

**Compulsory Purchase Association
Response to Technical Consultation on Compulsory Purchase
June 2015**

To: Robert Segall
CPO Consultation Team
Planning Directorate
Department for Communities and Local Government
Third Floor NE
Fry Building
2 Marsham Street
SW1P 4DF

Email to: CPOConsultation@communities.gsi.gov.uk

1 Introduction

- 1.1 This document is submitted on behalf of the Compulsory Purchase Association (**CPA**).
- 1.2 CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. This includes promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation.
- 1.3 CPA has some 600 members practising in this field, including surveyors, lawyers, accountants, planners and officers of public authorities.
- 1.4 This consultation response has been formulated following discussions within the National Committee of CPA.
- 1.5 A separate response is provided for the response to the consultation draft of the Circular to replace Circular 06/04.
- 1.6 CPA remains committed to a fundamental reform and codification of the law on Compulsory Purchase, as proposed by the Law Commission in 2003/4. CPA's responses to the Technical Consultation are provided to assist the Department and to promote better CPO practice, but CPA remains of the view that a more radical approach is the better option to provide a simpler, fairer and faster procedure for compulsory purchase.
- 1.7 CPA has for several years promoted incremental change to legislation to remedy some of the inconsistencies and unfairness in the process. Some of these proposals are reflected in the Technical Consultation. Others have not been covered. Appendix 1 to this response provides detail of some additional changes CPA would wish to see brought forward, pending more fundamental reform.
- 1.8 CPA is grateful to both DCLG and HM Treasury for their participation in CPA events and engagement with CPA on matters of reform of the Compulsory Purchase process. We remain available to assist Government in its evaluation of CPO law and practice.

Compulsory Purchase Association Response to Technical Consultation on Compulsory Purchase June 2015

* Your Details

Name: Richard Guyatt

Organisation (if applicable): Compulsory Purchase Association

Position/Job Title: Vice Chair

Address: C/O 3 Temple Quay, Temple Back East, Bristol

Postcode: BS1 6DZ

Email: richard.guyatt@bonddickinson.com

Phone number: 0117 989 6877

*Are the views expressed on this consultation an official response from an organisation you represent or your own personal views?

Organisational response

Personal views

*Please tick one box that best describes you or your organisation from the following list (If the organisations do not apply to you, then please tick N/A and enter your organisation on the next list):

Public Sector

- District / Borough Council
- Unitary Council
- County Council
- London Borough Council
- Parish or Town Council
- National Park / Broads Authority
- N/A

Other public sector (please specify):

Other

- Land Owner
- Developer / House builder
- Professional Association/ Industry representative body
- Local Enterprise Partnership
- Community Organisation
- Voluntary / Charitable Sector
- N/A

Other (if none of the options in the lists above apply to you, please specify your type of organisation here):

Encouraging public authorities to offer good levels of compensation

Question 1:

1. a) Should public sector bodies be given more flexibility in their compensation offers at an earlier stage in the process?

Yes No

Comments:

It is clear that the purpose behind the Loss Payments legislation in the Planning and Compulsory Purchase Act 2004 has not had the desired effect of making easier the process of agreeing compensation following expropriation.

It is important to confirm to accountable officers that a degree of flexibility and realism is permissible, enabling acquiring authorities to take into account all of the savings they may arise if agreement is reached, rather than compulsory acquisition being necessary. The wording must be carefully expressed and must be a discretion and not an entitlement.

It may also be sensible to consider the widening of existing statutory powers, such as S26 of the Land Compensation Act 1973, to empower relevant acquiring authorities to acquire land in advance of compulsory purchase, as well as encouraging in guidance wider use of this power for mitigating the impacts of schemes. In addition, guidance to encourage the exercise of the power to make discretionary loss payments in advance of compulsory purchase, in S33J of the 1973 Act may assist.

There must be some concern that landowners will hold out for what they see as an entitlement to additional value over and above market value, if the Guidance is not appropriately phrased. Any perception of an additional amount being an entitlement, may encourage the "last man standing" tactic, where landowners hold out deliberately to ensure that they have a premium for doing so. Any guidance to acquiring authorities therefore must be phrased very carefully to make it clear that market value remains the determining level of valuation and any additional payment to reflect the overall costs to the acquiring authority must be discretionary.

In addition it must be made clear in valuation practice that such incentive payments do not affect the market value that is assessed for plots that do proceed to compulsory purchase, so the acquiring authority is not penalised for the incentive payments in future transactions. It should be clear that incentive payments are part of an "all in" offer and that the open market value is not enhanced or inflated.

We would also propose the need for a higher evidential burden to be placed on acquiring authorities to show meaningful negotiations have taken place. The current burden on acquiring authorities is too low. Too frequently the acquiring authority is not required to show that proper offers have been made before recourse to CPO promotion.

We would suggest that if it was made clear at any inquiry there would need to be clear evidence of genuine and meaningful negotiations, or a clear explanation why this was not possible (such as absent owner, the large number of plots or refusal to engage by the owner) then this would place a higher duty on acquiring authorities and also should mean that more negotiations are successful at an earlier stage, thus saving all parties time, uncertainty and costs.

In development consent order processes, the Examining Authority invariably ask for several full explanations on engagement with landowners and a similar approach should be taken by the Inspectorate and the Secretary of State in relation to CPO inquiries, more rigorously than is currently the case.

The Guidance should also make it clear that this is an evidential burden the Secretary of State expects to see discharged before confirming a CPO, as that will empower acquiring authorities who are promoting CPOS backed by developers to insist the developers do indeed engage in meaningful negotiations and have sufficient funding to secure options and where appropriate acquire land in advance of CPO powers being confirmed. The reluctance from promoters to commit to acquisition before implementation of powers is a frequent problem – and creates an excessive and unnecessary burden on those subject to the uncertainty and stress of compulsory purchase.

Overall, CPA supports any approach to make the process faster in terms of resolution and less adversarial. Acquiring Authorities need to be encouraged to act fairly and pragmatically and engage genuinely and at an early stage. Equally they must not be penalised where an affected person has refused to engage in realistic and meaningful discussions.

Further consideration should also be given to providing powers where they do not exist currently for acquiring authorities to make advance payments in advance of compulsory acquisition to enable early relocation in appropriate circumstances.

1. b) Does the draft wording provide helpful guidance to Accounting Officers that oversee public schemes and should it be included in guidance publications such as Managing Public Money, the Green Book guidance, Department for Communities and Local Government's Best Value Guidance for Local Authorities and/or the new compulsory purchase guidance?

Yes No

Comments:

We would suggest the following wording is appropriate:

"When offering financial compensation for land in advance of the compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the exchequer as a whole."

~~Higher levels of compensation that lead to early settlement can be justified on the basis that it avoids the need for an order or reduces size, benefiting all parties.~~

Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land in advance of compulsory purchase. For instance the early acquisition may avoid some of the following costs being incurred:

- Legal fees [*continue as suggested in the consultation document*]

Powers of entry for survey prior to a compulsory purchase being made

Question 2:

Do you agree that all acquiring authorities should have the same powers of entry for survey purposes prior to a compulsory purchase order being made?

Yes

No

Comments:

CPA believes it is appropriate for powers of survey to be available both for taking levels and assessing ground conditions (including archaeological surveys) and also for the purposes of carrying out environmental assessment and habitats regulations assessment. The ability to assess and determine between alternatives and not just one defined scheme might assist.

Reference to the powers in the Planning Act 2008 S53 may assist.

Question 3:

Do you agree that there should be a warrant provision associated with the proposed standard power of entry for survey purposes prior to a compulsory purchase order being made?

Yes

No

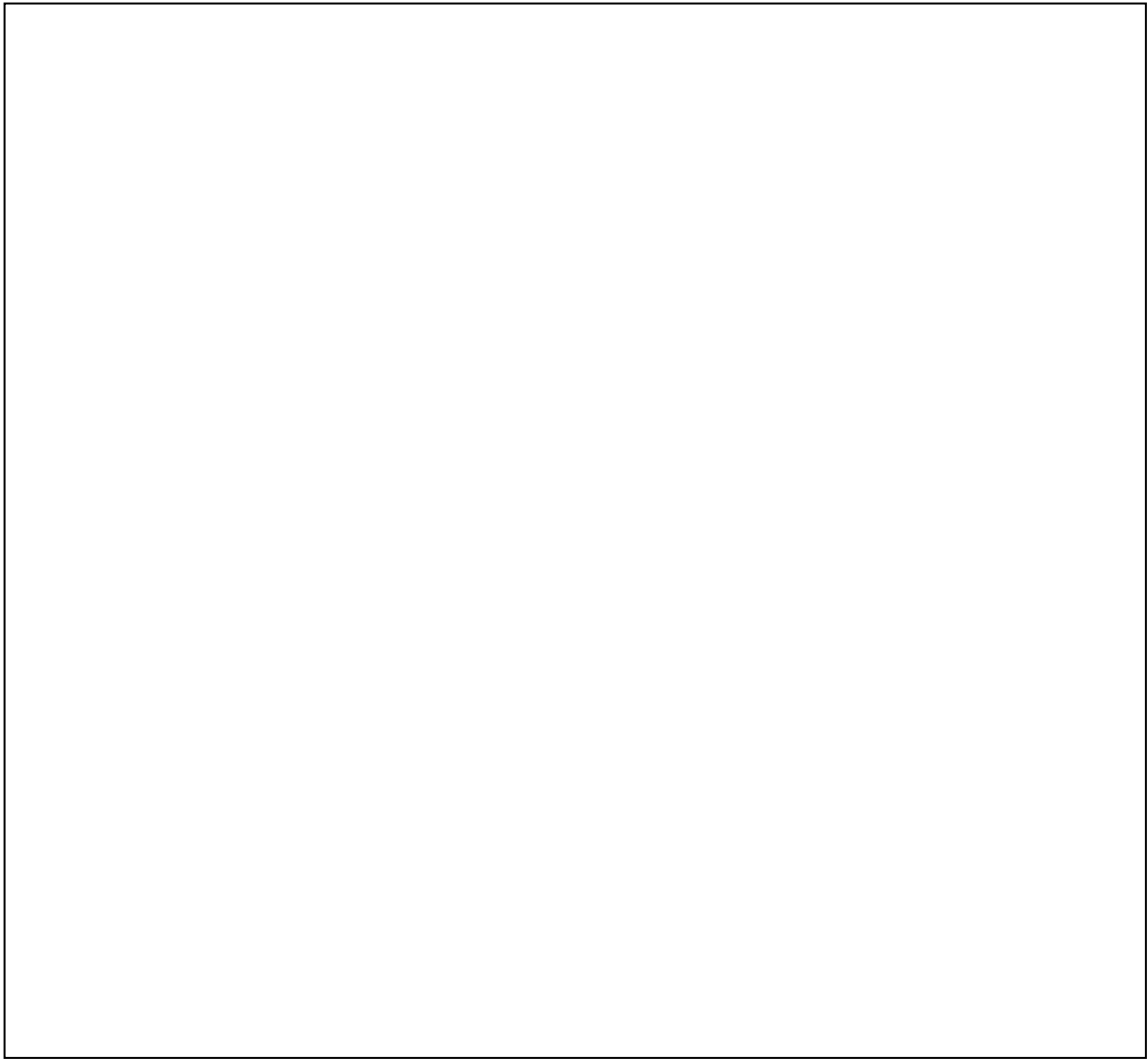
Comments:

Members have come up against obstruction in one form or another on a number of occasions which has delayed entry. A warrant may be the answer in such circumstances, particularly where, as suggested, it can be secured where refusal of entry is apprehended. It should be a precondition to an application for a warrant that evidence of reasonable attempts to secure access by agreement have been ignored or rejected.

The process and principles for determining the warrant application need to be clearly defined. The warrant should be available only if the AA can demonstrate it has taken reasonable steps to gain access by agreement. There should be a duty to make reparation if the warrant is exercised.

Reference to the principles in the Planning Act 2008 s53 may assist.

The general power should be available for those promoting schemes under the Transport and Works Act and Private Bills.



Question 4:

Do you agree that the notice period for the single power of entry for survey purposes prior to a compulsory purchase order should be a minimum of 14 days? If you disagree, please specify what minimum time period of notice should be adopted.

Yes

No

Comments:

A 14 day period is appropriate. The powers should include power for compensation for damage or disruption caused to the landowner and the obligation to pay compensation will incentivise acquiring authorities to cause the minimum of damage and disruption.

Streamlining government processes

Question 5:

5. a) Do you agree, in principle, that we should introduce statutory targets and timescales for the confirmation stage of the compulsory purchase order process for:

- | | Yes | No |
|---|-------------------------------------|--------------------------|
| i. cases decided by the Secretary of State? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ii. if introduced, for delegated decisions? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Comments:

The standard timetables of three months for a panel report and three months for the Secretary of State's decision following the close of a hearing under the Planning Act 2008 has worked effectively and has not been missed, save in situations of special parliamentary procedure or highly contentious situations, in the processes under the Planning Act 2008. We would suggest that the timetables would be appropriate for positions following compulsory purchase order inquiries.

5. b) For cases decided by the Secretary of State do you agree with the following timescales and targets for cases dealt with by written representations?

- i. a new statutory requirement for a site visit to be conducted within 15 weeks of the starting date letter. If you disagree, please specify any alternative timescale

Yes No

- ii. a new target for 80% of decisions on written representation cases to be issued within eight weeks of the site visit with the remaining 20% of cases dealt with within 12 weeks of the site visit. If you disagree, please specify any alternative timescales or percentages.

Yes No

Comments:

See our comments at question 4 above. We would also be concerned about the limited consequence of the targets being missed. It is clearly possible for statutory timescales to work for NSIP and we do not see why smaller scale schemes should not be subject to a similar regime. Much of the hardship and difficulty for claimants comes from uncertain timescales and a fixed timetable for decisions would go some way to reducing this.

5. c) For cases decided by the Secretary of State do you agree with the following timescales and targets for cases that are the subject of a public inquiry?

- i. a new statutory requirement for the Inspector who conducted the inquiry to inform the acquiring authority, within 10 days of the end of the inquiry, the timescale for a decision. If you disagree, please specify any alternative timescales.

Yes

No

- ii. a new back-stop target that 80% of cases are dealt with within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. If you disagree, please specify any alternative timescales or percentages.

Yes

No

Comments:

See previous response

Question 6:

Do you agree that we should introduce a new statutory requirement for each Secretary of State with confirmation powers to report annually to Parliament on his/her performance in meeting the defined timescales and targets for confirmation of orders, where the number of cases decided in the year exceeded five?

Yes

No

Comments:

A threshold of 5 is not needed. We would suggest the information should be provided by any SoS confirming a CPO in a given year regardless of numbers confirmed.

We would also suggest the report should include orders confirmed by acquiring authorities, who can be directed by the SoS to provide notice of confirmation to the SoS when the Order is provided back to the acquiring authority for confirmation.

Question 7:

7. a) Do you agree that each Secretary of State should be able to delegate to an Inspector a decision on whether to confirm or refuse to confirm a compulsory purchase order?

Yes

No

Comments:

We do not believe it is appropriate for the power to resolve upon confirmation of compulsory purchase powers to be delegated by the Secretary of State. Given the controversy that was caused by the Infrastructure Planning Commission having similar powers, free from political interference, we would suggest that it is clear there is a public perception that compulsory purchase powers should only be provided to an acquiring authority with the Secretary of State being the decision making body.

7. b) Do you agree it would only be appropriate to delegate decisions that do not raise issues of more than local importance? If not, why not, and what other types of cases would be suitable for a delegated decision?

Yes

No

Comments:

If the decision is taken to allow for delegation then this should only be for simple compulsory purchase orders (if such orders exist) and should not be for orders where there is any special category land or land of statutory undertakers, nor where there is an objection by a landowner and the landowner insists upon an inquiry being held.

7. c) Do you agree that the Secretary of State should also be able to recover for their own decision any delegated case, at any point, before a final decision is made?

Yes

No

Comments:

7. d) What sort of cases would be suitable for a delegated decision? Would it only be appropriate to delegate decisions that do not raise issues of more than local importance?

Comments:

Only the most simple of compulsory purchase orders, with one or two plots, with no objections save for an objection to the principle of the acquisition, should be included in delegation.

Question 8:

Do you agree that the communication of decision letters and Inspector's reports on compulsory purchase orders can be undertaken electronically, subject to ensuring that parties who did not have electronic access, or who requested a hard copy, continued to receive the relevant information by post?

Yes

No

Comments:

Notices and the decision letter should also be posted on the relevant Department's website.

Reforming High Court challenges

Question 9:

Do you agree that the remedies available to the Courts should be widened to allow them to quash the decision to confirm an order as an alternative to quashing the order?

Yes No

Comments:

It is appropriate that the Courts have the wider discretion. Acquiring authorities should not be punished if the decision to quash is as a result of a procedural error of the confirming authority, after the order has been correctly made.

Question 10:

Do you think there is a need to change the method of challenging a decision not to confirm a compulsory purchase order from judicial review to statutory High Court challenge?

Yes No

Comments:

If the process is to be the subject of primary legislation then the anomaly could be dealt with by way of ensuring that both sides have the same powers, time limits and processes available to them for a challenge.

Question 11:

11. a) Do you think that there is a need to extend the time allowed to implement a compulsory purchase order in the event of an unsuccessful legal challenge?

Yes No

Comments:

11. b) If the time to implement should be extended, would your preference be for:

- i. a flexible period of extension reflecting the time taken to achieve final determination of the challenge

or

- ii. a set period only in all cases? Please specify what set period of extension should be granted.

Comments:

Consideration should be given to a long stop date for the extension of time so as to achieve a fair balance for landowners who have not challenged the Order – whilst an acquiring authority should be allowed a reasonable time to implement powers, it should not be extended without a reasonable limit given the continuing uncertainty which arises during the period until a challenge is finally determined.

Entry to take possession of acquired land

Question 12:

Do you agree that the notice period before entry to land authorised to be acquired by compulsory purchase should be three months? If not, specify what alternative period would be appropriate.

Yes

No

Comments:

CPA's members have differing views on this topic.

Three months as a *minimum period* is seen by many members as an appropriate compromise in considering the competing interests of those involved in the process, if this reform is taken forward.

Others see no reason why the current periods which apply to a Notice to Treat and Notice of Entry shouldn't be retained, and have experience of schemes where the shorter period proved to be vital to scheme delivery.

The majority of members expressing a view indicate that possession should be deemed to have taken place on the 'on' date referred to in notices of entry, as it is in vesting situations. Acquiring authorities should be able to plan accordingly to either have people available to take physical possession, or stagger notices so that the 'on' date is different for different properties, so avoiding difficulties caused by lack of available resources on the day.

Question 13:

13. a) Do you agree in principle that there should be a mechanism to enable a claimant to require the acquiring authority to take possession after the specified date of entry?

Yes No

Comments:

We believe the principle should be investigated further, but there could be significant ramifications for legislating for it, particularly in relation to developer-backed regeneration CPOS. Overall however, if a notice of entry has been served but not acted on then it is for the acquiring authority to confirm its stated intention and allow the affected party certainty in terms of relocation or removal.

13. b) If a mechanism were introduced, do you prefer:

option 1 - to allow the claimant to serve a 'reverse notice of entry'

option 2 - that the acquiring authority should be deemed to have entered and taken possession on the 'on' date, whether or not they had actually done so

Comments:

As a degree of flexibility may be appropriate, for either party, option 1 is preferred.

13. c) If option 1 were to be taken forward, do you agree the defined period, where a reverse notice of entry can be served, should be 28 days after the earliest date for entry?

Yes No

Comments:

Clear drafting and/or guidance will be needed on how the process will work. It is assumed the 28 day time period to serve the reverse notice of entry runs from 28 days after entry should have been taken according to the notice of entry, and continues until entry is taken. The actual date of entry, and the date on which it is to be assessed on which it is reasonable for a claimant to relocate will need to be clarified. Whether a notice to treat is capable of being withdrawn before entry is finally deemed to have occurred also needs to be clarified.

Question 14:

Do you agree that there should be provision for a new notice to treat / general vesting declaration in the circumstances outlined in this consultation paper in paragraph 75?

Yes

No

Comments:

We agree with the proposal set out in para 75.

Further if the acquiring authority relies on upon the information supplied by the claimant and acts reasonably and in good faith, it should be enabled to continue with vesting/possession if that information is later found to not be correct.

Question 15:

Do you agree that when obtaining entry by means of a general vesting declaration, the general vesting declaration must be executed within three years of the date of operation of the compulsory purchase order in order to exercise the powers of compulsory purchase?

Yes

No

Comments:

A point not covered in the consultation is that there is no clarity as to how long after the execution of the GVD that possession must be taken. If the GVD is executed just before 3 year expiry of the CPO how long can entry be delayed by – should there be a long stop date for vesting in the 1981 Act.

We are assuming that the reforms will also provide that the need for a first stage GVD notice is to be repealed.

Question 16:

Do you agree that the alternative method of obtaining entry in section 11(2) of, and Schedule 3 to, the Compulsory Purchase Act 1965 should be repealed?

Yes

No

Comments:

Advance payments of compensation

Question 17:

Do you agree that claimants should be required to submit a prescribed form of claim before requesting an advance payment of compensation?

Yes

No

Comments:

The form should be required to be sent out with the NTT or GVD notices for a claimant to complete.

We suggest the form is for guidance and not prescribed, as much of the information can be detailed in nature and hard for some claimants to easily ascertain. It should not become a burden for claimants with limited resource. Acquiring authorities insisting on the information being provided should not use the form as a weapon to penalise claimants – it must be a tool to assist compromising claims, and not as a way of exerting pressure on claimants

It should also be open to claimants to be able to part complete forms, without penalty. Acquiring authorities should not be able to decline to consider requests just because every box has not been fully completed.

Guidance should make it clear that partial information can permit partial payment, at 90% based on the information received by the acquiring authority. The form could be drafted in such a way that the claimant understands that his application for an advance payment will only be considered for the areas he makes his claim.

We are happy to assist DCLG on the settling of an appropriate form for this purpose.

Question 18:

18. a) Do you agree that a claim for an advance payment should be allowed to be made at any time from the date of confirmation of the compulsory purchase order?

Yes

No

Comments:

The acquiring authority should be enabled by statute to make advance payments prior to vesting if it wishes to do so – it should be a power but not an obligation.

18. b) Do you agree that the earliest date on which an advance payment can be made should be brought forward to two months after a claim or the date of the notice to treat or execution of the general vesting declaration, whichever is later?

Yes

No

Comments:

We do not see why the time period should be set as provided for in this question. Guidance needs to support and encourage early payment. A claim should be permissible at any time following confirmation and acquiring authorities should be empowered to make a payment if they believe it is appropriate at any time after confirmation. After possession/vesting the acquiring authority should be obliged to make payment as soon as reasonably practicable, with a back stop date of 2 months following possession.

Question 19

19. a) Do you agree that there should be time limits on requests for additional information from acquiring authorities when processing claims for advance payments?

Yes

No

Comments:

This will depend on the nature of the form and how prescriptive it is intended to be for claimants.

There should be a comment on the form that the advance payment represents the AAs estimate of what it believes the claim is worth, so the less information provided the more conservative the payment is likely to be.

In terms of fairness to the acquiring authority, it is possible that it will receive a large number of requests in a very short time, and if a large proportion of these are unclear or appear to be inaccurate, it may be appropriate for the acquiring authority to see clarification or have time to distil the information.

Overall therefore the majority view is against strict time periods as being too bureaucratic for what should be a simple system for making early payment and assisting claimants. Other incentives on the acquiring authority such as increased interest rates for dilatory behaviour in paying claimants may be more appropriate.

19. b) If so what time limits should be imposed?

Comments:

21 days from receipt of the information by the acquiring authority.

19. c) Do you support the introduction of fast-track decision process to deal with disputes over claims for advance payments?

Yes

No

Comments:

After long consideration CPA concluded the additional process would be more likely to slow down the final resolution of claims.

19. d) If so, how might this be achieved?

Comments:

First Tier Tribunal or a team of experts established by the Upper Tribunal – but this will need primary legislation.

19. e) Who might provide such a service?

Comments:

See above

19. f) How might a service be funded?

Comments:

By the acquiring authority – a set fee per reference to the new Tribunal, with a discretion to make no award or to determine the costs be paid by any other party in the case of unreasonable behaviour by that party.

19. g) Do you have any proposals for a sanction against acquiring authorities who do not make payments on time?

Comments:

Interest at a rate sufficient to act as a penalty and the automatic award of costs on an indemnity basis.

An alternative could be to link payment delay directly to the value of the claim, with a penal rate of interest applying where the acquiring authority has not made a payment by the statutorily required date.

Improved interest rates on outstanding compensation

a) **Question 20:**

20. a) Do you agree that the rate of interest should be pegged to the Bank of England base rate?

Yes

No

Comments:

20. b) Do you agree that the prescribed rate should be set at 1% above the Bank rate?

Yes

No

Comments:

Question 21:

Do you agree that legislation should be introduced to require compound interest to apply?

Yes

No

Comments:

Question 22:

Do you agree that setting a 1% interest rate floor is fair on all parties concerned?

Yes

No

Comments:

We do not have consensus on this point. A floor is seen as appropriate but if it does not reflect the rate at which a claimant is having to borrow to enable it to bridge until payment is made, it is unlikely to be compensated for the shortfall. Some members feel this unfairness needs to be addressed.

Transferring mortgages to avoid negative equity

Question 23:

23. a) Do you agree that encouraging the transfer of mortgages to avoid negative equity is a worthwhile and fair proposal to pursue with industry?

Yes

No

Comments:

23. b) If government is unable to secure agreement with industry do you agree that such protections should be implemented through legislation?

Yes

No

Comments:

Extending powers to override easements and restrictive covenants

Question 24:

24. a) Do you agree that existing powers to override covenants and easements should be extended to other acquiring authorities, acting in their capacity as statutory undertakers or in the exercise of their public functions?

Yes

No

Comments:

If the power to override easements and covenants is extended to other acquiring authorities, such powers will need to be very carefully defined. It should not necessarily be provided for all acquiring authorities and without regard for the purposes for which the land was originally acquired.

A solution may be to legislate for the initial compulsory purchase order process to be able to include a wider extinguishment power in those circumstances when the relevant rights would otherwise only be suspended by the use of the land for statutory purposes,. It would then be for the acquiring authority in each case to justify why the power is needed and to notify the relevant beneficiaries that the power is being sought.

24. b) Do you have any comments on the proposal that where overriding by those authorities is to facilitate commercial development on land acquired for public works, the basis of compensation should be open market value rather than diminution to the value of the claimants land (as is currently the case for local authorities)?

Comments:

The definition of "open market value" will need to be very clearly explained. The use of pure open market value could lead to a situation where ransom payments are sought and secured because that reflects the open market value of the interest being bought off. Whilst in pure landownership terms this may be an appropriate level of compensation it will not assist the Government in its ambitions in releasing more land for development.

Traditionally the diminution in value measure has led to far more affordable development of land encumbered by interests and there could be a considerable increased expense to developers and the taxpayer if an open market value approach is adopted.

Taking part of a claimant's land – 'Material Detriment'

Question 25:

25. a) Would you prefer harmonisation of the treatment of material detriment which:

- i. allows entry to land and vesting of title before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures? Please explain why.

or

- ii. involves a procedure similar to requiring acquisition of the whole under the current general vesting declaration procedure that would apply also to the notice to treat procedure, which prevents entry on to the land and vesting of title before the dispute has been determined? Please explain why.

Comments:

It is essential that Schedule 1 of the Compulsory Purchase (Vesting Declarations) Act 1981 is not repeated – indeed it should be repealed. When the question is whether part of a claimant's land can be taken without material detriment to the rest of it, there is no purpose in that part not being allowed to be taken until the issue is determined. The process of determination can take several years and puts an onerous burden on acquiring authorities. It could lead to the cancellation or significant delay to major infrastructure and other schemes if Schedule 1 was in effect applied to all compulsory purchase procedures. The fact that part of a claimant's land can be taken has been established through the compulsory purchase order making process. The issue of whether the remainder can be taken may well have been rehearsed at the compulsory purchase order inquiry or the inquiry into the relevant order. There is no reason why a claimant cannot bring evidence at such a stage. If therefore compulsory powers have been given allowing purchase of part and not the whole, it is inappropriate for that issue to effectively be argued again, on the basis very much in the claimant's failure given the continuing delay to the acquiring authority's scheme will be resolved. Further, the Lands Chamber is not sufficiently resourced to allow the swift resolution of material detriment claims and so it is imperative that schemes are not delayed whilst the issue is being argued in the Lands Chamber.

25. b) Do you agree to allow the material detriment provisions to be disapplied in compulsory purchase orders for the acquisition of rights through subsoil?

Yes

No

Comments:

It would depend on the circumstances – a deep tube tunnel is different in effect from a shallow-buried pipeline or cable, albeit for the latter surface rights are usually required for maintenance. On balance it is probably better today retain the process for the issue to be resolved on a case by case basis.

25. c) Are there any other options to achieve harmonisation of the treatment of material detriment?

Comments:

Repeal Schedule 1 of the Compulsory Purchase (Vesting Declarations) Act 1981 and apply section 8 of the 1965 Act to vesting declarations and acquisition of rights.

Impact Assessment

Question 26:

26. a) Do you agree that the measures listed in paragraphs 124, 125 and 126 of the consultation paper will provide modest net benefits for business interests, or have a negligible impact? If you disagree, please specify which measures may not provide modest net benefits or have negligible impact?

Yes

No

Comments:

26. b) Do you agree that cost savings to all claimants as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to all acquiring authorities? Please explain the basis of your response.

Yes

No

Comments:

26. c) Do you agree that cost savings to business as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to acquiring authorities that involve business interests? Please explain the basis of your response.

Yes

No

Comments:

26. d) Do you agree with our assumption that the average amount claimed by a business is typically larger in monetary terms than the average amount claimed by an individual homeowner? Please explain your response

Yes No

Comments:

26. e) Do you agree with the assumption, set out in the consultation stage impact assessment, that there is an average of 15 household claimants per compulsory purchase order? Please explain your response.

Yes No

Comments:

26. f) Do you have any further comments on the likely impact of these proposals on business interests, including the assumptions we have adopted for proportions of compulsory purchase orders with business interests, both in respect to the acquiring authority or the claimants?

Yes No

Comments:

Public Sector Equality Duty

Question 27:

Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.

Yes

No

Comments:

Appendix – Additional reforms proposed by CPA

Reverse the loss payment uplift

What is the Problem? - a summary	The present law provides for a payment of up to £75,000 to investment owners but a payment of up to only £25,000 for Occupiers of a property. However it is the Occupier that bears the burden of having to relocate its business operation and so incurs the greater cost burden; not all of which burden qualifies for compensation.
Aim	Change the 2004 Act allocation between investment owner and occupier.
What we seek	<p>So that Occupiers have the greater benefit from the loss payment regime:-</p> <p>Provide that the Basic Loss payment be set at 2.5% of market value, subject to a maximum of £25,000,</p> <p>Provide that the Occupier Loss payment be set at:-</p> <ul style="list-style-type: none"> a) .7.5% of the market value of the occupier's interest in land, or, b) £75 per square metre of building, or, c) £7.50 per square metre of land, <p>in each case subject to a maximum payment of £75,000.</p> <p>Provide for these amounts to be altered by Regulations made under the 1973 Act. See S33K of the Land Compensation Act 1973.</p>
Discussion	<p>This would apply to commercial property only.</p> <p>Suggestion that it might be better to consider setting different rates rather than seeking simply to reverse the existing ones – i.e. what was the rationale for the rates that currently apply and are these still the right ones to use?</p> <p>Suggestion that the payments to owners be dropped altogether with a 10% payment for occupiers.</p> <p>If it is accepted that this is really part of the consequential loss equation should it not be determined on a case by case basis rather than by a standardised rate?</p>
Next Action	Primary legislation is not required, as the Secretary of State can effect the change by Regulations. See S33K of the Land Compensation Act 1973

Temporary possession powers

What is the Problem? - a summary	<p>CPOs only allow permanent acquisition or acquisition of (permanent) new rights. The power to use land temporarily is available under Special Acts, Transport and Works Act Orders and is widely sought in Development Consent Orders.</p> <p>The scope of the temporary powers available, and how they should be used, is not sufficiently circumscribed by legislation, being controlled only by precedent in the case of Special Acts and model clauses in respect of TWAOs and DCOs. This has</p>
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	led to instances of widened powers being secured which place an unacceptable burden of uncertainty on affected land owners and occupiers.
Aim	<p>The discrepancy in the availability of powers should be addressed to ensure that the necessary powers are available to all authorities.</p> <p>The scope and operation of temporary powers should be properly defined and limited in legislation to protect land owners and occupiers from extended periods of uncertainty in relation to the occupation and purchase of their land.</p>
What we seek	Primary legislation is needed to address consistently the availability and extent of powers to temporarily use land and to provide broad principles for the assessment of compensation in relation to the use of such powers.
Discussion	<p>These have been included in a number of 2008 Act Development Consent Orders that have been issued and not aware of any major problems or concerns re the scope of these powers.</p> <p>The basis of powers for TWAOs are vague and could be a basis of challenge. Also although some Highway Authorities do make use of temporary possession there is no express power that allows them to do so.</p> <p>The issues are not really with the powers but with the difficulty of assessing compensation. At present can only be done on a loss or damages incurred basis which creates difficulties. Also concerns that there is no power to make any advance payment.</p>
Next Action	Primary legislation to allow temporary possession in all CPOS in appropriate cases and to provide clarity on compensation for temporary possession

Reform of "Bishopsgate" principle

What is the Problem? - a summary	<p>The case of Bishopsgate Space Management Ltd –v- London Underground Ltd considered the occupier's to compensation under section 20 of the Compulsory Purchase Act 1965. It was held that it was necessary to make the assumption that a landlord would terminate the tenant's interests at the first available opportunity following notice to treat, whether or not that would happen in reality and thereby severely reducing the compensation to which such an occupier would be entitled. The decision creates a situation where an occupier with no formal interest in the land it occupies may be better off in terms of its compensation entitlement than one occupying under a formal lease.</p>
Aim	Remove apparent unfairness of S20 of the Compulsory Purchase Act 1965 (as recommended by the Law Commission) for short term tenants and lessees with a break clause in their leases

What we seek	Focused attention on this issue in the light of the above.
Discussion	<p>The real injustice is on the value of the business. An experienced surveyor should be able to take account of the prospect of lease renewal when valuing the interest. The problem is that the two different parts of the LCA are in direct conflict on this matter.</p> <p>The expectations of the business to continue in occupation should be taken into account in valuing the interest. Agree with the general principle put forward by the CPA but when you disregard the scheme you also have to disregard the Landlord's right to terminate the lease so should there not be a consistent approach re the occupier's right to renew?</p>
Next Action	Legislative provision to address the unfairness of the current position.

Providing claim within 21 days of Notice to Treat being served

What is the Problem? - a summary	<p>S.6 of the Compulsory Purchase Act 1965 states that if a claimant does not state the particulars of his claim, or treat with the acquiring authority, or if compensation has not been agreed, then the question of compensation shall be referred to the Lands Chamber of the Upper Tribunal. Where Notice to Treat has been served but entry won't be taken for many months, it should not be necessary for a claim to be formulated within 21 days of a notice being served on the claimant. In practice, and particularly in the case of compensation due under rule 6, it will in fact normally be impossible to make a reasoned claim within this time period. Most claims, if they are actually made in compliance with timing requirement, simply state quantum is to be determined.</p> <p>There is a risk of cost penalties if a claimant does make a claim within 21 days of a Notice to Treat being served. The possibility of being at risk on costs should not hangover a claimant, albeit the Tribunal rarely invokes the penalty of denying a claimant their costs for not submitting a claim within the prescribed time.</p>
Aim	<p>Remove the current unrealistic 21 day requirement for making a claim and replace it with a requirement to make a claim within a more reasonably achievable period.</p> <p>There is potential to create interaction with this provision and the prescribed form of request for an advance payment referred to above.</p>
Notes from discussion	It is very rare for a claimant to provide any meaningful information within 21 days.
Next Actions	Primary legislation to amend S6 and to leave the issue to the discretion of the Lands Chamber of the Upper Tribunal

Injurious Affection s.10 - Compulsory Purchase Act 1965

What is the Problem? - a summary	<p>s.10 of the 1965 Act provides injurious affection compensation where legal rights held with land are interfered with but no interest is acquired from the claimant. The measure of compensation is the reduction in the value of the claimant's land as a result of the interference. Eligibility for compensation is summarised in the "McCarthy Rules" and includes a requirement that the interference with the affected right must have been "actionable" in the absence of the authority's statutory protection. The actionability of interference in the absence of protection stems from the law of tort but in many cases is not easily ascertainable, particularly in relation to interference with public rights which may or may not constitute an actionable tort.</p> <p>This uncertainty makes it difficult and potentially expensive for claimants to seek redress under this provision with little certainty as to the outcome.</p>
Aim	To create greater certainty in relation to eligibility for compensation under s.10 to allow claimants and authorities to deal more quickly and efficiently with situations where public and private rights are interfered with in pursuance of public works.
What we seek	We have considered this issue in the past without being able to propose a workable solution. The principal problem surrounds clearly defining criteria by which the interference with rights should be judged to fall within or without the provision in s.10, particularly in relation to interference with a public right which may constitute an actionable nuisance for example. We do not currently have reform proposals for this issue but welcome thoughts and observations that may inform our further consideration of the matter.
Notes from discussion	Should we do away with S10 and revise Part 1? This should be a high priority for reform or any future Law Commission report.
Next Actions	Review Law Commission findings and commission a new report on modernising injurious affection, to be followed by Primary legislation

Additional areas for consideration of the need for reform

Blight notices and Notice to Treat

Clarity is needed on the service of a Notice to Treat in advance of making a General Vesting Declaration. The assumption is that a vesting declaration cannot be made if a Notice to Treat has been served and not withdrawn lawfully.

Once a blight notice is in force, a deemed Notice to Treat is served and this could thwart an attempt to make a General Vesting Declaration, although legislation talks of a Notice to Treat being served which may be an attempt to distinguish it from a deemed Notice to Treat.

The point is capable of resolution and the opportunity should be taken to do so.

Generalised Blight

Transport for London (TfL) have shared with CPA suggestions for broadening the scope of blight provisions. CPA believe that, based on the experiences of HS2, TfL and others there is a significant level of understanding of the need for a review of blight provisions, so as to remove a degree of fear and uncertainty of, and opposition to schemes. CPA commend a fresh review of the existing legislation and consideration of a more market-based approach to provide for a revised process for dealing with generalised blight.

CPA also suggest the current annual value limits for blight are in need of review as they set an unnecessarily restrictive bar on claims.

Deficiencies in the Written Representations Process

The technical consultation doesn't address an issue in the Written Representations Process that can lead to delay. PINS/DCLG can impose written reps when the acquiring authority believes that cross examination is necessary. Members have experienced several instances where an objector does not wish to be subject to cross examination as their representations are flawed, but the acquiring authority is not entitled to ask for an inquiry or hearing. This should be something that acquiring authorities can request is considered by the Secretary of State in appropriate circumstances, allowing the acquiring authority to demonstrate an inquiry is the appropriate procedure in the specific circumstances.