

Acquisition of Land Act 1981 Section 19 and/or 28 Certificate Applications

Notes for Guidance for applicants where land forming part of a common or town or village green is included in a compulsory purchase order

October 2012

Background

1. Whenever a compulsory purchase order authorises the purchase of land which forms part of a common, open space or fuel or field garden allotment, or of new rights over such land, it is subject to special parliamentary procedure unless a certificate is obtained from the Secretary of State under section 19 and/or 28 of the Acquisition of Land Act 1981 (the Act). A copy of section 19 is attached (at A), together with (at B) a copy of paragraph 6 of Schedule 3 to the Act (to which section 28 refers).
2. Comprehensive guidance on making compulsory purchase orders and submitting them for confirmation, including advice on certificate applications, is contained in Office of the Deputy Prime Minister Circular 06/2004 - 'Compulsory Purchase Orders'. Model forms of order are prescribed in the Compulsory Purchase of Land Regulations 2004 (SI 2004 No 2595). **Both Circular 06/2004 and SI 2595/2004, which are HMSO publications, MUST be carefully followed by acquiring authorities.** Form 2 should normally be used when exchange land is to be provided, and Form 3 when there is no exchange land. **When drafting the order, you should give careful attention to the discharging and vesting provisions of section 19(3) and paragraph 6(4) of the 1981 Act.**
3. Where land in an Order is "common", the application for a certificate should be made to the Planning Inspectorate's Common Land Casework Team at the address below. 'Common' is defined in section 19(4) and paragraph 6(5) as including 'any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green'. The definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965. Advice on where to send applications in respect of other types of special category land is in the Circular.

The Certificate Application

4. You should apply by letter, and enclose a copy of the draft order, schedule(s) and map(s). You should also provide an additional map showing the common/green plots in the context of the common/green as a whole, and in relation to any proposed exchange land. Circular 06/2004 (key extracts attached at C) explains the requirements in detail.
5. You must say under which sub-section(s) your application is made – e.g. section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). If you are applying under more than one sub-section, say so, and specify the plots that each part of the application is intended to cover. Where an application is under section 19(1)(b), say whether it is made on the basis that "the land does not exceed 209 square metres (250 square yards)" or under the highway "widening or drainage" criterion.
6. In writing, you should pay careful attention to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:
 - the name of the common or green involved (including CL/VG number);
 - the plot numbers and their areas, in square metres;
 - 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;
 - any further information which you think may support your case.

The Planning Inspectorate
Common Land Casework Team
Room 3/25B Temple Quay House
Bristol, BS1 6PN
Tel: 0303 444 5408

Acquisition of Land Act 1981 - Section 19

19. – (1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied –

- (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or
- (aa) that the land is being purchased in order to secure its preservation or improve its management, or
- (b) that the land does not exceed 209 square metres (250 square yards) 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 that 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,

and certifies accordingly.

(2) Where it is proposed to give a certificate under this section, the Secretary of State shall direct the acquiring authority to give public notice of his intention so to do, and –

- (a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and
- (b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,

the Secretary of State may, after considering any representations and objections made, and, if an inquiry has been held, the report of the person who held the inquiry, give the certificate.

(2A) Notice under subsection (2) above shall be given in such form and manner as the Secretary of State may direct.

(3) A compulsory purchase order may provide for –

- (a) vesting land given in exchange as mentioned in subsection (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and
- (b) discharging the land purchased from all rights, trusts and incidents to which it was previously subject, except where the Secretary of State has given a certificate under subsection (1)(aa) above.

(4) In this section –

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.

Acquisition of Land Act 1981 - Schedule 3, paragraph 6

6. – (1) In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied –
- (a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before, or
 - (aa) that the right is being acquired in order to secure the preservation or improve the management of the land, or
 - (b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or
 - (c) that the land affected by the right to be acquired does not exceed 209 square metres (250 square yards) in extent, and that the giving of other land in exchange for the 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,

and certifies accordingly.

(2) In the case of a compulsory purchase order under the Highways Act 1980 sub-paragraph (1)(c) above shall have effect as if after the words "extent" there were inserted the words "or the 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".

(3) Where it is proposed to give a certificate under this paragraph, the Secretary of State shall direct the acquiring authority to give public notice of his intention so to do, and –

- (a) after affording opportunity to all persons interested to make representations and objections in relation thereto, and
- (b) after causing a public local inquiry to be held in any case where it appears to him to be expedient so to do, having regard to any representations or objections made,

the Secretary of State may, after considering any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry, give the certificate.

(3A) Notice under sub-paragraph 3 above shall be given in such form and manner as the Secretary of State may direct.

(4) A compulsory purchase order may provide for vesting land given in exchange as mentioned in sub paragraph (1) above in the persons, and subject to the rights, trusts and incidents, therein mentioned, and except where the Secretary of State has given his certificate under sub-paragraph (1)(aa) above, for discharging the land over which any right is to be acquired 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 that right.

(5) In this paragraph –

"common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green,

"fuel or field garden allotment" means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act,

"open space" means any land laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground.

Extract from the Office of the Deputy Prime Minister Circular 06/2004
"COMPULSORY PURCHASE ORDERS"

APPENDIX L: Special kinds of land

Section 19 of the 1981 Act

13. Compulsory purchase orders may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the 1981 Act:
 - "common" includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green. The definition therefore includes, but may go wider than, land registered under the Commons Registration Act 1965;
 - "open space" means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and
 - "fuel or field garden allotment" means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.
14. An order which authorises purchase of any such land will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17) gives a certificate under section 19 indicating his satisfaction that either:
 - section 19(1)(a) - exchange land is being given which is no less in area and equally advantageous as the land taken; or
 - section 19(1)(aa) - that the land is being purchased to ensure its preservation or improve its management; or
 - section 19(1)(b) - that the land is 250 sq yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary.
15. Likewise, an order which authorises the purchase of new rights over such land will be subject to special parliamentary procedure unless the relevant Secretary of State gives a certificate under Schedule 3, paragraph 6. See Appendix M paragraphs 10-14.
16. As to the form of order, see Appendix U, paragraphs 17 to 24 and Appendix M, paragraphs 13 to 16.

Application for a section 19 certificate

17. An acquiring authority which will require a certificate from the relevant Secretary of State under section 19 and/or Schedule 3, paragraph 6, should apply as follows:
 - common land - The Planning Inspectorate, Common Land Casework Team, Room 3/25, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN;
 - open space – The National Planning Casework Unit, 5 St Philips Place, Colmore Row, Birmingham, B3 2PW;
 - fuel or field garden allotments – The National Planning Casework Unit, 5 St Philips Place, Colmore Row, Birmingham, B3 2PW.

Applications for certificates should be made when the order is submitted for confirmation (or, in the case of an order prepared in draft by a Minister, when notice is published and served in accordance with paragraphs 2 and 3 of Schedule 1 to the 1981 Act).

18. The land, including any new rights, should be described in detail, by reference to the compulsory purchase order, and all the land clearly identified on an accompanying map. This should show 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 exchange land. The acquiring authority should also provide copies of the order, including the Schedules, and order map. For a particularly large order, they may provide: (a) copies of the order and relevant parts or sheets of the map; and (b) a copy, or copies, of the relevant extract or extracts from the order Schedule or Schedules, which include the following:

- (i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right ("the order land"); and
- (ii) any land which they propose to give in exchange ("the exchange land").

(Where Schedule 3, paragraph 6(1)(b) applies and additional land is being given in exchange for a new right, substitute "the rights land" and "the additional land" for the definitions given in (i) and (ii) above, respectively.)

19. When drafting an order, careful attention should be given to the discharging and vesting provisions of section 19(3) of the 1981 Act or of paragraph 6(4) of Schedule 3 to that Act.
20. It must be specified under which sub-section(s) an application for a certificate is made - eg. Section 19(1)(a), (aa) or (b), and/or paragraph 6(1)(a), (aa), (b) or (c). Where an application is 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 under section 19(1)(b), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.
21. In writing, careful attention should be given to the particular criteria in section 19 and/or paragraph 6 that the Secretary of State will be considering. The information provided should include:
 - the name of the common or green involved (including CL/VG number);
 - the plots numbers and their areas, in square metres;
 - 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; and - details of any special provisions or restrictions affecting any of the land in the application; and
 - any further information which supports the case for a certificate.
22. In most cases, arrangements will be made for the order/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the relevant Secretary of State is satisfied that a certificate could, in principle, be given, he will direct the acquiring authority to publish notice of his intention to give a certificate, with details of the address to which any representations and objections may be submitted. In most cases where there are objections, the matter will be considered by the Inspector at the inquiry into the compulsory purchase order.
23. Where an inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the Inspector will summarise the evidence in his or her report and make a recommendation. The relevant Secretary of State's consideration of and response to the Inspector's recommendation are subject to the statutory inquiry procedure rules which apply to the compulsory purchase order. 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, and after taking into account the written representations from any objectors and from the acquiring authority.
24. The Secretary of State must decline to give a certificate if he is not satisfied that the requirements of the section have been complied with. Where exchange land is to be provided for land used by the public for recreation, the relevant Secretary of State will have regard (in particular) 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)*.

Exchange land

25. Where a certificate would be in terms of section 19(1)(a), the exchange land must be no less in area than the order land; and must be equally advantageous to any persons entitled to rights of common or to other rights, and to the public. Depending on the particular facts and circumstances, the relevant Secretary of State may have regard to such matters as relative size and proximity of the exchange land when compared with the order land. The date upon which equality of advantage is to be assessed is the date of exchange. (See paragraph 5 of Form 2 in the Schedule to the 2004 Regulations). But the relevant Secretary of State may have regard to any prospects of improvement to the exchange land which exists at that date. Other issues may arise involving questions of the respective merits of order and exchange land. The latter may not possess the **same** character and

features as the order land, and it may not offer the same advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But 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 exchange 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 exchange 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. The relevant Secretary of State will examine any such case with particular care.

Meaning of the “the public”

26. With regard to exchange land for open space included in an order, the Secretary of State takes the view that “the public” means principally the section of the public which has hitherto benefited from the order land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Secretary of State would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider crosssection of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional park.

Section 19(1)(aa)

27. In some cases, the acquiring authority may wish to acquire land to which section 19 applies, e.g. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be “improvement” within the sense of section 226(1)(a) of the 1990 Act, or a purpose necessary in the interests of proper planning (section 226(1)(b)). The land might be neglected or unsightly (see Appendix G), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore the acquisition or enabling powers and the specific purposes may vary. In such circumstances, ie. where the reason for making the order is to secure preservation or improve management of land to which section 19 applies, a certificate may be given in the terms of section 19(1)(aa).

NB Where the acquiring authority seek a certificate in terms of section 19(1)(aa), section 19(3)(b) cannot apply and the order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also Appendix U, paragraph 24.

Section 19(1)(b)

28. A certificate can only be given in terms of section 19(1)(b), where the Secretary of State concerned is persuaded that both the criteria set out in paragraph 14 third bullet are met. He will 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, he may be reluctant to certify in terms of section 19(1)(b). Should he refuse such a certificate, it would remain open to the acquiring authority to consider providing exchange land and seeking a certificate in terms of 19(1)(a).

SECTION 3

Special parliamentary procedure

29. In the event that an order includes land whose acquisition is subject to special parliamentary procedure, any confirmation of the order by the confirming authority would be made subject to that procedure. This means that if the order is being confirmed so as to include the special category land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The order will, instead, be governed by the procedures set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965. The confirming authority will give full instructions at the appropriate time.
30. Described briefly for information, special parliamentary procedure is as follows: following the confirming authority's decision to confirm, the order is laid before Parliament, after giving 3 days' notice in the London Gazette. If a petition of general objection or amendment is lodged within a 21 day period, it will be referred to a Joint Committee of both Houses to consider and report to Parliament as to whether to approve. If no petition is lodged, the confirmation is usually approved without such referral.

APPENDIX M

Schedule and map

8. The land over which each new right is sought should be shown as a separate plot in the order Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the right plots. It would be helpful if new rights could be described immediately before or after any plot to which they relate; or, if this is not practicable, e.g. where there are a number of new rights, they could be shown together in the Schedule with appropriate cross-referencing between the related plots.
9. The order map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests. (See Note (g) to Forms 1, 2 and 3 or Note (d) to Forms 4, 5 and 6.)

Special kinds of land (see also Appendices L and U)

10. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, paragraph 6 of Schedule 3 to the 1981 Act applies (in the same way that section 19 applies to the compulsory purchase of any land forming part of a common, open space etc.). The order will be subject to special parliamentary procedure unless the relevant Secretary of State (see paragraph 17 of Appendix L) gives a certificate, in the relevant terms, under paragraph 6(1) and (2).
11. A certificate may be given in the following circumstances:
 - paragraph 6(1)(a) - the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or
 - paragraph 6(1)(aa) - the right is being acquired in order to secure the preservation or improve the management of the land (but see paragraph 13 below); or
 - paragraph 6(1)(b) - additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to paragraph 6(1)(a) above for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the Act; or

paragraph 6(1)(c) –

- (i) the land affected by the right to be acquired does not exceed 209 square metres (250 square yards); or,
- (ii) in the case of an order made under the Highways Act 1980, the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway, and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.

12. The same compulsory purchase order may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.
13. Where an acquiring authority propose to apply for a certificate in terms of paragraph 6(1)(aa), they should note that the order cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. See also Appendix U, paragraph 24; and Appendix L, paragraph 27.
14. Where an authority seek a certificate in terms of paragraph 6(1)(b) because they propose to give land (“the additional land”) in exchange for the right, the order should include paragraph 4(1) and the appropriate paragraph 4(2) of Form 2 in the Schedule to the 2004 Prescribed Form Regulations (see Note (s)). The land over which the right is being acquired (“the rights land”) and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the order. Paragraph 2(ii) should be adapted as necessary. (See also Appendix U, paragraphs 20 and 21 and Appendix L, paragraph 18.)
15. Where additional land which is not being acquired compulsorily is to be vested in the owner(s) of the rights land, the additional land should be delineated and shown on the order map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the order. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.
16. An order which does not provide for the vesting of additional land but provides for discharging the rights 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 right(s) to be acquired, should comply with Form 3 and should include the reference in paragraph 4(3) of that Form (or, if appropriate, as adapted for paragraph 4(2) of Form 6,) to land over which the new right is acquired. (See also paragraph 13 above.)