



Planning Act 2008

Guidance related to procedures for compulsory acquisition



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February 2010

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Terms used

In this document (including the Annexes), meanings are as follows:

- ‘the Planning Act’ or ‘the Act’ – the Planning Act 2008
- ‘the CPA 1965’ – the Compulsory Purchase Act 1965
- ‘the APR 2009’ – the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- ‘the MPO 2009’ – the Infrastructure Planning (Model Provisions) Order 2009
- ‘the CAR 2010’ – the Infrastructure Planning (Compulsory Acquisition) Regulations 2010
- ‘the EPR 2010’ – the Infrastructure Planning (Examination Procedure) Rules 2010
- ‘the CMR 2010’ – the Infrastructure Planning (Consents and Miscellaneous Provisions) Regulations 2010
- ‘promoter’ – a person intending to submit an application to the IPC for a nationally significant infrastructure project
- ‘decision-maker’ – either the panel or council of the IPC, or the Secretary of State, whichever has the function of deciding the relevant application
- ‘NPS’ – a national policy statement
- ‘NSIP’ – a nationally significant infrastructure project
- ‘IPC’ – the Infrastructure Planning Commission
- References to the ‘compulsory acquisition of land’ also mean the compulsory acquisition of any interest in or right over land; and acquiring a right over land includes acquiring it by the creation of a new right
- ‘special land’ means:
 - land owned by a local authority (section 128(1)(a))
 - land acquired by a statutory undertaker (other than a local authority) for the purposes of their undertaking (section 128(1)(b) (section 128(5) defines ‘statutory undertakers’ for the purposes of this section)
 - land held by the National Trust inalienably (section 130)
 - land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132)

Introduction

1. The Planning Act, which received Royal Assent on 26 November 2008, provides for a faster and fairer development consent system for nationally significant transport, energy, water, waste-water and waste infrastructure projects.
2. The Act makes provision for the Government to designate national policy statements (NPS) which will establish the national case for infrastructure development and set the policy framework for decisions on applications for nationally significant infrastructure projects. It also establishes a new independent body, the Infrastructure Planning Commission (IPC), which will take responsibility for examining applications for development consent for nationally significant infrastructure planning applications and determining them where a relevant NPS is in place.
3. The Act also provides that an order granting development consent can authorise the compulsory acquisition of land. This marks a significant change from the Town and Country Planning system, in which compulsory acquisition of land is applied for separately from consent for development to take place – under the Act authorisation for compulsory acquisition should be applied for, and decided as part of a development consent order. This guidance, which is issued under section 124 of the Act, outlines the relevant provisions and how they are expected to work.
4. The purpose of this document is to provide guidance to the promoters and the IPC when drafting, examining and deciding an order granting development consent which includes provision authorising the compulsory acquisition of land. Its aim is to help promoters and the IPC understand the powers contained in the Planning Act, and how they can be used to best effect. It also aims to advise on the application of the correct procedures and statutory or administrative requirements, to help ensure that the process of dealing with such orders is as fair, straightforward and accurate for all parties as possible.
5. Where the IPC panel or council proposes to make an order granting development consent which includes provision authorising the compulsory acquisition of land, it must have regard to this guidance under section 124(2) of the Planning Act.

Roles

The role of the promoter

6. Under the Planning Act, compulsory acquisition will be authorised as part of a development consent order granted by the IPC or the Secretary of State, whichever is the decision-maker. The Act, together with its secondary legislation, makes specific provision for applications which seek authorisation for compulsory acquisition.
7. Under the APR 2009 any application to the IPC must be accompanied by a draft of the proposed order. Where a promoter seeks authorisation for the compulsory acquisition of land, or rights over land, the promoter should make appropriate provision in the draft order, making use of the model provisions set out in the MPO 2009 where relevant.
8. Before an application is made to the IPC, promoters will need to comply with the pre-application requirements set out in Chapter 2 of Part 5 of the Act. In particular, this chapter requires promoters to consult anyone who, after diligent inquiry by the promoter, is identified as having an interest in the land, the power to sell and convey or release the land, or might be able to make a claim for compensation (sections 42 and 44). This will therefore capture anyone who the promoter believes may be affected by a provision authorising compulsory acquisition. The promoter must also prepare a consultation report describing the account taken of relevant responses to consultation, and this must accompany the application to the IPC (section 37). Once an application has been accepted, the same categories of persons who were consulted must also be notified of the acceptance, and given a deadline by which representations must be received concerning the application (section 56).
9. When preparing an application, promoters must ensure that they comply with the APR 2009, which contains specific requirements where authorisation for compulsory acquisition is sought, including requirements for the following information:
 - a statement of reasons
 - a statement to explain how the proposals contained in an order which includes authorisation for compulsory acquisition will be funded
 - a plan showing the land which would be acquired, including special land and any proposed replacement land
 - a book of reference
10. Once an application seeking an order authorising compulsory acquisition has been accepted by the IPC, the promoters must also give the IPC a notice specifying the names and other details of people who would be affected by the proposed compulsory acquisition (section 59).

11. Once an order authorising compulsory acquisition has been made, promoters must also ensure that they comply with the notification requirements under section 134 of the Act.

The role of the decision-maker

12. Sections 122–134 of the Planning Act set out the main provisions relating to the authorisation of compulsory acquisition. Broadly speaking, they specify the conditions which must be satisfied if an order is to authorise compulsory acquisition, apply the provisions of the CPA 1965 (with appropriate modifications), restrict the provision which may be made about compensation in an order, and set out additional conditions which apply in relation to special land.
13. Where the promoter is seeking authorisation to acquire compulsorily special land, the decision-maker must also be satisfied that the conditions specified in sections 127–133 have been met. These conditions are discussed in more detail below.
14. In some cases the provisions place duties on someone other than the decision-maker (i.e. the promoter or Secretary of State). However, the decision-maker must be satisfied that the processes set out in the Act have been properly observed by all parties before an order authorising compulsory acquisition is made.
15. Where the decision-maker has decided in favour of an application for an order granting development consent, the decision-maker must then make the order. Under section 116 of the Act, the decision-maker must publish a statement of reasons for deciding to make an order. Where the order includes provision authorising compulsory purchase, it is important that the statement should address the reasons for doing so.

Additional powers

16. Promoters and decision-makers should also note that section 125 of the Planning Act applies (with suitable modifications and omissions) the provisions of Part 1 of the CPA 1965 to all orders made under the Planning Act which authorise the compulsory acquisition of land (section 125 also makes suitable provision for land in Scotland). These provisions of the CPA 1965 govern the procedures to be followed once the compulsory acquisition of land has been authorised under the Planning Act.
17. An order under the Planning Act may also provide for a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 (see model provision 23 of the MPO 2009).

Justification for seeking an order authorising compulsory acquisition

18. Section 122 of the Planning Act provides that an order granting development consent may only authorise compulsory acquisition if the decision-maker is satisfied that:
 - the land is required for the development to which the consent relates, or is required to facilitate or is incidental to the development, or is replacement land given in exchange under section 131 or 132 (subsection (2) of section 122) and
 - there is a compelling case in the public interest for the compulsory acquisition (subsection (3))
19. Promoters must therefore be prepared to justify their proposals for the compulsory acquisition of any land (or rights over land) to the satisfaction of the decision-maker and will need to be ready to defend such proposals throughout the examination of the application. The following guidance indicates certain factors to which the decision-maker must have regard in deciding whether or not to include provision authorising the compulsory acquisition of land in an order granting development consent, and which promoters should therefore take into account when preparing an application.

General considerations

20. The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored and that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate.
21. The promoter must have a clear idea of how it intends to use the land which it is proposing to acquire, and should be able to demonstrate that there is a reasonable prospect of the requisite funds becoming available. Otherwise, it will be difficult to show conclusively that the compulsory purchase of land meets the two conditions in section 122 (see below) and is therefore justified in the public interest at that time.
22. The decision-maker must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had in particular to the provisions of Article 1 of the First Protocol to the European Convention on

Human Rights and, in the case of acquisition of a dwelling, Article 8 of the Convention.

The section 122(2) condition

23. As explained above, section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the decision-maker before any compulsory acquisition can be authorised. The first of those conditions is at subsection (2), which requires one of three criteria to be met. In order to identify which of those three criteria is relevant, the decision-maker must be in no doubt as to the particular purposes for which any land is to be compulsorily acquired.
24. The first criterion is that the land is required for the development to which the development consent relates. For this to be met, the promoter should be able to demonstrate to the satisfaction of the decision-maker that the land in question is needed for the development for which consent is sought. The decision-maker should be satisfied, in this regard, that the land to be acquired is no more than is reasonably required for the purposes of the development.
25. The second criterion is that the land is required to facilitate or is incidental to the proposed development. An example might be the acquisition of land for the purposes of landscaping the project. In this example, the decision-maker should be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired, that the land to be taken is no more than is reasonably necessary for that purpose and is proportionate.
26. The third criterion is that the land is replacement land which is to be given in exchange under section 131 or 132 of the Act. This may arise where, for example, land which forms part of an open space or common is to be lost to the scheme, but the promoter does not hold other land in the area which may be suitable to offer in exchange. Again, the decision-maker will wish to be persuaded that the proposed compulsory acquisition is needed for replacement land, that no more land is being taken than is reasonably necessary for that purpose and is proportionate.

The section 122(3) condition

27. Compliance with one of the criteria in subsection (2) of section 122 is not, however, enough in its own. Under subsection (3), the decision-maker must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.
28. For this condition to be met, the decision-maker will need to be persuaded that there is compelling evidence that the public benefits that would be

derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. This is reinforced by the condition in section 122(3).

Balancing public interest against private loss

29. Whatever the case for allowing a nationally significant infrastructure project to go ahead, any compulsory acquisition provisions must be fully justified in their own right against the conditions in section 122. This does not mean, though, that the merits of any compulsory acquisition proposals can be considered in isolation from wider consideration of the merits of the project to which they relate. In practice, there is likely to be some overlap in the factors that the decision-maker must have regard to when considering whether to grant development consent for a project and the factors that must be taken into account when considering whether to authorise, in the development consent order, any proposed compulsory purchase of land.
30. More particularly, the extent to which the decision-maker is satisfied that there is a need in the public interest for a project to be carried out will be an important factor in determining the justification for any compulsory acquisition provisions which are shown to be required in order for that scheme to take place. If the decision-maker is satisfied that any proposed compulsory acquisition provisions are required for a purpose described in section 122(2), it will be necessary for the decision-maker to weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory purchase, in order to determine where the balance of public interest lies.
31. The decision-maker will also wish to bear in mind that, since development consent for a project and authority to compulsorily acquire land for that project will fall to be given in the same development consent order, rather than separately, it will be necessary to ensure that there is consistency and coherency in the decision-making process.
32. There may be circumstances where the decision-maker could reasonably justify granting development consent for a project while at the same time refusing to include in an order the provisions authorising the compulsory acquisition of the land or modifying these to reduce the area of land so affected. This could arise, for example, where the decision-maker is satisfied on the case for granting development consent but is not persuaded that all of the land which the promoter wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Or the decision-maker may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition. Such scenarios could lead to a decision to remove all or some of the proposed compulsory purchase provisions from a development consent order.

Resource implications of the proposed scheme

33. As stated above, any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. It may be that the project is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the promoter should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.
34. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the CMR 2010 allows for five years within which any notice to treat must be served beginning on the date on which the order granting development consent is made, though the decision-maker does have the discretion to make a different provision in an order granting development consent. Promoters should be able to demonstrate that adequate funding is likely to be available to enable the promoter to carry out the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.

Other matters

35. The high profile and potentially controversial nature of nationally significant infrastructure projects means that they can generate significant opposition and may be subject to legal challenge. It will be helpful if promoters are able to demonstrate that the application submitted is firmly rooted in the relevant NPS. Promoters will also need to be able to demonstrate that pre-application consultation has been carried out in full accordance with Chapter 2 of Part 5 of the Planning Act, and that any potential risks or impediments to implementation of the scheme have been properly managed. While any legal challenge will be to the decision of the relevant decision-maker, the representations and evidence submitted by the promoter and others will form a vital part of the decision-maker's justification as this will have formed the basis of the decision.
36. Promoters will also need to be able to demonstrate that they have taken account of any other physical and legal matters pertaining to the application, including any associated development to strengthen infrastructure support for the principal development, the programming of any infrastructure accommodation works or remedial work which may be required, and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

Preparing the application

Section 123 of the Act

37. An order may only contain provision authorising compulsory acquisition if one of the conditions set out in section 123(2)–(4) are met. These are that:
- the application for the order included a request for compulsory acquisition of land to be authorised – in which case the proposals will have been subject to pre-application consultation, and the other pre-application and application procedures set out in the Act; or
 - if the application did not include such a request:
 - the relevant procedures set out in the CAR 2010 have been followed; or
 - all those with an interest in the land consent to the inclusion of the provision

Preparatory work

38. Sections 42 and 44 of the Act require promoters to consult anyone who, after diligent inquiry by the promoter, is identified as having an interest in the land, the power to sell and convey or release the land, or might be able to make a relevant claim for compensation. Early contact with people who could be affected by the authorisation of compulsory acquisition is therefore a statutory requirement under the Planning Act. This early contact can help to build up a good working relationship with those whose interests are affected by showing that the promoter is willing to be open and to treat their concerns with respect. This can then help to save time during the examination process through addressing and resolving issues before an application is submitted, and reducing potential mistrust or fear that can arise in these circumstances.
39. Promoters should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always not be practicable to acquire by agreement. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. The promoter should, however, be negotiating in parallel to acquire land by agreement, so that by

the time the examination phase begins the promoter is only dealing with the minimum number of objectors.¹

40. Promoters should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan for compulsory acquisition at the same time as conducting negotiations. Making clear during pre-application consultation that compulsory acquisition will, if necessary, be sought in an order will help to make the seriousness of the promoter's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.
41. Where a promoter is seeking to compulsorily acquire special land (principally, statutory undertakers' land, common land or open space) for which certification by the Secretary of State is either required under section 127, or obtainable under section 131 or 132 of the Act, early contact should be made with the relevant Government department to ensure this process is begun promptly. This process is described in more detail in Annex 1. In the case of section 131 or 132, failure to obtain the appropriate certificate in due time will mean that the order becomes subject to special parliamentary procedure.

Use of alternative dispute resolution techniques

42. In the interests of speed and fostering good will, promoters are urged to consider offering those with concerns about the authorisation of compulsory acquisition of their land full access to alternative dispute resolution (ADR) techniques. These should involve a suitably qualified independent third party and should be available wherever appropriate throughout the whole of the compulsory acquisition process, from the planning and preparation stage to agreeing the compensation payable for the acquired properties. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land, while other techniques such as early neutral evaluation might help to relieve worries at an early stage about the potential level of compensation eventually payable if the order were to be confirmed. The use of ADR can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the process inevitably places on those whose properties are affected. It also echoes the spirit of the Government's own pledge to settle legal disputes to which it is a party by means of mediation or arbitration wherever appropriate and the other party agrees.

¹ It should be noted that in some cases it may be preferable, or necessary, to acquire compulsorily rather than by agreement. In the case of land belonging to and held inalienably by the National Trust, because the Trust has no power to dispose of land so held, the compulsory acquisition of Trust land must be authorised in an order even if the Trust is minded not to oppose the proposals. Additionally, where land is affected by rights of common, rights to lawful sports and pastimes, trusts, schemes of regulation or other incidents, it may be preferable to proceed by way of powers of compulsory acquisition in order that the rights, trusts and incidents may be discharged from the acquired land and vested in land given in exchange.

Other means of involving those affected

43. Other actions which promoters should consider initiating during the preparatory stage include:
 - providing full information about what the compulsory acquisition process under the Planning Act involves, the rights and duties of those affected and an indicative timetable for the IPC's decision making process
 - appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.
44. The promoter may offer to alleviate concerns about future compensation entitlement by entering into agreements with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Chamber of the Upper Tribunal), including the basis on which disturbance costs would be assessed.

IPC involvement at the preparation stage

45. Promoters are expected to seek their own legal and professional advice when preparing an application to the IPC. However, the Planning Act provides that the IPC may give advice to a promoter who intends to submit an application, and where a promoter has concerns or questions about particular technical points concerning a draft order, including provisions regarding compulsory acquisition the IPC may be able to provide advice or clarification. The IPC cannot give any opinion about the merits of an application or a proposed application. Section 55(3)(e) of the Act provides that the IPC may only accept an application where it concludes that the promoter has complied with Chapter 2 of Part 5 of the Act, and the IPC will be able to give advice in particular on how compliance should be achieved. The IPC can also give advice to those wanting to make representations in respect of applications for development consent. Any advice given by the IPC will, however, be subject to the caveat that its comments are without prejudice to its consideration of any application which may subsequently be submitted.

Statement of reasons

46. The APR 2009 made under section 37(3)(d) of the Planning Act require a promoter, when seeking an order which would authorise compulsory acquisition, to submit with the application a statement of reasons (relating to the compulsory acquisition), a statement to explain how an order that contains the authorisation of compulsory acquisition will be funded, and a plan showing any land which it is proposed to acquire compulsorily.

47. The statement of reasons should seek to justify the compulsory acquisition sought, and explain in particular why in the promoter's opinion there is a compelling case in the public interest for it. This is explained in more detail in Annex 2.
48. When serving a compulsory acquisition notice under section 134(3)(a) of the Planning Act, promoters are advised that they should (in addition to the requirements of that section) send to each person they are notifying a copy of the statement of reasons and a plan showing how that person's land is affected by the compulsory purchase proposals.

The examination process

49. Applications to the IPC for an order authorising compulsory acquisition will be subject to the same examination procedures as all other applications to the IPC. These procedures are set out in the EPR 2010 and in the associated guidance document². These documents should be read alongside this guidance as necessary.
50. Where the IPC has accepted an application for an order which would authorise the compulsory acquisition of land, section 92 of the Planning Act requires the IPC to hold an oral compulsory acquisition hearing if requested to by an 'affected person'³ within the set deadline. At this hearing each affected person will be able to make oral representations regarding the compulsory acquisition request, subject to the rules governing the hearing.

² Guidance on the examination process can be found on the CLG web site.

³ Defined in section 92(5) of the Act.

Implementation

51. All parties should note that, unlike the two stage process which generally operates for compulsory purchase, whereby an order is made by an acquiring authority but then has to be confirmed by a minister, an order under the Planning Act is 'made' in a single stage and does not have to be confirmed by another authority. Unless it is subject to special parliamentary procedure, an order granting development consent under the Planning Act becomes operative when it is made, unless a different coming into force date is provided for in the Order itself.
52. Unless the order is subject to legal challenge (which must take place within 6 weeks of the date of publication of the order or the statement of reasons for deciding to make the order under section 118 of the Planning Act), the promoter may then implement the compulsory acquisition provisions. Implementation of compulsory acquisition provisions may be by 'notice to treat' or, if the order so provides, by 'general vesting declaration'. Regulation 3(2) of the CMR 2010 specifies that where a notice to treat is served under section 5 of the Compulsory Purchase Act 1965, it must be served before the end of five years beginning on the date on which the order granting development consent is made, unless the order itself specifies a different period.

Further guidance

53. The ODPM circular 06/2004 *Compulsory Purchase and the Crichton Down Rules* contains further general guidance on matters related to compulsory acquisition, including on serving a 'notice to treat', making a general vesting declaration, and compensation and other matters.

Annex 1: Special land

1. Certain kinds of land, special land, are given some protection against compulsory acquisition (including compulsory acquisition of new rights over them) in sections 128–132 of the Act by provision that an order including such land may be subject to special parliamentary procedure. Section 127 provides additional protection for statutory undertakers' land by requiring the Secretary of State to certify that he or she is satisfied of certain matters before an order may authorise compulsory acquisition.
2. The following kinds of land are 'special land':
 - land owned by a local authority (section 128(1)(a))
 - land acquired by a statutory undertaker (other than a local authority) for the purposes of their undertaking (section 128(1)(b), section 128(5) defines 'statutory undertakers' for the purposes of this section)
 - land held by the National Trust inalienably (section 130)
 - land forming part of a common (including a town or village green), open space, or fuel or field garden allotment (sections 131 and 132)
3. Unless stated otherwise:
 - advice in this Annex about the compulsory acquisition of the special land mentioned in paragraph 2 above also applies to the compulsory acquisition of new rights over such land
 - any reference to statutory undertakers' land means land which has been acquired by statutory undertakers for the purposes of their undertaking

Protection for statutory undertakers' land

4. Sections 127 and 128 provide protection for statutory undertakers' land. In both sections, the land must have been acquired for the purposes of the undertaking and these provisions do not apply if the land was acquired for other purposes which are not directly connected to the undertakers' statutory functions. Before making a representation to the IPC under either section 127 or 128, undertakers should take particular care over the status of the land which the promoter proposes to acquire, and seek their own legal advice as necessary.

Section 127

5. Under section 127, statutory undertakers who wish to object to the inclusion in an order of a provision authorising compulsory acquisition of land which

they have acquired for the purposes of their undertaking, may make representations to IPC.

6. If, as a result of any such representations, the IPC are satisfied that the land in question is used for the purposes of the statutory undertaker's undertaking, or that an interest in the land is held for those purposes, the order to which it relates must not authorise the compulsory acquisition unless the appropriate Secretary of State gives a certificate in accordance with section 127(2) or 127(5) (which are concerned with the compulsory acquisition of land and with the compulsory acquisition of rights over land by the creation of a new right over land respectively).
7. For section 127(2) these are either that the land:
 - can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or that
 - if purchased it can be replaced by other land belonging to or available for acquisition by the undertaker without serious detriment to the carrying on of the undertaking
8. For section 127(5) these are either that the rights over land:
 - can be purchased without serious detriment to the carrying on of the undertaking, or that
 - if the right is acquired, any consequential detriment to the carrying on of the undertaking can be made good by the undertaker by the use of other land belonging to or available for acquisition by the undertaker

Section 128

9. This section is concerned with orders authorising the compulsory acquisition of land owned by a local authority, or which has been acquired by a statutory undertaker (other than a local authority) for the purposes of its undertaking. In the event that such an authority or undertaker makes (and does not withdraw) a representation to the IPC concerning the compulsory acquisition, the order would be subject to special parliamentary procedure.
10. Section 129 excludes the application of section 128 if the promoter is one of the bodies referred to in section 129(1) (which include a local authority and statutory undertaker as defined in section 129(2)), and the application of section 128 is therefore likely to be limited.

Section 130

11. Where an order seeks to authorise the compulsory acquisition of land belonging to and held inalienably by the National Trust, it will be subject to

special parliamentary procedure if the Trust has made, and not withdrawn, a representation to the IPC regarding it.

Sections 131 and 132

12. These sections are concerned with orders authorising the compulsory acquisition of land (section 131) or of a right over land by the creation of a new right (section 132) which is, or forms part of, a common, open space, or fuel or field garden allotment. These terms are defined in sections 131(12) and 132(12), and include town or village greens.
13. An order which authorises the compulsory acquisition of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under either section 131(3) or 132(2), as appropriate.
14. Both sections 131 and 132 provide that if the Secretary of State intends to issue such a certificate, notice of the proposal and an opportunity to make representations regarding it must be given. In addition, the Secretary of State may decide to hold a public local inquiry. The certificate may only be issued once the Secretary of State has considered any representations and, if an inquiry has been held, the report of the person who held the inquiry.
15. It should be noted that the 200 square metre threshold set out in subsection (5) refers to the total relevant land which it is intended to acquire compulsorily, not to individual plots.

Application for a certificate under sections 127, 131 and 132

16. If the order is not to be subject to special parliamentary procedure, the decision-maker should not make an order for which Secretary of State certification is required under section 127 until a certificate has been issued. It is the responsibility of the promoter to ensure a certificate required under section 127, or available under section 131 or 132, is obtained in good time to allow the decision-maker to make the order without any delay to the process. Applications for certificates should therefore be made as early as possible, ideally as soon as the promoter is clear that a certificate is desired and before an application is submitted to the IPC.
17. A promoter seeking a certificate from the relevant Secretary of State under sections 127, 131 and 132 should apply as follows (see addresses at the end of this annex):
 - common land (including a town or village green) – the Secretary of State for Environment, Food and Rural Affairs

- open space (not common land or town or village green) and fuel or field garden allotments – the Secretary of State for Communities and Local Government at the Government Office for London
 - statutory undertakers' land – the Secretary of State for Transport; for Environment, Food and Rural Affairs; for Business, Innovation and Skills; or for Energy and Climate Change as appropriate
18. The evidence that should support the application for a certificate will also be required for the application for development consent to the IPC; therefore the application for a certificate should cross-refer to the (proposed) application to the IPC.
19. Promoters should specify under which sub-section an application for a certificate is being made. Where an application is made under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is one to which either section 131(5)(a) or 132(5)(a) applies, it should be stated whether it is made on the basis that the land taken does not exceed 200 square metres or is made under the highway widening or drainage criterion.
20. In preparing an application for a certificate, careful attention should be given to the particular criteria that the Secretary of State will be considering. The information provided should include:
- the name of the common, green, open space, fuel or field garden allotment affected (including CL/VG number where applicable)
 - the plot numbers and their areas, in square metres
 - where applicable, details of any rights of common registered, or rights of public access, and the extent to which they are exercised
 - the purpose of the acquisition
 - details of any special provisions or restrictions affecting any of the land in the application (such as statutory or other schemes for the regulation of the land, or byelaws affecting the land)
 - details of the replacement land (if applicable)
 - any further information which supports the case for a certificate
21. In particular, the application should describe the land (including any new rights) in detail with reference to the (proposed) application to the IPC. All the land should be clearly identified on an accompanying map, showing the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed replacement land. The promoter should also (as far as possible, depending on how far it has been developed) provide details of the (proposed) IPC application and accompanying documents and maps, as this will be important supporting evidence.

22. In most cases, arrangements will be made for the land which is to be compulsorily acquired and the proposed replacement land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed replacement/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given the Secretary of State will direct the promoter to publish notice of the Secretary of State's *intention* to give a certificate, with details of the address to which any representations and objections may be submitted.
23. Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed replacement/additional land), the person who presided at the inquiry will summarise the relevant evidence in his or her report and make a recommendation. Where there is no inquiry, the relevant Secretary of State's decision on the certificate will be made having regard to an appraisal by an Inspector or a professionally qualified planner, after taking into account the written representations from any objectors and from the promoter.
24. The Secretary of State must decline to give a certificate if the Secretary of State is not satisfied that the requirements of the section have been complied with. Where replacement land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.⁴

Replacement land

25. Where, depending on the particular facts and circumstances, either section 131(4) or 132(4) applies, the relevant Secretary of State may, in considering whether or not to issue a certificate, have regard to such matters as relative size and proximity of the replacement land when compared with the land sought through the order. Land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as replacement land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed replacement land is temporary (e.g. pending development). In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future.

Section 131(5) and 132(5)

26. Where either section 131(5) or 132(5) applies, a certificate can be given only where the relevant Secretary of State is persuaded that the criteria set out

⁴ 1 62 4 [1994] J. P. L. 607. In this case the Court held that when considering whether land to be exchanged for open-space land was equally advantageous it was permissible to have regard to future developments which would affect either piece of land. It was not necessary that there should be precise correspondence between the advantages of each piece of land.

in both paragraphs (a) and (b) are met. In coming to a view as to whether paragraph (b) applies, the Secretary of State may have regard to the overall extent of common land, open space land or fuel or field garden allotment land being acquired compulsorily. Where all or a large part of such land would be lost, the Secretary of State may be reluctant to certify in terms of section 131(5) or 132(5). Should a certificate be refused, it would remain open to the promoter to consider providing replacement land and seeking a certificate under section 131(4) or 132(4), though such an approach may well cause delay.

Secretary of State's policy in relation to common land and town or village greens

27. The Secretary of State has set out his policy for granting consents in relation to common land and town or village greens under the Commons Act 2006, and applications for a certificate under the 2008 Act will be subject to the same policy considerations in so far as those considerations are compatible with the requirements of the Planning Act. Further information can be obtained on the Defra website at www.defra.gov.uk/rural/protected/commonland/protect-consent.htm#guide.

Addresses

For certificates in relation to commons and greens:

**Secretary of State for Environment, Food and Rural Affairs
Common Land Casework Team
The Planning Inspectorate
Zone 4/05, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN**

For certificates in relation to open space, and fuel or field garden allotments:

**Secretary of State for Communities and Local Government
Central Casework Co-ordination
National Unit for Land Acquisition and Disposals
Government Office for London
9th Floor, Riverwalk House
157–161 Millbank
London SW1P 4RR**

Annex 2: Preparing the statement of reasons

1. As set out in paragraph 9 of the guidance to which this Annex relates, regulation 5(2)(h) of the APR 2009 requires a promoter to submit a statement of reasons alongside an application for an order which seeks authorisation for compulsory acquisition. The statement of reasons should include the following (adapted and supplemented as necessary according to the circumstances of the particular application):
 - a brief description of the land to be subject to compulsory acquisition and its location, topographical features and present use
 - an outline of the promoter's purpose in seeking to acquire the land, including brief details of the wider project for which development consent is sought
 - a statement of the promoter's justification for compulsory acquisition, including reference to how regard has been given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights, and Article 8 if appropriate
 - the details of any reference to the land in a national policy statement, or if none, details of any other views which may have been expressed by a Government department about the proposed development of the order site
 - a description of the proposals for the use or development of the land
 - any special considerations affecting the land to be compulsorily acquired, e.g. ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc
 - details of how the promoter intends to overcome any obstacle or prior consent needed before the order scheme can be implemented, such as the need for an operational licence
 - any other information which would be of interest to someone affected by the order, such as proposals for re-housing displaced residents or for relocation of businesses, and addresses, telephone numbers, websites and email addresses where further information on these matters can be obtained

Annex 3: Plan which must accompany an application authorising compulsory acquisition

1. The APR 2009 sets out certain requirements relating to compulsory acquisition. Regulations 5(2)(h), 5(2)(i) and 7(e) require that:
 - if the proposed order would authorise the compulsory acquisition of land or an interest in land or right over land, the application must be accompanied by a statement of reasons and a statement to indicate how that order is proposed to be funded
 - the land plan (see regulation 5(i)) must identify any land over which it is proposed to exercise powers of compulsory acquisition or any right to use land
 - where the land falls into one of the categories set out in regulation 7(e) it must be specified in the book of reference (see regulation 7)
2. Promoters should ensure that references to the plan in the draft order and other documentation relating to the application correspond exactly with headings on the plan itself.
3. All land to be compulsorily acquired, and any replacement land, should be clearly identified on the plan by colouring or by any other method at the discretion of the promoter. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and replacement land is shown green. Where black-and-white copies are used they must still provide clear identification of the land to be compulsorily acquired and, where appropriate, any replacement land (e.g. by suitable shading or hatching).
4. The use of a sufficiently large scale, Ordnance Survey based map is important. The APR 2009 specifies that maps should be on a scale no smaller than 1/2500. However, experience has shown that for compulsory acquisition a map of this scale is only suitable for rural areas. In general, the map scale should not be smaller than 1/1250, and for land in a densely populated urban area, the scale should be at least 1/500 and preferably larger. Where the order involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. Where a plan requires three or more separate sheets, they should be bound together, and a key plan should be provided showing how the various sheets are interrelated.

5. Where it is necessary to have more than one sheet, appropriate references must be made to each of them in the text of the draft order so that there is no doubt that they are all related to the order. If it is necessary to include a key plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the order relates. It should be the plan itself, and not the key plan which identifies the boundaries of the land to be acquired.
6. It is also important that the plan should show such details as are necessary to relate it to the description of each parcel of land described in the book of reference. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.
7. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the book of reference. Land which is delineated on the map but which is not being acquired compulsorily should be clearly distinguishable from land which is being acquired compulsorily.
8. There should be no discrepancy between the description of the land in the book of reference and the plan, and no room for doubt on anyone's part as to the precise areas of land which are to be compulsorily acquired. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the IPC may refuse to make the order until this is made clear.
9. Where a promoter seeks authorisation for compulsory acquisition of additional land not included in the original application, and has not therefore been able to comply with the APR 2009, the promoter must either secure the consent of all those with an interest in the land in question or observe the relevant procedures set out in regulations 5–13 of the CAR 2010.

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