

Impact of Growth and Infrastructure Bill on the Waterways Infrastructure Trust

- Sections 128 to 134 of the Planning Act 2008 provide, amongst other things, that where an order granting development consent made under that Act authorises compulsory acquisition of Statutory Undertaker Land, Open Space (essentially land used for public recreation) or land held by the National Trust inalienably, and the owner objects to the compulsory acquisition, the order shall be subject to special parliamentary procedure (under the Statutory Orders (Special Procedure) Act 1945).
- Clauses 20 to 24 of the Growth and Infrastructure Bill amends the Planning Act 2008 to
 - remove the provision for special parliamentary procedure in the case of disputed compulsory purchase for any statutory undertaker land
 - remove the provision for special parliamentary procedure in the case of disputed compulsory purchase for any open space (subject to the Secretary of State certifying certain circumstances apply)
 - preserves the provision for special parliamentary procedure where the National Trust objects to compulsory acquisition of land it holds inalienably
- Waterway related land of which Canal & River Trust is trustee under the Waterways Infrastructure Trust is in part Statutory Undertaker Land and in part Open Space land for the purposes of the Planning Act 2008.
- With regard to waterway land that is statutory undertaker land there is no requirement for the Secretary of State to satisfy himself that it is strongly in the public interest for the development to begin without a special parliamentary procedure or for the Order to specifically record the conclusions of the Secretary of State in this respect.
- With regard to waterway land that is open space land the Secretary of State has to satisfy himself that certain conditions apply justifying compulsory acquisition and if so satisfied, special parliamentary procedure shall not apply to the order.
- One of the conditions on which the Secretary of State made decide a development order involving compulsory acquisition shall not be subject to special parliamentary procedure is where “there is no suitable land to be given in exchange for the order right” or “any suitable land available to be given in exchange is only available at prohibitive cost”.
- Accordingly the Secretary of State may make an order that involves compulsory acquisition of Waterway Infrastructure Trust land without any replacement or substitution and such order shall not be subject to the scrutiny of Parliament under the special parliamentary procedure.
- This is particularly significant given that Clause 23 of the Bill also allows the Secretary of State to widen the kinds of scheme that can come forward under the Planning Act 2008 to business and commercial projects. Therefore private developers will be able to apply for powers of compulsory purchase in respect of purely commercial schemes under the Act without the previous protections given to open space and statutory undertaker land.
- Clause 22(5) however preserves the application of the special parliamentary procedure to proposed compulsory acquisition of National Trust Land held inalienably (which will includes its historic waterways).
- There is no rational argument for applying the higher threshold of justification and scrutiny to historic waterways held in trust for the nation by the National Trust and those held in trust for the nation by Canal & River Trust. The special qualities of each, deserving of the higher thresholds of justification and scrutiny, are exactly the same.