; s. 123 in force for certain purposes at Royal Assent see s. 241

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#### **124 Guidance about authorisation of compulsory acquisition**

- (1) The Secretary of State may issue guidance about the making of an order granting development consent which includes provision authorising the compulsory acquisition of land.
- (2) If a Panel or the Council proposes to make such an order, it must have regard to any guidance issued under subsection (1).

VALID FROM 01/03/2010

#### **125 Application of compulsory acquisition provisions**

- (1) This section applies if an order granting development consent 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);
  - (c) paragraph 3(3) of Schedule 3 (provision as to giving of bonds).
- (4) In so far as the order includes provision authorising the compulsory acquisition of land in Scotland—
  - (a) subsections (2) and (3) do not apply, and
  - (b) the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (“the 1947 Act”) applies to the compulsory acquisition of that land under the order as if the order were a compulsory purchase order as defined in section 1(1) of that Act.
- (5) The 1947 Act, as applied by subsection (4), has effect with the omission of the following provisions—
  - (a) Parts 2 and 3 of the First Schedule (compulsory purchase by Ministers and special provisions as to certain descriptions of land);
  - (b) section 116 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) (time limit for exercise of compulsory purchase powers) (that section being incorporated into the 1947 Act by paragraph 1 of the Second Schedule to the 1947 Act).
- (6) Subsections (2) to (5) are subject to any contrary provision made by the order granting development consent.

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## **126 Compensation for compulsory acquisition**

- (1) This section applies in relation to an order granting development consent which 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 a provision of or made under an Act which relates to compensation for the compulsory acquisition of land.

VALID FROM 01/03/2010

## **127 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 an order granting development 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 decision-maker is 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.
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State—
  - (a) is satisfied of the matters set out in subsection (3), and
  - (b) issues a certificate to that effect.
- (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 order granting development consent 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 Secretary of State—

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- (a) is satisfied of the matters set out in subsection (6), and
  - (b) issues a certificate to that effect.
- (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) If the Secretary of State issues a certificate under subsection (2) or (5), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the statutory undertakers' land is situated a notice in the prescribed form that the certificate has been given, and
  - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given.
- (8) 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) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
  - (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).
- (9) 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 Secretary of State for use or occupation by the body.

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## **128 Local authority and statutory undertakers' land: general**

- (1) This section applies to land which—
- (a) is the property of a local authority, or
  - (b) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking.
- (2) An order granting development consent is subject to special parliamentary 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 local authority or (as the case may be) the statutory undertakers about the application for the order granting development consent before the completion of the examination of the application, and

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- (b) the representation has not been withdrawn.
- (4) Subsection (2) is subject to section 129.
- (5) In this section—
  - “local authority” has the meaning given by section 7(1) of the Acquisition of Land Act 1981;
  - “statutory undertakers” has the meaning given by section 8 of that Act and also includes the undertakers—
    - (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
    - (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).
- (6) 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), the reference to land acquired by statutory undertakers is to be construed as a reference to land acquired by the Secretary of State for use or occupation by the body.

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## **129 Local authority and statutory undertakers' land: acquisition by public body**

- (1) Section 128(2) does not apply to the compulsory acquisition of land if the person acquiring the land is any of the following—
  - (a) a local authority;
  - (b) a National Park authority;
  - (c) an urban development corporation;
  - (d) a Welsh planning board;
  - (e) statutory undertakers;
  - (f) a Minister of the Crown.
- (2) In this section—
  - “local authority” has the meaning given by section 17(4) of the Acquisition of Land Act 1981 (c. 67);
  - “statutory undertakers” has the meaning given by section 8 of that Act and also includes the authorities, bodies and undertakers—
    - (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
    - (b) which are statutory undertakers for the purposes of section 17(3) of that Act (see section 17(4) of that Act);
  - “Welsh planning board” means a board constituted under section 2(1B) of TCPA 1990.

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### 130 National Trust land

- (1) This section applies to land belonging to the National Trust which is held by the Trust inalienably.
- (2) An order granting development consent is subject to special parliamentary 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 order granting development consent before the completion of the examination of the application, and
  - (b) the representation has not been withdrawn.
- (4) 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).
- (5) In this section “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (c. cxxxvi).

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### 131 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 132 applies.
- (3) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless the Secretary of State—
  - (a) is satisfied that subsection (4) or (5) applies, and
  - (b) issues a certificate to that effect.
- (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 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



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- (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.
- (6) If the Secretary of State proposes to issue a certificate under subsection (3), the Secretary of State must—
- (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and
  - (b) give any persons interested in the proposal an opportunity to make representations about the proposal.
- (7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.
- (8) The Secretary of State may issue the certificate only after considering—
- (a) any representations made about the proposal, and
  - (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.
- (9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.
- (10) If the Secretary of State issues a certificate under subsection (3), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
  - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent 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.
- (12) In this section —
- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
  - “the order land” means the land authorised to be compulsorily acquired;
  - “the prospective seller” means the person or persons in whom the order land is vested;
  - “replacement land” 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.

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### **132 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 order granting development consent is subject to special parliamentary 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 the Secretary of State—
  - (a) is satisfied that one of subsections (3) to (5) applies, and
  - (b) issues a certificate to that effect.
- (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 order granting development consent).
- (5) 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.
- (6) If the Secretary of State proposes to issue a certificate under subsection (2), the Secretary of State must—
  - (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and
  - (b) give any persons interested in the proposal an opportunity to make representations about the proposal.
- (7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.
- (8) The Secretary of State may issue the certificate only after considering—
  - (a) any representations made about the proposal, and
  - (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.

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- (9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.
- (10) If the Secretary of State issues a certificate under subsection (2), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
  - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent 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.
- (12) In this section —
- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
  - “the order land” means the land to which this section applies over which the order right is to be exercisable;
  - “the order right” means the right authorised to be compulsorily acquired;
  - “replacement land” 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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### **133 Rights in connection with underground gas storage facilities**

- (1) This section applies if—
- (a) the development to which an order granting development consent relates is development within section 14(1)(c), and
  - (b) the order authorises the compulsory acquisition of one or more rights within subsection (2).
- (2) The rights are—
- (a) a right to store gas in underground gas storage facilities;

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- (b) a right to stop up a well, borehole or shaft, or prevent its use by another person;
  - (c) a right of way over land.
- (3) If the right within subsection (2) is an existing right to store gas in underground gas storage facilities, this Act has effect in relation to the compulsory acquisition of the right with the omission of section 131.
- (4) If the order authorises the compulsory acquisition of the right by the creation of a new right within subsection (2), this Act has effect in relation to the compulsory acquisition of the right with the omission of sections 127 to 132.

### 134 Notice of authorisation of compulsory acquisition

- (1) This section applies if—
- (a) an order is made granting development consent, and
  - (b) the order includes provision authorising the compulsory acquisition of land.
- (2) In this section —
- “the order land” means—
- (a) in a case where the order granting development consent 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;
  - (b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;
- “the prospective purchaser” means—
- (a) in a case where the order granting development consent 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 order granting development consent authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.
- (3) After the order has been made, the prospective purchaser must—
- (a) serve a compulsory acquisition notice and a copy of the order on each person to whom subsection (4) applies, and
  - (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.
- (4) This subsection applies to any person who, if the order granting development consent were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c. 67) (notice to owners, lessees and occupiers).
- (5) A compulsory acquisition notice which is affixed under subsection (3)(b) must—
- (a) be addressed to persons occupying or having an interest in the order land, and
  - (b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.

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- (6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.
- (7) A compulsory acquisition notice is a notice in the prescribed form—
  - (a) describing the order land,
  - (b) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, describing the right,
  - (c) stating that the order granting development consent 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, and
  - (d) stating that a person aggrieved by the order may challenge the order only in accordance with section 118.
- (8) A compulsory acquisition notice which is affixed under subsection (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

#### Commencement Information

**I2** S. 134 partly in force; s. 134 in force for certain purposes at Royal Assent see s. 241

#### Miscellaneous

VALID FROM 01/03/2010

#### 135 Orders: Crown land

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

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VALID FROM 01/03/2010

### 136 Public rights of way

- (1) An order granting development consent may extinguish a public right of way over land only if the decision-maker 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 appropriate authority that the proposal to acquire the land has been abandoned.
- (5) The appropriate authority must by order direct that the right is to revive.
- (6) “The appropriate authority” is—
  - (a) if the order granting development consent was made by a Panel or the Council, the Commission;
  - (b) in any other case, the Secretary of State.
- (7) Nothing in subsection (5) prevents the making of a further order extinguishing the right of way.

VALID FROM 01/03/2010

### 137 Public rights of way: statutory undertakers' apparatus etc.

- (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

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- (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”.

VALID FROM 01/03/2010

**138 Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.**

- (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.
- (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

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- (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 decision-maker 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.

VALID FROM 01/03/2010

### **139 Common land and rights of common**

- (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.
- (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.



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VALID FROM 01/03/2010

#### **140 Operation of generating stations**

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.

VALID FROM 01/03/2010

#### **141 Keeping electric lines installed above ground**

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.

VALID FROM 01/03/2010

#### **142 Use of underground gas storage facilities**

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).

VALID FROM 01/03/2010

#### **143 Diversion of watercourses**

- (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.
- (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.

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VALID FROM 01/03/2010

#### 144 Highways

- (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.

VALID FROM 01/03/2010

#### 145 Harbours

- (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.
- (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.

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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.

VALID FROM 01/03/2010

#### **146 Discharge of water**

- (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.

VALID FROM 01/03/2010

#### **147 Development of Green Belt land**

- (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

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- (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 decision-maker must notify the relevant local authorities of the provision made by the order.
- (3) If the decision-maker is a Panel or the Council, the decision-maker must also notify the Secretary of State of the provision made by the order.
- (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).

VALID FROM 01/03/2010

#### **148 Deemed consent under section 34 of the Coast Protection Act 1949**

- (1) An order granting development consent may include provision deeming consent under section 34 of the Coast Protection Act 1949 (c. 74) to have been given for any operations only if the operations are to be carried out wholly in one or more of the areas specified in subsection (2).
- (2) The areas are—
  - (a) England;
  - (b) Wales;
  - (c) waters adjacent to England or Wales up to the seaward limits of the territorial sea;
  - (d) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) Subsection (4) applies if an order granting development consent includes provision—
  - (a) deeming consent under section 34 of the Coast Protection Act 1949 to have been given subject to specified conditions, and
  - (b) deeming those conditions to have been imposed by the Secretary of State under that section.
- (4) A person who fails to comply with such a condition does not commit an offence under section 161 of this Act.

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VALID FROM 01/03/2010

#### **149 Deemed licences under Part 2 of the Food and Environment Protection Act 1985**

- (1) An order granting development consent may include provision deeming a licence to have been issued under Part 2 of the Food and Environment Protection Act 1985 (c. 48) for any operations only if the operations are 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) 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 a 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 licence to have been issued under Part 2 of the Food and Environment Protection Act 1985 subject to specified provisions, and
  - (b) deeming those provisions to have been included in the licence by virtue of that Act.
- (4) A person who fails to comply with such a provision does not commit an offence under section 161 of this Act.
- (5) Paragraphs 1 and 2 of Schedule 3 to the Food and Environment Protection Act 1985 (c. 48) (licences: right to make representations etc.) do not apply in relation to the deemed licence.

#### **150 Removal of consent requirements**

- (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**

**I3** S. 150 partly in force; s. 150 in force for certain purposes at Royal Assent see s. 241

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VALID FROM 01/03/2010

### 151 Liability under existing regimes

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).

VALID FROM 01/03/2010

### 152 Compensation in case where no right to claim in nuisance

- (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>F1</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.
- (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.

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(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).

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**Textual Amendments**

**F1** 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)

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