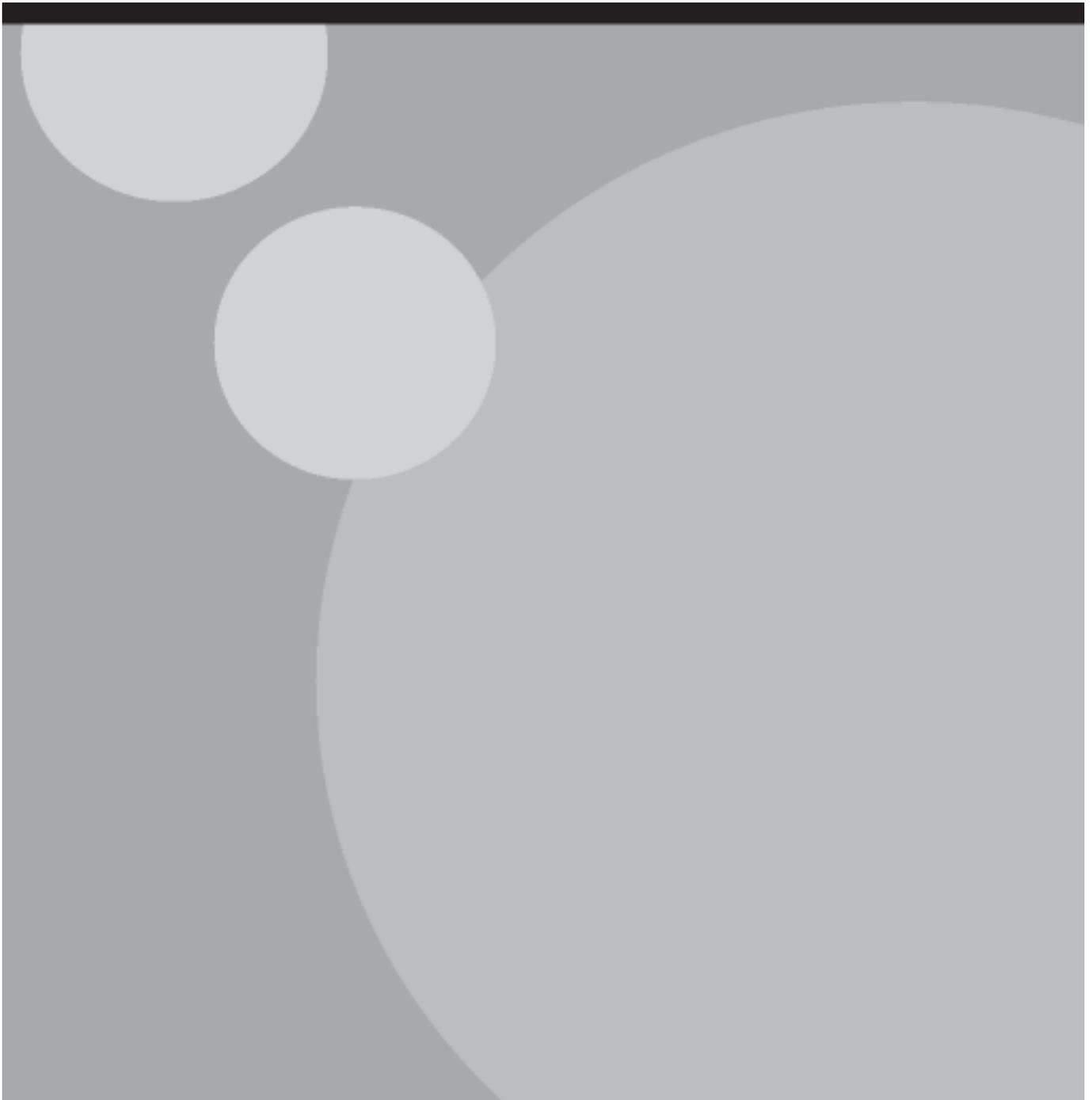




Planning Act 2008

Guidance related to procedures for the compulsory acquisition of land: Consultation





Planning Act 2008

Guidance related to procedures for the compulsory acquisition of land: Consultation

© Crown copyright, 2012

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.communities.gov.uk

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

April, 2012

ISBN: 978-1-4098-3454-0

Contents

| | |
|--|----|
| Terms used | 2 |
| Introduction | 3 |
| Roles | 4 |
| The role of the promoter | 4 |
| The role of the Secretary of State | 5 |
| Additional powers | 5 |
| Justification for seeking an order authorising compulsory acquisition | 6 |
| General considerations | 6 |
| The section 122(2) condition | 6 |
| The section 122(3) condition | 7 |
| Balancing public interest against private loss | 7 |
| Resource implications of the proposed scheme | 8 |
| Other matters | 9 |
| Preparing the application | 10 |
| Section 123 of the Act | 10 |
| Preparatory work | 10 |
| Use of alternative dispute resolution techniques | 11 |
| Other means of involving those affected | 12 |
| Involvement of the Planning Inspectorate at the preparation stage | 12 |
| Statement of reasons | 12 |
| The examination process | 13 |
| Implementation | 14 |
| Further guidance | 14 |
| Annex 1: Special land | 15 |
| Annex 2: Preparing the statement of reasons | 20 |
| Annex 3: Plan which must accompany an application authorising compulsory acquisition | 21 |

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 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 Infrastructure Planning Commission for a nationally significant infrastructure project
- ‘NPS’ – a national policy statement
- ‘DCO’ – a Development Consent Order under section 37 of the Planning Act 2008
- 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 2008 Planning Act created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water, and waste. These projects are commonly referred to as major infrastructure projects and will be throughout this document. Through the Localism Act 2011 (“the Localism Act”) the Government made significant changes to the regime. The Localism Act abolished the Infrastructure Planning Commission and transferred responsibility for decision making to the Secretary of State¹.
2. Though the Secretary of State bears legal responsibility for it, the Government has made the decision to delegate responsibility for accepting and examining applications to the Planning Inspectorate (“the Inspectorate”), which will allocate appointed persons to act as the Examining Authority for individual applications. Where this guidance refers to the Secretary of State users should bear in mind that, in practice, the Inspectorate will carry out all functions on the Secretary of State’s behalf, except for decision-making and it is to the Inspectorate that all activities should be directed in the first instance. The relevant provisions of the Localism Act were commenced on 1 April 2012 and where this guidance refers to the Planning Act, unless otherwise stated, it should be read as the Planning Act as amended by the Localism Act
3. The purpose of this document is to provide guidance to those intending to make an application for a Development Consent Order under the Planning Act which includes provision authorising the compulsory acquisition of land or rights over land. Its aim is to help promoters of major infrastructure projects 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.
4. Nothing in this guidance should be taken as indicating that any requirement of Planning law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The guidance does not in any way replace the statutory provisions of the Act nor does it add to their scope. Only the courts can give an authoritative interpretation of these Acts. The Examining Authority and others using the guidance must take their own professional and legal advice about its implementation.

¹ ‘Secretary of State’ in this document should be read as ‘the Secretary of State with responsibility for the relevant policy area’. Applications relating to energy projects will be decided by the Secretary of State for Energy and Climate Change; those relating to transport by the Secretary of State for Transport, hazardous waste by the Secretary of State for Communities and those for waste water and water supply will be a joint decision by the Secretary of State for Communities and the Secretary of State for the Environment.

Roles

The role of the promoter

5. Under the Planning Act, compulsory acquisition may be authorised as part of a Development Consent Order. The Act, together with its secondary legislation, makes specific provision for applications which seek authorisation for compulsory acquisition.
6. Under the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 any application must be accompanied by a draft of the proposed order. Where a promoter seeks authorisation for the compulsory acquisition of land, the promoter should make appropriate provision in the draft order.
7. Before an application is made, 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, which must accompany the application (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).
8. When preparing an application, promoters must ensure that they comply with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 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
9. Once an application seeking an order authorising compulsory acquisition has been accepted for examination, the promoters must also notify the Secretary of State of the names and other details of people who would be affected by the proposed compulsory acquisition (section 59).

10. 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 Secretary of State

11. 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 Compulsory Purchase Act 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.

12. Where the promoter is seeking authorisation to acquire compulsorily special land, the Secretary of State, as 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.

13. Where the Secretary of State has decided in favour of an application for an order granting development consent which authorises the compulsory acquisition of land, the Secretary of State must then make the order. Under section 116 of the Act a statement of reasons for deciding to make an order must be published, which will address the reasons for authorising the compulsory acquisition of land.

Additional powers

14. Promoters should also note that section 125 of the Planning Act applies (with suitable modifications and omissions) the provisions of Part 1 of the Compulsory Purchase Act 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 Compulsory Purchase Act 1965 govern the procedures to be followed once the compulsory acquisition of land has been authorised under the Planning Act.

15. 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.

Justification for seeking an order authorising compulsory acquisition

16. Section 122 of the Planning Act provides that a Development Consent Order may only authorise compulsory acquisition if the Secretary of State 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))

17. 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 Secretary of State 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 Secretary of State will 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

18. The promoter should be able to demonstrate to the satisfaction of the Secretary of State 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.

19. 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.

20. The Secretary of State 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

21. As explained above, section 122 of the Planning Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first of those conditions is set out in subsection (2), and requires one of three criteria to be met. In order to identify which of those three criteria is relevant, the Secretary of State must be

in no doubt as to the particular purposes for which any land is to be compulsorily acquired.

22. 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 Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will wish to be satisfied, in this regard, that the land to be acquired is no more than is reasonably required for the purposes of the development.
23. 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 will wish to 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.
24. 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 Secretary of State 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

25. Compliance with one of the criteria in subsection (2) of section 122 is not, however, enough in its own. Under subsection (3), the Secretary of State must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.
26. For this condition to be met, the Secretary of State 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

27. Whatever the case for allowing a major 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 Secretary of State 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 acquisition of land.

28. More particularly, the extent to which the Secretary of State 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 Secretary of State is satisfied that any proposed compulsory acquisition provisions are required for a purpose described in section 122(2), it will be necessary for the Secretary of State 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.
29. The Secretary of State will also wish to bear in mind that, since development consent for a project and authority to compulsorily acquire land for that project will 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.
30. There may be circumstances where the Secretary of State 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 Secretary of State 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 Secretary of State 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

31. 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.
32. The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Consents and Miscellaneous Provisions) Regulations 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 Secretary of State 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

33. The high profile and potentially controversial nature of major 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 national policy statement. Promoters will also need to be able to demonstrate that pre-application consultation has been carried out in 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 Secretary of State, the representations and evidence submitted by the promoter and others will form a vital part of the Secretary of State's justification as this will have formed the basis of the decision.
34. 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

35. 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 Infrastructure Planning (Compulsory Acquisition) Regulations 2010 have been followed; or
 - all those with an interest in the land consent to the inclusion of the provision

Preparatory work

36. 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.

37. 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

38. 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.

39. 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, the application for a certificate will usually be dealt with by the Planning Inspectorate in parallel with the main application. Promoters should ensure the Inspectorate is aware at the pre-application stage that a certificate may be necessary. This process is described in more detail in Annex 1. In the case of section 131 or 132, failure to obtain the appropriate certificate will mean that the order becomes subject to special parliamentary procedure.

Use of alternative dispute resolution techniques

40. 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 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 alternative dispute resolution techniques 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

41. 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 decision making process
- appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access.

42. 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.

Involvement of the Planning Inspectorate at the preparation stage

43. Promoters are expected to seek their own legal and professional advice when preparing an application under the Planning Act. However, where a promoter has concerns or questions about particular technical points concerning a draft order, including provisions regarding compulsory acquisition, the Planning Inspectorate may be able to provide advice or clarification. The Inspectorate may also be able to provide advice to those who wish to make representations in respect of applications for development consent.

Statement of reasons

44. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 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.

45. 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.

46. 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

47. Applications for a Development Consent Order authorising compulsory acquisition will be subject to the same examination procedures as all other applications under the Planning Act. These procedures are set out in the Infrastructure Planning (Examination Procedure) Rules 2010 and in the associated guidance document. These documents should be read alongside this guidance as necessary.
48. Where the Secretary of State has accepted an application for an order which would authorise the compulsory acquisition of land, section 92 of the Planning Act requires the Secretary of State to hold an oral compulsory acquisition hearing if requested to by an 'affected person'² 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 Defined in section 92(5) of the Act.

Implementation

49. 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, a Development Consent Order under the Planning Act becomes operative when it is made, unless a different coming into force date is provided for in the Order itself.
50. 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 Infrastructure Planning (Consents and Miscellaneous Provisions) Regulations 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 Development Consent Order is made, unless the order itself specifies a different period.

Further guidance

51. The ODPM circular 06/2004 *Compulsory Purchase and the Criche! 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 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 Secretary of State.
6. If, as a result of any such representations, the Secretary of State is 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 will not authorise the compulsory acquisition unless the 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 Secretary of State 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 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 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 Planning Inspectorate.
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 Secretary of State will not make an order for which certification by the Secretary of State is required under section 127 until a certificate has been issued. Where certification is required, the Planning Inspectorate will usually deal with the application for a certificate in parallel with the main application. Promoters should ensure the Inspectorate is aware as early as possible in the pre-application stage that a certificate may be necessary.
17. A promoter seeking a certificate should apply for a certificate to the relevant Secretary of State, but using the same address to which the main application is submitted.
18. The evidence that should support the application for a certificate will also be required for the application for a Development Consent Order; therefore the application for a certificate should cross-refer to that application.
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 for a Development Consent Order. 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 Development Consent Order application and accompanying documents and maps, as this will be important supporting evidence.
22. The person appointed by the Planning Inspectorate on behalf of the Secretary of State to make a recommendation to the Secretary of State on the application for a certificate will make such enquiries as he or she considers necessary. He or she will examine the issues relevant to the application for a certificate, including, where applicable, the merits of any proposed replacement/ additional land, and will summarise the relevant evidence in his or her report and make a recommendation.
23. The Secretary of State will decline to give a certificate if he or she is not satisfied that the requirements of the relevant 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)*.³

Replacement land

24. 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.

³ 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.

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)

25. 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 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.

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 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 requires a promoter to submit a statement of reasons alongside an application for a Development Consent 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 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 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 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 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 Secretary of State 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 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 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 Infrastructure Planning (Compulsory Acquisition) Regulations 2010.