



Planning Act 2008

2008 CHAPTER 29

PART 7

ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 1

CONTENT OF ORDERS

Compulsory acquisition

VALID FROM 01/03/2010

122 Purpose for which compulsory acquisition may be authorised

- (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the decision-maker is satisfied that the conditions in subsections (2) and (3) are met.
- (2) The condition is that the land—
 - (a) is required for the development to which the development consent relates,
 - (b) is required to facilitate or is incidental to that development, or
 - (c) is replacement land which is to be given in exchange for the order land under section 131 or 132.
- (3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.

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123 Land to which authorisation of compulsory acquisition can relate

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

Commencement Information

II [S. 123](#) partly in force; [s. 123](#) in force for certain purposes at Royal Assent see [s. 241](#)

VALID FROM 01/03/2010

124 Guidance about authorisation of compulsory acquisition

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

VALID FROM 01/03/2010

125 Application of compulsory acquisition provisions

- (1) This section applies if an order granting development consent includes provision authorising the compulsory acquisition of land.
- (2) Part 1 of the Compulsory Purchase Act 1965 (c. 56) (procedure for compulsory purchase) applies to the compulsory acquisition of land under the order—
 - (a) as it applies to a compulsory purchase to which Part 2 of the Acquisition of Land Act 1981 (c. 67) applies, and
 - (b) as if the order were a compulsory purchase order under that Act.
- (3) Part 1 of the Compulsory Purchase Act 1965, as applied by subsection (2), has effect with the omission of the following provisions—
 - (a) section 4 (time limit for exercise of compulsory purchase powers);
 - (b) section 10 (compensation for injurious affection);
 - (c) paragraph 3(3) of Schedule 3 (provision as to giving of bonds).
- (4) In so far as the order includes provision authorising the compulsory acquisition of land in Scotland—
 - (a) subsections (2) and (3) do not apply, and

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- (b) the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) (“the 1947 Act”) applies to the compulsory acquisition of that land under the order as if the order were a compulsory purchase order as defined in section 1(1) of that Act.
- (5) The 1947 Act, as applied by subsection (4), has effect with the omission of the following provisions—
- (a) Parts 2 and 3 of the First Schedule (compulsory purchase by Ministers and special provisions as to certain descriptions of land);
 - (b) section 116 of the Lands Clauses Consolidation (Scotland) Act 1845 (c. 19) (time limit for exercise of compulsory purchase powers) (that section being incorporated into the 1947 Act by paragraph 1 of the Second Schedule to the 1947 Act).
- (6) Subsections (2) to (5) are subject to any contrary provision made by the order granting development consent.

VALID FROM 01/03/2010

126 Compensation for compulsory acquisition

- (1) This section applies in relation to an order granting development consent which includes provision authorising the compulsory acquisition of land.
- (2) The order may not include provision the effect of which is to modify the application of a compensation provision, except to the extent necessary to apply the provision to the compulsory acquisition of land authorised by the order.
- (3) The order may not include provision the effect of which is to exclude the application of a compensation provision.
- (4) A compensation provision is a provision of or made under an Act which relates to compensation for the compulsory acquisition of land.

VALID FROM 01/03/2010

127 Statutory undertakers' land

- (1) This section applies in relation to land (“statutory undertakers' land”) if—
 - (a) the land has been acquired by statutory undertakers for the purposes of their undertaking,
 - (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and
 - (c) as a result of the representation the decision-maker is satisfied that—
 - (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or
 - (ii) an interest in the land is held for those purposes.

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- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State—
 - (a) is satisfied of the matters set out in subsection (3), and
 - (b) issues a certificate to that effect.
- (3) The matters are that the nature and situation of the land are such that—
 - (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
 - (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
- (4) Subsections (2) and (3) do not apply in a case within subsection (5).
- (5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State—
 - (a) is satisfied of the matters set out in subsection (6), and
 - (b) issues a certificate to that effect.
- (6) The matters are that the nature and situation of the land are such that—
 - (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
 - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- (7) If the Secretary of State issues a certificate under subsection (2) or (5), the Secretary of State must—
 - (a) publish in one or more local newspapers circulating in the locality in which the statutory undertakers' land is situated a notice in the prescribed form that the certificate has been given, and
 - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given.
- (8) In this section—

“statutory undertakers” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

 - (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
 - (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).
- (9) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Secretary of State for use or occupation by the body.

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VALID FROM 01/03/2010

128 Local authority and statutory undertakers' land: general

- (1) This section applies to land which—
 - (a) is the property of a local authority, or
 - (b) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking.
- (2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.
- (3) The condition is that—
 - (a) a representation has been made by the local authority or (as the case may be) the statutory undertakers about the application for the order granting development consent before the completion of the examination of the application, and
 - (b) the representation has not been withdrawn.
- (4) Subsection (2) is subject to section 129.
- (5) In this section—

“local authority” has the meaning given by section 7(1) of the Acquisition of Land Act 1981;

“statutory undertakers” has the meaning given by section 8 of that Act and also includes the undertakers—

 - (a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;
 - (b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).
- (6) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990), the reference to land acquired by statutory undertakers is to be construed as a reference to land acquired by the Secretary of State for use or occupation by the body.

VALID FROM 01/03/2010

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

- (1) Section 128(2) does not apply to the compulsory acquisition of land if the person acquiring the land is any of the following—
 - (a) a local authority;
 - (b) a National Park authority;
 - (c) an urban development corporation;
 - (d) a Welsh planning board;
 - (e) statutory undertakers;

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(f) a Minister of the Crown.

(2) In this section—

“local authority” has the meaning given by section 17(4) of the Acquisition of Land Act 1981 (c. 67);

“statutory undertakers” has the meaning given by section 8 of that Act and also includes the authorities, bodies and undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 17(3) of that Act (see section 17(4) of that Act);

“Welsh planning board” means a board constituted under section 2(1B) of TCPA 1990.

VALID FROM 01/03/2010

130 National Trust land

(1) This section applies to land belonging to the National Trust which is held by the Trust inalienably.

(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.

(3) The condition is that—

(a) a representation has been made by the National Trust about the application for the order granting development consent before the completion of the examination of the application, and

(b) the representation has not been withdrawn.

(4) In this section “held inalienably”, in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the National Trust Act 1907 (c. cxxxvi) or section 8 of the National Trust Act 1939 (c. lxxxvi).

(5) In this section “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (c. cxxxvi).

VALID FROM 01/03/2010

131 Commons, open spaces etc: compulsory acquisition of land

(1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.

(2) This section does not apply in a case to which section 132 applies.

(3) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, unless the Secretary of State—

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- (a) is satisfied that subsection (4) or (5) applies, and
 - (b) issues a certificate to that effect.
- (4) This subsection applies if—
- (a) replacement land has been or will be given in exchange for the order land, and
 - (b) the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.
- (5) This subsection applies if—
- (a) the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and
 - (b) the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- (6) If the Secretary of State proposes to issue a certificate under subsection (3), the Secretary of State must—
- (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and
 - (b) give any persons interested in the proposal an opportunity to make representations about the proposal.
- (7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.
- (8) The Secretary of State may issue the certificate only after considering—
- (a) any representations made about the proposal, and
 - (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.
- (9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.
- (10) If the Secretary of State issues a certificate under subsection (3), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
 - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent authorises the compulsory acquisition of land to which this section applies, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the prospective seller and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
 - (b) for discharging the order land from all rights, trusts and incidents to which it is subject.

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(12) In this section —

- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
- “the order land” means the land authorised to be compulsorily acquired;
- “the prospective seller” means the person or persons in whom the order land is vested;
- “replacement land” means land which is not less in area than the order land and which is no less advantageous to the persons, if any, entitled to rights of common or other rights, and to the public.

VALID FROM 01/03/2010

132 Commons, open spaces etc: compulsory acquisition of rights over land

- (1) This section applies to any land forming part of a common, open space or fuel or field garden allotment.
- (2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, unless the Secretary of State—
 - (a) is satisfied that one of subsections (3) to (5) applies, and
 - (b) issues a certificate to that effect.
- (3) This subsection applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—
 - (a) the persons in whom it is vested,
 - (b) other persons, if any, entitled to rights of common or other rights, and
 - (c) the public.
- (4) This subsection applies if—
 - (a) replacement land has been or will be given in exchange for the order right, and
 - (b) the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent).
- (5) This subsection applies if—
 - (a) the order land does not exceed 200 square metres in extent or the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway, and
 - (b) the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.
- (6) If the Secretary of State proposes to issue a certificate under subsection (2), the Secretary of State must—
 - (a) give notice of the proposal or direct the person who applied for the order granting development consent to do so, and

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- (b) give any persons interested in the proposal an opportunity to make representations about the proposal.
- (7) The Secretary of State may also cause a public local inquiry to be held in relation to the proposal.
- (8) The Secretary of State may issue the certificate only after considering—
- (a) any representations made about the proposal, and
 - (b) if an inquiry has been held under subsection (7), the report of the person who held the inquiry.
- (9) Notice under subsection (6)(a) must be given in such form and manner as the Secretary of State may direct.
- (10) If the Secretary of State issues a certificate under subsection (2), the Secretary of State must—
- (a) publish in one or more local newspapers circulating in the locality in which the order land is situated a notice in the prescribed form that the certificate has been given, or direct the person who applied for the order granting development consent to do so, and
 - (b) in a case where a Panel or the Council is the decision-maker, notify the Commission that the certificate has been given, or direct the person who applied for the order granting development consent to do so.
- (11) If an order granting development consent authorises the compulsory acquisition of a right over land to which this section applies by the creation of a new right over land, it may include provision—
- (a) for vesting replacement land given in exchange as mentioned in subsection (4)(a) in the persons in whom the order land is vested and subject to the rights, trusts and incidents mentioned in subsection (4)(b), and
 - (b) for discharging the order land from all rights, trusts and incidents to which it has previously been subject so far as their continuance would be inconsistent with the exercise of the order right.
- (12) In this section —
- “common”, “fuel or field garden allotment” and “open space” have the same meanings as in section 19 of the Acquisition of Land Act 1981 (c. 67);
 - “the order land” means the land to which this section applies over which the order right is to be exercisable;
 - “the order right” means the right authorised to be compulsorily acquired;
 - “replacement land” means land which will be adequate to compensate the following persons for the disadvantages which result from the compulsory acquisition of the order right—
- (a) the persons in whom the order land is vested,
 - (b) the persons, if any, entitled to rights of common or other rights over the order land, and
 - (c) the public.

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133 Rights in connection with underground gas storage facilities

- (1) This section applies if—
 - (a) the development to which an order granting development consent relates is development within section 14(1)(c), and
 - (b) the order authorises the compulsory acquisition of one or more rights within subsection (2).
- (2) The rights are—
 - (a) a right to store gas in underground gas storage facilities;
 - (b) a right to stop up a well, borehole or shaft, or prevent its use by another person;
 - (c) a right of way over land.
- (3) If the right within subsection (2) is an existing right to store gas in underground gas storage facilities, this Act has effect in relation to the compulsory acquisition of the right with the omission of section 131.
- (4) If the order authorises the compulsory acquisition of the right by the creation of a new right within subsection (2), this Act has effect in relation to the compulsory acquisition of the right with the omission of sections 127 to 132.

134 Notice of authorisation of compulsory acquisition

- (1) This section applies if—
 - (a) an order is made granting development consent, and
 - (b) the order includes provision authorising the compulsory acquisition of land.
- (2) In this section —

“the order land” means—

 - (a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the land over which the right is to be exercisable;
 - (b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the land authorised to be compulsorily acquired;

“the prospective purchaser” means—

 - (a) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, the person for whose benefit the order authorises the creation of the right;
 - (b) in any other case where the order granting development consent authorises the compulsory acquisition of land, the person authorised by the order to compulsorily acquire the land.
- (3) After the order has been made, the prospective purchaser must—
 - (a) serve a compulsory acquisition notice and a copy of the order on each person to whom subsection (4) applies, and

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- (b) affix a compulsory acquisition notice to a conspicuous object or objects on or near the order land.
- (4) This subsection applies to any person who, if the order granting development consent were a compulsory purchase order, would be a qualifying person for the purposes of section 12(1) of the Acquisition of Land Act 1981 (c. 67) (notice to owners, lessees and occupiers).
- (5) A compulsory acquisition notice which is affixed under subsection (3)(b) must—
 - (a) be addressed to persons occupying or having an interest in the order land, and
 - (b) so far as practicable, be kept in place by the prospective purchaser until the end of the period of 6 weeks beginning with the date on which the order is published.
- (6) The prospective purchaser must also publish a compulsory acquisition notice in one or more local newspapers circulating in the locality in which the order land is situated.
- (7) A compulsory acquisition notice is a notice in the prescribed form—
 - (a) describing the order land,
 - (b) in a case where the order granting development consent authorises the compulsory acquisition of a right over land by the creation of a new right, describing the right,
 - (c) stating that the order granting development consent includes provision authorising the compulsory acquisition of a right over the land by the creation of a right over it or (as the case may be) the compulsory acquisition of the land, and
 - (d) stating that a person aggrieved by the order may challenge the order only in accordance with section 118.
- (8) A compulsory acquisition notice which is affixed under subsection (3)(b) must also name a place where a copy of the order granting development consent may be inspected at all reasonable hours.

Commencement Information

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

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