

Insights

LEVELLING UP AND REGENERATION ACT 2023: SUMMARY OF DCO AND CPO REFORMS

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SUMMARY

Included in the wide range of provisions in the Levelling Up and Regeneration Act 2023 are some important changes to the process and procedures for Development Consent Orders and Compulsory Purchase Orders. In this Insight we examine these changes and their implications for landowners and local authorities.

The Levelling Up and Regeneration Act 2023 (LURA) introduces a broad range of changes. We previously discussed some of the key planning changes (see this [BCLP Insight](#)), but in this Insight we focus on those made to the Development Consent Orders (DCO) procedure and to Compulsory Purchase Orders (CPOs).

Whilst these changes do not amount to a major shakeup of either the DCO or CPO regimes, they do have important implications. However, exactly when they will come into force is not yet known but it is important for those potentially affected to be prepared. We expect the government's timetable for implementation will be influenced by its pre-election political positioning as well as departmental capacity.

DCO CHANGES

The LURA (s126-s128) contains provisions that support the delivery of some of the operational changes to the NSIP consenting process outlined in the NSIP Action Plan in February 2023 and consulted on in the summer of 2023. These changes are designed to improve the speed, flexibility and resilience of the NSIP regime so it can better handle the increasing pipeline of energy and other infrastructure projects. Powers included in the LURA allow the Secretary of State to make regulations that:

ALLOW STATUTORY CONSULTEES TO CHARGE FOR ADVICE (S126)

Through an amendment to the Planning Act 2008, this new power will allow certain public authority statutory consultees (to be set out in regulations) to charge for their services in connection with DCO applications, such as providing advice, information and consultation responses, with the intention of improving engagement.

SHORTEN DEADLINES FOR EXAMINATION OF DCO APPLICATIONS (S127)

The examination and reporting on DCO applications must currently be completed within six months, which period can be extended, which is the statutory timetable imposed by the Planning Act 2008.

This new power in the LURA will allow the Secretary of State to set a shorter timescale where it is considered appropriate, and will be introduced to enable delivery of a new fast-track consenting route for certain DCO applications (previously consulted on) expected to be in place by spring 2024. Under the new fast-track route a shorter examination timeframe of up to 4 months would apply as part of a non-statutory target of 12 months from acceptance to decision.

RELATE TO THE DECISION MAKING FOR NON-MATERIAL CHANGES TO DCOS (S128)

To speed up the approval process for post-consent changes, under this power the Secretary of State can make regulations regarding the decision-making process for non-material change applications, which could include time limits for making decisions on such applications.

CPO CHANGES

The amendments to compulsory purchase legislation included in the LURA are mostly designed to give local authorities the right compulsory purchase enabling powers and processes, and the confidence to use them, to encourage their use and facilitate regeneration in their areas. The most significant changes cover the following matters:

NEW ABILITY TO DISAPPLY 'HOPE VALUE' WHEN COMPENSATING OWNERS IN CERTAIN CASES WHERE JUSTIFIED (S190)

This is one of the most controversial changes and follows a government consultation earlier in the year. It will allow certain acquiring authorities to include a direction in a CPO for the non-payment of 'hope value' in compensation assessments. This power will only be available in limited circumstance, namely for schemes delivering affordable and social housing, or education or health-related development **and** where there is a compelling justification in the public interest.

'Hope value' takes into account the prospect of obtaining planning permission and the development potential of a site in a 'no-scheme world'. Removing this element of compensation will allow local authorities to acquire land at a substantially reduced cost in certain cases meaning that compensation payments are closer to the existing use value for land which, with the aim to increase viability and support the delivery of schemes that deliver public benefits.

Landowners affected by such a direction will still be able to claim other types of compensation as well as seek additional compensation further down the line if the acquiring authority fails to build out the scheme as proposed.

It is important to put these changes into context as they will only apply in very specific circumstances. However, landowners potentially affected may want to keep under review their ability to apply for planning permission or a CAAD along with relevant timescales, ahead of the use of such powers by an acquiring authority. Tracking and objecting to the making of a CPO at all relevant stages would also be recommended in order to protect their position.

CHANGES TO THE CAAD PROCESS (S189)

Changes to the process for obtaining a Certificate of Appropriate Alternative Development (CAAD) are designed to ensure that the CPO compensation regime does not deliver elevated levels 'hope value' which could result in more than fair value being paid to affected landowners.

The powers in the LURA mean that compensation for alternative development can only be claimed following the issue of a CAAD and any 'hope value' in the future cannot be claimed. This means that when determining compensation, a Tribunal can only include compensation for development potential if a CAAD has been issued.

Other changes to the CAAD procedure are introduced which put more onus on landowners to evidence development value. For example, there is a new requirement for CAAD applications to specify the description of development(s) for which the CAAD is sought, along with the streamlining of the process so that local planning authorities will not have to assess all types of possible alternative development following a CAAD application, thus reducing their administrative burden, along with the cost burden for acquiring authorities.

CONDITIONAL CONFIRMATION OF CPOS (S183/184)

At present confirming authorities can only reject a CPO or confirm it with or without modifications, or to confirm it in stages. This new provision creates an additional option that allows confirmation of a CPO subject to conditions before it can be exercised.

Currently, acquiring authorities often delay making their CPO until other impediments (such as funding) have been overcome, and this can delay the overall scheme delivery. This power is designed to encourage acquiring authorities to make the CPO earlier in the process alongside other consenting and funding processes.

TIME LIMIT FOR IMPLEMENTATION OF CPOS BEYOND 3 YEARS (S185)

This change gives confirming authorities more flexibility in the implementation of CPOs by allowing longer than three years to implement a CPO after its confirmation where justified. It will be for the

confirming authority to decide whether a longer period is justified in the circumstances and what that longer period should be, if any.

Its aim is to support acquiring authorities wanting to bring forward more complex schemes which may need longer than three years to implement.

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