

Compulsory Purchase Reform in Scotland

Consultation Paper

September 2025

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Foreword

This consultation is a significant step towards putting in place a fairer, faster and simpler compulsory purchase system for Scotland.

Compulsory Purchase Orders (CPOs) are a powerful tool – with potential to help drive real change for Scotland's people and places. They can enable the delivery of development and infrastructure projects needed to deliver economic growth and reach net zero. They can support the transformation of land and buildings which are disused, dilapidated and which blight communities. And they can help to accelerate the delivery of new homes, or to put empty properties back to productive use.

We accept that this potential has not yet been fully realised: many public bodies rarely, if ever, make use of their CPO powers. The current system can often be seen as opaque, antagonistic, costly and time consuming.

We want to change that. The proposals set out here could provide the basis for a more effective and modernised system which is less onerous for authorities – and fairer and more transparent for those affected.

The core of compulsory purchase legislation is almost two centuries old, and so changes to this very complicated system are long overdue. This consultation identifies many aspects of the existing legislation which could be improved so that the process works more smoothly, is easier to navigate and is simpler to understand and apply in practice.

The consultation also invites views on the associated concept of Compulsory Sale Orders, which have been suggested as an alternative or additional tool. If they are taken forward they will require a new legislative framework, likely incorporating similar procedures, checks and balances to CPO.

Whilst there is no doubt about the scale of this task – and the detail involved has been substantial – this is much more than a technical exercise. We hope that these proposals will lead to ambitious and comprehensive legislation which in turn will help to drive a more positive and proactive approach to infrastructure and development delivery by public bodies across Scotland in the future.

We would urge everyone with an interest in Scotland's future development to share their views on the proposals set out here.

The consultation paper has been informed by detailed analysis and input from a range of stakeholders. We are very grateful to all those we have spoken to, and members of the Practitioner Advisory Group, for their considered advice, expertise and input to date.

Roseanna Cunningham & Fiona Simpson, Chief Planner

Joint Chairs of the Compulsory Purchase Reform Practitioner Advisory Group

1. Introduction

The case for reform

- 1.1 Compulsory purchase is a powerful tool. It can help to deliver a wide range of projects – large and small – that would not otherwise happen. This can range from bringing individual empty homes back into use and the refurbishment of vacant or derelict properties, through to the delivery of major infrastructure and town centre redevelopment schemes.
- 1.2 By unlocking schemes in the public interest, compulsory purchase can bring about social, economic and environmental improvements and contribute to Scotland's National Outcomes. In doing so it can support many of the Scottish Government's strategic plans, policies and programmes – including [National Planning Framework 4](#), the [National Transport Strategy](#) and the [Infrastructure Investment Plan](#), and contribute to addressing the housing emergency.
- 1.3 While acknowledging the potential benefits that compulsory purchase can help to secure, it must be recognised that it intrudes on people's property rights: taking someone's home or business is a serious step. The use of compulsory purchase powers therefore requires careful consideration and clear justification. People must be able to understand the process, have opportunities to object and compensation must be fair.
- 1.4 Current Scottish Government policy encourages public bodies to take a positive and proactive approach to the use of compulsory purchase powers. Despite this, the use of compulsory purchase is not particularly widespread and it is fair to suggest that it is an under-utilised tool. There are a number of reasons why compulsory purchase is not used more frequently, but one of the fundamental issues is the current legal framework.
- 1.5 The Scottish Law Commission carried out an [extensive review between 2014 and 2016](#). Its 2014 Discussion Paper suggested that: "the age and complexity of the primary legislation may well discourage its use by those who would otherwise wish to initiate the process". The Commission's 2016 Final Report concluded that "the legislation is old, difficult to understand and does not work effectively in a modern context" and that those who the Commission consulted with: "took the view that the system, both procedurally and in relation to the award of compensation, does not operate fairly".
- 1.6 So while compulsory purchase has the potential to support the Scottish Government's ambitions across multiple policy areas, it is clear that this potential is not currently being fulfilled. The system as it exists in 2025 is not working; the positive role that compulsory purchase could play is hamstrung by a legislative framework which dates back almost 200 years. The case for reforming and modernising Scotland's compulsory purchase system could hardly be clearer and the Scottish Government has committed to do just that. The comprehensive package of proposals contained in this consultation mark an important step towards delivering a compulsory purchase regime fit for the 21st Century.

The aims of the reform programme

- 1.7 The overarching aims of the compulsory purchase reform programme are set out in the boxed text below.

The Scottish Government wants compulsory purchase to fulfil its potential as a tool for delivering projects in the public interest – one that encourages authorities to make positive and proactive use of their powers, including in partnership with third parties.

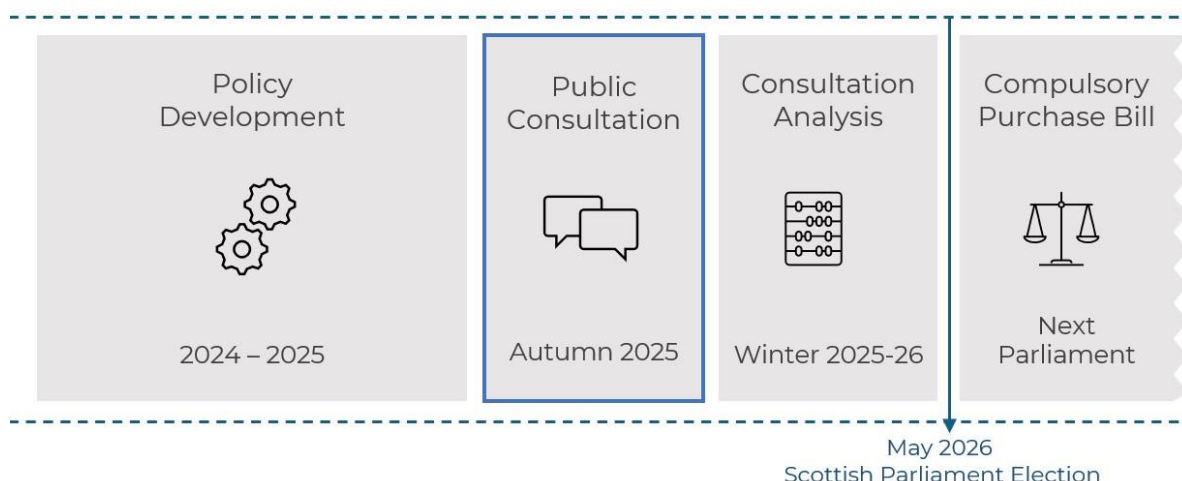
The overall objective of the reform programme is to make the system **simpler**, more **streamlined** and **fairer** for all parties. In doing so, our aim is to move towards a system that is:

- **Equitable:** Compensates claimants fairly and timeously.
- **Effective:** Supports efficient decision-making, whilst ensuring procedural fairness, openness, and transparency.
- **Easy to understand:** Provides all parties with certainty and clarity about how the process works and their rights, roles and responsibilities within it.

The reform programme to date

- 1.8 Compulsory purchase reform is a substantial undertaking. The reform programme got underway in Spring 2024, and will be delivered over a number of years. The publication of this consultation paper represents the culmination of more than a year of policy development work and stakeholder engagement. The consultation is an important milestone and follows on from the [Progress Report](#) published in December 2024. Analysis of the consultation responses will take place over the winter of 2025-26.
- 1.9 Any substantive reform to compulsory purchase will involve making changes to primary legislation, which requires [a Bill](#). Given the limited time remaining in the current Parliament, a Compulsory Purchase Bill would need to be taken forward after the Scottish Parliament election scheduled for May 2026, subject to the views of the new Scottish Ministers.

Figure 1: Timetable of reform programme



Stakeholder engagement

- 1.10 Compulsory purchase is of interest to a variety of different stakeholders in the public, private and third sectors. In developing the options and proposals contained in this consultation, we have engaged with a wide range of groups. We would like to thank all the people and organisations we have spoken to over the last year, for the interest they have shown in the work and for the valuable feedback provided.
- 1.11 As already noted, compulsory purchase is complex. To illustrate the point, the Scottish Law Commission’s Discussion Paper and Final Report ran to a combined 1,100+ pages. It is also a specialist subject which brings together various technical disciplines. In that context, we wanted to be able to draw on the knowledge of those with first-hand experience of working with the system.
- 1.12 That is why we established the [Practitioner Advisory Group \(PAG\)](#), jointly chaired by Roseanna Cunningham and the Chief Planner, Fiona Simpson. The PAG has acted as a sounding board for emerging options and a source of practical expertise and information. We are very grateful to Ms Cunningham and to all members of the PAG for the time they have generously given to the project – and for the insights and challenges they have provided.

This consultation

- 1.13 We acknowledge that this is a technical and comparatively lengthy consultation document. That is partly a reflection of the subject matter, its inherent complexity and the fragmented nature of the legislation. But it also reflects our determination to take forward compulsory purchase reform in a meaningful way, and to adopt a comprehensive rather than piecemeal approach.
- 1.14 We have endeavoured to make the consultation as straightforward to follow as possible, and to explain key terms and concepts throughout. There is a glossary of terms at the end of this paper and a high-level overview of how the compulsory purchase system works in chapter 2, which we hope are of assistance. We nevertheless recognise that some people – particularly those

less familiar with compulsory purchase – may find further explanation of certain aspects of the consultation helpful. If that is the case, please do get in touch at CPO.Reform@gov.scot.

- 1.15 The policy development phase of the programme has been structured around five thematic ‘building blocks’, which broadly correspond to the stages of the compulsory purchase process. The same building blocks have been used to organise this consultation and the proposals we are seeking views on:
- Enabling powers (chapter 3)
 - Early engagement and preliminary steps (chapter 4)
 - Confirmation procedures (chapters 5 and 6)
 - Implementation (chapter 7)
 - Compensation (chapters 8 and 9)
- 1.16 Views are also sought on the draft BRIA and to support the other impact assessments being prepared alongside the consultation proposals (chapter 11).

Compulsory sale and lease orders

- 1.17 The Programme for Government 2023-24 contained a commitment that the Scottish Government would continue to consider the justification for, and practical operation of, compulsory sale orders. To further that consideration, some questions on compulsory sale orders (and compulsory lease orders) are included at chapter 10.

Next steps

- 1.18 The consultation is open until **19 December 2025**, which is the deadline for comments. The feedback received will be used to inform the further development and refinement of reform proposals. As noted, any changes that would involve amending primary legislation will require to be implemented through a Bill after the next Scottish Parliament elections.
- 1.19 Those wishing to respond to the questions posed in this consultation paper should use Citizen Space, the Scottish Government’s online consultation portal: <https://consult.gov.scot/planning-architecture/compulsory-purchase-reform/>.
- 1.20 If you are unable to respond using Citizen Space, responses can be sent (together with a Respondent Information Form (RIF)) to CPO.Reform@gov.scot or by post. Additional information on how to respond, and how your response will be handled, is at the end of this consultation paper.

2. Overview: How compulsory purchase works

What is compulsory purchase?

- 2.1 As the name suggests, compulsory purchase powers provide a mechanism by which certain organisations can acquire land (including buildings) without the consent of their owner.
- 2.2 Taking a person's property is a serious step and one which interferes with the private rights of those affected; it also engages various protections¹ under the European Convention on Human Rights (ECHR). So while the use of compulsory purchase can help to deliver positive outcomes in the public interest, it is essential that appropriate safeguards are in place to ensure that, in any given case:
- the use of compulsory purchase powers is justified and proportionate
 - those who are affected have the opportunity to object and are compensated fairly

Who has compulsory purchase powers?

- 2.3 A wide range of public sector bodies have compulsory purchase powers, including local authorities and certain infrastructure providers such as utilities companies. Scottish Ministers also have compulsory purchase powers which are exercised by agencies such as Transport Scotland.
- 2.4 Bodies with compulsory purchase powers are known as 'acquiring authorities'. Legislation specifies the purpose(s) which particular acquiring authorities can compulsorily purchase land for. These are referred to as 'enabling powers'.
- 2.5 Each acquiring authority's enabling powers relate to their statutory functions and objectives. The link between an acquiring authority's enabling powers and its statutory functions goes back to the intrusive nature of compulsory purchase: to be justified, an acquisition needs to serve a legitimate purpose which Parliament has provided for in legislation. Enabling powers are covered in more detail in chapter 3.

How are compulsory purchase powers used?

- 2.6 Having compulsory purchase powers is one thing; using them is another. The existence of compulsory purchase powers does not, in itself, authorise the relevant authority to acquire whatever land it likes, whenever it likes. To make use of its powers, an acquiring authority will need to prepare a compulsory purchase order (CPO). A CPO identifies the specific land that is to be acquired, the relevant enabling powers being used and the purpose of the

¹ Specifically: the protection of property under article 1 of the first protocol ("A1P1"); the right to a fair trial under article 6; and (in some cases such as where a home is acquired) the right to respect for private and family life under article 8.

proposed acquisition. It will generally be accompanied by a Statement of Reasons, which sets out the acquiring authority's justification.

- 2.7 Acquiring authorities are expected to start engaging with those affected by a prospective compulsory purchase early in the process. Doing so can help build trust, reduce conflict and potentially even avoid the need for compulsory purchase at all. Such engagement can ultimately save all parties time and money. The acquiring authority should try to buy land by agreement before making a CPO, although in some cases this may not be practical². Early engagement is covered in more detail in chapter 4.

Who decides whether a CPO is approved? How are those decisions made?

- 2.8 All CPOs are subject to 'confirmation' (i.e. approval) by the Scottish Ministers. Once a CPO has been made, the acquiring authority must notify affected owners and occupiers and advertise the Order. Requirements for making the CPO and for notification and advertisement are covered in more detail in chapter 5. The CPO is then sent to Scottish Ministers for determination. There follows a period of not less than 21 days for parties to make objections, which are submitted directly to the Scottish Government.
- 2.9 If no objections are received, Scottish Ministers will decide whether or not to confirm the CPO. If objections are received and not withdrawn, the case will be transferred to the Planning and Environmental Appeals Division (DPEA) who will arrange for it to be considered by a Reporter. A Public Local Inquiry or Hearing will be held, after which the Reporter will prepare a report to the Scottish Ministers with recommendations as to whether the CPO should be confirmed. The final decision rests with Scottish Ministers.
- 2.10 For any CPO to be confirmed, the decision-maker must be satisfied that there is a strong enough case in the public interest to justify the acquisition. In deciding whether to confirm a CPO, Scottish Ministers will weigh up the public benefit in the authority's proposals against the private interests of the people affected. CPO decisions are taken on their merits: the justification for an Order depends on the circumstances of the case. The procedures for determining whether or not CPOs are confirmed – and the basis of those decisions – are covered in more detail in chapter 6.
- 2.11 The paragraphs above apply to the majority of acquiring authorities. The equivalent terminology is different for Ministerial CPOs – for example, where Transport Scotland is the acquiring authority. In such cases, the Order is technically 'made in draft' and, if it is approved, 'made' (i.e. rather than 'made' and 'confirmed'). The Order will be prepared by the agency and then sent to the Scottish Ministers for approval. If there are objections the case will be considered by DPEA as in paragraph 2.9. For simplicity, this consultation

² See paragraphs 7 and 8 of [Circular 6/2011](#).

document refers to CPOs being made and then confirmed. Such references should be read in the context of this paragraph.

How is a CPO implemented?

- 2.12 A confirmed CPO does not, in itself, transfer ownership of the land to the acquiring authority. To exercise the powers conferred by a confirmed CPO and take possession of the land, the acquiring authority must serve notice on affected owners and occupiers. There are two main ways of doing this: by preparing a 'general vesting declaration' or by serving a 'notice to treat'. Whichever procedure is used, the acquiring authority has three years within which to initiate the implementation of a CPO – after which the powers lapse. The procedures for taking possession of and title to land within a CPO are covered in more detail in chapter 7.

Compensation

- 2.13 Those whose property is acquired compulsorily are entitled to compensation. The rules governing compulsory purchase compensation in Scotland are founded on the underlying and long-standing principle of 'equivalence'. This is the principle that those whose land is acquired by compulsion should be put (at least in financial terms) in the same position after the acquisition as they were before it, being left neither better off nor worse off as a result. There are four principal elements of compensation:
- the value of the land taken
 - injurious affection (reduction in value of retained land)³
 - disturbance
 - loss payments
- 2.14 Disputes over CPO compensation are settled by the Lands Tribunal for Scotland (LTS). Compensation is covered in more detail in chapter 8 and the associated procedures in chapter 9.

Legislation and guidance

- 2.15 As noted in chapter 1, Scotland's compulsory purchase legislation is complex and fragmented – being spread across multiple statutes which date back to the mid-19th Century. The table below sets out the key statutes which govern compulsory purchase procedures and compensation. These pieces of legislation are referred to throughout this consultation document by the stated shorthand. The table does not include enabling powers; as explained in chapter 3, these are in the various acts which set out acquiring authorities' statutory functions.

³ Sometimes a CPO will take only part of a person's land. In those cases special rules apply to take account of the impact on the land they have left, known as 'retained land'.

Full Title	Shorthand
Lands Clauses Consolidation (Scotland) Act 1845	The 1845 Act
Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947	The 1947 Act
Land Compensation (Scotland) Act 1963	The 1963 Act
Land Compensation (Scotland) Act 1973	The 1973 Act
Town and Country Planning (Scotland) Act 1997 (Schedule 15: General Vesting Declarations)	The 1997 Act

- 2.16 The Scottish Government has produced a number of policy and guidance documents on compulsory purchase. The key document is [Circular 6/2011](#), which sets out policy on the use of compulsory purchase powers, including the factors Scottish Ministers will take into account when taking CPO decisions. It also contains advice and guidance on specific topics.
- 2.17 A five-part series of Guidance Notes aimed specifically at acquiring authorities was published by the Scottish Government in 2018:
- [Guidance Note No.1: Can I use compulsory purchase?](#)
 - [Guidance Note No.2: What should I do before developing a CPO?](#)
 - [Guidance Note No.3: How do I prepare and submit a CPO?](#)
 - [Guidance Note No.4: How do Scottish Ministers consider a CPO?](#)
 - [Guidance Note No.5: Confirmed Orders – next steps](#)
- 2.18 In 2019, guidance was published for those affected by compulsory purchase projects: [Compulsory Purchase in Scotland: A guide for property owners and occupiers](#). The above documents and a range of other information and guidance can be found on the Scottish Government's [compulsory purchase homepage](#), which includes a [register](#) of all the CPOs submitted to the Scottish Ministers for confirmation since 2012.

Options and proposals

- 2.19 Our intention is that a future Compulsory Purchase Bill would not just amend current provisions but would replace and repeal existing primary legislation relating to compulsory purchase procedures and compensation. A single Compulsory Purchase Act incorporating the reforms introduced through this programme would offer clear benefits in terms of clarity and useability. This was proposed by the Scottish Law Commission in its 2014-16 review and universally supported by respondents.

- 2.20 The introduction of a single Compulsory Purchase statute combining procedural requirements and compensation is our aspiration and preferred option. We do not think this statute should include enabling powers, which in the interests of flexibility would continue to be contained in the statutes for the relevant policy areas (e.g. housing, planning, education etc). However, the proposed Bill could amend those enabling powers where necessary.
- 2.21 Where existing compulsory purchase procedures have been incorporated into 'special acts' and other legislation, our preference is that they should be replaced by the new procedures, with transitional provisions where necessary to deal with projects already underway.

Question 1: Do you agree that legislation governing compulsory purchase procedures and compensation in Scotland should be brought into a single statute?

Question 2: Do you have any specific concerns in relation to the repeal of existing legislation on CPO procedures and compensation that we should consider?

3. Enabling powers

Overview

- 3.1 Enabling powers specify who can compulsorily acquire land and the purposes for which it can be acquired. They relate to the statutory functions of the acquiring authority concerned, such as planning, housing, environmental protection or the provision of various types of infrastructure. Enabling powers also set out the nature of the interests that can be acquired and, in particular, whether this can include the creation of new rights short of full ownership (e.g. servitudes). This chapter of the consultation covers:
- who can acquire land and for what purpose(s)
 - the nature of what can be acquired
 - creation of new rights in land
 - temporary possession
- 3.2 Additionally, this chapter looks at the relationship between compulsory purchase powers and other mechanisms, including community rights under Land Reform legislation and orders under the Transport and Works (Scotland) Act 2007.

Who can acquire land and for what purpose(s)?

- 3.3 A very wide range of organisations have compulsory purchase powers – and for a wide range of purposes. Acquiring authorities include:
- the Scottish Ministers – who have powers under various pieces of legislation. In some cases, these powers are in practice utilised by national agencies (e.g. Transport Scotland, Forestry and Land Scotland)
 - local authorities – under various pieces of legislation covering their statutory functions
 - executive non-departmental public bodies such as NatureScot and Scottish Environment Protection Agency (SEPA), and public companies such as Scottish Water
 - private companies holding transmission licences, electricity system operator licences or certain distribution licences under the Electricity Act 1989
 - executive non-departmental public bodies of the UK Government which have functions in Scotland, such as Network Rail
- 3.4 As noted, each acquiring authority's enabling powers correspond to their statutory functions and objectives. This means that, for example, Transport Scotland can compulsorily purchase land to construct or improve a trunk road – but it cannot do so for (say) a housing development or a hospital. Organisations which have several statutory functions, such as local authorities, may have multiple compulsory purchase powers. Although not

exhaustive, [Appendix B of Circular 6/2011](#) sets out a range of the compulsory purchase powers applicable in Scotland.

- 3.5 During the course of the reform work, we have spoken to a range of stakeholders – both within and outside of the Scottish Government – to understand whether there are any gaps in existing enabling powers or any uncertainty as to their scope. Put another way: are there activities that authorities may need to carry out in exercising their statutory functions which could involve compulsory purchase but which fall outside the scope of their enabling powers?
- 3.6 On the basis of this engagement, there do not appear to be fundamental gaps in the scope of enabling powers. In general, compulsory purchase powers are broad and correspond appropriately to acquiring authorities' statutory functions. There are two notable exceptions to this:
- **South of Scotland Enterprise (SOSE)** does not have compulsory purchase powers (unlike Scottish Enterprise and Highlands and Islands Enterprise)
 - although they can promote schemes under TAWS legislation (see paragraph 3.24), **Network Rail** have relatively limited general powers of compulsory purchase compared to other infrastructure providers
- 3.7 We can see that new CPO powers could support these bodies in delivering their statutory functions and will explore the matter further. In the case of SOSE, these could help to promote economic development in, and attract investment to, the South of Scotland.

Question 3: With the exception of the bodies referred to at paragraph 3.6, are there any gaps in acquiring authorities' enabling powers? Please provide specific examples.

Local Authority powers

- 3.8 As the table below indicates, local authorities have extensive compulsory purchase powers, which can be used to support a wide variety of projects in the public interest. This includes refurbishing empty homes and bringing vacant and derelict land or buildings back into use, helping to address the blight that such sites can cause to communities across Scotland. There do not appear to us to be any obvious gaps in the scope of local authorities' powers. We would welcome views on this, including whether there is any scope for clarification.

Question 4: Are local authorities' compulsory purchase powers (set out below) sufficiently broad to cover the circumstances in which they may need to compulsorily acquire land in carrying out their statutory functions?

If not, please specify which powers require to be amended, clarified or supplemented.

Key Local Authority Compulsory Purchase Powers

Power	Purpose(s) for which land can be acquired
<u>Section 45, Building (Scotland) Act 2003</u>	Acquiring a building and its site on which the authority has carried out works under the Act's enforcement provisions for dangerous buildings, and has then demolished the building, but the work / demolition costs incurred cannot be recovered because the property owner cannot be found.
<u>Section 20, Education (Scotland) Act 1980</u>	To enable the execution of any of the authority's functions as an education authority.
<u>Section 66, Flood Risk Management (Scotland) Act 2009</u>	For operations specified in the authority's flood protection scheme.
<u>Sections 9 and 10, Housing (Scotland) Act 1987</u>	For or in connection with the provision of housing accommodation.
<u>Section 124, Housing (Scotland) Act 1987</u>	Acquiring the site of a building which has been demolished by the authority where an owner fails to comply with a demolition order under this Act, and the demolition costs cannot be recovered because the owner cannot be found.
<u>Section 40, Housing (Scotland) Act 2006</u>	Acquisition of a house and its site for the purposes of demolition where the house owner fails to comply with a demolition notice served under the Act.
<u>Section 71, Local Government (Scotland) Act 1973</u>	For the purposes of any of the authority's functions under any Act.
<u>Section 42, Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997</u>	For the preservation of listed buildings.
<u>Sections 103 to 110, Roads (Scotland) Act 1984</u>	Various purposes including: the construction, improvement or protection of public roads (including cycle tracks and footpaths); the provision of buildings/facilities needed for constructing, improving, maintaining or servicing a public road; mitigating any adverse effect of their roads on the surroundings of the road.
<u>Section 189, Town and Country Planning (Scotland) Act 1997</u>	Carrying out development, redevelopment or improvement; or a purpose necessary to achieve in the interests of the proper planning of an area.

Creation of new rights in land

- 3.9 Where a piece of land is subject to compulsory purchase, the acquiring authority will generally need to acquire the whole interest on a permanent basis. However, in certain circumstances, an acquiring authority may be able to achieve its purposes through the creation of a new right in land (such as a servitude) without needing to acquire the land outright.
- 3.10 Doing so may be mutually beneficial. The creation of lesser rights may be less intrusive in terms of land-take and so cause less disruption to affected owners and occupiers; it may also be less costly in terms of compensation. This flexibility can therefore help to enable public interest objectives to be achieved in a more proportionate and streamlined way.
- 3.11 However, acquiring authorities need express provision in legislation to allow them to create new rights in land, and not all enabling powers have this. For example, section 19 of the Forestry and Land Management (Scotland) Act 2018 allows the creation of new rights, while others, such as section 47 of the Water Industry (Scotland) Act 2002, do not. In practice, this means that some acquiring authorities have the flexibility to create new rights in land whereas others do not. There does not seem to be a clear policy reason for this inconsistency.
- 3.12 Given the potential benefits such powers offer to both landowners and acquiring authorities, we intend to address this issue. Specifically, we propose to take forward a general power for all acquiring authorities to create new rights in land – and to attach conditions to such rights (for example, to prevent tree planting over the relevant area).

<p>Question 5: Should there be a general power for acquiring authorities to create new rights in land and to attach conditions to such rights?</p>

Temporary possession

- 3.13 Acquiring authorities may find it beneficial to acquire land on a temporary rather than permanent basis. For example, land may be needed for temporary facilities or for storage purposes during the construction of a project but not required once it is operational. Such arrangements may be less disruptive to the landowner and less costly for an acquiring authority than permanent acquisition.
- 3.14 However, as with the ability to create new rights in land, temporary possession can only be taken (unless agreed on a voluntary basis) where it is expressly provided for in an enabling Act. It would appear that the only express powers to take temporary possession under Scottish acts relate to projects which have been authorised through specific private acts or TAWS order. For example, the Edinburgh Tram (Line One) Act 2006 and Forth Crossing Act 2011.

3.15 Our view is that a new power of compulsory temporary possession would provide additional flexibility that could benefit both acquiring authorities and affected owners. We therefore propose to take this forward. However, we consider that the following would need to be set out in legislation to ensure use of any new temporary possession powers is proportionate and fair:

- the process by which temporary possession is to be sought and authorised
- the uses and works that may be carried out on land by the acquiring authority during the period of temporary possession
- notice requirements prior to taking temporary possession of land
- the maximum duration of possession (under the Waverley Railway Act this was one year following the completion of the works – unless agreed by the owner)
- the condition to which land is to be reinstated at the end of the period of temporary possession
- compensation entitlement of affected parties
- how disputes are to be settled

Question 6: Should there be a general power for acquiring authorities to seek temporary possession of land?

Question 7: Do you agree with the proposed list of matters that should be addressed in any new temporary possession power? If not, please give details.

Back-to-back CPOs

3.16 Compulsory purchase powers can only be used by those bodies which are authorised to do so by statute. However, it is possible for an acquiring authority to compulsorily acquire land which it is not intending to use or develop itself, and dispose of the land to a third party after the acquisition.

3.17 These types of arrangement are sometimes referred to as ‘back-to-back’ CPOs. They can support land assembly for projects that are to be financed or developed by (or in partnership with) a third party such as a private developer, a community group or another public body.

3.18 Back-to-back CPOs can help authorities to deliver schemes that would not otherwise be possible. It should be noted that the process does not necessarily need to be initiated by an acquiring authority; a third party can approach the acquiring authority and request that it uses its compulsory purchase powers. It is important to stress that CPOs involving a third party are determined like any other CPO: the purpose of the acquisition must fall within the scope of the acquiring authority’s enabling powers and demonstrably be in the public interest.

- 3.19 While public finances remain constrained, our view is that back-to-back CPOs could play an important role in delivering projects that require partnership working between public, private and voluntary sectors to unlock. Circular 6/2011 makes clear that back-to-back arrangements are a legitimate way of using compulsory purchase powers. However, it is apparent that some authorities have limited awareness of such approaches. We would therefore be interested in how the use of back-to-back CPOs might be encouraged – including whether more detailed guidance would be beneficial.

Question 8: How might the use of back-to-back CPOs be further encouraged?

Relationship with other powers

Compulsory purchase, community ownership and land reform

- 3.20 Communities in Scotland have rights to acquire land or buildings under the Land Reform (Scotland) Act 2003 and Reform (Scotland) Act 2016. These are known as ‘Community Rights to Buy’ (CRTB) and include, in certain circumstances, the ability to compulsorily purchase land. The legislation and procedures governing these community rights are different from those which apply when acquiring authorities take forward a CPO. As such, CRTB is not within the scope of the compulsory purchase reform programme. However, the Scottish Government is carrying out [a separate review of CRTB](#), which will report in December 2025.
- 3.21 Compulsory purchase is a land assembly tool rather than a land reform mechanism. The role of CPO is to enable statutory bodies to deliver specific projects, in the public interest, in accordance with their statutory functions. As noted above, it is possible for acquiring authorities to use their powers to deliver projects they are not intending to deliver themselves through so-called back-to-back CPOs. If CRTB powers were not an appropriate mechanism in the circumstances of a case, a community group could potentially ask a local authority to compulsorily acquire land on its behalf. Whether or not to do so would be at the authority's discretion.
- 3.22 It is vital to note that a CPO made in such circumstances would be assessed on the same basis as any other CPO (see chapter 6 for more detail on how CPO decisions are taken). Seeking to change the ownership of land cannot, in and of itself, be the objective of compulsory purchase: the acquisition must serve a specific purpose (e.g. planning, housing etc) that accords with the acquiring authority's enabling powers.
- 3.23 At the time of publication, the Scottish Parliament is considering a Land Reform Bill which aims to ensure that the benefits of land ownership, and decisions about how land is managed and used, are more widely shared. The Bill includes a number of new requirements relating to land sales from large landholdings over 1000 hectares, including new powers to ensure that the public interest is considered when such holdings are sold, and in certain circumstances to require land to be sold in smaller lots. Unlike under a CPO, the landowner would not be required to sell land to a particular buyer. The Bill

also includes requirements to notify certain land sales, as well as a range of tenancy reforms, including more opportunities for tenants to be able to buy their farms.

Transport and Works Act Orders

- 3.24 Certain types of transport project (e.g. tramways, railways, inland waterways) can be authorised by orders under the Transport and Works (Scotland) Act 2007 ('TAWS'). Where necessary, a TAWS order can confer compulsory purchase powers for the purpose of delivering the specific transport project to which the order relates. Specific procedures apply when compulsory purchase powers are sought through a TAWS order. These procedures are outside the scope of this reform programme.

Compulsory Sale and Lease Orders

- 3.25 In recent years there has been interest in the potential introduction of compulsory sale orders and compulsory lease orders. Exploration of such measures has been outside the scope of the compulsory purchase reform programme, which is focussed on changes to existing tools rather than the creation of new ones. However, chapter 10 of this document contains some questions to further the Scottish Government's consideration of such mechanisms.

4. Early engagement and preliminary steps

Overview

- 4.1 This chapter looks at the stage of the compulsory purchase process which takes place before a CPO is made by the acquiring authority and submitted for confirmation. A range of activities and tasks will happen during this period, the scope and duration of which can vary significantly depending on the nature of the project. Typical steps include:
- initial engagement with affected owners and occupiers
 - land referencing: identifying the land interests and rights that may need to be acquired
 - entering onto land in order to carry out surveys
- 4.2 Although dealt with here as discrete stages, it should be recognised that in practice they are likely to be inter-linked rather than neatly delineated.
- 4.3 It is also important to recognise that a CPO is often one aspect of a wider development project (e.g. regeneration scheme, new road etc). The design and proposed land-take of such projects may evolve over a period of time on an iterative basis. This may be due to technical, environmental or financial consideration/constraints, but also as a result of engagement with affected parties and/or the local community. Other consents – notably planning permission – may also need to be obtained, which typically have their own procedural requirements and consultation arrangements. In short, the CPO process does not operate in a vacuum: a range of technical work, stakeholder engagement and consultation may take place simultaneously during the early stages of a development project.
- 4.4 Of course, a key task for the acquiring authority at this stage will be the preparation of the CPO itself and the associated documents that accompany the Order. These matters are covered in chapter 5.

Initial engagement

- 4.5 Compulsory purchase can be very unsettling for those affected. The prospect of a person or business having their property acquired at a time not of their choosing can be stressful. This may be compounded during the early stages of a project by uncertainty around whether, when and how much land might ultimately be acquired.
- 4.6 Early engagement with affected owners and occupiers is therefore vital and can play an important part in helping to mitigate the anxiety and uncertainty that compulsory purchase may induce. This may include:
- explaining the purpose of the project and why land may need to be acquired
 - describing how the CPO process works, broad timings and next steps

- exploring whether there are alternative options that do not involve compulsory purchase
 - seeking to purchase land by agreement
- 4.7 Communicating with those affected, as early as possible, can help to allay concerns about the process, allow alternative solutions to be explored and build trust. This can help to prevent positions becoming entrenched at the outset, which may in turn avoid protracted disputes and save all parties time and expense in the long run. It may lead to a voluntary transaction, alleviating the need for compulsory acquisition. Investment in early engagement can therefore make the process run more smoothly and swiftly, from the initial stages through to the assessment and payment of compensation.
- 4.8 This is not simply a box-ticking exercise: the manner in which engagement is carried out matters too. Its effectiveness is likely to be enhanced if conducted with compassion, openness and patience. Sensitive and respectful engagement is more likely to bring about positive outcomes for all concerned.
- 4.9 While the onus is on the acquiring authority to initiate contact with those whose land may be acquired, all parties have a role to play in effective early engagement. It is important for owners and occupiers not to 'bury their heads in the sand' even though this may be an understandable reaction to the prospect of a CPO. Affected parties are more likely to influence the process, limit the impact on their property and receive compensation promptly if they respond to and engage with the acquiring authority from an early stage.
- 4.10 There is limited legislation covering this stage of the CPO process. However, current Scottish Government policy and guidance strongly advocates early engagement by all parties – and underlines the potential benefits that can arise as a result of doing so. See for example:
- [Circular 6/2011](#)
 - [Guidance Note for Acquiring Authorities No. 2: What to do before developing a CPO](#)
 - [Guide for Property Owners and Occupiers](#)

Options and proposals

- 4.11 The absence of statutory prescription around early engagement has one clear advantage: flexibility. It allows engagement carried out prior to the making of a CPO to be tailored to the circumstances, scale and nature of a particular project. Where compulsory acquisition forms part of a wider project for which various consents are needed, this flexibility may also help avoid unnecessary duplication and ensure that engagement activities are joined-up and proportionate.
- 4.12 Given the wide variety of projects whose delivery may involve compulsory purchase, placing early engagement on a statutory footing could have unintended consequences. Statutory prescription in this area could lead to requirements which, although well-intentioned and appropriate for (say) a

single house CPO, may not be proportionate and/or realistic for (say) a linear transport CPO – and vice versa. Furthermore as noted at paragraph 4.8, the effectiveness of early engagement will be informed by the attitude and conduct of those involved. Such behaviours are difficult to legislate for.

- 4.13 For these reasons, we are not minded to use legislation to introduce new statutory requirements for engagement prior to the making of a CPO. This is not because such engagement is not important, but because we do not consider legislation would be an effective or proportionate way of promoting early and positive engagement between parties.

Question 9: Do you agree that early and effective engagement is best promoted through non-statutory measures (e.g. guidance) rather than legislative requirements?

Question 10: How might early and effective engagement between acquiring authorities and affected parties be further encouraged?

Land referencing

- 4.14 Land referencing is the process through which the acquiring authority identifies those with an interest in (or rights over) the land they might need to acquire. It is an important feature of projects that involve compulsory purchase; it can help to ensure that relevant parties are notified of a CPO and facilitate early engagement, dialogue and negotiation more broadly. Acquiring authorities can include land in a CPO where the owners, lessees and occupiers are unknown. However, reasonable inquiries must have been made to identify such parties if this approach is taken.
- 4.15 Both [Circular 6/2011 \(Appendix E\)](#) and the [second of Scottish Government's Guidance Notes](#) outline the techniques that an acquiring authority may employ as part of the land referencing process. These include searching the Land Register of Scotland and/or the Register of Sasines, visiting the site(s) to enquire locally, consulting with community councils and preparing questionnaires. Guidance is also provided on potential approaches where owners are unknown.
- 4.16 The various methods referred to in our guidance are non-statutory. We note that acquiring authorities in England and Wales have statutory powers⁴ to serve notice on specified persons, who must provide details about the ownership and occupation of the land identified in the notice. There are associated offence provisions for non-compliance with such a notice or for knowingly providing false or misleading information.
- 4.17 We are not aware of any equivalent general power in Scotland. There are specific powers to require information about land ownership at section 272 of the 1997 Act. These could only be used in conjunction with prospective CPOs made under the same Act (i.e. for planning purposes) and not CPOs under

⁴ under section 5A of the Acquisition of Land Act 1981, as inserted by section 105 of the Planning and Compulsory Purchase Act 2004.

housing, transport or other legislation. SEPA has similar powers under section 27 of the Environment Act 1995.

Options and proposals

- 4.18 We are interested in respondents' views on whether we should introduce a general power for acquiring authorities to require the provision of information about interests in land. A potential risk with such a power – particularly if used at the start of the process – is that it may be regarded as antagonistic rather than being conducive to early engagement between acquiring authority and affected parties. Serving statutory notices with offence provisions may lead to entrenchment and mistrust rather than promoting a positive dialogue. Despite this, we are keen to hear feedback on whether a power of this kind might be helpful as a statutory 'backstop' in support of other land referencing activities. It would be useful to hear from those with experience of practising in England and Wales about the effectiveness or otherwise of these powers.

Question 11: Would it be helpful to introduce a general power for acquiring authorities to require specified parties to provide information about ownership, occupation and other interests in land? Please explain your views.

Powers of entry

- 4.19 During the early stages of a project, an acquiring authority may need to enter land in order to ascertain whether it is suitable for the purpose they are minded to acquire it for. Doing so may help to inform the design and land-take of the proposed scheme, including potential mitigation measures, as well as consideration of alternative options, accommodation works and estimates of potential compensation liabilities. Entering land before a CPO is made may also be required to carry out environmental surveys that are needed to satisfy various legislative requirements.
- 4.20 Section 83 of the Lands Clauses Consolidation (Scotland) Act 1845 provides acquiring authorities with a power of entry, subject to giving not less than three days' notice and not more than 14 days' notice. The authority must compensate the landowner for any damage caused.
- 4.21 These powers do not appear fit for purpose. As well as being confusingly worded, the minimum notice period of three days is very short and it is not clear what purpose is served by the maximum notice period: this seems unhelpfully inflexible.
- 4.22 Furthermore, certain enabling acts (see for example sections 140 to 142 of Roads (Scotland) Act 1984) contain their own powers of entry with specific notice, warrant and compensation arrangements. Hence there is inconsistency between powers available to different acquiring authorities and the implications for landowners (in terms of notice periods etc).

Options and proposals

- 4.23 We are minded to take forward a new general power for acquiring authorities to enter land in Scotland in advance of a CPO being made. We propose that such a power would replace section 83 of the 1845 Act and would:
- empower all acquiring authorities (including persons authorised in writing by the acquiring authority) to enter land for the purposes of surveying and valuing land – including carrying out environmental surveys – in connection with a proposal to acquire land
 - not allow the use of force unless this has been authorised by a warrant issued by the relevant sheriff
 - be subject to a minimum notice period of 14 days (no maximum notice period)
 - be subject to a right to compensation for damage caused by the exercise of the power of entry
 - provide that the notice given to the owner/occupier must:
 - specify the works and activities proposed to be carried out by the acquiring authority
 - state the recipient's entitlement to compensation
 - include a copy of any associated warrant – if there is one
 - include offence provisions where a person unreasonably obstructs the exercise of the power of entry
 - make provision in respect of statutory undertakers' right to object to the carrying out of certain work, where it would be seriously detrimental to the statutory undertaker carrying on its undertaking
- 4.24 We would anticipate publishing guidance on these powers to ensure appropriate and proportionate use. For example, in an agricultural context there may be particular issues to consider such as crop cycles and biosecurity arrangements.

Question 12: Do you agree that acquiring authorities should have a general power of entry prior to the making of a CPO for the purposes of surveying etc?

Question 13: Does the outline proposal at paragraph 4.23 strike a reasonable balance between the needs of acquiring authorities and rights of the owner/occupier? If not, how should it be changed?

5. Confirmation procedures – Making a CPO

Overview

- 5.1 This chapter covers the procedures which govern the preparation of CPOs. It encompasses the steps involved in drafting an Order, advertising it and notifying affected parties. It also considers questions around the potential for digitising parts of the CPO process, much of which is concerned with notices and advertising.

Form and content of a CPO

- 5.2 The 1947 Act⁵ says that a CPO “shall be in the prescribed form and shall describe by reference to a map the land to which it applies”. This prescription is provided by ‘Form 1’ in the [Compulsory Purchase of Land \(Scotland\) Regulations 2003](#) (“the 2003 Regulations”). Circular 6/2011 provides guidance on drafting a CPO and what documents it should be accompanied by – as does [the third of Scottish Government’s Guidance Note series](#) for acquiring authorities. In summary, the effect of the legislation and guidance is the following documents will need to be prepared by an acquiring authority:

	Components of a CPO
Statutory Documentation	<ul style="list-style-type: none">• The Order• Schedule(s)• Map(s)
Non-Statutory Documentation	<ul style="list-style-type: none">• Statement of Reasons• General Certificate• Protected Assets and Special Category Land Certificate

Statutory documentation

- 5.3 **The Order** itself is generally quite short, comprising up to five articles. The 2003 Regulations provide that a CPO must:
- set out relevant enabling powers authorising compulsory purchase
 - specify the name of the acquiring authority
 - state the title of the Order (article 1)
 - describe the purposes of the Order by reference to the Schedule of land (article 2)

⁵ See paragraph 2 of Schedule 1 to the 1947 Act

- 5.4 Depending on the acquiring authority's intentions, a CPO may:
- incorporate the 'Mining Code', which has the effect of excluding mineral rights from the acquisition (article 3)⁶
 - make reference, via a separate Schedule, to any exchange land being given (article 4)
 - identify, via a separate Schedule, any real burdens or servitudes (or development management schemes) it does not wish to extinguish or disapply (article 5)
- 5.5 **The Schedule** describes, by reference to the Map, what interests are proposed to be acquired and identifies owners, lessees and occupiers. The 2003 Regulations provide that the Schedule comprises four columns:
- i. map reference number
 - ii. description of the land
 - iii. details of owners
 - iv. details of lessees and occupiers
- 5.6 If any 'special category land' (see chapter 6) is included in the Order, the 2003 Regulations require that this is to be specified. Any exchange land being provided and any real burdens or servitudes that are to be preserved must be identified in separate schedules.
- 5.7 **The Map** is required by both the 1947 Act and 2003 Regulations. The notes in the Regulations state:
- "The boundaries of each plot of land separately numbered in the Schedule to the order should be clearly delineated. Also, the map itself should contain sufficient topographical detail and be on a scale sufficient to enable the situation of the land to be readily identified on the Ordnance Map and related to the description given in the Schedule".

Options and proposals

- 5.8 The statutory provisions regarding the form and content of a CPO appear to be proportionate and appropriate. We do not consider that major change is needed.
- 5.9 In chapter 4 of this consultation paper we propose to introduce new general powers for acquiring authorities to: a) create new rights in land and; b) take temporary possession of land. If such powers are taken forward, we consider that – in the interests of clarity and transparency – these should be recorded in separate schedules from interests that are to be permanently acquired.

⁶ In most cases, acquiring authorities will do so to avoid having to justify the acquisition of the minerals and incurring any associated liability to pay compensation.

Question 14: Are any changes required to the legislation which prescribes the form and content of CPOs? If so, please give details.

Non-statutory documentation

- 5.10 Although it is not a statutory requirement, a CPO will generally be accompanied by a **Statement of Reasons**. It is the principal document through which the acquiring authority sets out its justification for the proposed acquisition and seeks to demonstrate that it is in the public interest. As such, the Statement of Reasons will generally need to address the key factors that are taken into account when confirmation decisions are taken (see 'How CPOs are decided' below). [Appendix D of Circular 6/2011](#) provides guidance on what should be included in a Statement of Reasons.
- 5.11 The **General Certificate** identifies who the acquiring authority has notified of the making of the CPO, confirms that a period of not less than 21 days has been allowed for objections and indicates where a copy of the Order and Map can be inspected. The purpose of the General Certificate is to confirm that the relevant statutory procedures have been followed and the notices served correctly. [Appendix H of Circular 6/2011](#) provides a form for the General Certificate and encourages acquiring authorities to submit it alongside a CPO.
- 5.12 The **Protected Assets and Special Category Land Certificate** indicates whether certain heritage assets (listed buildings, buildings subject to a preservation notice, buildings in a conservation area, scheduled monuments) would be affected by the CPO scheme. It also indicates whether any special category land is proposed to be acquired. [Appendix J of Circular 6/2011](#) provides a form for this certificate and encourages acquiring authorities to submit it alongside a CPO.
- 5.13 As the above three documents are non-statutory, it is not a legal requirement for CPOs to be accompanied by them. Nevertheless, it is likely to be in the acquiring authority's interest to submit supporting material which serves the same purpose as these non-statutory documents, even if this has a different title and/or uses a different format. For example, an acquiring authority will need to explain its justification for a CPO even if this is not done via a Statement of Reasons.

Options and proposals

- 5.14 We are not aware of any particular calls for either the Statement of Reasons, General Certificate or Protected Assets Certificate to be put on a statutory footing. These non-statutory documents, or equivalents, are in practice prepared for (and submitted with) most CPOs. As such, making it a statutory requirement to prepare them would not necessarily make the process more onerous for the acquiring authority. We note that if proposals for CPOs to be 'self-confirmed' in certain circumstances (see 'Who takes CPO decisions' below) are taken forward, the General Certificate may take on additional importance.

Question 15: Should any or all of the following documents be placed on a statutory footing?

- Statement of Reasons
- General Certificate
- Protected Assets and Special Category Land Certificate

Notification and advertisement of a CPO

- 5.15 Before submitting a CPO for confirmation, the acquiring authority must publicise their intention to do so and notify those affected. The purpose of this step is to make people aware that a CPO has been made and to provide an opportunity for objections to be lodged. Further notification takes place if a CPO is confirmed.
- 5.16 There are effectively three elements of the notification and advertisement process:
- notifying individuals, including approaches to be used where their name or address cannot be found
 - notices for public information, currently in newspapers, and
 - making documents available for inspection

Notices to individual parties

Who is notified

- 5.17 Schedule 1 of the 1947 Act requires that before submitting the Order for confirmation, the acquiring authority must serve notice on:
- (i) every owner, lessee and occupier (except tenants for a month or for any period less than a month)
 - (ii) the holder of any personal real burden affecting the land
 - (iii) the owner of any land which is a benefited property, and
 - (iv) any owners' association of the development in question
- 5.18 Those who are required to be notified of a CPO are described as 'statutory objectors'. This is because if they make an objection which is not withdrawn, the confirming authority must, before confirming the order, either hold a public local inquiry (PLI) or offer them a hearing (see 'Considering objections to a CPO' below). Other parties can object to a CPO – or make other representations – but these do not have any bearing on whether a PLI or hearing must be held. In other words, any further procedure regarding non-statutory objectors is discretionary.

Form and method of notice

- 5.19 The prescribed form of notice for individuals ('Form 3') is contained in the 2003 regulations. In summary, the notice states the relevant enabling powers, the title and effect of the Order; indicates that it is about to be submitted for confirmation; and includes details of where documents may be inspected, how objections can be made and by when they must be submitted.
- 5.20 The procedures for serving notice on statutory objectors are set out in the 1947 Act itself. For owners, lessees and occupiers (**group (i)**), the 1947 Act⁷ provides that a notice may be served by delivering it to the person, leaving it at their address, or by registered post. If the person's name or address cannot be found, it can be delivered to "some person on the land" or "affixed to some conspicuous part of the land".
- 5.21 The Title Conditions (Scotland) Act 2003 ("the Title Conditions Act") added the requirement to notify **groups (ii), (iii) and (iv)**, with different arrangements for doing so. For **groups (ii) and (iii)**, (holders of personal real burdens; owners of benefited property) service is by:
- sending (see section 124 of the Title Conditions Act, which includes by email)
 - advertisement
 - affixing a conspicuous notice to one or more lamp posts near the property (with substantial detail as to how this is done), or
- 5.22 "by such other means as the acquiring authority think fit" For **group (iv)** (owners associations), service is to be by sending, as above, or such other means as the acquiring authority think fit.

Options and proposals

- 5.23 The notification requirements for CPOs in Scotland are set out in primary legislation, namely the 1947 Act. This means that there are limited opportunities to change them, needing an Act of the Scottish Parliament. As a result, the notification requirements for CPOs have not kept pace with societal and technological changes.
- 5.24 To provide greater flexibility, we propose that the detailed requirements for publicising CPOs and notifying affected individuals should be prescribed through secondary legislation. This would enable Governments to keep these requirements up-to-date, and potentially simplify them, without needing a Bill to do so. It would also bring CPO into line with other regimes such as planning.

Question 16: Do you agree that the notification requirements for CPOs should be prescribed through secondary rather than primary legislation?

⁷ Paragraph 19 of the first Schedule to the 1947 Act

- 5.25 As regards who is notified of CPOs, we think the current list of statutory objectors is broadly appropriate. Some respondents to the Scottish Law Commission's review suggested that heritable creditors could be added to the list, for awareness in relation to the value of their asset. This would be particularly relevant if a CPO extinguishes all securities, as discussed in paragraph 7.44. On the other hand, the conditions of a standard security will generally require the borrower to inform their lender of any prospective CPO or other action that could affect the property⁸. Form 3 in the 2003 Regulations could be amended to highlight this and advise recipients to do so.
- 5.26 As indicated in paragraph 5.18, those who are required to be notified of a CPO have the status of statutory objectors. If heritable creditors, or any other additional groups, are to be added to the list of parties who must be notified of a CPO, it is not clear that giving them the status of statutory objector is necessarily proportionate. It might be appropriate to establish a new category of persons to be notified but who would not qualify as statutory objectors.

Question 17: Should heritable creditors be added to the list of parties who must be individually notified of a CPO? Should they have the status of statutory objectors?

Question 18: Are any other changes required to the list of people to be individually notified?

- 5.27 As outlined above, some statutory objectors can be notified by email but this does not apply to owners, lessees and occupiers, whose notices must be delivered in person, by post or left at their address. It is clear from our engagement to date that stakeholders consider that the compulsory purchase system is overly paper-based. This is partly driven by legislative requirements. The 'Digitisation' section below looks at how the compulsory purchase process could be digitised – including procedures for serving notice.

Newspaper notices and access to documents

- 5.28 As well as notifying statutory objectors, the acquiring authority must publish a notice for two successive weeks "in one or more local newspapers circulating in the locality in which the land comprised in the order is situated". If the Order is confirmed, a similar notice must be published for one week.
- 5.29 Similar to individual notices, those in newspapers must: state that the CPO has been made and is about to be submitted for confirmation; state the purpose for which the land is required; describe the land; specify a place within the locality where a copy of the order and map can be inspected; and specify how and by when objections can be made.

⁸ See paragraph 4 of [schedule 3 to the Conveyancing and Feudal Reform \(Scotland\) Act 1970](#)

Options and proposals

- 5.30 The purpose of newspaper notices is to bring the making of a CPO to the attention of a wider audience than those who are notified individually. It can also be a means of trying to identify unknown owners.
- 5.31 During our engagement to date we have heard concerns about the cost of newspaper advertisement and questions raised about its effectiveness given declining circulation and the rise of alternative media platforms. However, we are also conscious of the risk of digital exclusion if information is only available online.
- 5.32 As a minimum, we propose that – in addition to being made available for inspection at a specified location – CPOs should be published on a suitable website (e.g. the acquiring authority's site). The relevant website would be referred to within newspaper and individual notices. This would reduce reliance on hard copy documentation and inspection at physical locations.

Question 19: Do you agree that the CPO (and map) should be published on a suitable website, in addition to being made available for inspection at a specified physical location?

- 5.33 We are also interested in respondents' views on whether newspaper notices should continue to be required and, subject to that, what alternative approaches may be effective. Clearly, online notices – wherever they are placed – have a similar problem to those in newspapers: people will only see them if they know where to look for them and/or subscribe to the relevant outlet or platform.
- 5.34 It might be helpful for notices to be listed somewhere central, either nationally or by local authority. An existing central resource is the [Public Notice Portal](#) operated by the News Media Association, where many notices placed in local newspapers are also listed and which can be searched by area. Of course, as a privately owned resource, government cannot guarantee that the Public Notice Portal will continue to operate. We note that planning authorities are required to maintain registers of planning applications and issue weekly lists of these to community councils. CPOs could perhaps be added to those lists, which would at least reach those who have an interest in planning and development matters in a particular area. This would, however, require other acquiring authorities to provide the information to the local planning authority.
- 5.35 We also note that the cost of newspaper notices is partly down to their length. The content of notices is prescribed by the 2003 Regulations. If newspaper notification is retained, the associated costs could potentially be limited or reduced by streamlining the content required by the relevant form – in particular the need to describe all the land comprised in the CPO.

Question 20: Should newspaper notices continue to be used to publicise the making of CPOs?

Question 21: What alternative approaches might be appropriate for publicising CPOs – either in addition to or instead of newspaper notices?

Timing of notices

- 5.36 After an Order has been confirmed, the required notices (sometimes referred to as ‘confirmation notices’ or ‘notices of confirmation’) must be published and served “as soon as may be”. The date of this notification is the date when the Order becomes operative. This marks the start of the three-year period for implementing a confirmed CPO. Any legal challenge to the validity of the Order must be brought within 6 weeks of the date of this notification. Chapter 7 of this consultation considers potential changes to these time limits – see paragraphs 7.23 to 7.38.

Digitisation

- 5.37 The legislation governing compulsory purchase in Scotland dates from a pre-digital age. Many of the procedural requirements envisage paper-based communication, in-person meetings and inspection of physical documentation in specific locations such as libraries or council offices.
- 5.38 In recent years, digital technology has transformed the way we communicate, access information and consume media – as well as the way many services are provided. Against that backdrop, it is right that we consider the scope to digitise the compulsory purchase processes.
- 5.39 In 2021, the Compulsory Purchase Association (CPA) established a Digital Working Group to explore how the end-to-end compulsory purchase process could be digitised. Their subsequent Position Paper⁹ made a series of recommendations as to how this might be achieved.
- 5.40 The Paper’s recommendations were wide-ranging and go beyond what can be achieved through legislative change alone: wholesale digitisation of the compulsory purchase system will require investment and change by a range of industry partners. Nevertheless, legislative change can undoubtedly play a part in helping to facilitate and remove barriers to this process. That is the focus of this section.
- 5.41 Digitisation of the compulsory purchase system has the potential to improve access to documentation, streamline procedures and facilitate improved engagement between parties. However, it is important to recognise that access to digital technology varies and care will need to be taken not to widen the ‘digital divide’.

⁹ [Compulsory Purchase Association Position Paper on Compulsory Purchase Digitisation](#)

Data standards

- 5.42 The CPA Digital Working Group's Position Paper highlights the importance of common data standards in enabling the digitisation of regulatory systems; it recommends that this is provided for by legislation. We note that [section 187 of the Levelling-up and Regeneration Act 2023](#) allows the UK Government to specify (through regulations) common data standards for compulsory purchase documentation, which acquiring authorities would need to comply with. Regulations under that Act would not apply in Scotland.

Options and proposals

- 5.43 Through the compulsory purchase reform programme, we propose to introduce a statutory power for Scottish Ministers to prescribe common data standards for compulsory purchase documentation in Scotland. It is envisaged that these would be prescribed through secondary legislation rather than on the face of a Bill. This would provide greater flexibility and responsiveness to technological change.

Question 22: Should Scottish Ministers have a power to prescribe (through secondary legislation) common data standards for compulsory purchase documentation? If not, please explain your reasons.

Digitisation of notices and documents

- 5.44 The compulsory purchase system requires a range of notices and documents to be served on different parties at various stages of the process: from the confirmation stage, through to implementation and compensation. Generally speaking, the various acts envisage these being delivered by post, by hand or by being left at the relevant property.

Options and proposals

- 5.45 We propose to make provision for notices and other compulsory purchase documents to be served electronically. Doing so has the potential to speed up the process and reduce administrative costs.
- 5.46 We do not think electronic communications can be mandated in all cases, not least because some people have limited or no internet access. Instead, our intention is to provide the flexibility to serve compulsory purchase notices and documents by electronic means, where parties expressly agree to this.
- 5.47 We propose to make provision for notices to be served by electronic means where a party agrees to this in writing and provides an email address for this purpose. If a party does not agree to be notified electronically (or does not provide an address) then the current delivery methods would apply. It is considered that this would provide additional flexibility while recognising individual preference and the fact that not everyone has equal access to, or familiarity with, electronic communications.

Question 23: Should acquiring authorities be able to serve compulsory purchase notices by electronic means, if a party agrees to this in writing and provides an address for this purpose? If not, please explain your reasons.

6. Confirmation procedures – Deciding a CPO

6.1 This chapter deals with the process for determining whether or not CPOs should be confirmed, the basis of such decisions and how those decisions can be challenged. It is broken down into the following sections:

- Considering objections to a CPO
- How CPOs are decided
- Who takes CPO decisions
- Special category land
- The scope and timing of CPO decisions
- Challenges to a CPO

Considering objections to a CPO

6.2 Once a CPO has been made and the relevant notices served, it is submitted to the Scottish Ministers for confirmation. This section of the consultation looks at what happens when a CPO is received by the Scottish Ministers and how objections are handled prior to a decision on the Order being taken.

Receipt of CPO by the Scottish Government

6.3 CPOs submitted for confirmation are sent to the relevant team in the Scottish Government that handles casework on behalf of the Scottish Ministers – as are any objections. For example, CPOs made under planning legislation are handled by the decisions team within Planning, Architecture and Regeneration Directorate (PARd); CPOs made under housing legislation are dealt with by More Homes Division.

6.4 The next step depends on whether any objections are received. Where objections are received (be that from statutory objectors or other parties), copies are sent to the acquiring authority, which will be given the opportunity to comment on those objections. The acquiring authority's comments will then be sent to the objectors and a further period allowed for their comment. This iterative process of exchange between objectors and the acquiring authority can lead to objections being withdrawn.

6.5 If there are no objections from statutory objectors – or their objections are submitted but subsequently withdrawn – Scottish Ministers may proceed to make a decision on whether or not to confirm the CPO. These are sometimes referred to as 'unopposed cases' or 'unopposed CPOs'. In such instances, the relevant Scottish Government official will send advice to the Scottish Ministers who will decide whether to confirm the CPO, or confirm it with modifications.

6.6 If there are objections from statutory objectors, the case will be passed to the DPEA who will be appointed to hold a PLI or offer a hearing. These are known as 'opposed cases/CPOs'. It should be noted that non-statutory objections

can be considered by a Reporter if they are judged to warrant consideration in this way – although this is not a statutory requirement.

Options and proposals

- 6.7 As noted above, if a CPO is opposed, there is an iterative process after it is received by the Scottish Government and before it is passed to DPEA. This has the advantage of allowing further negotiation, which may result in objections being withdrawn. If that is the case, then parties may save time and money in the long run. However, the Scottish Law Commission highlighted that this back-and-forth can become protracted and lead to substantial delay. As indicated in the Business and Regulatory Impact Assessment (BRIA) accompanying this consultation, data suggests this period is an average of almost 7 months (205 days)¹⁰.
- 6.8 We are interested in whether there should be a statutory time period by which an opposed CPO should be referred to a Reporter for consideration. Compared to the currently open-ended position, such a deadline may help to provide certainty for interested parties and encourage negotiations to conclude more swiftly. There may also be risks of unintended consequences – such as parties being ‘bounced’ into a potentially costly PLI or hearing process. Larger CPOs with higher numbers of landowners will naturally take longer to resolve all the issues.
- 6.9 If a deadline of this nature were introduced, detailed consideration would need to be given to what the defined ‘start’ and ‘end’ points would be. A starting point, could perhaps be the end of the objection period or the date on which all CPO documentation is received by the Scottish Government. An end point could be, for example, the issuing of: the notice of a Reporter being appointed; the ‘relevant date’ notice¹¹; or the notice of a Pre-Inquiry Meeting.
- 6.10 A further question arises around how long the period should be. It would need to be long enough to enable key tasks to be carried out (e.g. checking CPO documentation, obtaining and circulating comments on objections) and to provide scope for objections to be withdrawn – but not so long as to defeat the purpose of specifying a time period.

Question 24: Should there be a statutory time period within which an opposed CPO should be referred to a Reporter after it has been submitted for confirmation? If not, please explain your reasons.

Question 25: If there is to be a statutory time period, how long should it be?

¹⁰ Time from receipt of a CPO by Scottish Ministers to DPEA receiving it. The date a case is referred to a reporter, or a reporter is appointed, may be later.

¹¹ The ‘relevant date’ is the date on which the acquiring authority and objectors are notified of the intention to hold a PLI

Handling of opposed CPOs by the DPEA

- 6.11 Once a case is passed to the DPEA and a Reporter identified, objections will be handled by one of three procedures:
- Public Local Inquiry (PLI)
 - hearing
 - written submissions
- 6.12 Both PLI and a hearing involve an oral process, where those involved state their case in front of the Reporter. A hearing takes the form of a structured discussion whereas a PLI is typically a more formal event, at which witnesses give evidence in front of the Reporter and can be cross-examined, similar to a court of law. Written submissions, as the name suggests, involve parties stating their case in writing and having the opportunity to comment on each other's statements.
- 6.13 Statutory objectors have a right to be heard. The 1947 Act provides that if a PLI is not held, statutory objectors must be offered a hearing. There seems to be a widely held view that there must be a PLI if statutory objectors ask for one but this is not what the legislation states. However, the situation is made more complicated by the rules regarding awards of expenses (see next section).
- 6.14 PLIs are governed by [the Compulsory Purchase by Public Authorities \(Inquiries Procedure\) \(Scotland\) Rules 1998](#)¹². These rules prescribe the procedures to be followed before, during and after the inquiry – including the holding of pre-inquiry meetings, site visits and the service of documents.
- 6.15 In Scotland, there is no statutorily prescribed process for conducting hearings and written submissions in respect of CPOs. In the absence of such provision, the [Town and Country Planning \(Appeals\) \(Scotland\) Regulations 2013](#) are used 'by analogy' in those cases where objections are considered through a hearing or written submissions.
- 6.16 Once the relevant procedure has been completed, the Reporter will prepare a report making a recommendation as to whether the CPO should be confirmed, including any recommended modifications. This report is sent to the relevant casework team in Scottish Government; advice is then provided to the Scottish Ministers who take the final decision.

Options and proposals

- 6.17 The current situation, whereby planning appeals regulations are used 'by analogy' to manage hearings or written submissions in CPO cases seems unsatisfactory and potentially confusing.

¹² Technically these rules apply to local authority CPOs but in practice, they are used for PLIs into other bodies' CPOs 'by analogy'.

- 6.18 We therefore propose that in reforming compulsory purchase legislation in Scotland, express provision should be made for objections to CPOs to be considered through written submissions (where statutory objectors¹³ agree to that as an alternative to a PLI or a hearing). We also propose that the procedural rules for hearings and written submissions should be set out in secondary legislation. This would provide greater clarity and certainty for all concerned.
- 6.19 We propose to retain the right of statutory objectors to be heard through either a PLI or hearing. As at present, it would be for the Scottish Ministers to decide on the need for a PLI when statutory objectors exercise their right to be heard. Written submissions would be used if deemed appropriate by the Scottish Ministers and statutory objectors agree.

Question 26: Should express provision be made in legislation for objections to be considered through written submissions?

Question 27: Should the procedural rules for hearings and written submissions for CPO cases be set out in secondary legislation?

Question 28: Do you agree that statutory objectors' right to be heard at either a PLI or a hearing should be retained?

Question 29: Should Scottish Ministers continue to decide whether a PLI or hearing is used? If not, in what circumstances should a PLI be required?

Awards of expenses

- 6.20 In a compulsory purchase context, 'awards of expenses' refers to one party being ordered to meet the expenses of another party. The 1947 Act makes provision for awards of expenses to be made in certain circumstances where a PLI is held. Scottish Government guidance on awards of expenses in planning appeals and CPO inquiries is set out in [Circular 6/1990](#).
- 6.21 The Circular sets out principles for awarding expenses depending on the level of success of a statutory objector. Generally speaking, an award will be made where an objection is sustained: either by the Scottish Ministers' refusal to confirm a CPO, or by their decision to exclude the whole or part of the statutory objector's land.
- 6.22 Crucially, the power to award expenses applies only in relation to PLIs. There is no legal basis to do so in respect of other procedures. This partly explains the potential inclination to hold a PLI rather than a hearing where requested by a statutory objector, even though doing so is not a legal requirement.

¹³ There are no statutory requirements to conduct written submissions, a hearing or PLI in relation to non-statutory objectors.

Options and proposals

- 6.23 The current position whereby awards of expenses are not available in relation to hearings and written submissions seems unfair. Furthermore, it may result in cases that otherwise do not merit a PLI following that process, which has the potential to increase time and cost for all. We therefore propose to ensure that awards of expenses can be made where CPO objections are considered through written representations or a hearing – not just a PLI.

Question 30: Should provisions on awards of expenses be extended to cover cases where objections are considered through hearings and written submissions?

How CPOs are decided

The basis of CPO decisions: The public interest test

- 6.24 At its core, CPO decision-taking involves weighing the public benefits of the acquiring authority's proposals against the private interests of the people affected. For a CPO to be confirmed, the acquiring authority must demonstrate (and decision-taker must be satisfied) that there is a **strong enough case in the public interest** to justify the acquisition. This balancing of public and private interests reflects that while compulsory purchase can bring about social, economic and environmental improvements, taking someone's property is an intrusive step which requires clear and compelling justification.
- 6.25 The public interest test which governs CPO decision taking is policy-based rather than statutory. Decisions are taken on their individual merits reflecting the circumstances of the case. There are nevertheless some key considerations which are generally used to determine whether a CPO should be confirmed, which are summarised in the table below.

Theme	Key considerations
Purpose & Lawfulness	Does the purpose of the CPO clearly relate to the acquiring authority's enabling powers?
Engagement	Has the acquiring authority sought to acquire the land by agreement?
Alternatives	Have alternatives to compulsory purchase been considered?
Proposals	Is there reasonable clarity as to how the land is proposed to be used or developed?
Public Benefits	What are the social, economic and/or environmental benefits of the proposals?
Planning Position	Do the acquiring authority's proposals accord with planning policies? Has planning permission been granted for the proposals? If not is there any obvious reason why it would be refused?

Theme	Key considerations
Strategic Fit	Do the acquiring authority's proposals support or align with any other strategies, policies or programmes outwith planning?
Funding & Delivery	Will the necessary funds be in place to deliver the acquiring authority's proposals within a reasonable timeframe? Will the scheme be funded and/or delivered in partnership with a third party?
Other Barriers	Are there any other physical or legal barriers to the acquiring authority's scheme?

6.26 These considerations, which are contained in Circular 6/2011, collectively comprise the public interest test. Taken together, they are about establishing whether, in the circumstances of the case, the use of CPO powers represents a proportionate step that will demonstrably deliver outcomes in the public interest, which would not otherwise be (or are unlikely to be) realised.

6.27 It is very important to stress that these are not 'hard-and-fast' rules. In other words, if the answer to the questions in the above table is yes or no, it does not automatically follow that the CPO will (or will not) be confirmed. As policy-based considerations, they provide substantial flexibility, which allows site-specific circumstances and context to be taken into account. For example, Circular 6/2011:

- encourages acquiring authorities to attempt to acquire land by agreement where practicable but recognises this may not always be possible. It states that the absence of such an attempt "will not prevent Ministers from confirming a CPO, as long as the authority can justify its approach"
- indicates that a CPO scheme should accord with planning policy but recognises that "it may not always be possible or appropriate for the authority to wait until the full details of its proposals have been developed, and planning permission obtained, before it proceeds with an order"
- underlines that there should be a reasonable prospect of securing sufficient funding to acquire the land within the three-year period and delivering the scheme within reasonable timescales. But recognises "that funding streams for projects can be unpredictable and their sources can change over time" and therefore it may be possible to justify acquisition where long-term funding is not guaranteed
- makes clear that the acquiring authority does not necessarily need to fund and/or carry out the CPO scheme itself but can enter 'back-to-back' arrangements with third parties. It notes that the authority do not necessarily need to have identified the party when the CPO is made

Options and proposals

6.28 The Scottish Government's view is that the policies governing CPO decision-taking remain appropriate. The components of the public interest test are well-established and do not appear to require revision given the flexibility they

afford. On the one hand, they reflect the intrusive nature of compulsory purchase and the need for clear and compelling public-interest justification for the powers to be used. While on the other hand, they provide flexibility for acquiring authorities to tailor their justification to the circumstances of the case. This seems a fair and reasonable balance.

- 6.29 We are also of the view that the considerations that comprise the public interest test should remain policy-based rather than detailed in legislation. This retains flexibility and enables considerations to be kept up to date. We do, however, accept that there may be scope to improve the way the public interest test and its considerations are laid out. Given that Circular 6/2011 will undoubtedly need to be updated to take account of wider reforms, such improvements can be considered as the programme moves forward.

Question 31: Does the public interest test, as currently set out in Circular 6/2011, strike a fair balance between private and public interests? Please explain your views.

Question 32: Do you agree that the public interest test should continue to be policy-based rather than statutory?

Who takes CPO decisions

- 6.30 All decisions as to whether to confirm CPOs are currently taken by the Scottish Ministers. As outlined above (see 'Considering objections to a CPO'), if a statutory objector makes – and does not withdraw – an objection, a Reporter will be appointed and a PLI, hearing or written submissions will be conducted, after which the Reporter will prepare a report making recommendations. However, it is Ministers who at present take the final decision.
- 6.31 In this section we explore: whether that should always be the case; whether there are circumstances in which parties other than the Scottish Ministers could decide whether to confirm a CPO, and whether making changes in this area would help to streamline the process.

Unopposed cases: confirmation by acquiring authorities

- 6.32 A significant number of CPOs are unopposed (i.e. have no objections or all objections are withdrawn). The BRIA accompanying this consultation document suggests around 70% of CPOs determined by Scottish Ministers under Housing Act powers receive no objections at all and in 80% of cases all objections are subsequently withdrawn. As set out above, unopposed CPOs still require to be confirmed by the Scottish Ministers which involves processing by the relevant casework team in the Scottish Government. The BRIA suggests that on average, unopposed cases take around 11 weeks to process¹⁴. We think that there is scope to streamline the confirmation process by enabling acquiring authorities to confirm unopposed CPOs. Since such a

¹⁴ These are figures for unopposed Planning and Housing CPOs over a 10 year period – from receipt to decision by Scottish Ministers.

measure would relate to cases where there are no objections from affected parties, or these have been withdrawn, such a provision need not be at the expense of fairness.

- 6.33 It should be noted that in England and Wales, unopposed CPOs can be referred back to the acquiring authority to confirm, under powers introduced by the Planning and Compulsory Purchase Act 2004. The [English Register of Housing and Planning CPOs](#) suggests that between 2019 and 2025 (June), 79% of all CPOs made under Housing Act powers and 33% of all CPOs made under Town and Country Planning Act powers were referred back to the acquiring authority for confirmation under powers introduced by the 2004 Act. We are not aware that these powers have raised particular concerns in respect of procedural fairness.

Options and proposals

- 6.34 We consider there to be two broad options that would empower acquiring authorities to confirm CPOs in certain circumstances.
- under **Option 1**, CPOs would continue to be sent to the Scottish Government for confirmation by Ministers. As is currently the case, notices would instruct parties to send objections to the Scottish Government. However, Scottish Ministers would have discretion to refer cases back to the acquiring authority where no objections are received from statutory objectors – or all such objections have been withdrawn. This would broadly mirror the position in England and Wales
 - **Option 2** would go further. Notices would be served in the usual way but any objections would be sent to the acquiring authority in the first instance rather than Scottish Government. The CPO would only be sent for confirmation by Scottish Ministers if objections are received from statutory objectors. As with option 1, Scottish Ministers would be able to refer back CPOs which start out as opposed cases but where objections are subsequently withdrawn
- 6.35 Both options have pros and cons. Option 2 would represent a more fundamental change and potentially offer greater time savings because cases with no objections from the outset would not need to come to the Scottish Government at all. There might be concerns about a lack of oversight because at present, the acquiring authority submits the ‘General Certificate’ (see paragraph 5.11) confirming that notices have been served correctly.
- 6.36 However, we do not consider that the risks of notices not being served correctly would necessarily be any greater than at present. It would continue to be the acquiring authority’s responsibility to comply with the legal requirements regarding notification. If objections were lodged, the authority would need to submit the CPO to the Scottish Government together with a General Certificate confirming that notices have been served correctly. As now, failure to comply with these requirements could increase the risk of successful legal challenge.

- 6.37 On balance our current preferred option is Option 2 but we would welcome views on the relative merits of each approach – as well as potential alternatives.

Question 33: Should acquiring authorities be empowered to confirm unopposed CPOs?

Question 34: If acquiring authorities are empowered to confirm unopposed CPOs, which approach outlined at paragraph 6.34 would be preferable – Option 1 or 2? Please explain your views.

Opposed cases: confirmation by Reporters

- 6.38 Where a statutory objector makes and does not withdraw an objection to a CPO, the case is passed to the DPEA and handled by a Reporter. Following the associated PLI, Hearing or Written Submissions, a Reporter will write a report making recommendations as to whether or not the Scottish Ministers should confirm the Order. This final stage of the process is administered by the relevant Scottish Government casework team.

Options and proposals

- 6.39 The current arrangements for opposed CPOs involve a degree of double-handling which adds to the time it takes for decisions to be taken. As indicated in the accompanying BRIA, this period from Reporter's report to the decision by Scottish Ministers takes 45 days on average¹⁵. To help streamline the process, we propose to take forward provisions that would enable Scottish Ministers to effectively delegate CPO decisions to Reporters. In such delegated cases, Reporters would determine whether or not the CPO should be confirmed – rather than making recommendations and the case being passed back to the Scottish Ministers.
- 6.40 This proposal would bring CPOs into line with other types of casework involving DPEA Reporters such as planning appeals, and cut down on the amount of double-handling that takes place.
- 6.41 As with other types of casework that can be delegated, the Scottish Ministers would retain the power to take CPO decisions themselves. In the interests of transparency, we would anticipate publishing Scottish Government policy on the circumstances in which cases would be recalled by the Scottish Ministers and those which would be decided by Reporters.

Question 35: Should Reporters be empowered to take CPO decisions, subject to published criteria regarding delegation by Scottish Ministers? Please explain your views.

¹⁵ These are figures for opposed Planning and Housing CPOs over a 10 year period.

Special category land

6.42 Additional procedural requirements apply to the confirmation process where certain types of land are included. These are referred to as ‘special category land’. This section of the consultation looks at those extra procedures and considers whether they remain appropriate.

Special Parliamentary Procedure

6.43 If special category land is included in a CPO, and specified criteria are met, an additional process known as ‘special parliamentary procedure’ (SPP) will apply to the confirmation of that CPO. The table below sets out the four special categories of land which can result in SPP being required and the circumstances in which this is triggered.

Special Category Land	Special Parliamentary Procedure Trigger
Land owned by a local authority	CPO is subject to SPP if the local authority objects to the inclusion of its land and that objection is not withdrawn.
Statutory undertaker land ¹⁶	CPO is subject to SPP if the statutory undertaker objects to the inclusion of its land and that objection is not withdrawn. Note that additional requirements apply in relation to statutory undertaker land – see paragraph 6.52 below.
Land held inalienably by the National Trust for Scotland (NTS)	CPO is subject to SPP if the NTS objects to the inclusion of its land and that objection is not withdrawn.
Land forming part of a common ¹⁷ or open space ¹⁸	CPO is subject to SPP unless: <ul style="list-style-type: none">a) The Scottish Ministers certify that there has been or will be exchange land given by the acquiring authority which is of equal area, and of equal advantage to the persons entitled to the rights and the public; orb) In cases where the land is less than 250 square yards, or the land is required for widening an existing public road, the Scottish Ministers certify that the giving of exchange land is unnecessary. Prior to issuing such a certificate, Ministers must direct the acquiring authority to issue notices to interested parties. They must consider any objections made, including by way of PLI if it is expedient to do so.

¹⁶ Land acquired by a statutory undertaker for the purposes of its undertaking

¹⁷ Defined in the 1947 Act as including any town or village green.

¹⁸ Defined in the 1947 Act as meaning any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.

- 6.44 SPP is a process of additional scrutiny by the Scottish Parliament which can apply to certain types of order (including CPOs) made, confirmed or approved by the Scottish Ministers. The steps involved in SPP are set out in the Interpretation and Legislative Reform (Scotland) Act 2010.
- 6.45 Where SPP is triggered, further notification must be carried out, in addition to that which is already required by the 1947 Act (see section above on 'Notification and advertisement of a CPO'). Where 'relevant objections'¹⁹ are made and maintained – in response to either set of notification requirements – then the CPO cannot be confirmed except by an Act of the Scottish Parliament.
- 6.46 If there are no relevant objections, or these are subsequently withdrawn, the CPO is laid before the Scottish Parliament and cannot come into force until at least 40 days has passed, and provided Parliament has not within that period resolved that the Order should be annulled.
- 6.47 For local authority and statutory undertaker land, the position is more complicated. The Local Government, Planning and Land Act 1980 excluded certain CPOs from the need for SPP where the Order includes local authority or statutory undertaker land. Whether these exclusions apply depends on who the acquiring authority is. As a result, some CPOs will trigger SPP if they include local authority or statutory undertaker land (and the authority/undertaker makes and does not withdraw an objection) but other CPOs do not. Furthermore, as noted below, separate restrictions apply in relation to statutory undertaker land.

Options and proposals

- 6.48 As summarised above, SPP effectively puts the matter of whether certain CPOs should be confirmed before the Scottish Parliament. Where there are 'relevant objections', an Act of Parliament is required. The procedures involved have the potential to add significant complexity, time and uncertainty to the process.
- 6.49 While the types of land which SPP can apply to are undoubtedly important, we are interested in views on whether the current arrangements are proportionate – especially having regard to the checks and balances that apply to the confirmation of CPOs more generally, and the considerations taken into account when applying the public interest test.
- 6.50 As regards local authority and statutory undertaker land, the requirement for SPP is already disapplied in respect of certain CPOs, depending on who the acquiring authority is. The policy rationale for this differential approach is unclear and calls into the question the need for SPP in relation to CPOs that include local authority or statutory undertaker land. For CPOs that include statutory undertaker land, there is a separate, additional restriction on

¹⁹ As defined in section 50 of the Interpretation and Legislative Reform Act (Scotland) Act 2010

confirmation where a representation is made and not withdrawn – and this would continue to apply, as set out below.

6.51 In cases where additional scrutiny is deemed to be required, we are interested in whether alternative approaches might be more proportionate than the current SPP arrangements. Potential alternatives could for example include:

- a requirement to hold a PLI if special category land is included in a CPO and objections are made and not withdrawn, rather than this being at the discretion of the Scottish Ministers or Reporter
- a restriction on Scottish Ministers' ability to confirm a CPO that includes special category land unless and until specified certification has taken place – similar to the position for statutory undertaker land (see paragraphs 6.52 to 6.54)
- retain SPP but confirmation is by a motion of the Scottish Parliament, rather than an Act of Parliament, in cases where there are objections – similar to the position in respect of the National Planning Framework

Question 36: Is additional scrutiny still needed for CPOs which include particular land? If yes, which of the four current special categories of land should this apply to?

- land owned by a local authority
- statutory undertaker land²⁰
- land held inalienably by the National Trust for Scotland (NTS)
- land forming part of a common²¹ or open space²²

Question 37: If additional scrutiny of certain CPOs is needed, could there be alternative ways to achieve this other than Special Parliamentary Procedure? Please outline your suggestions.

Statutory undertaker land: restriction on confirmation of a CPO

6.52 Where a CPO includes statutory undertaker land, separate restrictions apply under paragraph 10 of Schedule 1 to the 1947 Act. In summary, where an objection is made and not withdrawn, Scottish Ministers are restricted from confirming the CPO – unless they certify that they are satisfied that the land, by virtue of its nature and situation:

- can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
- if purchased, it can be replaced by other land belonging to, or available for acquisition by, the statutory undertaker without serious detriment to the carrying on of its undertaking

²⁰ Land acquired by a statutory undertaker for the purposes of its undertaking

²¹ Defined in the 1947 Act as including any town or village green.

²² Defined in the 1947 Act as meaning any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.

- 6.53 It is notable that the legislation does not specify that the objection necessarily needs to be made by the statutory undertaker, or that it relate to the inclusion of the undertaker's land within the CPO.

Options and proposals

- 6.54 We are minded to retain this restriction, which we think strikes a reasonable balance between the acquiring authority and statutory undertaker. Indeed, it is part of the reason that we consider that SPP could be removed insofar as it relates to CPOs that include statutory undertaker land. Nevertheless, we propose to clarify that this restriction on the confirmation of a CPO only applies if an objection is made by the relevant statutory undertaker (i.e. whose land is included in the Order).

Question 38: Should the restriction on confirmation of CPOs that include statutory undertaker land apply only where a relevant objection is made by the undertaker whose land is included in the Order? If not, please explain your reasons.

Public Rights of Way

- 6.55 Section 3 of the 1947 Act provides that, subject to certain exceptions, where a CPO includes land which has a public right of way over it (other than roads), and Scottish Ministers are satisfied that a suitable alternative right of way will be provided or none is required, then the Scottish Ministers can extinguish the right of way through an Order. In those circumstances, Ministers must publish a notice of their intention to extinguish a public right of way, and if there is an objection which is not withdrawn, a PLI must be held.

Options and proposals

- 6.56 The Scottish Law Commission's review considered the requirement for a PLI where a public right of way is to be extinguished by an order under section 3, and the potential for this to be conjoined with any separate PLI into the related CPO. There was support among respondents for the confirming authority to have discretion over the need for a PLI where a public right of way is affected by a CPO and the acquiring authority offers to replace the right of way. There was also support for allowing PLIs to be conjoined.
- 6.57 Where a CPO includes land with such a public right of way over it and Scottish Ministers publish notice of their intention to extinguish that right of way, we propose to:
- give Scottish Ministers discretion as to the holding of a PLI if objections are made (and not withdrawn)
 - allow a PLI into the extinguishment of a public right of way to be conjoined with a PLI into the related CPO

Question 39: Do you agree with the proposals at paragraph 6.57 regarding the interaction between CPOs and public rights of way? If not, please explain your reasons.

Scope and timing of CPO decisions

Scope of CPO decisions

6.58 After considering the merits of a CPO, the decision-taker can either:

- confirm the Order
- confirm the Order with modifications
- refuse to confirm the Order

Modifications to CPOs

6.59 The confirming authority's power of modification is used sparingly. It can be used to deal with minor mistakes or change of circumstances but not to address more significant matters. An example of a possible modification would be to remove land from a CPO because it is no longer required, having been acquired voluntarily.

6.60 At present, modification takes place at the end of the process, when the CPO is confirmed. Prior to that, the acquiring authority may agree to a modification to address a statutory objector's representation. However, until the CPO is confirmed with that modification, a statutory objector may maintain their objection and right be heard. This could delay the process and incur unnecessary expenditure on a hearing or PLI.

6.61 For certain statutory objectors (see groups (ii), (iii) and (iv) in paragraph 5.17), the current legislation already provides some flexibility to avoid having to hold a hearing or PLI in circumstances where the acquiring authority agrees to address an objection. Specifically, paragraph 4(2A) to (2C) of [Schedule 1 to the 1947 Act](#) allows the acquiring authority to give specific written undertakings as to how they will address certain statutory objections²³ at the conveyancing stage, removing the need for a hearing or PLI. This provision does not, however, apply to owners, lessees and occupiers of land included within a CPO (see group (i) at paragraph 5.17).

Options and proposals

6.62 We would be interested in views on potential new measures that would give acquiring authorities greater flexibility to address statutory objectors' concerns during the confirmation process, and in so doing avoid unnecessary hearings or PLIs – and the associated costs. We think this could potentially be achieved in different ways. For example:

- extending the provisions described in paragraph 6.61 so that they apply to all statutory objectors (i.e. to include owners, lessees and occupiers)

²³ These objections relate to maintaining a person's enforceable rights in relation to a title condition and not disapplying a development management scheme.

- making provision for the acquiring authority to modify a CPO during the confirmation process to allow them to remove land and/or make minor modifications to address errors

6.63 Clearly, any new mechanism of this nature should not enable additional land to be added to a CPO (even if this is to address a minor error) without the owner being notified and having the opportunity to object. If taken forward, further consideration would also need to be given to awards of expenses incurred in relation to a PLI or hearing that is cancelled or curtailed as a result of such a mechanism.

Question 40: Should there be a mechanism that would allow statutory objections to be addressed during the confirmation process, so avoiding unnecessary hearings or PLIs?

Question 41: If provision for such a mechanism were made, what procedures or safeguards would need to be put in place to ensure fairness? Could either of the suggestions in paragraph 6.62 achieve this?

Conditional Confirmation

- 6.64 CPOs do not exist in a vacuum. Compulsory purchase is typically one part of a wider development project, which may involve various consents, funding arrangements and dependencies. How these individual elements are sequenced may impact on overall cost and deliverability.
- 6.65 As outlined above (see 'How CPOs are decided'), the public interest test for CPOs considers whether the relevant funds are in place to acquire the land and deliver the scheme, and whether planning permission and other consents have been secured. As noted, these are not hard-and-fast requirements, and the Circular provides flexibility in this regard. In particular, it does not necessarily require that all the funding needs to be in place up front – or that detailed planning permission and other consents must have been secured before a CPO will be confirmed. Nevertheless, it is understandable that some authorities may seek to manage risk by only seeking confirmation for a CPO once other consents have been secured and there is certainty of funding. If prospective funding partners are reluctant to provide this certainty until a CPO is in place, a 'chicken and egg' scenario could arise.

Options and proposals

- 6.66 An option could be to make provision for conditional CPOs. That is to say, the confirming authority would be able to confirm a CPO subject to conditions. Such conditions could, for example, relate to separate consents or funding being secured. If such a power were introduced, the CPO would not become operative (i.e. the three year implementation period would not start) until the confirming authority is satisfied that conditions have been complied with, following a subsequent application by the acquiring authority.

- 6.67 We would be interested in views on whether such a provision could add to the flexibility already provided by the Circular, in terms of when compulsory purchase powers are sought relative to other aspects of development projects. In particular, we would welcome thoughts on whether it would enable acquiring authorities to make CPOs earlier in the delivery of projects alongside other consenting, procurement and funding processes – and whether this would help to de-risk delivery in practice.
- 6.68 Although there may be some advantages, we can see potential drawbacks and risks too. Providing for conditional confirmation could add complexity: new procedures would need to be put in place by which acquiring authorities apply to discharge conditions, including opportunities for affected parties to make representations. Provision would need to be made to ensure matters of principle were not re-opened through such a process. Depending on how long acquiring authorities have to discharge conditions following conditional confirmation, the effect could be to prolong the uncertainty experienced by owners and occupiers. Additionally, there may be an increase in CPOs which are not confirmed on the basis of being premature.

Question 42: Would a power to confirm CPOs subject to conditions be helpful in terms of overall project delivery? Please explain your views.

Question 43: If conditional CPOs were taken forward, what additional procedures and safeguards would need to be in place to ensure fair and proportionate use?

Timescales for CPO decisions

- 6.69 This section looks at the need for time limits for issuing CPO decisions after the procedure for considering objections (be that PLI, hearing or written submissions) has concluded. No such time limits are currently prescribed.

Options and proposals

- 6.70 It is clear from stakeholders that both acquiring authorities and affected landowners/occupiers would welcome changes that make the CPO confirmation process swifter. What is less clear is whether statutory time limits for the issuing of CPO decisions would have that effect – and so contribute to the reform programme’s aim of making the process more streamlined.
- 6.71 The Scottish Law Commission was cautious about the prospect of specifying such time limits through primary legislation, questioning whether this would be conducive to issues being properly considered – especially in more complex cases. Rigid time limits therefore have the potential to be counter-productive in terms of the quality of decision taking. Another unintended consequence of fixed or binding time limits could be to increase instances of Ministers (or Reporters) refusing to confirm CPOs.
- 6.72 A further consideration is what an effective sanction might be if time limits for issuing CPO decisions are not complied with. For example, providing that a CPO is invalid if it is not confirmed within a specified period could unfairly and

disproportionately penalise acquiring authorities. By the same token, providing that a CPO is deemed to be confirmed if no decision is taken within a specified period would be very unfair to affected owners and unlikely to be compliant with ECHR.

- 6.73 For the above reasons, we are unconvinced about the effectiveness of introducing binding, statutory time limits for the issuing of CPO decisions. We instead propose to publish target timescales for deciding CPOs. Although non-binding, doing so should provide affected parties with additional clarity and certainty. A requirement to periodically report on these timescales could help to further support transparency.
- 6.74 The issue of decision-making timescales is contingent on other proposals in this consultation. For example, if provision is made for CPOs to be decided by Reporters and/or acquiring authorities, specific targets may be required for such scenarios. Similarly, specific timescales may be needed depending on whether objections are considered via PLI, hearing or written representations – recognising that the former are likely to be more complex.

Question 44: Do you agree that the Scottish Government should publish target timescales for the issuing of CPO decisions, rather than having binding statutory time limits? If not, please explain your reasons.

Question 45: If targets (statutory or otherwise) are not met, what sanctions might be appropriate?

Question 46: Should the Scottish Government be required to report on compliance with any target timescales for CPOs?

Challenges to a CPO

- 6.75 This section of the document examines how a CPO which has been confirmed can be challenged. It looks at the grounds of challenge, the time limits for bringing a challenge and the remedies open to the court where a challenge is successful.

Grounds of challenge

- 6.76 The legal basis for challenging a confirmed CPO is set out in paragraphs 15 and 16 of Schedule 1 to the 1947 Act. In summary, an aggrieved person may apply to the Court of Session to challenge the validity of a CPO on the grounds that either: the confirmation is ultra vires (outside the scope of legal powers), or the applicant has been prejudiced by a failure to follow the relevant statutory procedures.
- 6.77 While the wording could perhaps be clarified, we are not minded to amend the substance of the grounds on which a confirmed CPO may be challenged and propose that they are retained.

Question 47: Do you agree that the grounds on which a confirmed CPO may be legally challenged should be retained? If not, please explain your reasons.

Time limit for bringing challenge

6.78 Legal challenges to the validity of a confirmed CPO must be brought within 6 weeks. This time limit starts when notices of the confirmation of a CPO are published.

Options and proposals

6.79 The Scottish Law Commission did not consider the 6-week challenge period to be unreasonably short and noted that it is consistent with other analogous regimes. It therefore did not seek views on the matter. The Commission did, however, ask about whether legal challenges made on the basis of non-compliance with rights under the ECHR should also be brought within a 6-week period. A substantial majority of respondents agreed that they should and we do not intend to alter this. We propose to retain the 6-week period within which challenges to the validity of a confirmed CPO must be brought.

Question 48: Should the 6-week period within which a confirmed CPO may be legally challenged be retained? If not, what should the period be?

Remedies

6.80 Where a challenge is successful, the court may quash the CPO in whole or in part. The Scottish Law Commission acknowledged that in some cases, for example where a challenge succeeds on the grounds of a procedural defect, it may be disproportionate for the Court to quash the Order. Even if the CPO is otherwise sound, the acquiring authority would have to start the entire process again. The Commission therefore asked about whether the court should have discretion to grant some remedy short of quashing the CPO. This could, for example, include allowing the court to quash just the confirmation decision instead of the whole CPO or requiring the inquiry to be re-run. A substantial majority of respondents felt that the court should be given such discretion.

Options and proposals

6.81 We propose to give the Court the discretion to quash **the decision** to confirm a CPO, rather than its only available remedy being to quash the Order itself. This would provide greater flexibility to deal with situations where it would be disproportionate for a CPO to be quashed in whole or in part.

Question 49: If a legal challenge is successful, should the court have discretion to quash just the confirmation decision, rather than its only remedy being to quash the Order itself?

7. Implementation

Overview

- 7.1 Once a CPO has been confirmed, a separate process is required for the acquiring authority to enter and take ownership of the land. This is known as implementation of the CPO.
- 7.2 This chapter looks at the legal procedures for implementation and their timing, including the options for landowners to object if only part of their land is to be taken ('objection to severance'). It also considers the effect of compulsory purchase on the title of the land and on rights subordinate to ownership, whether they are existing rights or new rights being created.
- 7.3 The acquiring authority does not have to take ownership of all the land authorised to be taken by the CPO, nor to take all the land they intend to acquire at once. Changes to the planned development may mean that not all the land included in the CPO is ultimately required, and the development may be phased so that it is more appropriate to acquire the land in parcels. In this chapter, therefore, "the land" means only the area(s) of land the acquiring authority wants to acquire at that point in time.

Procedure

- 7.4 There are currently several different options for implementing a CPO, which are interlinked and very complex.
- 7.5 The original procedure set out in the 1845 Act requires the acquiring authority to serve a **notice to treat (NTT)** on each person with an interest in the land, and invite them to respond with a statement of their claim for compensation. If no claim is made, or compensation is not agreed, within 21 days, the dispute can be referred to the Lands Tribunal for Scotland. Under this procedure, the authority cannot register their title to the land until compensation has been determined and paid.
- 7.6 A separate process is required for the authority to take title to the land after a NTT, and there are various ways of doing this in different circumstances. In addition, the acquiring authority can serve a notice of entry, at any time after the notice to treat, giving the landowner a minimum of 14 days notice of their intention to enter and take possession of the land. This is separate from taking title, and can be done before compensation is agreed.
- 7.7 The other main procedure for implementing a CPO is a **general vesting declaration (GVD)**. This is a single document which covers all the land the authority intend to acquire at one time, and may include multiple landowners. The provisions for GVD are now set out in schedule 15 of the 1997 Act, having been first introduced in 1945. It should be noted that when a GVD is used, the provisions of various other legislation apply as if a NTT had been served (a 'deemed NTT'), for example in relation to rights to compensation.

However, the main advantage of a GVD for the acquiring authority is that compensation is settled after title is transferred.

- 7.8 The acquiring authority must give notice of their intention to make a GVD, and invite all persons who consider they are entitled to compensation to submit information. The authority must allow at least two months after the notice before making the GVD (unless all landowners agree), and then at least 28 days from making the GVD until it takes effect. When it takes effect, it vests (transfers title of) all the land described in it in the acquiring authority, including the right to enter and take possession of it. Because of this, the GVD must describe the land in conveyancing terms (unlike a NTT). No separate procedure is needed to take title, although the GVD needs to be registered in the Land Register in order to deliver a real right of ownership.

Options and proposals

- 7.9 Almost all CPOs are now implemented by GVD, including those for a single property. We therefore propose that new legislation should provide for a single procedure, broadly based on the GVD approach. For the purposes of this paper we will call the new procedure a **Compulsory Purchase Vesting Declaration** (CPVD). This would have the following features:
- i. the declaration could apply to the whole or part of the land covered by the CPO, including multiple landowners
 - ii. the declaration would require to describe the land in conveyancing terms
 - iii. after an appropriate period of notice, the declaration would operate as a registrable transfer of the land described in it to the acquiring authority
 - iv. all questions of compensation would be left to be settled at a later stage
- 7.10 Further details, including timing, objection to severance and the effects on title, are addressed in the rest of this chapter.

Question 50: Do you agree that there should be a single procedure for implementing compulsory purchase, similar to GVD? If not, what problems do you see with this approach?

Notification

- 7.11 The first stage in making a GVD is for the acquiring authority to provide a notice that they intend to do so. This notice must invite any person who would be entitled to claim compensation to contact the acquiring authority with details of their name and address and the nature of their interest in the land. This notice is to be served on the same people and in the same way as for the original notification of the making of the CPO, which excludes tenants for a month or less.
- 7.12 After making the GVD, the acquiring authority must serve a notice stating its effect, on every person who responded to the original notice, and every occupier of the land, other than those with “a short tenancy, or a long tenancy

which is about to expire”. These are defined as tenancies for a year or less, or with a year or less to run.

- 7.13 Questions around the list of persons to be notified of a CPO are dealt with in chapter 5 (see paragraphs 5.17 to 5.26). To avoid any discrepancies, we would suggest that the list of people to be notified should be set out once in the legislation and applied to implementation of a CPO as well as to its making and confirmation.

Persons enabled to sell

- 7.14 Notices are required to be served on “all the parties interested in such lands, or to the parties enabled by this or the special Act to sell and convey the same”. Sections 7 and 8 of the 1845 Act enable people to sell an interest in land to the acquiring authority, and to exercise other powers relating to the land, even if they could not normally do so. Those enabled include liferenters, trustees, executors and administrators, and legal representatives of children or of people suffering from “mental disorder” within the meaning of the Mental Health (Scotland) Act 1960²⁴.
- 7.15 These provisions ensure that the acquiring authority can obtain the land it needs even if the current owner would not normally be able to sell it. We consider that provisions similar to sections 7 and 8 of the 1845 Act should be included in new legislation for this purpose. However, they will need to be modernised to reflect current law on capacity, guardianship etc.

Objection to severance

- 7.16 Where a GVD or NTT includes only part of a piece of land, and losing that part has a negative impact on the remainder, the landowner can serve a notice requiring the authority to acquire the whole of the land. This is known as a ‘counter-notice’ or ‘notice of objection to severance’, depending on the circumstances. The acquiring authority can either accept and acquire the additional land, in which case it is treated as if it was originally included in the NTT or GVD, or withdraw the NTT (or deemed NTT created by the GVD) and not acquire any of that piece of land. Or the Lands Tribunal for Scotland (LTS) may determine that there is no negative impact, and the acquisition of part of the land goes ahead as planned.
- 7.17 The details of the process depend on the type of land involved and the procedure used. There are different tests as to whether there is a negative impact on the land which is not included in the NTT or GVD:
- for a “house, building or manufactory” the question is whether the part to be acquired can be taken “without material detriment” to the rest
 - for “the park or garden of a house”, the question is whether it can be taken “without seriously affecting the amenity or convenience of the house”

²⁴ The Mental Health (Scotland) Act 1960 has been repealed and replaced by legislation using more modern terms, but the reference in the 1845 Act has not been updated.

- for agricultural land, the test is whether the land “is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land, as a separate agricultural unit”
- 7.18 For houses etc served with a NTT, there is no time limit for serving a counter-notice, but there is debate over whether it must be served before the acquiring authority take entry. Since compensation must be agreed before title can be acquired under a NTT, the counter-notice does not affect the operation of the NTT.
- 7.19 For houses etc included in a GVD, the notice of objection to severance must be served within 28 days of the notice that the GVD has been made, which means it is before the earliest date the GVD can have effect. The notice prevents the land vesting in the acquiring authority or the authority entering on the land until the issue has been resolved. The authority has three months in which to either withdraw the deemed NTT for that land, accept the notice of severance and acquire the whole of the land, or refer the notice to the LTS for determination. If the authority fail to take action, the deemed NTT is deemed to be withdrawn.
- 7.20 For agricultural land, the counter-notice must be served within two months of the NTT (or deemed NTT, i.e. notice that the GVD has been made). The acquiring authority have two months to accept the notice, after which it may be referred to the LTS. Where a GVD has been used it is not clear whether this counter-notice prevents the land vesting in the acquiring authority, as a notice of objection to severance would. It is also unclear how the timescales fit together, since the GVD could take effect after 28 days, before the deadline for serving a counter-notice.

Options and proposals

- 7.21 The current categories of land in relation to objection to severance do not necessarily cover all modern land uses, and the difference in the language of the tests is unhelpful. We are interested in views as to whether there should be a single test for all types of land, or a different categorisation – for example having different tests for commercial versus residential land. We deal with timings in the following section.

Question 51: Should there be a single test for objection to severance, or a different categorisation? If you propose different categories, please explain what they would be.

- 7.22 Some stakeholders have suggested that a notice of objection to severance should not prevent the land included in the CPO from vesting in the acquiring authority. They highlight that confirmation of the CPO means it has been shown that the land is needed for the development, and it is in the public interest for the authority to acquire it. In the current system, in some cases the authority may feel it has to agree to acquire the whole of the objector’s land to avoid delaying the development, rather than referring the question to the LTS. To remedy this, new legislation could provide that the land included in the

CPO vests in the acquiring authority as usual, and negotiation over the remaining land is dealt with afterwards, alongside compensation.

Question 52: Under the new CPVD, should a notice of objection to severance prevent the land included in the CPO from vesting in the acquiring authority?

Timing

- 7.23 At all stages of a CPO there is a tension between the acquiring authority being able to press on with the project, and allowing enough time for persons with an interest in the land to decide whether they want to challenge the action. Occupiers also need time to find other accommodation, premises or land and to move. Occupiers of agricultural land may need additional time to manage crop cycles. However, there is also a balance between allowing enough time while minimising uncertainty. Engaging with the people affected will help the acquiring authority to understand and address people's concerns, and the acquiring authority should give as much notice as possible of when they intend to take forward each stage of the process.

Time limit for implementation

- 7.24 At present, an acquiring authority has three years within which to implement a CPO (see section 116 of the 1845 Act and Schedule 2 to the 1947 Act). Before considering whether this is an appropriate time limit, it is important to first clarify when the clock starts on the three-year period.

Starting the clock

- 7.25 As outlined in paragraph 5.36, a CPO becomes 'operative' when the acquiring authority publishes notices of the confirmation of the order: not the date on which the Scottish Ministers agree to confirm the order. This marks the start of the period within which the CPO may be implemented as well as the period within which the validity of the CPO can be challenged in the Court of Session.
- 7.26 It is notable that there is no fixed period within which notices of confirmation must be published: per paragraph 6 of Schedule 1 to the 1947 Act, these must be published "**as soon as may be** after the order has been confirmed". This seems unhelpfully open-ended.
- 7.27 We consider that a time limit on the service of confirmation notices could provide certainty for affected parties and help to streamline the process. In England and Wales, notices of confirmation must be served within 6 weeks. We would welcome views on whether a similar time limit would be helpful.

Question 53: Should confirmation notices be required to be published within 6 weeks of the date on which the order is confirmed? If you disagree, what timing would you prefer, and why?

Longer or Shorter Implementation Period

- 7.28 Responses to the Scottish Law Commission's review indicated that there are a range of concerns about whether the current three-year period is reasonable. Some suggested that a longer period is needed for complex projects, while others felt it should be shorter to reduce uncertainty for landowners.
- 7.29 In light of this, a compromise position could be to give the confirming authority the power to set either a longer or a shorter time limit when a CPO is confirmed. Potentially an updated Circular could provide guidance on exercising this power; clearly, the scale and complexity of the scheme would have a key bearing on the appropriateness of an alternative time limit.

Question 54: Do you agree that the standard implementation period should remain at three years?

Question 55: Should confirming authorities be able to specify a longer or shorter implementation period?

Stopping the Implementation Clock

- 7.30 At present, the implementation period of a confirmed CPO is not affected by any challenge to the validity of the Order. A court challenge can therefore significantly reduce the actual time available for the acquiring authority to implement the CPO. To provide additional flexibility, we propose that the time limit should be suspended pending the conclusion of any court action.

Question 56: Do you agree that the time limit should be suspended during any court challenge to the validity of the CPO?

Question 57: Please add any comments on the time limit for implementation, if you wish to expand on your answers to questions 53 to 56.

Implementation procedures

- 7.31 As set out above, GVD is a quicker way of taking title to the land, since it is not necessary to wait for compensation to be agreed, but NTT and a notice of entry provides a quicker way of gaining entry, in as little as two weeks. In developing a new single procedure (CPVD), we need to strike a balance between the two.
- 7.32 A GVD takes a minimum of 3 months from confirmation of the CPO to transfer of ownership. The notice of intention to make a GVD can be issued with the notice of confirmation. Two months is then required before making the GVD, unless all occupiers agree to a shorter period. Twenty-eight days is then required between the GVD being made and the land and right of entry vesting in the acquiring authority. This period cannot be shortened. Persons with an

interest in the land have those 28 days to serve a notice of objection to severance, which prevents the land vesting in the authority and prevents them gaining the right of entry, until the notice is resolved.

- 7.33 The timings for a NTT and notice of entry overlap significantly, meaning there is more risk to the acquiring authority if they choose to act quickly. The NTT can be served with the confirmation notice. After the NTT is served, those with an interest in the land have 21 days to provide a statement of their claim for compensation, and the authority has six weeks after that, or after compensation has been determined, to withdraw the NTT (if, for example, they decide the compensation is too high).
- 7.34 Owners of agricultural land where only part of the land is to be acquired have two months from service of the NTT to serve a counter-notice, requiring the authority to purchase the whole of the land, and the authority has two months to respond (there is no timescale for other types of land). However, a Notice of Entry can be served at the same time as the NTT, and entry can be taken no less than two weeks after that – before the deadline for any of the other actions.
- 7.35 The figures below set out these timings graphically. Note that these show the minimum possible timings for each element, assuming that the initial notices are served, or CPVD is made, at the same time as the notice of confirmation of the CPO.

Figure 2: Timing of current implementation procedures

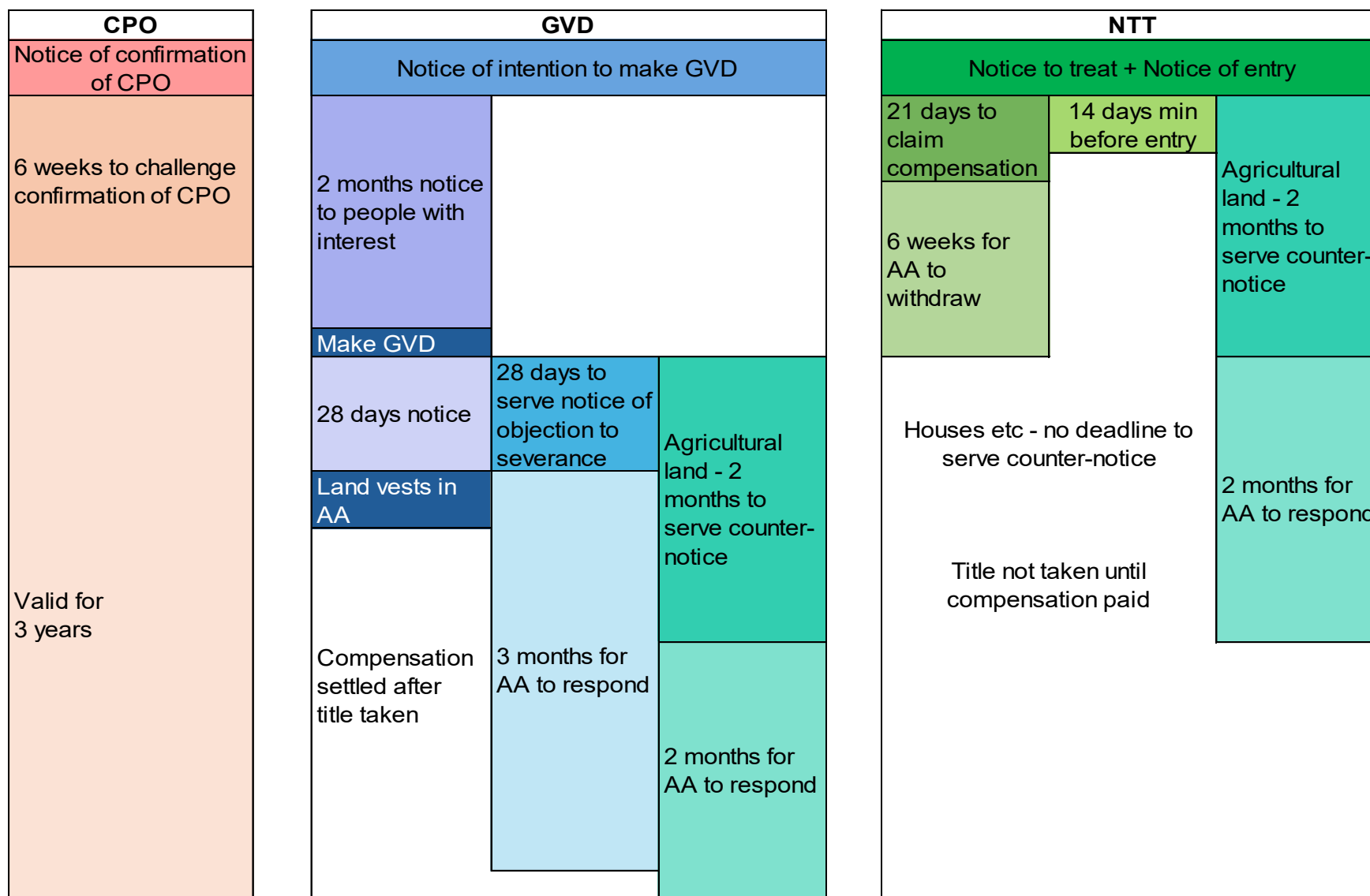


Figure 3: Timing of proposed new procedure

CPO		Proposed CPVD	
Notice of confirmation of CPO		Make declaration	
6 weeks to challenge confirmation of CPO		6 weeks notice	6 weeks to serve notice of objection to severance
		CPO land vests in AA	
Valid for 3 years		Compensation settled after title taken	AA responds after vesting

Options and proposals

- 7.36 As set out in paragraph 7.32, for a GVD a period of two months is required between serving a notice of intention to make the GVD and actually making it. For the CPVD, we do not feel it is necessary to have this statutory period in which people with an interest in the land are notified and required to respond with their details. The acquiring authority should have these people's details following the procedures for making and confirmation of the CPO. They would need to check for any changes, particularly if there is a lengthy gap between notifying confirmation of the CPO and implementing it, but this can be done concurrently with other preparations for implementation. Procedure for claiming compensation is dealt with in chapter 9.
- 7.37 We propose that the period for a CPVD to take effect should be six weeks, starting from the date when people with an interest in the land have been notified that it has been made. Any notice of objection to severance (for any type of land) would need to be served within that six week period. At the end of the six weeks, the CPVD would act as a registrable transfer of the land to the acquiring authority.
- 7.38 This six-week period for the CPVD to take effect is the same amount of time as interested parties would have to challenge the confirmation of the CPO. It therefore removes the risk of the CPO being challenged after the acquiring authority has obtained title to the land, even if the CPVD is made immediately after confirmation.

Question 58: Do you agree that the new CPVD should take effect six weeks after notification that it has been made? If not, what should the period be, and why?

Question 59: Is there a need for a separate stage to notify people with an interest in the land and seek information from them?

Effect on title

- 7.39 There are various potential issues with the title of land which could cause problems to an acquiring authority in its future use of the land. All of these have at least partial remedies in the existing legislation, but it is often unclear whether they cover all circumstances. We propose that these issues should be made clear and universal. A key point is that anyone whose property rights are affected by these actions would still have a right to compensation when it was discovered, even if they were not identified and notified at the time.

Defects

- 7.40 We propose that the new single procedure should remove any defects in the title of the land acquired, providing the acquiring authority with a clear, valid title.

Real burdens and servitudes

- 7.41 Section 106 of the Title Conditions (Scotland) Act 2003 ('the Title Conditions Act') provides that when land is acquired compulsorily under a CPO, then any real burdens or servitudes over the land are extinguished and any development management scheme applying to the land is disapplied, unless the CPO or the GVD (or other form of conveyance) specifies they are not to be extinguished/disapplied. Section 194 of the 1997 Act makes similar provision in relation to "all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land and all other rights or servitudes in or relating to that land", for CPOs made by local authorities for planning purposes. It does not affect real burdens, and excludes rights and apparatus belonging to statutory undertakers or for electronic communications.
- 7.42 We propose that the CPVD should combine these provisions so that in all cases, the effect of a CPO is to extinguish all real burdens, servitudes and other rights, unless the CPO specifically states otherwise.

Acquisition by agreement

- 7.43 Section 107 of the Title Conditions Act provides that when land is acquired by agreement, but could have been acquired compulsorily, it has the same effect of extinguishing real burdens and servitudes and disapplying any development management scheme. There is some doubt whether it is sufficient for the acquiring authority to simply have relevant compulsory purchase powers, or it must show that it could have obtained a confirmed CPO in the specific circumstances. We propose that s.107 should be amended to clarify that it is only necessary for the authority to have relevant powers, otherwise a separate process would be required to show that a confirmed CPO could have been obtained.

Securities

- 7.44 Where land is subject to a security (mortgage), there are different provisions about how it is to be paid off and whether a separate deed of discharge is required, depending whether an NTT is used or a GVD. Our view is that a separate discharge is not required, if the CPO extinguishes all "incumbrances". The security holder will be entitled to compensation, if the debtor is not required to pay off the loan either when the CPO is proposed or from their own compensation. Paragraphs 5.25 and 5.26 discuss notifying heritable creditors of CPOs.

Land owned by the acquiring authority

- 7.45 It is a general conveyancing rule that a person cannot grant a disposition of land which they own to themselves, and therefore an acquiring authority cannot at present compulsorily acquire land it already owns. However, we appreciate that there could be circumstances where it would be useful to do so, and cases where the acquiring authority is genuinely unsure whether it owns a part of a parcel of land. This may, for example, be a particular issue in

built-up areas where land is still in the Register of Sasines and therefore boundaries may be less clear. We propose that the acquiring authority should be able to include the whole parcel of land in a CPVD and register it in the Land Register, thus ensuring they have valid title to the whole area. Compensation would be available to anyone later found to have had rights in the land.

Notice in Land Register

- 7.46 The Land Register does not provide information on how the land has been conveyed, and therefore it may not be clear what has happened to previous servitudes, securities etc. The proposed solution is that the Keeper should be required to add a note on the title sheet stating that the title was acquired by compulsory purchase. They should also be required to remove any standard security from the title. Anyone checking the register would then be able to conclude that any rights, securities or defects in title which no longer appear have been removed by the compulsory purchase.

Question 60: Should the new CPVD provide the acquiring authority with a valid title, removing all defects, real burdens, servitudes etc and securities? If not, please explain your reasons.

Question 61: In relation to section 107 of the Title Conditions Act, should the legislation be amended to clarify that the acquiring authority simply has to have relevant compulsory purchase powers? If not, please explain your reasons.

Question 62: Should acquiring authorities be able to include land in a CPVD which belongs to them, or where they are unsure if it does? If not, please explain your reasons.

Question 63: Should a note be added to the title sheet in the Land Register stating that the title was acquired by compulsory purchase? If not, please explain your reasons.

Rights subordinate to ownership

Leases

- 7.47 The current law on the effect of compulsory purchase on leases is complex. Under current procedures:
- for leases longer than a year, or from year to year, under the NTT procedure, the authority may acquire the landlord's right and wait for the lease to expire, or they may serve a NTT on the tenant to acquire their right, in return for compensation
 - tenants with short leases or long leases about to expire (see paragraph 7.12) have no right to a NTT. Their lease is simply extinguished when the acquiring authority takes entry, but they are entitled to compensation, under section 114 of the 1845 Act

- under the GVD procedure, tenants with long leases are required to be served with the relevant notices, their lease is extinguished when the GVD takes effect and they are entitled to compensation
- **BUT** a GVD has no effect on a short lease or long lease about to expire. When the land vests in the acquiring authority, it is still subject to the lease until it ends. If the authority wishes to take entry earlier, under paragraph 8 of schedule 15 to the 1997 Act, they may serve a NTT and Notice of Entry on the tenant. This is the only case in which a Notice of Entry can be served in combination with a GVD

7.48 If only part of the land subject to a lease is included in the CPO, section 112 of the 1845 Act makes provision for apportionment of the rent, and the tenant is entitled to compensation for severance in the same way as an owner would be. The lease continues to have effect in relation to the remainder of the land in the same terms as before.

Liferents

7.49 There are two types of liferent:

- a proper liferent, in which the liferenter has a real right of liferent, and
- an improper liferent, which is a beneficial interest under a trust which has the real right of ownership

7.50 Improper liferents are more common and relatively simple for compulsory purchase, as the acquiring authority would acquire the interest of the trustee and pay compensation to the trust. A proper liferenter's real right cannot normally be transmitted to any other person, but section 7 of the 1845 Act allows them to sell and convey their interest to the acquiring authority.

Options and proposals

7.51 We would propose that the new procedure should enable the acquiring authority to end or extinguish any lease or liferent when they acquire ownership of the land, and the tenant / liferenter will be entitled to compensation. It seems unnecessary to retain a separate notice to treat / notice of entry process for this situation. Provisions about apportionment of rent etc, if only part of the leased land is acquired, should remain.

Question 64: Would there be any difficulties in including all leases and liferents in a CPVD, extinguishing them in return for compensation?

New rights subordinate to ownership

7.52 Section 63 of the 1973 Act provides that the provisions of the 1845 and the 1947 Act apply, with necessary modifications, to the creation of new rights over land as they apply to the compulsory acquisition of land. We propose that this should continue and a single CPVD should be able to cover both acquisition of physical land and the creation of new rights over neighbouring land, for example.

8. Compensation

Overview

- 8.1 The rules governing compulsory purchase compensation in Scotland are founded on the underlying principle of **'equivalence'**. This is the long-standing principle that those whose land is acquired by compulsion should be put (at least in financial terms) in the same position after the acquisition as they were before it, being left neither better off nor worse off as a result.
- 8.2 People who are subject to compulsory acquisition and are entitled to claim compensation are referred to as 'claimants'. Claimants are entitled to four principal elements of compensation, which are sometimes referred to as 'heads of claim' or 'heads of compensation':
- the **value of the land** to be acquired
 - **injurious affection** payments for the reduction in value of other land retained by the claimant
 - **disturbance** payments for losses which are unconnected to the value of the land, such as removal costs and professional fees
 - **loss payments** recognising the inconvenience and disruption caused by compulsory purchase
- 8.3 The legal basis for these heads of compensation is derived from a combination of statute and case law. As regards the first two heads, section 48 of the 1845 Act refers to "the value of lands to be purchased" and "compensation claimed for injury done or to be done to the lands held therewith". The 1963 Act sets out rules specifying how compensation for the value of the land acquired is to be assessed. Loss payments were introduced separately in the 1973 Act.
- 8.4 Over time, case law has determined that, in order to uphold the principle of equivalence, claimants should be compensated for additional costs such as removal and re-establishing a business in another location. Such costs, which can effectively be thought of as expenses, are referred to in a compulsory purchase context as 'disturbance'. However, there is no statutory definition of disturbance in the current legislation and the right to compensation for disturbance is not clearly set out.
- 8.5 The remainder of this chapter of the consultation paper is structured around the four key heads of claim.

Value of land acquired

General rules

- 8.6 Claimants' entitlement to compensation for the value of the land that is acquired compulsorily is very long-standing, dating back to the 1845 Act.

Section 12 of the 1963 Act contains six rules for assessing how such compensation is to be assessed, first formulated in 1919. These are:

- (1) No allowance shall be made on account of the acquisition being compulsory.
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any authority possessing compulsory purchase powers.
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health, the amount of that increase shall not be taken into account.
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbiter is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.
- (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

8.7 Rule (1) has arguably been superseded by the existence of statutory loss payments, which provide additional compensation to reflect the disruption caused to people affected by compulsory purchase. Rule (6) causes a number of issues for the assessment of disturbance. These issues are explored in the relevant sections below.

8.8 Our current view is that Rules (2) to (5) should be retained in any new compulsory purchase legislation, although they may need to be revised and clarified alongside wider reforms taken forward.

Market value: the current approach

8.9 Rule (2) makes clear that claimants are entitled to the market value of the land that is acquired. However, by definition, compulsory purchase does not involve a willing seller and is not a market transaction. In the context of compulsory acquisition, 'normal' market conditions and considerations clearly do not apply. Accordingly, legislation (and case law) prescribe how land is to be valued for the purposes of compensation. In particular, the law specifies

those factors which can be taken into account and those that are to be disregarded when compensation is assessed.

8.10 In doing so, legislation and case law in effect seek to ensure that compensation reflects what the market value of the land **would have been** had it not been subject to compulsory purchase. References to ‘market value’ throughout this chapter should be read in this context. The Courts have observed that this can take CPO compensation into “the realm of the counterfactual”²⁵. There are three key aspects to this:

- the No-Scheme Principle
- the Planning Assumptions
- Certificates of Appropriate Alternative Development (CAAD)

8.11 An important exception to the market value approach to valuation is where the land in question is used for a purpose which has no general demand or market (e.g. a place of worship) and the owner intends to continue the use elsewhere. In such cases, compensation may be on the basis of the reasonable cost of ‘equivalent reinstatement’ (Rule 5).

No-Scheme Principle

8.12 In practice, the value of land subject to compulsory acquisition would likely be skewed by it being included, or potentially included, in a CPO. The value may be reduced or inflated, depending on the scheme. Basing compensation on such values would clearly run counter to the principle of equivalence. Hence, the market value of land acquired in a CPO context is assessed in accordance with the ‘no-scheme principle’.

8.13 In relation to compulsory purchase, “the scheme” is the development underlying the acquisition, such as a road project, housing refurbishment works etc. In summary, the no-scheme principle requires increases or decreases in value which are attributable to the scheme – or the prospect of that scheme – to be disregarded for the purposes of assessing market value. This is partly given effect by the 1963 Act (see section 13 and Schedule 1), which specifies certain developments that are to be disregarded. However, much of what constitutes the no-scheme principle – and the assumptions that are to be made when applying it – are derived from case law which dates back over 100 years.

The Planning Assumptions

8.14 The market value of land depends on various factors. What land can be used for – now and in the future – is an important determinant of market value. As such, the planning system has an important bearing on the value of land. The value of a piece of land sold on the open market will be affected by (amongst other things) its planning status and its development potential. In particular, market value will be influenced by:

²⁵ South Lanarkshire Council v Lord Advocate [2001] ScotCS 213

- any existing planning permission(s) for alternative forms of development (development value)
 - the future prospect of planning permission being granted for alternative forms of development (hope value)
- 8.15 The existence of planning permission (or prospect of planning permission) may, depending on the type of development, increase the market value of the relevant land. By the same token, where land does not benefit from planning permission and/or there are limited prospects of it being granted, the market value of land will be the same as, or close to, its existing use value. Of course, factors outwith planning (e.g. taxes and subsidies, physical factors such as contamination) can have a key bearing on land's market value too.
- 8.16 In broad terms, the CPO compensation provisions seek to replicate this position, in that they take account of the development potential of the land acquired. However, they do so in the context of the wider no-scheme principle. That is to say, the assessment of compensation considers what (if any) planning permissions would have been – or are likely to have been – granted had it not been for the compulsory purchase. Again, this reflects the overarching principle of equivalence.
- 8.17 To this end, the 1963 Act contains a series of statutory assumptions as to planning permissions which can be taken into account when ascertaining the value of land subject to compulsory purchase. These are often referred to as 'the planning assumptions'. The relevant provisions (sections 22 to 24) are complicated, but in very broad terms they provide that currently:
- account is to be taken of any extant planning permission (section 22)
 - planning permission is to be assumed (sections 23 and 24) for:
 - the acquiring authority's proposals
 - development specified in a CAAD
 - development which accords with the relevant development plan and can reasonably have been expected to have been granted were it not for the CPO
- 8.18 It is important to note that even where there is an extant planning permission – or planning permission can be assumed – for an alternative development, the assessment of compensation will take into account the costs, risks and uncertainties of implementing the development. For example, remediation costs, infrastructure requirements and/or restrictions imposed by planning conditions/obligations.

Certificates of Appropriate Alternative Development (CAAD)

- 8.19 As noted above, the 1963 Act provides that when compensation is assessed, planning permission is to be assumed for development specified in a CAAD. In summary, CAADs provide a mechanism for establishing what development(s) would have been granted planning permission in the absence of the scheme underlying the CPO. To this end, they can help to assess the

market value of land that is subject to compulsory acquisition. The relevant procedures are in Part IV of the 1963 Act.

- 8.20 An application for a CAAD must be made in writing and contain information regarding the classes of development which the applicant believes, either immediately or at a future time, would be appropriate for the land in question, if it were not for the proposed compulsory acquisition (section 25(3) of the 1963 Act).
- 8.21 CAAD applications are made to the relevant planning authority; they can be submitted by either the claimant or the acquiring authority. In practice, the planning authority will then have to make a judgement about what developments would be acceptable in the 'no-scheme world' (i.e. if the underlying scheme did not exist). The planning authority may issue either a:
- positive certificate – indicating planning permission would have been granted for one or more classes of development specified therein
 - negative certificate – indicating that planning permission would not have been granted for any development other than the scheme underlying the CPO
- 8.22 Both the claimant and acquiring authority can appeal against a CAAD to the Scottish Ministers. In practice such appeals are generally handled by the Planning and Environmental Appeals Division (DPEA). As with the no-scheme principle, there is substantial case law relating to CAADs.

Planning permission for additional development

- 8.23 Under Part V of the 1963 Act, if planning permission is granted for additional development within a period of 10 years after the compulsory acquisition, further compensation may be payable to a claimant if the effect of that permission is to increase the value of the land above the amount paid to the original owner. This is sometimes referred to as 'second-bite' compensation.

Summary of Current Position

- 8.24 To summarise, the intention behind the legislation is that a claimant will receive compensation that reflects what the land in question would have been worth if sold on the open market had the CPO scheme not existed. This reflects the principle of equivalence: that those whose land is acquired should be put in the same financial position as if it had not been taken.
- 8.25 The assessment of compensation therefore considers the development potential of the land that is acquired. However, this will only be taken into account where it can demonstrably be shown to exist outwith the scheme: increases in value attributable to the acquiring authority's scheme are disregarded. If land subject to CPO has limited pre-existing development potential outwith the scheme, then that land's market value – and hence compensation – may very well be the same as (or close to) its existing use value. In other words, there is no automatic right to development or hope value.

Market value: potential ways forward

Disregarding land's development potential and planning prospects

- 8.26 In recent years a number of groups have called for the assessment of compensation to take no account of land's development potential and/or planning prospects. The suggestion is that excluding consideration of development value and/or hope value would enable public bodies to acquire land more cheaply, which would in turn support the provision of affordable housing and other public policy objectives. However, such approaches could result in those subject to compulsory purchase receiving less for their property than it would be worth if sold voluntarily i.e. compensation would be below market value. This would depart from the principle of equivalence and raises some fundamental questions about fairness.
- 8.27 During the passage of the Planning (Scotland) Act 2019, amendments were proposed which sought to base CPO compensation on existing use value rather than market value. In May 2019 the Scottish Land Commission published advice to the Scottish Ministers on Options for Land Value Uplift Capture²⁶ which flagged the associated risks and advised that any approach:
- “will need to ensure that landowners whose land is acquired through compulsory purchase receive equivalent compensation to landowners who sell their land on the open market. Simply introducing new rules to exclude hope value from compensation arrangements without addressing this issue is likely to be regarded as very unfair and could breach the protections provided by the ECHR”.
- 8.28 The proposed amendments were not ultimately agreed to by the Scottish Parliament but the above quote highlights some of the relevant considerations. As the Land Commission noted, legislative change that results in claimants being compensated below market value would run counter to the principle of equivalence and risks non-compliance with the ECHR. In particular it could give rise to a ‘two-tier’ land market, in which those selling land privately receive a price which takes account of its development potential, while those selling land as a result of a CPO receive compensation which ignores such development potential.
- 8.29 Another potential unintended consequence identified by the Land Commission is the possibility of disincentivising landowners and developers from making the investment necessary to bring land forward for development. Additionally, below-market value compensation may drive up opposition to (and slow down delivery of) projects involving compulsory purchase.
- 8.30 Whether such a change could be justified depends on whether it would demonstrably deliver public benefits that would not otherwise be realised, and whether compensating affected landowners below market value is a

²⁶ [Scottish Land Commission, Options for Land Value Uplift Capture: Advice to Scottish Ministers 17 May 2019](#)

necessary and proportionate means of achieving those outcomes. This ultimately comes down to evidence.

- 8.31 At present – and taking account of the risks set out above – it is not clear that excluding consideration of land’s development potential from the assessment of compensation (which would see some claimants receive less compensation than their property would otherwise be worth) can be justified – at least not on a blanket basis. Further evidence, including evidence gathered through this consultation, will help to further inform this view. We would welcome any evidence relating to the impact of the current compensation rules on the use of compulsory purchase in Scotland, which can be submitted separately to cpo.reform@gov.scot.
- 8.32 The Scottish Government considers that equivalence remains the right strategic approach to compulsory purchase compensation. As such, we propose that, as a general rule, compensation should continue to reflect the market value of the land (disregarding the effects of the underlying CPO scheme). Nevertheless, in the following paragraphs we consider whether there could be any exceptions to this general position.

Question 65: Do you agree that compulsory purchase compensation in Scotland should continue to be based on the principle of equivalence? If not, please explain your reasons.

Question 66: Should compensation for land acquired compulsorily continue to be based on an assessment of its market value (disregarding increases/decreases attributable to the CPO scheme)? Please note that the following questions consider potential exceptions to this approach.

- 8.33 In England and Wales, as in Scotland, claimants are generally entitled to the market value of land that is acquired through a CPO. However, through the Levelling-Up and Regeneration Act 2023 (“LURA”), the UK Government made provision for the development prospects of land to be ignored in certain circumstances.
- 8.34 In summary, the LURA provisions (see [section 190](#)) allow acquiring authorities promoting certain types²⁷ of CPO to include a direction that, for the purposes of that specific CPO, the assessment of compensation will ignore the prospect of planning permission for alternative development. When considering whether or not to authorise the CPO, it is for the Secretary of State to decide whether the direction is justified in the public interest. In effect, this allows for a case-by-case assessment of whether below-market value compensation is necessary and proportionate in the circumstances.
- 8.35 We would be interested in respondents’ views on whether there are any circumstances in which below-market value compensation could be justified in

²⁷ A direction under these provisions may only accompany CPOs for education purposes, for the purposes of the NHS or those which involve the provision of affordable housing. See section 15A of and schedule 2A to the [Acquisition of Land Act 1981](#).

Scotland. We would be keen to hear thoughts on whether measures along similar lines to the LURA provisions would be appropriate. That is to say, allow acquiring authorities promoting CPOs to include a direction that – in respect of a specific CPO submitted for confirmation – compensation would take no account of the prospect of permission being granted for alternative development. It would be for the Scottish Ministers to determine whether to approve such directions. For any CPO which did not include a direction, the standard planning assumptions would apply (see paragraphs 8.40 to 8.46).

Question 67: Should acquiring authorities have the power to request that, for a specific CPO, compensation would take no account of the prospect of planning permission being granted for alternative development? It would be for Scottish Ministers to make the decision when confirming the CPO.

In what circumstances do you think this approach would be justified?

No-Scheme Principle

- 8.36 The Scottish Government's view is that the no-scheme principle is an important component of the way compulsory purchase compensation is assessed. Disregarding increases and decreases in value that are attributable to the scheme underlying the acquiring authority's CPO is vital to ensuring fairness to both owners and acquiring authorities, and consistent with the principle of equivalence.
- 8.37 Applying the no-scheme principle is inherently complex: it involves the valuation of land in a hypothetical world in which the acquiring authority's proposals do not exist. However, the task is made more difficult by the fact that much of what constitutes the no-scheme principle is derived from case law, some of which is convoluted, and in some instances seems contradictory. What is contained in statute is old and complex.
- 8.38 The position as it stands in Scotland was summed up by the Scottish Law Commission, whose 2014 Discussion Paper stated:
- “Our impression is that a combination of over-complicated statutory provisions and judicial activism have left the whole matter in a state of considerable confusion; so that only a comprehensive re-statement of the law in a new statute could produce a set of rules which would enable acquiring authorities, landowners and practitioners to work out what compensation might be payable in any particular circumstances”
- 8.39 The Scottish Government agrees that the current arrangements are confusing and overly-complicated, and that a comprehensive re-statement of the law in this regard is needed. We therefore propose that the no-scheme principle should be codified on the face of any new compulsory purchase legislation. In doing so, we would anticipate needing to specify:
- what the no-scheme principle is

- the definition of ‘the scheme’ for these purposes
- matters that are to be disregarded when assessing the value of land in a compulsory purchase context
- rules to be followed when applying the no scheme principle, including assumptions about when the scheme is deemed to have been cancelled, and there being no prospect of that scheme (or similar scheme serving the same purpose) being carried out

Question 68: Should the no-scheme principle be codified in the legislation?

Question 69: If the no-scheme principle is codified, do you agree with the outline proposal at paragraph 8.39? Are there any other matters that would need to be addressed?

Planning Assumptions

- 8.40 As noted in paragraph 8.14 to 8.18, the 1963 Act sets out various assumptions to be made about planning permission for development which accords with the relevant development plan. The Scottish Law Commission’s Discussion Paper pointed out that the provisions were enacted in the context of the planning legislation and planning system of the middle of the last century. As a result, the planning assumptions are clearly outdated and difficult to apply to the style of development plans that now exist.
- 8.41 Since the Scottish Law Commission’s review, the Planning (Scotland) Act 2019 has introduced further changes to the development planning regime in Scotland, and the fourth National Planning Framework (NPF4) now forms part of the statutory development plan. Furthermore, new tools for promoting and consenting development (Masterplan Consent Areas) have been recently introduced, which could have implications for compensation.
- 8.42 Accordingly, the Scottish Government considers that the planning assumptions require to be repealed and re-written so that they reflect Scotland’s planning system in the 21st Century.

Question 70: Should the planning assumptions be repealed and re-written?

- 8.43 Our intention is to ensure that, as far as possible, the reformed planning assumptions would reflect the principle of equivalence. That is to say, the assessment of compensation would consider what (if any) alternative development would have been granted planning permission had it not been for the compulsory acquisition. We would need to ensure that the risks, uncertainties and costs of implementing any such alternative development are taken into account (as they would be in an open market transaction) – and these reflected in the compensation paid.
- 8.44 We are conscious that in 2011 the UK Government reformed the planning assumptions in England and Wales, but these have since been amended.

This is partly due to a concern that under the 2011 provisions – whether intentionally or not – alternative developments which only had a prospect of being granted at a future date were treated as being a certainty. The suggestion was that this had the effect of inflating compensation artificially because in a market transaction, such uncertainty as to the likelihood of planning permission would be apparent in the valuation.

8.45 Based on the above, our view is that the reformed planning assumptions would provide that when compensation is assessed, account may be taken of:

- any planning permission which is extant at the valuation date
- any development (specified in a CAAD or otherwise) which would have been granted on the valuation date, if not for the CPO
- the prospects of planning permission being granted for other development on or after the valuation date

8.46 We also anticipate that it would be necessary to specify various assumptions that are to be made when determining the prospects of planning permission being granted for other development. In particular, assumptions would need to be made regarding the cancellation of ‘the scheme’ to ensure the reformed planning assumptions are consistent with the no-scheme principle. Unlike with the current planning assumptions, we do not consider that permission should be assumed for the acquiring authority’s proposals.

Question 71: Do you agree with the broad outline for how the planning assumptions might be reformed set out in paragraphs 8.45 to 8.46? Do you have any comments on the proposed changes to the planning assumptions?

8.47 At paragraphs 8.26 to 8.35, we asked about whether compensation should ignore land’s development potential and planning prospects in certain circumstances. Clearly, if provision were made for such exceptions then the planning assumptions (including those derived from CAADs) would not apply in those cases.

Certificates of Appropriate Alternative Development

8.48 CAADs provide a statutory process for establishing what developments would (or would not) have been granted planning permission in the absence of the acquiring authority’s scheme. The procedures involved – including their interaction with the statutory planning assumptions – are complex.

8.49 Applying for and determining CAADs can be costly. We have heard from stakeholders that in some cases which have been settled at the LTS, CAADs have ultimately had limited impact on the outcome in compensation terms.

8.50 In practice, we can see that it may be challenging for planning authorities to determine CAAD applications, which involve making hypothetical judgements about notional development proposals. This may be particularly difficult in relation to schemes which a planning authority has had limited involvement

with, such as major infrastructure projects that are consented outwith the usual planning application procedures. On the other hand, in cases where the planning authority is also the acquiring authority, we can see there may be a perception of a conflict of interest.

- 8.51 The Scottish Law Commission's review included some potential ideas for how the CAAD process could be improved (e.g. appeals, time limits and assumptions to be made regarding cancellation of the scheme). However, at this stage we are interested in views on the more strategic question of whether CAADs are an effective, efficient and equitable way of establishing what, if any, development value exists outwith the CPO scheme. And more fundamentally: are they needed?
- 8.52 As set out in the preceding paragraphs, we propose to retain claimants' general right to market value and to modernise the planning assumptions. Under that framework, the development and planning prospects of land would still be taken into account when compensation is assessed. The question is whether a statutorily-prescribed certification process is needed for that purpose. In other words, if CAADs were abolished, it would remain open to parties negotiating compensation to consider what developments would have been consented in the absence of the CPO – and the planning authority's views could be sought as necessary. But such negotiations would take place on a non-statutory basis. Where there is a dispute about planning prospects, and this goes to the value of compensation, this would be settled at the LTS – rather than CAADs being appealed to the Scottish Ministers.

Question 72: Should CAADs be retained as a tool to establish development value in a CPO context, or should they be abolished? Please explain your reasons.

Question 73: If CAADs were to be retained, how could they be made more effective, efficient and equitable?

Planning permission for additional development

- 8.53 Although we understand the current provisions are rarely used, the prospect of 'second-bite' compensation arising up to ten years post acquisition creates additional uncertainty and budgeting challenges for acquiring authorities. Furthermore, the planning prospects of land subject to compulsory purchase are taken into account when compensation is assessed via the statutory planning assumptions. We therefore propose to repeal Part V of the 1963 Act.

Question 74: Should Part V of the 1963 Act be repealed and not re-enacted?

Injurious Affection

- 8.54 This element of compensation applies where only part of the claimant's land is acquired compulsorily, and they retain part of it. There are two aspects:

- the reduction in the market value of the retained land as a result of the development activity or intended use of the development²⁸
- severance, which is the impact on the market value of the retained land of the removal of the acquired land

8.55 Severance may occur, for example, where a new road cuts through agricultural land, causing difficulties with access between the two parts, or where a reduction in the amount of land held by the claimant has an impact on what business activities can be accommodated or how they are co-ordinated. It is not necessary for the acquired land and the retained land to be next to each other, nor for them to be held under the same title, nor for the claimant to be owner and occupier of both. It is only necessary that they are held at the same time and have a connection.

8.56 Acquisition of part of a parcel of land may result in various losses, such as a loss of profitability or the cost of works to remedy the impact, for example making a new access. As a result, there can be overlap or confusion between injurious affection and disturbance. It may be helpful for new legislation to clarify that injurious affection (including severance) applies only to the depreciation caused to the market value of the retained land, and other losses should be considered under disturbance. All losses should be appropriately compensated, without duplication, to implement the principle of equivalence, but each element should be clearly identified.

Basis of valuation

8.57 The no-scheme principle does not apply to the assessment of injurious affection, since this element of compensation specifically relates to the impact of the development scheme. In addition, the 1973 Act makes clear that the depreciation for which compensation may be paid relates to the effect of the whole of the scheme; previously injurious affection could only be based on depreciation attributable to the use of the acquired land in connection with the development scheme.

8.58 Valuation of the retained land is carried out as at the date of severance, which under a GVD-style mechanism is the date of vesting of the acquired land. It can be helpful for the acquiring authority to visit the land at an early stage, if possible, to see the condition of the property before vesting. Some have argued that events occurring after the date of vesting should be able to be taken into account, such as grant or refusal of planning permission. However, these could result in either a higher or a lower value, and would in all cases cause further delay and uncertainty to both parties.

8.59 There are two possible approaches to the assessment of compensation for injurious affection. “Concurrent” valuation involves valuing the acquired land, and separately valuing the depreciation caused to the retained land. The “before and after” approach is carried out by determining the value of the

²⁸ The use of public works may also cause depreciation in the value of land where there is no compulsory purchase involved. Part 1 of the 1973 Act provides for compensation in such cases, known as “Part 1 claims”. We do not address this as it is outwith the scope of the current project.

whole of the land before the acquisition (“no-scheme world”), and deducting the value of the remaining land after the acquisition (“scheme world”).

- 8.60 The Scottish Government’s fifth Guidance Note for Acquiring Authorities briefly indicates that the “before and after” approach should be used. The Scottish Law Commission’s Discussion Paper suggested that the “before and after” approach should be set out in law as the required option. However, both their responses and our discussions with stakeholders indicate that there are a small number of cases where the concurrent approach is more appropriate. We therefore propose to leave this as a matter for guidance, to allow flexibility, rather than legislation.

Question 75: Do you agree that the method of valuation for injurious affection should be dealt with in guidance rather than set in legislation?

Set-off of betterment

- 8.61 Betterment is the opposite of injurious affection: it refers to the increase in value of retained land as a result of the development scheme for which the land is acquired. The Town and Country Planning (Scotland) Act 1959 established a general rule, later consolidated into the 1963 Act, that the compensation due to the claimant is reduced by the amount of any betterment – described as “set-off” of betterment. Cases involving betterment are not common, but where they do occur the claimant may receive little or no compensation for the land taken, as a result.
- 8.62 The set-off of betterment is part of the principle of equivalence, aiming to leave the claimant no worse off nor better off than before the compulsory acquisition. However, it can be seen as unfair in comparison to the owners of neighbouring land, who have not been subject to CPO. If neighbouring land increases in value, those owners are not required to return any of that benefit to the authority developing the scheme. Where the development causes depreciation in the value of land, those neighbouring landowners may have a claim for compensation under Part 1 of the 1973 Act.
- 8.63 On the other hand, it can be argued that betterment is created (in most cases) by public expenditure on the development project. Setting it off against compensation can reduce the amount the acquiring authority has to pay, effectively recouping some of that expenditure. This is therefore a question of fairness from another angle.

Question 76: Should set-off of betterment continue or be removed from the legislation? Please explain your views.

Accommodation works

- 8.64 In some cases, the acquiring authority may carry out works on the retained land, with the owner’s / occupier’s agreement, to mitigate the impact on the value of the retained land, such as erecting a fence, or installing sound-

proofing measures in affected buildings. They may also give undertakings about how the acquired land is to be used, to limit the impact. Such actions are taken into account when assessing compensation, and will reduce the amount of financial compensation for injurious affection.

- 8.65 Accommodation works are currently carried out on a voluntary, case-by-case basis, depending on individual circumstances. The SLC Discussion Paper considered whether they should be given a statutory basis. In our view, the need to agree what is to be provided, and issues such as obtaining planning permission, mean that it would be impractical to require acquiring authorities to carry out such works. As far as we are aware, there is also no need to make new provision to allow them to do so on a discretionary basis. We therefore do not intend to include any provision for accommodation works in future legislation.

Question 77: Please provide details of any acquiring authorities which you believe would need new powers to enable them to carry out accommodation works on a discretionary basis.

Disturbance

- 8.66 As set out at the beginning of this chapter, there is no statutory provision for compensation for disturbance. The Acquisition of Land (Assessment of Compensation) Act 1919 set out the six rules for the assessment of compensation, now restated in section 12 of the 1963 Act.

Rule 2 states that:

“the value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise”

Rule 6 states that:

“The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.”

- 8.67 Rule 6 does not confer a right to compensation for disturbance or other matters, but assumes that one already exists. By excluding it from the “willing seller” concept of rule 2, it recognises that the purpose of disturbance compensation is to recognise the additional costs caused by the compulsory nature of the purchase.
- 8.68 Since it cannot attach to injurious affection, as that only applies to cases where the landowner retains some land, disturbance has had to be interpreted as part of the value of the acquired land. This results in a number of complications which are addressed in this section. It also means that LBTT (formerly stamp duty) is payable on the total amount of compensation for market value plus disturbance.

Links between disturbance and market value

- 8.69 Case law requires that disturbance payments are assessed on the same basis as the market value of the land, in terms of its proposed use. This is based on *Horn v Sunderland*²⁹ in which the owner sought valuation of the land as ready for development, but also disturbance for removing his farming business elsewhere. The majority opinion was to reject the claim for disturbance, as the owner would have had to move anyway to realise the development value. The judgement stated “It is a mistake to construe rules 2 and 6 as though they conferred two separate and independent rights, one to receive the market value of the land and the other to receive compensation for disturbance, each of which must be ascertained in isolation”.
- 8.70 However, a dissenting opinion (by Goddard LJ) noted that the owner would also have to move if he was selling the land at agricultural value, and in that case the majority opinion would have been that he was entitled to disturbance. Rule 6 explicitly removes the willing seller hypothesis, making a clear distinction between these two elements of compensation.
- 8.71 There is also a question of when disturbance compensation should be valued. Where a GVD is used, the valuation date for the acquired land is the date of vesting. However, this is when the acquiring authority takes entry, or before it does so, and therefore before the disturbance occurs. It may also be difficult to establish the full amount of disturbance losses until some time has passed, particularly in the case of relocation of a business where issues such as loss of profits are to be assessed.

Options and proposals

- 8.72 In the interests of clarifying and simplifying the legislation, it seems clear that separate statutory provision should be made for compensation for disturbance. This would remove the link with the market value of the acquired land and make the associated legal contortions unnecessary, while retaining the overall principle of equivalence. Rule 6 would no longer be needed if compensation for disturbance is no longer connected with market value.
- 8.73 We propose that compensation for disturbance should be simply based on the actual costs reasonably incurred by the seller, and should be determined when sufficient time has elapsed to allow the extent of the loss to be quantified.

Question 78: Do you agree that separate statutory provision should be made for compensation for disturbance? If not please explain your reasons.

Disturbance principles

- 8.74 Since there is at present very little statutory provision relating to disturbance, various principles have been established through case law, including some

²⁹ *Horn v Sunderland Corporation* [1941] 2 KB 26

which are derived from the law of damages. We are interested in views on the extent to which these should be set out in statute (which may be difficult to draft with sufficient flexibility), or in more detailed guidance.

- 8.75 The *Shun Fung*³⁰ case set out three conditions which must be satisfied for a claim for disturbance compensation to succeed:
- there must be a causal connection between the acquisition and the loss in question (causation)
 - the loss must not be too remote (remoteness)
 - the loss or expenditure must not have been incurred unreasonably (mitigation)
- 8.76 These concepts are closely linked and effectively all come back to whether the loss can reasonably be considered to be caused by the acquisition, but they provide a framework in which to consider the key issues.

Causation

- 8.77 Causation requires the claimant to show that the loss occurred as a result of the compulsory purchase. The Courts have considered at length whether costs incurred before the date of acquisition can be said to be caused by the acquisition, but *Shun Fung* established that they can be. Taking entry or vesting may occur at a point in time, but compulsory purchase is a process which takes, at a minimum, several months, and it is entirely reasonable for a person to take steps to prepare for their dispossession. Taking such steps early may also help to mitigate the costs (see paragraph 8.86).
- 8.78 The question then is: when does the right to disturbance compensation begin? Costs such as legal advice or loss of profits may start to be incurred as soon as it becomes known that there is a possibility of compulsory purchase. This will often be before any formal action is taken. We propose that compensation for disturbance should be payable for costs incurred from the date of publication of the notice of making of the CPO. This is the first formal notice of the extent of the land that may be acquired. The duty to mitigate loss should also run from the same date. This means that the notice will need to be accompanied by information about compensation, to ensure that those eligible for compensation are aware of the mitigation duty.
- 8.79 A further question is whether compensation should be payable for costs incurred in relation to a CPO project even by those who do not ultimately have any land acquired, or if the project fails to proceed. If the right to compensation starts from the CPO being made, it will be limited to those who have a firm expectation that their land will be acquired, excluding land in the wider area which may have been considered at earlier stages.

³⁰ *Director of Buildings and Lands v Shun Fung Iron works Ltd* (1995) 2 AC 111

Question 79: Should compensation for disturbance be able to cover losses incurred from the date on which the notice of making of the CPO is published (and the claimant's duty of mitigation should apply from the same date)? If not, from what date should compensation apply? Please explain your reasons.

Question 80: Should compensation for disturbance be payable to those who have a compensable interest in land included in the CPO when it is made, even if that land is not ultimately acquired?

Remoteness

8.80 The principle of remoteness examines whether a loss is truly caused by the dispossession of the owner or occupier of the property. There are three elements to this; the first two issues relate to who can claim compensation.

8.81 Section 17A of the 1963 Act provides for compensation for an "investment owner" who does not occupy the property, where another property is bought within a year. However, this does not cover all potential losses for such owners. It is suggested that a wider range of compensation could be available, which could cover, for example, a longer time-frame to acquire a new property, loss of rental income, borrowing costs if there is a delay in receiving compensation, etc. It may also be appropriate to allow compensation for a non-occupying owner who incurs costs where only part of the land is acquired.

Question 81: Should owners who do not occupy the property be able to claim a wider range of disturbance compensation than at present?

8.82 The second issue is corporate structures, which may mean that not all the companies which incur losses are entitled to compensation, due to complex leasing arrangements. In some cases courts have found it appropriate to investigate those structures to determine what costs can be included in compensation ("piercing the corporate veil"). It is likely to be difficult to legislate clearly on the issue of corporate or family business structures, but guidance might be helpful.

Question 82: Would it be helpful to provide guidance on compensation in cases of complex corporate structures?

8.83 The third element of remoteness is 'impecuniosity'. Established in a case for damages in 1933³¹, this provides that compensation is not due where a loss is attributable to the claimant's poor financial circumstances rather than directly to the cause of the damage. This would relate to items such as higher costs for borrowing due to a poor credit score, or interest charges or hire costs because the claimant is unable to pay for something up-front. The principle

³¹ *Liesbosch Dredger v SS Edison* [1933] AC 449

has been applied in compulsory purchase cases, such as *Bryce v Motherwell District Council*³².

- 8.84 The concept of impecuniosity conflicts with the more modern recognition that “it’s expensive to be poor”. More recent case law on damages has indicated that the courts are less inclined to apply the impecuniosity rule. In a 2003 case relating to a road traffic collision³³, the House of Lords held that it was “reasonably foreseeable” that some people would be unable to pay car hire charges up front, and it would be unfair to attribute the extra cost of using credit to the victim’s choice rather than to the person who caused the collision.
- 8.85 It seems clear that some people affected by compulsory purchase will need to incur higher costs than others to reach a state of equivalence, and therefore such losses should be recoverable. We propose that new guidance or legislation should make clear that compensation should cover costs which are reasonable in the claimant’s individual circumstances, without reference to impecuniosity.

Question 83: Do you agree that the impecuniosity rule should be removed?

Mitigation

- 8.86 Mitigation is an expression of the requirement that loss or expenditure claimed must not have been incurred unreasonably: the claimant is expected to take steps to mitigate their loss. For example, they might take early action to look for a new house or premises, to increase the chance of finding something suitable and avoid short term rental or storage costs, or the expense of significant remodelling. Another example would be if a claimant needs to use a removals company to help them move, they can mitigate their loss by obtaining quotes from more than one firm and (assuming they offer equivalent levels of service) appointing the cheapest option.
- 8.87 The personal circumstances of the claimant are not currently taken into account in determining what mitigation actions are reasonable. This could potentially be considered unfair, for example if a person’s age, health or family circumstances limit the steps they can take. While retaining the overarching principle of equivalence, we propose that claimants should be able to receive compensation for the effect of the compulsory acquisition on a person in those particular circumstances, and the steps to be taken to mitigate loss should be those that a reasonable person in those circumstances would take.

Relocation and extinguishment

- 8.88 When a business property is being compulsorily acquired, in most cases it will be possible for the business to relocate to other premises. Compensation for disturbance may be claimed for costs such as searching for new premises,

³² *Bryce v Motherwell District Council* [1980] RVR 282

³³ *Lagden v O’Connor* [2003] UKHL 64

adapting the new premises, removal costs, temporary loss of profits, loss of goodwill etc.

- 8.89 In some cases it will not be reasonably possible to relocate the business because of a lack of suitable premises available or unique features of the business tying it to a particular location. In these cases the business will be extinguished, and compensation will be assessed on the value of the business as a going concern.
- 8.90 In most cases compensation for extinguishment will be higher than relocation costs. However, in *Shun Fung* it was established that relocation compensation may be paid even where it exceeds the total value of the business, if the costs are shown to be reasonable.
- 8.91 This also connects to the question of personal circumstances in mitigating loss. Section 43 of the 1973 Act provides that where a person is 60 or over when their land is acquired, disturbance compensation may be assessed on the basis of extinguishment rather than relocation, provided they give undertakings that they have not and will not sell the goodwill in the business, nor will they set up a similar business in the same area themselves. On the other hand, some cases have found that a person is required to take steps to relocate their business, in order to mitigate the loss, despite being in poor health. This distinction seems entirely arbitrary. We consider that individual circumstances should be able to be taken into account in determining whether it is reasonable for a person to relocate or extinguish their business, with no particular age limit.
- 8.92 In summary we propose that:
- disturbance compensation for a business should be based on the costs of relocation unless the claimant can show that it should be on the basis of extinguishment
 - all reasonable costs of relocation may be compensated, even if they exceed the total value of the business
 - the claimant's personal circumstances may be taken into account in considering what disturbance costs are reasonable

Question 84: Do you agree with the proposals on mitigation, including compensation for business relocation and extinguishment? Please add any comments on these issues.

Disturbance payments

- 8.93 This section has so far dealt with “disturbance compensation” for those who have a compensable interest in acquired land. For occupiers who do not have such an interest but are in possession of the land at the relevant date, section 34 of the 1973 Act provides a right to a “disturbance payment”. This would cover the reasonable expenses of removing from the land and any business losses due to the disturbance. Section 34(4) also allows the acquiring

authority to make a discretionary payment to anyone who is displaced but does not meet the criteria to be entitled to a payment. The amount of the payment is to be determined in the same way in both cases; in other words, discretion only applies to whether to make a payment, not the amount. These payments would apply, for example, to tenants without a formal lease, depending on their particular circumstances.

- 8.94 Under section 35(4), “Any dispute as to the amount of a disturbance payment shall be referred to and determined by the Lands Tribunal.”. However, the LTS has found that this only applies to mandatory disturbance payments. For discretionary payments the only remedy would be judicial review. We therefore propose that the jurisdiction of the LTS should be extended to cover discretionary as well as mandatory disturbance payments.

Question 85: Should the jurisdiction of the LTS should be extended to cover discretionary as well as mandatory disturbance payments?

Loss Payments

- 8.95 Loss payments are an additional payment recognising the distress and inconvenience that may be caused to those who are displaced as a result of compulsory purchase. In this sense, they seek to address non-financial loss and as such arguably go beyond the principle of equivalence. The provisions are set out in the 1973 Act, which provides for two types of loss payment: Home Loss Payments (HLP) ([sections 27 to 30](#)) and Farm Loss Payments (FLP) ([sections 31 to 33](#)). This section deals with each of these in turn.

Home Loss Payments

- 8.96 HLP are paid where a person is displaced from a dwelling. This includes where a dwelling is the subject of compulsory acquisition – but they are payable in other circumstances too, for example in relation to requirements for demolition, housing orders and improvement works in certain circumstances. They are not payable to non-resident landlords.

Qualifying Criteria

- 8.97 HLPs are payable to a person who has occupied the dwelling for a period of one year ending with the date of displacement, and it was their only or main residence. That occupation must also be by virtue of a relevant interest or right. The 1973 Act makes provision for HLP where properties are acquired by agreement.

Calculation of Amount: Home Loss Payment

- 8.98 Where a person is in occupation of a dwelling by virtue of an ‘owner’s interest’³⁴, the amount of HLP is 10% of the market value of the interest

³⁴ the interest of an ‘owner’, which, in relation to any land, includes any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking.

acquired. This is subject to a maximum payment of £15,000 and a minimum payment of £1500³⁵.

- 8.99 In any other case (e.g. tenants) a flat rate of £1500 applies. Scottish Ministers have powers to alter the minimum, maximum and flat-rate amount through secondary legislation.

Options and proposals

- 8.100 Loss payments are paid to occupiers, including both owner-occupiers and tenants. Non-resident landlords are not entitled to an HLP. The focus on occupiers reflects that the purpose of loss payments is to provide additional compensation for the distress and inconvenience of being displaced, which is felt most acutely by who live in the affected property.
- 8.101 We are not minded to substantially alter the qualifying criteria, which we consider to be broadly appropriate given the role of HLP. We would, however, be interested in views on whether the minimum length of residence should potentially be increased. The Scottish Law Commission raised the question of whether the current one-year requirement was potentially too short to discourage 'opportunistic buyers' from acquiring properties that are subject to compulsory purchase in order to obtain potential payments. It is not clear that this is an issue in practice.

Question 86: Should the minimum period of residence necessary to qualify for a HLP (currently one year) be increased? If so, what should the period be, and why?

- 8.102 As regards how HLP are calculated, the Scottish Law Commission recognised that a standardised approach of some sort is needed: seeking to make individual calculations based on individual circumstances would be inherently subjective, complex and uncertain. The question is what that standardised approach should be.
- 8.103 It is not clear to us that the current approach of directly linking the amount of HLP to the value of the property acquired is the most equitable approach. As noted, loss payments are an acknowledgement of inconvenience and distress that may be caused by compulsory displacement. The current approach, where the payment amount is 10% of the value of the interest (subject to minimum and maximum levels), arguably implies that those with more valuable property experience higher levels of hardship.
- 8.104 We are therefore interested in potential alternative methods for calculating HLPs and have identified the following broad options:
- Option 1 – Retain the current approach: 10% of market value subject to minimum and maximum amounts for those occupiers with an owner's interest and a flat rate for others.

³⁵ The equivalent maximum and minimum HLP amount are higher in England and Wales. At the time of writing, these are £81,000/£8,100 and £82,000/£8,200 respectively

- Option 2 – Flat rate: all displaced occupiers are entitled to the same fixed amount, regardless of tenure or property value.
- Option 3 – Graded rate: link the amount to length of occupation.

8.105 With all options, we would envisage that Scottish Ministers would continue to have a power to amend the relevant amounts or rates via secondary legislation.

8.106 Option 1 has the advantage of being established and therefore familiar. Under the current approach, owner occupiers of more valuable properties receive more, which may be regarded as unfair given the purpose of loss payments. The link to market value may result in delays in cases where the value of the property is disputed.

8.107 Option 2 would arguably be fairer given purpose of HLPs: it does not equate distress and inconvenience with the value of the property or length of tenure. It would make the HLP amount predictable for both acquiring authority and those being displaced, and allow earlier settlement. On the other hand it implies the subjective non-financial matters are the same for everyone.

8.108 Option 3 recognises that distress may be more associated with how well established an occupier has become than value of the property. Like Option 2 it would make HLP more predictable and allow earlier settlement. However, the implied assumption that those who have occupied a property for less time experience less distress and inconvenience may be regarded as unfair.

8.109 There is an inherent challenge with any mechanism that involves placing a financial value on something subjective and personal. In that sense, we have to recognise that any approach is going to be arbitrary to some extent. However, our view is that a flat rate set at a reasonable level would be a simpler and fairer basis for calculating HLP than the current approach. Furthermore, a flat rate already applies to those who do not have an 'owner's interest' in the property. On this basis, Option 2 is our preferred option although we would welcome views on the pros and cons of this and other potential approaches.

8.110 At this stage we are looking to establish the principle of how HLP ought to be calculated in future. Whichever approach is taken forward, further detailed work would of course need to be carried out to determine what the specific amount(s) should be.

Question 87: How should the amount of HLP be calculated, among the options discussed in paragraphs 8.104 to 8.110?

Please add any comments on these options or other approaches.

Farm Loss Payments

8.111 FLP are payable to farmers who are displaced as a result of compulsory acquisition. However, as set out below, the qualifying criteria are narrowly drawn and the method of calculating the amount of the payment is complex.

Qualifying Criteria

8.112 Where a CPO contains land which is, or is part of, an agricultural unit³⁶ those occupying the unit with an 'owner's interest'³⁷ are entitled to receive a FLP where:

- they are displaced from the land as a result of the whole or a 'sufficient part' of their interest being compulsorily acquired, and
- not more than three years after the date of displacement they begin to farm another agricultural unit elsewhere in Great Britain

8.113 For these purposes, a 'sufficient part' is defined as not less than 0.5 hectares, although Scottish Ministers may specify an alternative area through secondary legislation.

Calculation of Amount: Farm Loss Payment

8.114 The amount of FLP under the 1973 Act is equal to the average annual profit derived from the agricultural use of the agricultural land acquired. This is calculated with reference to profits for three years ending with the date of displacement, or, if shorter, the period of occupation.

8.115 The actual calculation is subject to a number of provisions, for example:

- altering the date of displacement depending on the availability of completed accounts
- requiring the deduction of a notional rent
- leaving out profits from activities for which a loss is compensated for by a disturbance payment
- requiring the FLP to be reduced proportionally in certain circumstances

Options and proposals

8.116 The current FLP provisions are in need of change. The methodology for calculating the value of the payment seems overly complicated, and under the

³⁶ land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land.

³⁷ the interest of an owner or a lessee under a lease where his interest is as a lessee for a year or from year to year or a greater interest, or the interest of a crofter or a landholder ("landholder" means and includes every existing crofter, every existing yearly tenant, every qualified leaseholder, and every new holder, and the successors of every such person in the holding being his heirs or legatees).

current qualifying criteria it is entirely possible that a person could be displaced and yet not be eligible for a FLP.

8.117 As a minimum, we therefore propose to remove the requirement to begin farming in another location within three years. We are also interested in views on the 'sufficient part' criterion: specifically, whether there should continue to be a minimum area of land below which a FLP is not payable.

Question 88: If a person is displaced from an agricultural unit as a result of compulsory purchase, should they be eligible for a loss payment regardless of whether they continue farming elsewhere?

Question 89: Should there continue to be a minimum area of land (currently 0.5 hectares) below which a FLP is not payable? If yes, what should the minimum area be?

8.118 With regard to the amount FLP, our starting point is that the current approach of using profits as the basis for a calculation, should be replaced with a simpler and fairer approach. We think the broad options are:

- Option 1 – Market rate: base the amount of FLP on a proportion of the market value of the land acquired.
- Option 2 – Flat rate: all those displaced get the same amount, similar to the approach proposed above in respect of HLP, perhaps subject to a minimum size threshold.
- Option 3 – Area-based rate: base the amount on the area of land and buildings acquired (calculated at a fixed rate per hectare and per square metre respectively).

8.119 As with HLP, it must be recognised that any mechanism that involves placing a monetary value on non-financial losses will to some extent be arbitrary. We are interested in views on what method of calculation might be most appropriate in the context of agricultural land – and whether there are reasons for taking a different approach from HLP.

Question 90: Do you agree that we should move away from the current profit-based approach to calculating FLP?

Question 91: If a new approach to calculating FLP is taken forward, which of the options outlined at paragraph 8.118 would you prefer?

8.120 The Scottish Law Commission's commentary on FLP noted that agricultural landowners may encounter 'peculiar difficulties' as a result of compulsory purchase – being relatively more difficult to relocate and potentially dependent on a specific area of land. We nevertheless recognise that the owners of businesses other than farms may experience stress and inconvenience when displaced as a result of compulsory purchase. We are therefore interested in

views on whether a more general loss payment for other types of non-residential land should be introduced, instead of or in addition to FLP.

Question 92: Should loss payments be extended to other non-residential interests displaced as a result of compulsory purchase? Please explain your views.

9. Compensation procedures

Overview

- 9.1 This chapter deals with the procedures for claiming and paying compensation, including the process of making a claim, time limits and advance payments.

Making a claim

- 9.2 Despite all the detailed legislation about how to calculate the amount of compensation due, there is very little about how to make a claim.
- 9.3 When a Notice to Treat (NTT) is served, the 1845 Act says acquiring authorities:
- “...by such notice shall demand from such parties the particulars of their interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof...”
- 9.4 For a General Vesting Declaration (GVD), the notice of intention to make the declaration must invite those entitled to compensation “to give information to the authority making the declaration in the prescribed form with respect to his name and address and the land in question”. The prescribed form is Form 9 of the Compulsory Purchase of Land (Scotland) Regulations 2003. It asks for the claimant’s name and address and details of the land and their interest in it, but not for any details of the compensation sought. Some acquiring authorities have created their own forms in order to collect the information they need to estimate the amount of compensation due, and to understand the basis of the claimant’s figures.

Options and proposals

- 9.5 It has been suggested that legislation should clearly require authorities to advise those on whom notices are served of their rights to compensation and the process for claiming it. Updated wording for notices and improved forms to obtain better information could potentially be prescribed in secondary legislation or set out in guidance.
- 9.6 During our engagement with stakeholders we have heard concerns over a lack of transparency from acquiring authorities about the assumptions underlying their own estimates. Acquiring authorities will typically have made an assessment of the likely compensation for properties they are purchasing, for budgeting purposes. Greater openness on both sides might enable a more collaborative approach to negotiation.
- 9.7 Another suggestion is that the system could be changed to require the acquiring authority to offer compensation as the first step, rather than requiring the owner to claim it. This would represent a more fundamental change.

Question 93: Should acquiring authorities be required to advise owners of their rights to compensation and how to claim it?

Question 94: Should a statutory claim form be provided to collect more information about the amount of compensation sought?

Question 95: Should acquiring authorities be required to provide information on their assumptions relating to compensation, if this is requested by a claimant?

Question 96: Should acquiring authorities be required to offer compensation, rather than requiring owners to claim it?

Question 97: Please provide any comments about the procedure for claiming compensation, if you wish to expand on your responses to questions 93 to 96.

Time limits

9.8 This section deals with the minimum and maximum time limits for claiming compensation, and for making an application to the LTS if the amount of compensation is disputed. In most cases compensation will be settled (with or without recourse to the LTS) without troubling those time limits. However, it is important that the relevant deadlines are both clear and reasonable, on the occasions when they are needed.

Current provisions

9.9 Under current procedures the timings vary between use of NTT and GVD, and some are clearer for one approach than the other. As set out in chapter 7, with NTT compensation has to be settled before title can be taken, whereas with GVD title is taken first and compensation settled afterwards.

9.10 A claim for compensation can be made from the date when the NTT or GVD is made. For a GVD, compensation provisions apply “as if, on the date on which the declaration was made, a NTT had been served” (the “deemed NTT”). In the context of early engagement and seeking to purchase land by agreement, there are likely to have been earlier discussions around compensation, but this is when a formal claim can be made. There appears to be no end limit on when a claim can be made.

9.11 An application in relation to a disputed claim for compensation can be made to the LTS after 30 days from the date on which a NTT is served, or deemed to be served. For a NTT, title is not taken until after compensation has been settled. For a GVD, the vesting date must be no less than 28 days from when the declaration is made. This sits slightly uncomfortably with the 30 days for reference to the LTS.

9.12 Under schedule 15 to the 1997 Act, the latest date on which an application can be made to the LTS, following a GVD, is “6 years from the date at which the person claiming compensation, or a person from whom he derives title,

first knew, or could reasonably be expected to have known, of the vesting of the interest”, but “no account shall be taken of any period during which the person claiming compensation or the person from whom he derives title was under legal disability by reason of nonage³⁸ or otherwise”. This makes it unclear whether the six years runs from the date of vesting, or the date of notice of making of the GVD, or some other date.

- 9.13 There appears to be no provision for a time limit for application to the LTS where a NTT is used.

Options and proposals

- 9.14 We see no reason to change the first date on which a claim for compensation can be made, which would be the date on which the proposed new Compulsory Purchase Vesting Declaration (CPVD) is made.
- 9.15 The earliest date on which a claim can be referred to the LTS, under the current system, is almost the same as the earliest date on which a GVD can take effect. To avoid such discrepancies we suggest that in the new system, the earliest date for application to the LTS should be the date of vesting.
- 9.16 In chapter 7 we have suggested that the new CPVD procedure should allow a minimum of six weeks between making the declaration and the vesting date.
- 9.17 In terms of the time limit for bringing cases to the LTS, we see no particular reasons to change the six year limit which currently applies to a GVD. We therefore consider that the limit should continue to be six years, but it should have a clear starting point at the date of vesting.
- 9.18 Some respondents to the Scottish Law Commission Discussion Paper were concerned that it can be difficult to determine the extent of a claim until the development scheme is completed. However, a case before the LTS can be sisted to allow more time for evidence to be gathered. In our view, the LTS should also have discretion to allow cases to be brought beyond the six year limit, but only if the applicant can show that they were not previously aware of the CPVD.
- 9.19 The lack of an end date for claiming compensation could cause difficulties for both parties, although late claims or owners who cannot be identified are very rare. For the acquiring authority, it leaves them with a potential liability for payment which they cannot close off. For the claimant, it means they could end up with a claim too late for any dispute to be referred to the LTS, and therefore remaining unresolved indefinitely. On the other hand, where an individual's property has been taken through compulsory purchase, it may not be appropriate to set a time limit on their right to compensation.

³⁸ Nonage means being under the legal age to conduct transactions.

9.20 In summary we propose that:

- a claim for compensation can be made from the date on which the CPVD is made
- there should be no final time limit on when claims can be made
- an application can be made to the LTS from the date of vesting
- the last date on which an application can be made to the LTS is six years from the date of vesting
- the LTS should have discretion to allow late applications if the applicant can show that they were not previously aware of the CPVD

Question 98: Do you agree that an application to the LTS should be able to be made from the date of vesting? If not, when should the earliest date for application be?

Question 99: Should there be a final time limit for making a claim for compensation? If yes, what should the limit be?

Question 100: Are any other changes needed in relation to the timing of compensation claims?

Advance payments

9.21 When using a GVD, an acquiring authority can take title first and compensation is agreed later. To avoid claimants being out of pocket and allow them to relocate, acquiring authorities are required to make an advance payment of compensation where one is requested. Advance payments can therefore be helpful in avoiding affected parties experiencing hardship.

9.22 This section considers issues around:

- information required to claim
- timing of payments
- heritable securities
- sanctions for non-payment

Statutory basis

9.23 An acquiring authority is obliged to make an advance payment to any person entitled to compensation who makes a claim for such payment (section 48 of the 1973 Act). This applies to subordinate rights as well as ownership. The amount of such an advance payment is 90 percent of the level of compensation as either agreed by the parties or estimated by the acquiring authority.

- 9.24 Requests are required to be in writing and give particulars of the claimant's interest in the land. The acquiring authority can also ask for additional information to allow them to estimate the amount of compensation due.
- 9.25 Any advance payment must be made within three months of the date of request, or, if later, on the date on which the acquiring authority take possession. If the payment is made before the acquiring authority obtain title to the land, the acquiring authority must arrange for notice of the advance payment to be registered in the Land Register or recorded in the Register of Sasines.
- 9.26 Where an advance payment is based on the acquiring authority's estimate and at any time it appears that was too low, the acquiring authority must pay the balance to the claimant upon request. If the final amount of compensation as agreed or decided is less than any advance payment based on an estimate, any overpayment must be repaid to the acquiring authority. Payments made to someone who was not entitled are also recoverable by the acquiring authority.
- 9.27 If the land is subject to a heritable security, the advance payment is reduced by the amount the authority consider they would need to pay off the security. If the principal of the security exceeds the amount that would be due, ie, 90% of the agreed or estimated compensation, no advance payment will be made. Advance payments cannot be made to security holders, their share is simply held back until agreement on compensation is reached.

Information required to claim

- 9.28 Acquiring authorities need adequate information to be able to estimate the overall amount of compensation, before they can calculate the amount of an advance payment. If a more detailed form is provided for the compensation claim as a whole, or the acquiring authority is required to offer compensation as the first step, (see paragraphs 9.2 to 9.7), then advance payments could simply be claimed by a letter. Notices should provide information about the right to advance payments as well as about compensation as a whole.

Timing of payments

- 9.29 The entitlement to an advance payment arises from the acquiring authority taking possession of the land. Payment is to be made on the date of possession, or within three months of the request being made, whichever is later. Claimants may, however, incur significant expenditure some time before this, for example if they choose to relocate before the acquiring authority takes possession. Under the GVD procedure, claims for compensation are invited when the notice of intention to make the GVD is issued, and a request for advance payment could be made at the same time. If the acquiring authority provides for more than the minimum time before vesting, it might be helpful for them to be able to make payments before taking possession.

Heritable securities

- 9.30 As set out in paragraph 9.27, advance payments cannot currently be made to security holders, and where the principal of the security exceeds the amount of payment due, no advance payment is made. This could clearly make it difficult for a claimant to relocate if their property is subject to a heritable security which they cannot pay off.
- 9.31 We understand that it can be difficult for acquiring authorities to engage with lenders, who may be unfamiliar with CPO procedures. However, with the involvement of the claimant it may be possible to reach agreement for an advance payment to be made to enable the security to be discharged.

Late payment

- 9.32 The key concern that has been raised over advance payments is that acquiring authorities may fail to make them within the required 3-month timescale. There is currently no mechanism for the claimant to enforce payment, short of judicial review or taking a case to the Scottish Public Services Ombudsman, since making advance payments is a statutory duty.
- 9.33 The Scottish Law Commission recommended that the courts should have a limited statutory power of enforcement where the acquiring authority have failed to make a proper estimate of the advance payment within the required time or has made one which is manifestly too low. It also suggested it may be appropriate to allow the LTS to provide an enforceable valuation figure for an advance payment.
- 9.34 However, both of these could be considered too slow and cumbersome to act as an effective sanction. The Scottish Compulsory Purchase Association have previously called for penalty interest payments (e.g. 10%) to be made to claimants where a legitimate application for an advance payment is not paid within the required timescale.

Options and proposals

- 9.35 Advance payments can play an important role in helping claimants to put their affairs in order. However, as noted, an acquiring authority's duty to pay an advance payment only arises after it takes possession. We are interested in views on whether it would be helpful for acquiring authorities to be able to make advance payments where a request is made before taking possession, on a discretionary basis. It is not currently clear whether all acquiring authorities can do so.
- 9.36 We consider it would be helpful to provide that where the landowner and heritable creditor both agree, an advance payment can be made to the creditor, and the landowner receives any balance after the amount needed to release the creditor's interest. Where the principal of the mortgage is over 90% of the compensation, the landowner does not receive any payment.

9.37 We are interested in views on how to ensure advance payments are paid promptly, without adding more onerous procedures.

Question 101: Are any new powers needed to enable acquiring authorities to make discretionary advance payments, if one is sought before they take possession?

Question 102: Would it be helpful to enable advance payments to be made to heritable creditors, with the landowner's agreement?

Question 103: What mechanisms do you think would help to ensure advance payments are made promptly?

- enforcement through the courts
- LTS enforceable valuation
- penalty interest
- other (please explain).

9.38 As explained above, an acquiring authority's duty to pay an advance payment only arises where one is requested by a claimant. Interest is payable on the amount of compensation outstanding from the date of vesting – less the value of any advance payment (see following section). This provides an additional incentive for authorities to make prompt advance payments and to settle disputes timeously.

9.39 In that context, we would welcome views on whether acquiring authorities should be given a power to proactively offer an advance payment after taking possession, even where one has not been requested. If such a payment were offered in writing but not taken up, the interest payable on the outstanding balance could be capped. In such a scenario, interest would be payable on the 10% that would be outstanding if the advance payment had been taken up. This could potentially help to avoid financially penalising acquiring authorities who are willing to make advance payments.

Question 104: Should acquiring authorities have the power to offer advance payments even where one is not requested? If so, should interest on the amount of outstanding compensation be capped?

Interest rates

9.40 Interest is payable on compensation between the date of taking possession, or the date of vesting in the case of a GVD, and the date on which compensation is paid. The method for determining the rate of interest is set out in the [Acquisition of Land \(Rate of Interest After Entry\) \(Scotland\) Regulations 1995](#) and the [Acquisition of Land \(Rate of Interest After Entry\) \(Scotland\) Amendment Regulations 2016](#). The current rate is 0.5% below the standard rate, which is the median of the base rates set by the seven largest UK banks (as defined in the 1995 regulations). The 2016 regulations provide

that the rate of interest cannot be negative, since at the time base rates had been close to zero for some time.

- 9.41 Under section 48A of the 1973 Act, where an advance payment is made, the acquiring authority must at the same time pay the accrued interest on the total figure by which the advance payment was calculated, and annually thereafter must pay the yearly interest due on the outstanding balance (10% of the estimated compensation), until the final compensation is paid.
- 9.42 We are interested in views on whether the general interest rate for compensation should be increased, so that it is at or above the standard rate. Some stakeholders have made reference to the amounts charged on overdrafts and even higher rates charged on loans taken out in the absence of advance payments, or the rate payable under the Late Payment of Commercial Debts (Interest) Act 1998 ("statutory interest") – currently base rate plus 8%. There has also been support for charging compound interest where payments are late.

Question 105: What should be the basis for the interest rate payable on outstanding compensation?

- current rate (0.5% below standard rate)
- average rate for overdrafts
- average rate for loans
- statutory interest
- other (please give details)

10. Compulsory Sale and Lease Orders

Compulsory Sale Orders

- 10.1 In recent years a number of stakeholders have expressed an interest in the idea of compulsory sale orders (CSO). The concept was proposed by the Scottish Land Commission in 2018, following recommendations from the Land Reform Review Group established in 2012.
- 10.2 The rationale for CSOs is that they would empower local authorities to require the sale of long-term vacant or derelict land and buildings, particularly in urban areas where such properties negatively impact communities. As set out in chapter 3 of this consultation document ('Enabling Powers'), local authority CPO powers can already be used to bring vacant and derelict properties back into active use. However, the perceived benefits of CSOs are that they would be more straightforward, quicker and cheaper for local authorities, in part because they would not have to outlay capital to purchase the properties.
- 10.3 We are interested in exploring whether those suggested benefits are likely to be realised in practice, especially noting the proposed changes to the CPO process set out in this consultation.
- 10.4 At the outset, it is critical to recognise that a compulsory sale, like a compulsory purchase, results in a person having to sell their property against their will. This interferes with the property rights of those affected and thereby engages protections under the ECHR, just as compulsory purchase does (see chapter 2). Any new CSO process would therefore need to be subject to appropriate safeguards to ensure use of compulsory sale powers is justified and proportionate – and compensation would need to be fair.
- 10.5 It is also important to note that it is already possible for local authorities to compulsorily acquire land they are not intending to develop themselves though back-to-back CPOs (see paragraphs 3.16 to 3.19 of this consultation). Through such arrangements, the authority's costs can be indemnified by a third party. This is relevant given the suggestion that CSO would be cheaper.
- 10.6 In the [Programme for Government 2023 to 2024](#), the Scottish Government committed to continue to consider the justification for, and practical operation of, CSOs. Accordingly, in 2024 we commissioned the Scottish Empty Homes Partnership (SEHP) to look at the practicalities of compulsory sale powers, specifically in the context of long-term empty homes, and any practical benefits they would offer beyond existing CPOs. The [final report](#) is now available on the SEHP website.
- 10.7 The SEHP report concluded that:
- CSO could sit alongside CPO as a tool to bring empty homes back to use
 - a new CSO mechanism would likely involve similar procedures to the current CPO process

- process costs would be similar to those of CPO but the local authority would not have an income bearing asset that could be used to offset these at the end of the process
 - local authorities would need sufficient legal, administrative and financial resources to make use of any CSO powers
 - for a CSO process to be effective it is important that it is part of a strategic joined-up approach to empty homes work
- 10.8 The report indicates that a CSO process would require the same or similar processes and resources in order to be delivered effectively, and so if these are already barriers to the use of CPO, they could also be barriers to use of a potential CSO mechanism.
- 10.9 As noted, the SEHP report indicates that the procedural steps involved in preparing a CSO are likely to be at least equivalent to those associated with a CPO. In that sense, provisions along the lines of those set out in chapters 4, 5 and 6 of this consultation would need to apply to the preparation of a CSO. In other words, a statutory CSO process, like the current CPO process, would need to include steps such as identifying and engaging with affected owners, seeking to secure the sale by agreement, preparing a justification for using compulsory powers, notifying affected parties, considering objections, decision-taking, rights of challenge etc.
- 10.10 Such procedural checks and balances would be necessary to ensure use of compulsory sale powers is proportionate, recognising that they would interfere with the property owner's rights. Provision would also need to be made to transfer legal title – see chapter 7 of this consultation.

Question 106: Should local authorities be able to instruct the sale of a property without permission from the property owner? Please explain your reasons.

Question 107: In what circumstances might compulsory sale be justified, and what benefits or drawbacks might there be?

Question 108: If a CSO process was introduced, would the procedures involved in preparing a CSO need to be equivalent to those that apply to a CPO? If not, how should those procedures differ?

- 10.11 The SEHP report acknowledges a wide range of issues that would be relevant when considering the practical operation of a compulsory sale process. An important issue is how to control the use of a property once a new owner has bought it. As set out in chapter 6 of this consultation, the proposed use is relevant to the public interest in a CPO being confirmed. Another issue is what the role of the local authority is during the CSO process. For example can the authority be considered “the seller” for property which they do not own? If not who is the seller in cases where the current owner cannot be traced or is unwilling to put the property up for sale? There is also a question of how long the property should remain on the market, and what should happen if it does

not sell. We assume the property cannot remain on the market indefinitely, as that would only prolong the situation which led to the CSO. We would welcome views on these issues.

Question 109: What governance or regulatory frameworks would need to be introduced to ensure that any future CSO process is used fairly and effectively?

Question 110: What measures could be taken to control the use of the property by the new owner?

Question 111: How long should a property subject to a CSO remain on the market?

Question 112: What should happen if the property does not sell?

Compulsory Lease Orders

10.12 Some calls for the introduction of CSO also mention Compulsory Lease Orders (CLO) and we are keen to understand whether and how these could add benefit to the compulsory purchase process. Similar considerations as those that currently apply to CPO, and potentially to CSO, would apply in terms of ensuing compatibility with the ECHR, controlling the use of the property by a new leaseholder and ensuing compensation paid to the current owner remains fair.

10.13 While the SEHP report mentioned in this chapter did not cover CLOs, we consider that the procedural requirements are likely to be more onerous than those for CPO – and potentially CSO – as there would be an ongoing duty on the local authority to monitor and manage that lease. These duties would not be expected to apply once ownership had changed through a CPO or, depending on the requirements of any future CSO process, once a sale was concluded through that process.

10.14 We are particularly keen to understand whether an owner of a property that is subject to a CLO would be treated as a landlord, and could be expected to fulfil the same duties and obligations that would apply to a landlord who chooses to voluntarily lease or rent their property.

Question 113: Should local authorities be able to instruct the lease of a property without permission from the property owner? Please explain your reasons.

Question 114: In what circumstances might compulsory lease be justified, and what benefits or drawbacks might there be?

Question 115: If a CLO process was introduced, would the procedures involved in preparing a CLO need to be more onerous than those that apply to a CPO? Please explain your views.

Question 116: If you think there are any other measures or issues that we should be aware of as part of our consideration of CLOs, please tell us more about these.

Question 117: Do you think that the introduction of either Compulsory Sale Orders or Compulsory Lease Orders in Scotland would add any benefits beyond a reformed CPO process, as a tool for tackling long-term vacant or derelict properties? Please provide details.

11. Assessment of impacts

Business and Regulatory Impact Assessment

- 11.1 A Partial (i.e. draft) Business and Regulatory Impact Assessment (BRIA) is provided in the **Annex** to this paper. This considers the potential costs and benefits of the proposals in this consultation on businesses, and economic impacts more generally. We would welcome any comments on this draft assessment. Feedback will inform further policy development and iteration of the BRIA, a final version of which will be published alongside any future Compulsory Purchase Bill.

Question 118: Do you have any comments on the draft BRIA provided in the Annex?

Other Assessments

- 11.2 A number of other assessments and screening exercises are also being progressed including:
- Equality Impact Assessment (EQIA)
 - Child Rights and Wellbeing Screening Assessment (CRWIA)
 - Island Communities Impact Assessment (ICIA)
 - Fairer Scotland Duty Assessment (FSDA)
- 11.3 Like the BRIA, these are ‘live’ documents which will be updated in the light of responses to this consultation and inform further policy development. Final impact assessments will be published when the reform package is taken forward through a future Bill.

Equality Impact Assessment

- 11.4 The public sector equality duty requires the Scottish Government to have due regard to the need to:
- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the [Equality Act 2010](#)
 - advance equality of opportunity between people who share a protected characteristic and those who do not, and
 - foster good relations between people who share a relevant protected characteristic and those who do not
- 11.5 The protected characteristics which the duty relates to are: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion & belief and sex & sexual orientation.

Question 119: Do you consider that any of the options and proposals in this consultation document would impact (positively or negatively) on people with protected characteristics? Please provide details.

Children's Rights and Wellbeing Impact Assessment

11.6 A CRWIA is an assessment process, tool and report through which the potential impacts of any proposed decision, including the development of policies, projects, programmes or services, on children's rights and wellbeing are considered. In carrying out these assessments, CRWIAs use:

- the Articles of the [UN Convention on the Rights of the Child](#)
- the two Optional Protocols of the UN Convention on the Rights of the Child which the UK has ratified³⁹
- the [child wellbeing indicators under the Children and Young People \(Scotland\) Act 2014](#)

Question 120: Do you consider that any of the options and proposals in this consultation document would affect children's rights and wellbeing? Please provide details.

Island Communities Impact Assessment

11.7 An ICIA considers the impacts of new policies, strategies or services that are likely to have an effect on an island community which is significantly different from the effect on other communities. ICIA are provided for under the [Islands \(Scotland\) Act 2018](#).

Question 121: Do you consider that any of the options and proposals in this consultation document would have significantly different impact on island communities from other communities? Please provide details.

Fairer Scotland Duty

11.8 The [Fairer Scotland Duty](#) requires Scottish Ministers and named public bodies to consider how they can reduce inequalities of outcome caused by socio-economic disadvantage when making strategic decisions.

Question 122: Do you consider that any of the options and proposals in this consultation document would impact (positively or negatively) on people who are socio-economically disadvantaged? Please provide details.

³⁹ [Optional Protocol on the sale of children, child prostitution and child pornography; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict | OHCHR](#)

Glossary

Legislation

Term	Explanation
The 1845 Act	Lands Clauses Consolidation (Scotland) Act 1845
The 1947 Act	Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947
The 1963 Act	Land Compensation (Scotland) Act 1963
The 1973 Act	Land Compensation (Scotland) Act 1973
The 1997 Act	Town and Country Planning (Scotland) Act 1997
The 2003 Regulations	The Compulsory Purchase of Land (Scotland) Regulations 2003
The Title Conditions Act	Title Conditions (Scotland) Act 2003

Term	Explanation
Accommodation Works	Voluntary works carried out by the acquiring authority to mitigate the impact on the value of a claimant's retained land, in order to reduce compensation for injurious affection.
Acquiring Authority	An organisation (usually a public body) empowered by an Act of Parliament to purchase land compulsorily for purposes related to their function(s).
Advance Payment	A payment made by the acquiring authority to a claimant in advance of the final amount of compensation being agreed.
Award of Expenses	In the context of a public local inquiry, a decision that one party must pay the expenses of another. Such awards typically occur if an objection is upheld or a party is deemed to have acted unreasonably.
Benefited Property	See 'real burden'.
Betterment	Increase in the value of a claimant's retained land as a result of the acquiring authority's scheme. The opposite of injurious affection.
Burdened Property	See 'real burden'.
Business and Regulatory Impact Assessment (BRIA)	An assessment of the impacts of proposed regulatory change(s).
Certificate of Appropriate Alternative Development (CAAD)	A tool for determining what, if any, planning permission would have been granted on a piece of land affected by compulsory purchase, had it not been for the CPO. In doing so, it helps assess the market value of the land.
Circular 6/1990	Planning Circular 6/1990 provides advice and guidance on awards and expenses in appeals and other planning proceedings and in CPO inquiries.

Term	Explanation
Circular 6/2011	Planning Circular 6/2011 sets out the Scottish Government's policy and guidance on the use of compulsory purchase orders in Scotland.
Claimant	A person entitled to claim compensation in the context of compulsory purchase.
Compulsory Purchase Order (CPO)	A document made by an acquiring authority which identifies land that it seeks to compulsorily acquire. CPOs are subject to confirmation by the Scottish Ministers.
Compulsory Purchase Vesting Declaration (CPVD)	A proposed new mechanism (set out in this consultation document) for implementing a confirmed CPO, which would replace general vesting declarations and notices to treat.
Confirmation	The process by which decisions are taken on whether or not a CPO is confirmed (i.e. approved). A CPO can be confirmed, confirmed with modifications or not confirmed.
Confirmation Notice / Notice of Confirmation	Notices published and served by the acquiring authority after a CPO has been confirmed. This marks the start of the three year period within which a CPO must be implemented, and the six week period within which a legal challenge can be brought.
Confirming Authority	The party responsible for deciding whether or not a CPO should be confirmed (currently Scottish Ministers).
Data Standards	A set of rules by which data are described, recorded and shared in order to ensure common understanding among data users and maintain data quality (integrity, consistency, format, meaning).
Development Value	Additional value of land associated with the grant of planning permission for a more valuable use (or the assumption of such planning permission).
Disturbance	Compensation for losses which are unconnected to the value of the land, such as removal costs and professional fees (effectively, expenses).
DPEA - Planning and Environmental Appeals Division	The DPEA is responsible for considering objections to draft compulsory purchase proposals and for providing recommendations to Ministers on whether they should be confirmed.
Enabling Power(s)	Powers specifying the purpose(s) for which an acquiring authority can compulsorily acquire land.
Equivalence	The principle that people whose interests are acquired compulsorily, or under the threat of compulsion, should be put – at least in monetary terms – in the same position as if the land had not been taken, being entitled to compensation which is neither less nor more than the value of their loss.

Term	Explanation
Exchange Land	Land which an acquiring authority propose to give in exchange for land compulsorily acquired.
Existing Use Value	Value of land in its existing use.
Farm Loss Payment (FLP)	Additional compensation paid to those displaced from agricultural land as a result of compulsory acquisition, subject to qualifying criteria.
General Certificate	A non-statutory certificate submitted with a CPO confirming who has been notified of the Order, that at least 21 days has been allowed for objections and indicating where a copy of the Order and map can be viewed.
General Register of Sasines / Sasine Register	A register of land ownership in Scotland which was established in 1617. It is progressively being replaced by the Land Register of Scotland.
General Vesting Declaration (GVD)	A legal document used to implement a confirmed CPO. A GVD transfers the title of all land described within it to the acquiring authority, including the right to enter and take possession of the land.
Hearing	A procedure through which objections to a CPO are considered. It takes the form of a structured discussion led by a Reporter and is typically less formal than a public local inquiry.
Heritable creditor	A person to whom money is owed which is secured on land – this is the term in Scots law for a mortgage lender. May also be described as a “security holder”.
Home Loss Payment	Additional compensation paid to those displaced from residential accommodation as a result of compulsory acquisition, subject to qualifying criteria.
Hope Value	Additional value of land reflecting the prospects of a more valuable future use.
Implementation (of a CPO)	The procedures by which the acquiring authority takes title to and possession of land within a CPO which has been confirmed. This is usually done by making a general vesting declaration (GVD) or less commonly, by serving a notice to treat (NTT).
Injurious Affection	Reduction in value of any land which is not acquired by the acquiring authority (see also ‘Retained Land’).
Keeper of the Registers of Scotland (‘the Keeper’)	Chief executive of Registers of Scotland – the official formally responsible for maintaining the Land Register, General Register of Sasines and other registers.
Land	In the context of compulsory purchase, the definition of land includes land and buildings, as well as any rights in or over land.
Land Register (of Scotland)	Map-based register of land ownership in Scotland, which is progressively replacing the General Register of Sasines.

Term	Explanation
Lands Tribunal for Scotland (LTS)	Tribunal which deals with disputes relating to land or property, including disputes of compulsory purchase compensation.
Liferent	A right in property given to someone for the duration of their life. For example, a parent may leave a property to their child, but with a liferent for their partner to live there for the rest of their life. The partner cannot sell it or leave it to anyone else.
Loss Payment	Additional compensation payment for the stress and inconvenience of being displaced as a result of compulsory acquisition. See Home Loss Payments and Farm Loss Payments.
Market Value	The price paid for land or property in the open market assuming a willing buyer and willing seller both acting prudently with the land/property having been properly marketed.
No-Scheme Principle	When assessing the value of property subject to compulsory acquisition, the disregard of any increases or decreases in value which are attributable to the underlying 'scheme' (e.g. road project, housing refurbishment works etc).
Notice to Treat (NTT)	A notice served by an acquiring authority on those with an interest in land within a confirmed CPO. In effect, it invites claimants to make a claim for compensation. It is one of the two principal mechanisms by which a CPO is implemented, the other being a general vesting declaration (GVD). A separate notice of entry must be served before entering onto the land; title is also transferred separately.
Reporter	A person appointed by the Scottish Ministers to consider objections to a CPO and make recommendations as to whether the Order should be confirmed.
Opposed CPO / Opposed Case	A CPO which has been objected to and those objections have not been withdrawn.
Owners' Association	A group of homeowners who have put in place arrangements for the purpose of managing and maintaining common areas.
Primary Legislation	Laws contained in an Act of Parliament or Act of the Scottish Parliament.
Protected Assets and Special Category Land Certificate	A non-statutory certificate submitted with a CPO indicating whether certain heritage assets (such as a listed building) would be affected, and whether any special category land is proposed to be acquired.
Public Local Inquiry	A procedure through which objections to a CPO are considered. At a PLI, parties give evidence in front of

Term	Explanation
	a Reporter and can be cross-examined by others. It is typically a more formal event than a Hearing.
Real Burden	A legal obligation restricting the use or development of a property ('the burdened property') for the benefit of another property ('the benefitted property'), whose owner may enforce the burden.
Retained Land	Land owned by a claimant which is not proposed to be acquired compulsorily.
Registers of Scotland	The government body responsible for maintaining public registers of land and property in Scotland, including the Land Register of Scotland and General Register of Sasines.
Secondary Legislation	Legislation made by Ministers under powers set out in primary legislation.
Security holder	See "heritable creditor".
Servitude	A legal right allowing the owner of a property ('the benefitted property') to make specific use of another property ('the burdened property'), such as a right of access.
Severance	The reduction in the value of a claimant's retained land caused by its separation from land acquired through a CPO.
Special Category Land	Categories of land which, if included in a CPO, may require additional procedures to be carried out before the Order can be confirmed.
Special Parliamentary Procedure	A process by which certain CPOs are subject to additional scrutiny and approval by the Scottish Parliament.
Standard Security	Deed securing a debt over land – equivalent to a mortgage.
Statement of Reasons	A document through which the acquiring authority sets out its justification for the proposed acquisition and seeks to demonstrate that there is a sufficiently strong case in the public interest for the CPO to be confirmed.
Statutory Objector	A party who must be notified by an acquiring authority when a CPO has been made and is about to be submitted for confirmation. Such parties have a right to be heard (through either a hearing or public local inquiry) if they object to a CPO and do not withdraw their objection.
Statutory Undertaker	A body with statutory powers to carry out works related to the provision of infrastructure.
TAWS	Transport and Works (Scotland) - an order-making process which avoids the need for private Bills for transport-related developments.
Unopposed CPO / Unopposed Case	A CPO which has not been objected to, or where all objections have been withdrawn.

Term	Explanation
Vest	To transfer a right or title to land. The land vests or is vested in the person who then owns it.
Written Submissions	A procedure through which objections to a CPO are considered. Unlike a Public Local Inquiry or Hearing, it does not involve oral sessions.

Annex: Partial Business and Regulatory Impact Assessment (BRIA)

Compulsory Purchase Reform

September 2025

Introduction

This Partial Business and Regulatory Impact Assessment (BRIA) accompanies the Scottish Government's consultation on compulsory purchase reform in Scotland.

The legislative framework governing compulsory purchase in Scotland is widely regarded as in need of reform. The Scottish Government has committed to take forward a programme of work to reform and modernise the system, with the aim of making the process simpler, more streamlined and fairer for all parties. The consultation document which this BRIA accompanies seeks views on a package of options and proposals (summarised in the Table at Appendix A).

Any substantive changes to Scotland's compulsory purchase legislation will require a Bill. If taken forward, this would be introduced in the next session of the Scottish Parliament following the 2026 elections. An updated BRIA would accompany any such Bill.

Section 1: Background, aims and options

Background to policy issue

Compulsory purchase powers enable specified bodies (known as ‘acquiring authorities’) to acquire land and property without the consent of their owner where there is a strong enough case in the public interest. These acquiring authorities comprise a wide range of public organisations, including local councils, Transport Scotland and Scottish Water, and some private ones, primarily airport operators and companies responsible for electricity infrastructure. For example, local councils can use their powers to support housing and planning projects, transport bodies can use them for new or improved road and rail links and utilities can use them to roll out and upgrade infrastructure. Acquiring authorities utilise their powers by preparing a compulsory purchase order (CPO).

Taking an individual's or a business's property is a significant step which interferes with the rights of those affected. The use of compulsory purchase powers therefore requires careful consideration and clear justification to demonstrate that it is necessary and proportionate. But when used effectively, compulsory purchase can support the delivery of a wide range of projects – both large and small – that would not otherwise come forward. This can range from bringing empty properties back into use through to the delivery of major infrastructure and town centre redevelopment schemes. Scottish Government policy therefore encourages a positive and proactive approach to the use of compulsory purchase. However, Scotland's compulsory purchase system has not been substantively updated for several decades and is widely regarded as being in need of reform.

Purpose/ aim of action and desired effect

By helping to unlock projects in the public interest, the use of compulsory purchase can contribute to many of the Scottish Government's wider plans, policies, and strategies – such as the [National Planning Framework 4](#), [the National Transport Strategy](#) and the [Infrastructure Investment Plan](#) – and contribute to our [National Outcomes](#). However, if compulsory purchase is to play this role, Scotland needs a system that is fit for purpose.

Between 2014 and 2016 the Scottish Law Commission carried out a [review of compulsory purchase in Scotland](#). Its 2016 Final Report concluded that “the legislation is old, difficult to understand and does not work effectively in a modern context” – and that those who the Commission consulted with “took the view that the system, both procedurally and in relation to the award of compensation, does not operate fairly”. The Scottish Government is therefore taking forward a comprehensive programme of work to reform and modernise the system.

The overall objective of the reform programme is to make the compulsory purchase system **simpler**, more **streamlined** and **fairer** for all parties. In doing so, our aim is to move towards a system that is:

- **Equitable:** Compensates claimants fairly and timeously

- **Effective:** Supports efficient decision-making, whilst ensuring procedural fairness, openness, and transparency
- **Easy to understand:** Provides all parties with certainty and clarity about how the process works and their rights, roles and responsibilities within it

The Scottish Government wants compulsory purchase to fulfil its potential as a tool for delivering projects in the public interest – one that encourages authorities to make positive and proactive use of their powers in appropriate circumstances, including in partnership with third parties.

Options

The Scottish Government has developed a package of options and proposals to meet the aims of compulsory purchase reform mentioned above. This was done through a combination of: stakeholder engagement, reviewing existing evidence sources, such as the Scottish Law Commission work, and by considering changes to equivalent systems in England and Wales. Additionally, the Scottish Government established a Practitioner Advisory Group to support the reform programme by providing feedback, advice and insights drawn from members' practical knowledge and experience of compulsory purchase and compensation.

The reform programme has been structured around five thematic 'building blocks':

- Enabling powers
- Early engagement
- Confirmation procedures
- Taking possession and title
- Compensation

The table in Appendix A of this BRIA summarises the options and proposals which the accompanying consultation document seeks views on (option 1), organised under the five building blocks.

Sectors/ Groups affected

The main groups affected will be:

- acquiring authorities
- owners and occupiers whose land is acquired by (or under the threat) of compulsory purchase, which may include businesses

The overall purpose of compulsory purchase is to facilitate schemes in the public interest. Works delivered through a CPO can therefore be expected to benefit the general public. By extension, proposed reforms which improve the general operation of the CPO system should have positive impacts overall. However, the specific impact will ultimately depend on the type, location and number of projects which utilise the reformed compulsory purchase regime. It is not possible to forecast this

with any certainty. The analysis of costs and benefits below identifies some measures which may have particular impacts on business interests.

Section 2: Engagement and information gathering

Engagement approach

Practitioner Advisory Group

[The 2023-24 Programme for Government](#) indicated that an expert group would be appointed to help inform the development of reform proposals. Doing so was also identified as an action in the [National Planning Framework 4 Delivery Programme](#).

In line with this commitment, the compulsory purchase reform Practitioner Advisory Group (PAG) was established in Spring 2024 – chaired by Roseanna Cunningham and the Chief Planner. The overarching role of the PAG has been to support the Scottish Government's reform programme by providing feedback, advice and insights drawn from members' practical knowledge and experience of compulsory purchase and compensation. More information about the PAG, its membership and terms of reference – as well as meeting minutes – can be found on the group's webpage: [Compulsory Purchase Reform Practitioner Advisory Group - gov.scot](https://compulsorypurchase.scot.nhs.uk/)

Wider engagement

A wide variety of stakeholders have an interest in compulsory purchase in the private, public and third sectors. In developing the measures set out in the consultation document, Scottish Government officials have engaged with a number of individuals and organisations. This includes:

- individual local authorities and representative bodies such as the Convention of Scottish Local Authorities (CoSLA) (see also section below on public sector engagement)
- professional bodies such as the Compulsory Purchase Association Scotland and the Law Society of Scotland
- land and development bodies such as Scottish Land and Estates and Scottish Property Federation
- organisations interested in land reform such as the Scottish Land Commission and Community Land Scotland

Internal SG engagement/ engagement with wider Public Sector

Within Government

The starting point for our enquiries about enabling powers was Scottish Government and Transport Scotland colleagues with policy responsibility for the various compulsory purchase powers that have been considered. This extended across areas such as health, education, road, rail, airports, housing, forestry, prisons, water and electricity infrastructure. In some cases, colleagues put us in direct contact with the relevant bodies with CPO powers: for example, the Scottish Fire and Rescue Services and airport operators; or they themselves liaised with the bodies such as the Scottish Police Authority.

UK / Devolved Administrations

We have liaised with the UK Government's Ministry of Housing, Communities & Local Government (MHCLG) to understand the rationale for changes to compulsory purchase legislation being progressed in England and Wales, including through the [Planning and Infrastructure Bill](#).

Wider Public Sector and Business / Third Sector engagement

Local authorities have a number of CPO powers. We have therefore reached out to various bodies that bring together local authority and public sector interests including:

- Society of Local Authority Lawyers & Administrators in Scotland (SOLAR)
- Association of Local Authority Chief Housing Officers (ALACHO)
- Local Authority Building Standards Scotland (LABSS)
- Heads of Planning Scotland (HOPS)
- Key Agencies Group (KAG)

Public consultation

This Partial BRIA accompanies a substantial public consultation published in September 2025. The consultation will run until December 2025. A brief summary of the feedback will be included in the final BRIA.

Progress Report

We published a [Progress Report](#) on 18 December 2024, which was shared with an extensive range of organisations and bodies. The purpose of the Report was to recap progress up to December 2024, summarise emerging proposals and set out next steps as we headed into 2025.

Section 3: Costs, impacts and benefits

Quantified costs to businesses

The impacts of the proposed reforms will to a large extent depend on the number and nature of CPOs that are ultimately promoted under the reformed system. It is not possible to forecast this with any certainty. Seeking to quantify specific impacts on businesses and other organisations is not feasible at this stage, especially while a number of the measures will be subject to further refinement and testing (notably those that relate to compensation).

It is also worth noting that not all businesses are affected by compulsory purchase in the same way. Clearly, some businesses will experience compulsory purchase as a directly affected owner or occupier whose property is acquired. On the other hand, it is possible for businesses to work in partnership with acquiring authorities to promote development projects that involve compulsory purchase – through so-called ‘back-to-back’ arrangements. The motivations of these businesses will clearly be very different – and changes to the CPO process will affect them differently too. Other businesses may be affected by compulsory purchase projects more indirectly. For example, a road project unlocked via a CPO may bring additional business and investment to an area – and local businesses of various types may benefit as a result.

Streamlining and simplifying the CPO process are core aims of the reform programme, and as set out in Appendix A we anticipate that several of the proposed measures will have that effect. To that extent, we would anticipate that businesses and other parties engaging with the process will generally benefit from greater speed, certainty and clarity. However, the specific costs/benefits will be very dependent on the circumstances of the case. There are no ‘typical’ costs which could be used to extrapolate broader impacts. To try and address this, the accompanying consultation seeks views on potential data and evidence sources that might help to quantify impacts more meaningfully.

The overall thrust of the reform options and proposals is to streamline and simplify the CPO system – and as indicated above, the effects of the majority of the proposed measures are likely to be beneficial to business. However, a number of the proposals could potentially increase business costs, even if offset by overall benefits/savings:

- new powers for authorities to require the provision of information about land ownership – potential costs of complying with such requests
- new requirements to engage with affected parties could increase costs for acquiring authorities
- allowing awards of costs (which currently apply to public local inquiries) to be claimed for written submissions and/or hearings
- allowing longer implementation timescales to be specified (and/or timescales to be extended where there is a legal challenge) could increase uncertainty for businesses subject to CPO. Shorter implementation periods could create delivery challenges, and hence costs, for large and/or complex projects

- several of the compensation measures could directly affect the levels of compensation paid to the owners and occupiers of land by the acquiring authority. The extent of any effect would depend on the circumstances of the case. Businesses working in partnership with an acquiring authority through a back-to-back CPO (i.e. paying compensation) and those who are the subject of a CPO (i.e. receiving compensation) will be impacted differently

In a number of areas (e.g. how to assess market value, calculation of loss payments), the consultation seeks high level views on various options. Further policy development and design is required before impacts can be determined – this process will be informed by the consultation feedback and will involve additional assessment and data gathering. For example, with respect to loss payments, the consultation seeks views on several options calculating the relevant amount: retaining the current approach (% of market value subject to maximum and minimum levels), a flat rate or a rate linked to length of occupancy. In each case, further testing would be required to determine the appropriate amount and associated impacts.

Benefits to business

While compulsory purchase reform has the potential to support private sector development, it is not currently feasible to quantify the impact. Potential benefits to businesses – such as specific sectors or the wider Scottish supply chain – remain uncertain at this stage. However, it is possible that a more efficient and modernised CPO system could contribute to more streamlined processes, longer-term savings, and improved resource efficiency. Any such benefits would depend heavily on how the reforms are implemented and the nature of future CPO cases.

As noted, quantifying the specific impact of many of the proposed measures is not feasible at present. This is either because further policy development is required before measures can be finalised, a lack of available/relevant data, and/or the number of unknown variables that will affect the impacts.

However, some data is available on the timescales involved in the CPO confirmation process. This makes it possible to indicate the potential time savings that could be associated with certain proposed measures. Such time savings could translate into reduced uncertainty and costs for businesses involved in the CPO process. The proposals in question are:

- time limits for referring cases to DPEA
- self-confirmation of unopposed CPOs by acquiring authorities
- delegation of CPO decisions to DPEA Reporters

By way of very brief summary, CPOs are generally submitted to the Scottish Ministers for a decision on whether or not to confirm (i.e. approve) the Order. At the same time as doing so, the acquiring authority will serve and publish notices indicating objections to the CPO should be sent to the Scottish Ministers. Where no objections are received by the end of the objection period set, Scottish Ministers may proceed to make a decision. If objections are received, the case will be referred to the Directorate for Planning and Environmental Appeals (DPEA). A DPEA reporter is

appointed to consider the objections and make a report and recommendation to Scottish Ministers, who then determine the case.

Time limits on DPEA referral

This relates to the potential introduction of a statutory time limit on the period between receipt of a CPO by Scottish Ministers and its being passed to DPEA to consider objections. The intention would be to stop this period continuing unduly, usually due to negotiations on objections, causing uncertainty and delay.

We have looked at the time taken from receipt of a CPO to its referral to DPEA for a 10-year period from 1 May 2015 to 30 April 2025. This is based on data from DPEA on cases received by them in that period and using the online Register of CPOs to identify when the CPOs were originally submitted to Scottish Ministers. This amounted to some 36 cases across a wide variety of CPO types.

The time taken to refer the case to DPEA in these cases ranged from 22 to 519 days. The average time taken in this period for these cases was 196⁴⁰ days. If we disregard the three longest cases, which look like potential outliers, the average drops to 170 days.

Time Taken	No. of Cases
Less than 60 days	5
60 to 100 days	5
100 to 200 days	11
200 to 365 days	12
365 to 1764	3

This suggests a statutory time limit could shorten any delay in moving the case on to DPEA by up to several months. Ultimately, the extent of the savings would depend on what time limit is set.

Self-confirmation of unopposed CPOs by Acquiring Authorities

This relates to potentially allowing the acquiring authority to confirm their CPO where no objections are made or all objections made are withdrawn. The consultation outlines two broad options:

1. CPOs continue to be submitted to the Scottish Ministers but are returned to the acquiring authority for a decision if there are no statutory objections or all such objections made are withdrawn.
2. CPOs are only submitted to Scottish Ministers if there are statutory objections, i.e. the case stays with the acquiring authority until the end of the objection period and objections are to be made to them not the Scottish Ministers.

⁴⁰ 469, 488 and 519 days, with the next nearest being 344 days.

With either option, we could still have cases referred with objections which are then withdrawn. So, as regards evaluating time saved, we are only looking at the time saved when no objections are made to a CPO.

We have figures for the period between submission of a CPO and a decision by Scottish Ministers on CPOs with no objections received. These relate to 43 Planning and Housing CPOs determined in the 10-year period 1 May 2015 to 30 April 2025.

Taking those figures for Planning and Housing CPOs where no objections were made together:

- shortest time was 21 days
- longest time was 698 days
- average time was 99 days
- average time minus the longest times taken was 76 days⁴¹

So, not having to submit unopposed cases to Scottish Ministers could reduce the processing time for CPOs with no objections by an average of two to three months. This might be offset slightly by the acquiring authority's own confirmation procedure.

Delegation of Decisions on CPOs to DPEA Reporters

This relates to the proposal to allow opposed cases (i.e. CPOs where objections are made and maintained) to be delegated to DPEA Reporters. For delegated cases, Reporters would decide whether or not the CPO is confirmed – rather than making a report and recommendation to the Scottish Ministers.

To evaluate the potential savings which such a measure could bring about, we have compiled data on the current time between Reporters issuing their report and an eventual decision being made by Ministers. We have figures for that step for 11 Planning and Housing CPOs⁴² over a 10-year period (cases determined from 1 May 2015 to 30 April 2025)⁴³.

Taking those figures for Planning and Housing CPOs together:

- shortest time was 12 days
- longest time was 106 days
- average time was 51 days
- average time minus the longest time taken was 45 days⁴⁴.

⁴¹ Two cases of 698 days and 455 days removed as outliers. The next longest case was 174 days with a fairly even spread of times down to 21 days

⁴² The dataset is smaller as relatively few Planning and Housing CPOs attracted objections that were subsequently maintained.

⁴³ These figures may include some Planning CPOs where objections were non-statutory, but the case went to DPEA and a report and recommendation was made to Scottish Ministers.

⁴⁴ The longest case of 106 days was a bit of an outlier, with the next longest being 84 days and the rest between 12 and 67 days.

This suggests a potential saving on average of a month and a half from the processing of opposed cases.

To obtain the data for cases which received no objections and where objections were received and maintained, we used the online Register of CPOs to identify cases, and used the DPEA online register and our case files to get information on whether objections were made and maintained and dates of DPEA Reporters' reports.

Small business impacts

It is not possible to assess the differential impact on small businesses with certainty at this stage. However, it is reasonable to suggest that small businesses subject to CPOs may be disproportionately affected by the current system's complexity and age due to their relative lack of resources. As such, they are likely to benefit from legislative measures that simplify and streamline the CPO process in Scotland – and any new guidance that explains how new procedures work. Measures which could be particularly beneficial to smaller businesses include:

- allowing claims for expense awards to be made where objections are considered through written submissions or hearings – not just PLI cases
- clarifying compensation entitlements associated with any new rights of entry
- introducing new general powers for acquiring authorities to create new rights and take temporary possession – rather than always having to acquire full title on a permanent basis
- standard compensation claim form
- measures to incentivise timely payment of compensation (including advance payments)
- changes to loss payments, including option of these being calculated on the basis of a flat or graded rate rather than being linked to market value

Investment

A greater willingness to support land assembly in collaboration with third parties may have a positive overall effect on investment by facilitating development opportunities. To the extent that compulsory purchase reform helps to facilitate the delivery of infrastructure projects (e.g. transport and energy schemes), there may be indirect positive impacts on investment.

The proposed options and proposals are not expected to significantly influence Scotland's overall attractiveness as a global investment destination; any potential impact on overall investor sentiment is likely to be relatively modest. The measures are broadly aligned with the aims of the First Minister's Investor Panel, particularly in supporting a more coordinated and enabling approach to development, although their direct connection to investor sentiment is probably limited.

Workforce and Fair Work

Workforce and Fair Work issues are not applicable. The proposed options and proposals are not expected to have any significant impact on the workforce, such as influencing inclusive recruitment practices or job satisfaction. Similarly, they are unlikely to affect businesses' ability to meet Fair Work First principles, including the payment of the real Living Wage. There is no clear link between the proposals and the promotion of Fair Work First principles.

Climate change/ Circular Economy

The potential impact of the options and proposals on businesses' ability to contribute to climate/circular economy targets will ultimately depend on the specific CPOs that come forward under the reformed system. Whether the measures will support the reduction, reuse, or recycling of resources by businesses, or influence the volume of goods and services consumed in Scotland, cannot be determined in general terms.

Competition Assessment

The options and proposals are not expected to have any impact on competition. Specifically, they will not directly or indirectly limit the number or range of suppliers, restrict suppliers' ability or incentives to compete, or affect consumers' ability to engage with the market and make informed choices. Additionally, the options will not influence the suppliers' ability or motivation to introduce new technologies, products, or business models. Overall, there is no evidence to suggest that the measures would either distort or enhance competition within the affected sectors.

Consumer Duty

In relation to the key questions associated with applying the Duty, none of the concerns raised are applicable to compulsory purchase. The proposal does not present any identifiable impacts on consumers, nor is it likely to result in consumer harm. There are no alternative proposals currently under consideration that would improve outcomes or reduce potential harm to consumers, and as such, no comparisons are necessary. Overall, the proposal is not expected to affect consumers in any significant way.

Section 4: Additional implementation considerations

Enforcement/ compliance

Most of the measures will be implemented through legislative changes, which acquiring authorities as well as affected owners and occupiers will be required to follow. The Scottish Government will seek and promote compliance primarily by implementing the requirements within the new legislation. Responsibility for monitoring, compliance and taking enforcement actions will rest with the relevant authorities under the legislation. Ultimately, any failure to comply with legislative requirements would be a matter for the Courts.

We will be rolling out a suite of revised guidance with any new legislation to help explain the requirements and indicate what is expected of acquiring authorities. This would be in relation to the exercise of their compulsory purchase powers, implementing a confirmed compulsory purchase order and in paying compensation and making any advance payments in that regard.

UK, EU and International Regulatory Alignment and Obligations

Internal Market/ Intra-UK Trade

The consultation proposals are, if implemented, likely to bring Scotland's compulsory purchase legislation into closer alignment with that of the rest of Great Britain, where incremental reforms have taken place over the past 25 years – a process which has not occurred in Scotland.

International Trade Implications

The consultation proposals are not considered likely to affect international trade. They are not expected to impact imports or exports of specific goods or services, nor to influence trade flows with any countries. The measures do not impose particular technical requirements on imported goods, nor do they differentiate between domestic and foreign businesses in a way that would create an uneven playing field or disadvantage certain countries.

EU Alignment consideration

The proposed measures are not considered likely to affect Scotland's alignment with the European Union. They are not expected to impact the Scottish Government's commitment to maintain and advance the high standards shared with the EU, nor to influence access to EU markets for people, goods, or services. Additionally, the measures do not present any significant implications for EU alignment in relation to the United Kingdom Internal Market Act 2020 or relevant Common Framework agreements.

Although separate from the EU, it is recognised that compulsory purchase has ECHR implications. Taking a person's property is a serious step and one which interferes with the private rights of those affected; it also engages various

protections⁴⁵ under the ECHR. While the use of compulsory purchase can help to deliver positive outcomes in the public interest, it is essential that appropriate safeguards are in place to ensure that, in any given case:

- the use of compulsory purchase powers is justified and proportionate
- those who are affected have the opportunity to object and are compensated fairly

Legal Aid

The options and proposals are not expected to have a significant impact on legal aid. They are unlikely to affect individuals' right to access justice through the availability of legal aid, nor are they anticipated to increase expenditure from the legal aid fund. Additionally, the reforms are not expected to lead to a rise in the number of people seeking legal assistance or pursuing court action.

Digital impact

The proposed measures take account of changing digital technologies and are intended to support the use of such technology, where and when appropriate. The primary focus of the current reform programme is on updating the legal framework governing compulsory purchase. While legislative reform can play a positive and enabling role in supporting the shift towards a more digital CPO process, digital transformation cannot be delivered through legislative reform alone. The consultation document acknowledges that this is a broader, longer-term undertaking that will ultimately require investment and collaboration from a range of industry partners.

In this context, the consultation seeks views on measures intended to help digitise compulsory purchase procedures – while safeguarding against digital exclusion. These measures are expected to enhance transparency, efficiency, and accessibility within the compulsory purchase system.

Business forms

The consultation document seeks views on introducing a new compensation claim form. Additionally, some of the other proposals may necessitate new forms or amendments to existing forms. For example, the Compulsory Purchase (Scotland) Regulations 2003 prescribe a range of forms for the transmission of information and of notices, which may need altered or amended in light of the finalised package of changes. The intention would be to help clarify information requirements. Any new forms can be tested with relevant industry stakeholders prior to implementation to ensure they are fit for purpose and user-friendly.

⁴⁵ Specifically: the protection of property under article 1 of the first protocol (“A1P1”); the right to a fair trial under article 6; and (in some cases such as where a home is acquired) the right to respect for private and family life under article 8.

Section 5: Next steps and implementation

The final package of compulsory purchase reform measures will be informed by the consultation responses and a finalised BRiA.

Implementation of reforms will be dependent on the planned bill forming part of the legislative programme of new Scottish Ministers after the 2026 Scottish Parliamentary Elections. Secondary legislation and guidance will be required subsequent to a bill. We recognise the need for a careful rollout of new requirements and any transitional arrangements and the introduction of new forms. However, at this stage it would be premature to develop a detailed plan for implementation.

Given these uncertainties, it is also too early for a detailed plan for post implementation review. The Scottish Government currently maintains a register of all CPOs submitted to Scottish Ministers for confirmation (including associated timescales) and we engage regularly with stakeholders with an interest in the subject matter, such as the Compulsory Purchase Association Scotland.

Declaration

I have read the Business and Regulatory Impact Assessment, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

I am also satisfied that officials have considered the impact on consumers as required by the [Consumer Scotland Act 2020](#) in completion of the Consumer Duty section of this BRIA.

Signed: Ivan McKee

Date: 19 August 2025

Minister's name: Ivan McKee MSP

Minister's title: Minister for Public Finance

Scottish Government Contact point: CPO.Reform@gov.scot

Appendix A: Consultation Options and Proposals

Theme	Options & Proposals	Contribution to Strategic Objectives
New Compulsory Purchase Act	Repealing and replacing old and fragmented compulsory purchase legislation with a single new statute covering procedural requirements and compensation.	Could make the system simpler and more streamlined .
Enabling Powers	Giving acquiring authorities a new general power to create new rights (e.g. servitudes) in land.	Providing authorities with greater flexibility to pursue less intrusive (and less costly) options than acquiring land on a permanent basis could make the system simpler , more streamlined and fairer .
	Giving acquiring authorities powers to take temporary possession of land.	
Early Engagement and Preparatory Steps	Updating guidance to set clearer expectations as regards early engagement with affected owners/occupiers.	More consistent and effective engagement could help make the system fairer .
	Seeking views on giving acquiring authorities powers to require information about land ownership in advance of a CPO.	Could make the system more streamlined by supporting effective land referencing.
	Introducing a new general power for acquiring authorities to enter land for the purposes of surveying in advance of a CPO – subject to appropriate safeguards as regards notice periods, compensation entitlements etc	Replacing the current provisions (which date from 1845) with a new power could make the system simpler and fairer .

Theme	Options & Proposals	Contribution to Strategic Objectives
Confirmation Procedures	Simplifying the notification requirements for CPOs – and setting these out in secondary rather than primary legislation so they are more flexible to changes in digital technology.	Clearer and more proportionate notification requirements which are less paper-based could make the process simpler and more streamlined .
	Seeking views on a new time limit within which opposed CPOs (those with objections) are to be referred to the DPEA by Scottish Government.	A time limit could provide parties with greater certainty, avoid delays in decision-taking and help make the system more streamlined .
	Introducing an expedited process for unopposed CPOs (i.e. those with no statutory objections) whereby these can be confirmed by acquiring authorities.	Empowering acquiring authorities to confirm cases with no objections could make the process more streamlined .
	Enabling Scottish Ministers to delegate decisions on opposed CPOs to DPEA Reporters in certain circumstances.	Allowing Reporters to confirm CPOs on Ministers' behalf could reduce double-handling and thereby make the process more streamlined .
	Making express provision for objections to be dealt with through written submissions, as an alternative to public local inquiry or hearing.	Providing greater clarity about how objections will be handled and the procedures to be used could make the process simpler . Enabling costs to be awarded to successful objectors in written submissions cases could make the system fairer – as well as more streamlined if it avoids cases going to PLI which otherwise would do.
	Clarifying who determines whether objections will be dealt with through public local inquiry, hearing or written submissions – and the circumstances in which these procedures will be used.	
	Allowing awards of costs to be made in relation to hearings and/or written submissions – not just public local inquiries.	

Theme	Options & Proposals	Contribution to Strategic Objectives
Confirmation Procedures	Seeking views on enabling CPOs to be confirmed subject to conditions.	If conditional confirmation incentivises authorities to make CPOs earlier in the development process, it could make the process more streamlined .
	Publishing target timescales for issuing confirmation decisions.	Providing greater clarity and certainty about the timescales for confirmation decisions could help make the process simpler and more streamlined .
	Giving the Court discretion to grant more flexible remedies than quashing the Order entirely where a CPO is successfully challenged on the grounds of a procedural defect.	Additional flexibility as to remedies open to the Court could avoid CPO processes having to re-started from scratch, helping make the system more streamlined .
	Simplifying the arrangements that apply where a CPO includes special category land.	Rationalising the arrangements for special category land could make the confirmation process more streamlined .
	Providing for common data standards within CPO documents	Taking steps to digitise the compulsory purchase process could make the process more streamlined .
	Allowing documents and notices to be served electronically	
Implementation	Introducing a single mechanism for implementing a CPO, which would replace the various ways this can be done at present.	A single procedure for implementing CPOs could make the process simpler and more streamlined .

Theme	Options & Proposals	Contribution to Strategic Objectives
Implementation	Simplifying the procedures by which owners can object to severance of their land.	Clarifying and harmonising objection to severance provisions could make the system fairer .
	Requiring confirmation notices (which 'start the clock' on the three-year implementation period) to be published within 6 weeks of a CPO being confirmed.	Starting the clock within a specified time would reduce uncertainty for affected parties and could help make the system fairer and more streamlined .
	Allowing a longer or shorter implementation period than the standard three years to be specified by the confirming authority.	Flexibility around the implementation period could help make the system fairer and more streamlined .
	Making provision for the implementation period to be extended in the event of a legal challenge.	Allowing the implementation clock to be stopped where legal proceedings are brought could help make the system fairer and more streamlined .
	Clarifying the effect of a CPO on existing titles and interests to ensure acquiring authorities are provided with clean title.	Clarification of the effect of CPO on title could make the system simpler .

Theme	Options & Proposals	Contribution to Strategic Objectives
Compensation	Retaining market value as the basis of compensation for land that is acquired.	Basing compensation on market value reflects the principle of equivalence and ensures fairness for claimants.
	Asking whether there are any circumstances in which below-market value compensation might be justified.	Insofar as such provisions help deliver affordable housing and other developments, they could encourage more proactive use of CPO – but would raise important questions about fairness to affected owners.
	Codifying the no-scheme principle so that increases or decreases in value attributable to the acquiring authority's scheme are disregarded.	Codifying and clarifying complex and contradictory case law could make the system simpler and more streamlined .
	Repealing and modernising the 'planning assumptions' so that they better reflect Scotland's planning system in the 21 st Century and the way development value is assessed in the market.	Reforming outdated planning assumptions could make the system simpler and fairer .
	Seeking views on whether Certificates of Appropriate Alternative Development (CAAD) could be abolished.	Abolishing complex CAADs could make the system simpler and more streamlined .
	Repealing rights to 'second bite' compensation whereby, within a ten-year period following acquisition, permission is granted for additional development.	Removal of Part V compensation could increase certainty for acquiring authorities and make system fairer and simpler .
	Seeking views on technical matters related to compensation for 'injurious affection', where only part of a claimant's land is acquired and the value of their retained land is affected.	Clarification of injurious affection rules could make system fairer and simpler .

Theme	Options & Proposals	Contribution to Strategic Objectives
Compensation	Making specific statutory provision for disturbance compensation.	A separate statutory right to disturbance and clarification of when this starts could make the system simpler and fairer .
	Clarifying when a claimant's right to disturbance (and their duty to mitigate losses) starts in relation to a CPO.	
	Abolishing the impecuniosity rule so that losses due to a person's poor financial circumstances are not disregarded.	Abolishing the disregard of costs associated with claimants' poor financial circumstances could make the system fairer .
	Reforming home loss payments so that they are based on a flat or graded rate rather than being linked to the value of the property.	Basing home loss payments on a flat or graded rate rather than value of interest could make the system fairer .
	Reforming farm loss payments to remove the requirement that those displaced must continue farming elsewhere in order to receive payment; seeking views on a new method of calculation.	Reforming the qualifying criteria for farm loss payments and simplifying their calculation could make the system fairer and more streamlined .
	Seeking views on replacing farm loss payments with a more generalised payment for non-residential interests.	Extending loss payments to other interests could make the system fairer .
	Seeking views on the introduction of a standard claim form	A standardised claim form could help ensure claims are 'right first time' and thereby streamline the process.
	Clarifying the time limits within which compensation claims can be lodged and applications made to the Lands Tribunal.	Making clearer the time periods within which claims can be lodged could make the system simpler .

Theme	Options & Proposals	Contribution to Strategic Objectives
Compensation	Enabling advance payments to be made to heritable creditors where parties agree.	Allowing payments to be made directly to creditors could streamline the process.
	Seeking views on what measures might help to ensure advance payments are paid on time.	Incentivising advance payments to be paid more swiftly could make the system more streamlined and fairer .
	Allowing acquiring authorities to offer an advance payment even where one has not been claimed, with interest capped where this is not taken up.	
	Seeking views on increasing the interest rate that applies to the balance of compensation outstanding from date of vesting.	Incentivising compensation to be paid more swiftly could make the system more streamlined and fairer .
Compulsory Sale and Lease Orders	High level consideration of the strategic case for CSO and CLO	Not part of CPO reform programme

Responding to the Consultation

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space. Access and respond to this consultation online at <https://consult.gov.scot/planning-architecture/compulsory-purchase-reform/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date.

If you are unable to respond using our consultation hub, please complete and send the Respondent Information Form, along with your answers to the questions, to: CPO.Reform@gov.scot or:

CPO Reform
Planning, Architecture and Regeneration Directorate
Scottish Government
Area 2F South
Victoria Quay
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Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, the Respondent Information Form, mentioned above, is provided alongside this document.

To find out how we handle your personal data you can view the privacy policy here: [Privacy - gov.scot \(www.gov.scot\)](https://www.gov.scot/privacy)

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or email above.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: [Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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