

English Devolution and Community Empowerment Bill

AMENDMENT
TO BE MOVED
IN GRAND COMMITTEE

[Supplementary to the Fifth Marshalled List]

After Clause 63

LORD BANNER
LORD GRABINER

After Clause 63, insert the following new Clause—

“CHAPTER 2A

LAND DISPOSED OF BY LOCAL COUNCILS

Discharge of statutory trusts

Secretary of State to have power to discharge statutory trusts

- (1) LGA 1972 is amended in accordance with this section.
- (2) After section 128 insert—

“Discharge of statutory trusts

128A Statutory trust discharge orders

- (1) The Secretary of State may make an order under this section in relation to land in England (a “statutory trust discharge order”).
- (2) The Secretary of State may not make a statutory trust discharge order in relation to land unless—
 - (a) a person has applied to the Secretary of State for the statutory trust discharge order to be made in relation to the land, and
 - (b) the Secretary of State is satisfied that the qualifying conditions are met (see section 128D).

- (3) The effect of an order being made in relation to land is that the land is freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with—
 - (a) section 164 of the Public Health Act 1875 (pleasure grounds), or
 - (b) section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds).
- (4) The order has that effect in relation to that land generally (and so its effect is not limited to that land as freehold or leasehold land as held by the applicant for the order).
- (5) The Secretary of State may, by regulations, make provision as to the making and determination of any application for a statutory trust discharge order.
- (6) Regulations under subsection (5) may in particular make provision as to—
 - (a) the steps to be taken by a person before making an application;
 - (b) the form of an application;
 - (c) the information or evidence to be supplied with an application;
 - (d) the publication of an application;
 - (e) the holding of an inquiry before determination of an application;
 - (f) the evidence to be taken into account in making a determination and the weight to be given to any evidence.
- (7) Regulations under subsection (5) may include provision for the Secretary of State to appoint a person to discharge any or all of the Secretary of State's functions in relation to an application for a statutory trust discharge order.
- (8) The power under subsection (5) to make regulations includes power to make—
 - (a) different provision for different cases;
 - (b) incidental, supplementary or consequential provision;
 - (c) transitional or saving provision.
- (9) A statutory instrument containing regulations under subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Section 128G contains further provision about the making of statutory trust discharge orders.

128B Applications for statutory trust discharge orders

- (1) A person making an application must have regard to any guidance issued by the Secretary of State (whether relating to how the application is made or to its form or content).
- (2) Qualifying condition B (see section 128D(3)) limits which kind of person is able to make a successful application.

- (3) An application may be varied after it has been made (and section 128A, this section, and sections 128D to 128G then apply to the application as varied).
- (4) The Secretary of State may require a person making an application to pay a fee before the Secretary of State considers the application (the “application fee”).
- (5) The application fee is to be of an amount specified in, or determined in accordance with, regulations made under section 128A(5).
- (6) The determination of an application for a statutory trust discharge order which relates to particular land does not prevent a further application from being made subsequently in relation to the same land.
- (7) But the Secretary of State may reject a further application if the Secretary of State considers that there has not been a material change in the circumstances relevant to the qualifying conditions.
- (8) If a further application is rejected, the Secretary of State must publish notice of the rejection in the manner which the Secretary of State considers appropriate.

128C Applications where land has been divided up

- (1) This section applies where —
 - (a) a principal council, parish council or parish meeting appropriated or disposed of land, and
 - (b) the freehold or leasehold title to that land has subsequently been divided.
- (2) An application may be made in relation to the land comprised in any of the relevant titles.
- (3) A single joint application may be made in relation to the land comprised in two or more of the relevant titles; and, in the case of such an application, the question of whether the qualifying conditions are met must be decided separately in relation to the land comprised in each title.
- (4) For the purposes of this section —
 - (a) a freehold title is “divided” if either or both of the following occurs —
 - (i) the title is divided into two or more different freehold titles;
 - (ii) a lease (including a sublease) is granted over some or all of the land comprised in the freehold title;
 - (b) a leasehold title is “divided” if —
 - (i) the title is divided into two or more different leasehold titles (for example by an assignment of part);
 - (ii) a sublease (including a sublease that is not immediately inferior to the leasehold title) is granted over some or all of the land comprised in the leasehold title.

- (5) In this section “relevant title” means—
- (a) the freehold title to the whole or a part of the land appropriated or disposed of;
 - (b) the title to a long lease of the whole or a part of the land appropriated or disposed of.

128D The qualifying conditions

- (1) This section sets out the “qualifying conditions” (referred to in section 128A(2)(b)).
- (2) *Qualifying condition A*: the application for the statutory trust discharge order identifies land in England in relation to which the order is being sought.
- (3) *Qualifying condition B*: the applicant for the order is—
 - (a) the freehold owner of the relevant land, or
 - (b) the tenant of the relevant land under a long lease, whether granted before or after commencement,
 at the time of the application (whether or not by virtue of the previous appropriation or disposal).
- (4) *Qualifying condition C*: a principal council, parish council or parish meeting—
 - (a) appropriated, or
 - (b) disposed of,
 the relevant land at a time before the application for the statutory trust discharge order is made (the “previous appropriation or disposal”).
- (5) It does not matter whether the previous appropriation or disposal occurred before or after commencement.
- (6) *Qualifying condition D*: the previous advertisement procedure was not complied with in relation to the previous appropriation or disposal.
- (7) For the purposes of determining whether qualifying condition D is met—
 - (a) it is sufficient that the previous advertisement procedure was not complied with;
 - (b) accordingly, it is irrelevant—
 - (i) whether the previous advertisement procedure in fact had to be complied with, or
 - (ii) whether the land was in fact land held in trust for enjoyment by the public in accordance with a trust of the kind mentioned in section 128A(3).
- (8) Section 128F includes provision for presuming that the previous advertisement procedure was not complied with; and qualifying condition D must be taken to be met if that presumption is made.
- (9) *Qualifying condition E*: the new publicity requirements have been complied with.

- (10) *Qualifying condition F*: it is in the public interest for the relevant land to be freed from the trusts by virtue of the order.
- (11) The reference in subsection (10) to the public interest includes the public interest in —
 - (a) nature conservation;
 - (b) the conservation of the landscape;
 - (c) the protection of public rights of access to the relevant land;
 - (d) the protection of archaeological remains and features of historic interest;
 - (e) development proposals relating to the relevant land;
 - (f) economic, environmental or social benefits which the order would facilitate if made.

128E The new publicity requirements

- (1) This section sets out the “new publicity requirements” (referred to in qualifying condition E in section 128D(9)).
- (2) The applicant must publish a notice of the application in four consecutive weeks —
 - (a) in a local newspaper — and, if there are two or more local newspapers, it must be the main local newspaper;
 - (b) if there is no local newspaper, either —
 - (i) in a national newspaper, or
 - (ii) on a website with a readership in the local area that is comparable to the readership of a local newspaper.
- (3) If —
 - (a) a newspaper is published in print and on a website, and
 - (b) it is possible to publish notices of the kind required by subsection (2) in both versions,a requirement under subsection (2) to publish a notice in the newspaper can only be complied with by publication of the notice in both versions.
- (4) If the applicant is a principal council, a parish council or parish trustees, they must also publish a notice of the application for a period of 28 days on their website (if they have one).
- (5) The applicant must display a notice of the application for a period of 28 days at the point of entry, or at the main points of entry, to the relevant land.
- (6) The Secretary of State must publish a notice of the application for a period of 28 days on the website, or main website, containing information about the Secretary of State’s department.
- (7) A notice under this section must identify the relevant land.
- (8) A notice under this section must —

- (a) state that a person who wishes to make representations about whether or not the order should be made may notify the Secretary of State of the representations, and
 - (b) state the manner in which, and date by which, representations must be notified;
- and that date must be later than the last day of the period of 56 days beginning with the day when that notice is first published or displayed.
- (9) When publishing or displaying a notice under this section, the applicant must have regard to any guidance issued by the Secretary of State (whether relating to its publication or display or its form or content).
 - (10) In this section –
 - “local area” means area in which the relevant land is situated;
 - “local newspaper” means a newspaper circulating in the local area.

128F Previous advertisement procedure: co-operation by councils etc and presumption

- (1) This section applies if an application has been made to the Secretary of State for a statutory trust discharge order.
- (2) The Secretary of State must notify the relevant council or parish trustees of –
 - (a) the application,
 - (b) the relevant land, and
 - (c) the information about the previous appropriation or disposal which the Secretary of State has as a result of the application.
- (3) Within the response period, the relevant council or parish trustees must give the Secretary of State –
 - (a) notice which –
 - (i) confirms that the previous advertisement procedure was complied with in relation to the previous appropriation or disposal,
 - (ii) confirms that the previous advertisement procedure was not complied with in relation to the previous appropriation or disposal, or
 - (iii) states that the relevant council or parish trustees are not able to confirm either of those things, and
 - (b) any information relating to compliance, or non-compliance, with the previous advertisement procedure which the relevant council or parish trustees have.
- (4) If the relevant council or parish trustees –
 - (a) give the Secretary of State a notice under subsection (3)(a)(iii) within the response period, or
 - (b) do not give the Secretary of State any notice under subsection (3)(a) within the response period,

the Secretary of State must presume that the previous advertisement procedure was not complied with in relation to the previous appropriation or disposal, unless the Secretary of State is satisfied that the procedure was complied with.

(5) In this section –

“relevant council or parish trustees” means –

- (a) in a case where a principal council undertook the previous appropriation or disposal, the principal council for the area where the relevant land is situated;
- (b) in a case where a parish council undertook the previous appropriation or disposal –
 - (i) the parish council or parish trustees for the area where the relevant land is situated, or
 - (ii) if the relevant land is no longer in the area of a parish, the principal council for the area where the relevant land is situated;
- (c) in a case where a parish meeting undertook the previous appropriation or disposal –
 - (i) the parish trustees or parish council for the area where the relevant land is situated, or
 - (ii) if the relevant land is no longer in the area of a parish, the principal council for the area where the relevant land is situated;

“response period”, in relation to a notification given by the Secretary of State under subsection (2), means the period of 28 days beginning with the day on which the notice is received by the relevant council or parish trustees.

128G Making statutory trust discharge orders

- (1) In deciding whether to make a statutory trust discharge order, the Secretary of State must take into account all matters that are relevant, including these matters –
 - (a) whether, and how, the person making the application has had regard to the guidance issued by the Secretary of State under section 128B(1) and section 128E(9);
 - (b) any representations about whether or not the order should be made that are notified to the Secretary of State (including any representations made by persons who are freehold owners, or tenants, of land comprised in the previous appropriation or disposal but who are not applying for the order).
- (2) A statutory trust discharge order may relate to only some of the relevant land specified in the application.
- (3) A statutory trust discharge order takes effect –
 - (a) on the day after the day on which the order is made, or

- (b) if the order specifies a later day on which it is to take effect, on that day.
- (4) In relation to each application for a statutory trust discharge order, the Secretary of State –
 - (a) must publish notice of the decision whether or not to make the order, and
 - (b) if the order is made, must publish the order.
- (5) That notice, or the order, is to be published in the manner which the Secretary of State considers appropriate.

128H Sections 128A to 128G: interpretation and application to the Crown

- (1) In sections 128A to 128G and this section –
 - “application” means an application for a statutory trust discharge order;
 - “commencement” means the coming into force of section (*Secretary of State to have power to discharge statutory trusts*) of the English Devolution and Community Empowerment Act 2025;
 - “long lease” means a lease which was granted for a term of 20 years or longer;
 - “new publicity requirements” has the meaning given in section 128E(1);
 - “previous advertisement procedure” means whichever of the following applied to the previous appropriation or disposal –
 - (a) the requirement to advertise notice of the intention to make the appropriation in accordance with –
 - (i) section 122(2A) in the case of an appropriation by a principal council;
 - (ii) section 126(4A) in the case of an appropriation by a parish council or parish meeting;
 - (b) the requirement to advertise notice of the intention to make the disposal in accordance with –
 - (i) section 123(2A) in the case of a disposal by a principal council;
 - (ii) section 123(2A) as applied by section 127(2) in the case of a disposal by a parish council or parish meeting;
 - “previous appropriation or disposal” has the meaning given in section 128D(4);
 - “qualifying conditions” has the meaning given in section 128D(1);
 - “relevant land” means the land identified in the application for a statutory trust discharge order as the land relation to which the order is being sought;
 - “statutory trust discharge order” has the meaning given in section 128A(1).

- (2) A reference in sections 128A to 128G to the freehold owner, or the tenant under a long lease, is a reference to –
- (a) the Crown Estate Commissioners, if the freehold or long lease belongs to His Majesty in right of the Crown and forms part of the Crown Estate;
 - (b) the government department having the management of the freehold or long lease, if it belongs to His Majesty in right of the Crown but does not form part of the Crown estate;
 - (c) the government department concerned, if the freehold or long lease belongs to a government department or is held in trust for His Majesty for the purposes of a government department;
 - (d) a person appointed by His Majesty in writing under the Royal Sign Manual, or if no such appointment is made the Secretary of State, if the freehold or long lease belongs to His Majesty in right of His private estates (which must be construed in accordance with section 1 of the Crown Private Estates Act 1862);
 - (e) the Chancellor of the Duchy of Lancaster, if the freehold or long lease belongs to His Majesty in right of the Duchy of Lancaster;
 - (f) a person appointed by the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, if the freehold or long lease belongs to the Duchy of Cornwall.”
- (3) In section 266(1) (orders which are to be made by statutory instrument), for “other than section 261 above” substitute “other than section 128A”.

Member's explanatory statement

This would enable the Secretary of State to make an order in relation to land previously appropriated or disposed of by a council. The order would discharge the land from statutory trusts relating to open land that arise under section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1906.

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