



Department for  
Communities and  
Local Government



HM Treasury

# Technical consultation on improvements to compulsory purchase processes

## Question template

The consultation document seeks views on the government's proposals for technical process improvements and guidance on compulsory purchase. It is recommended that you view the consultation document whilst filling in your response. This is available on our website: <https://www.gov.uk/government/consultations/improving-the-compulsory-purchase-process>.

Please respond by completing and returning this form by 9 June 2015.

Required fields are indicated with an asterisk (\*).

### \* Your Details

Name:	Duncan Bowie
Organisation (if applicable):	Highbury Group on housing Delivery
Position/Job Title:	Convener
Address:	University of Westminster, 35 Marylebone Road
Postcode:	London NW1 5LS
Email:	d.bowie@westminster.ac.uk
Phone number:	020350 66568

\*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 Institute / Professional e.g. planner, consultant
- 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):

The Highbury Group is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on policy options for optimising the output of housing including affordable housing.

The group was established in 2008. The group now meets at the University of Westminster, London. It comprises the following core members: Duncan Bowie -University of Westminster (convener); Stephen Ashworth – SRN Denton ; Julia Atkins - London Metropolitan University; Bob Colenutt - Northampton Institute for Urban Affairs ; Kathleen Dunmore - Three Dragons ; Michael Edwards - Bartlett School of Planning, UCL; Deborah Garvie SHELTER ; Stephen Hill - C20 Futureplanners ; Angela Housham - Consultant ; Andy von Bradsky -PRP ; Seema Manchanda – planning consultant; Tony Manzi - University of Westminster; James Stevens - HomeBuilders Federation ; Peter

Studdert – Planning consultant ; Janet Sutherland - JTP Cities; Paul Watt - Birkbeck College ; Nicholas Falk- URBED; Catriona Riddell – Planning Officers Society; Richard Donnell – Hometrack; Pete Redman – Housing Futures; Richard Simmons- University of Greenwich; Richard Blyth /Joe Kilroy – RTPI ; Shane Brownie – National Housing Federation; Stephen Battersby- Pro-Housing Alliance; Roger Jarman – Consultant/ Housing Quality Network; Richard Bate- Green Balance; Eric Sorensen; Ken Bartlett; David Waterhouse- Design Council/CABE; Martin Crookston; Chris Shepley; Kath Scanlon – LSE; Nicky Morrison – University of Cambridge; Glen Bramley- Heriot Watt University; Tim Marshall – Oxford Brookes University. Alisdair Chant- Berkeley Group, Chris Knowles – Tonbridge and Malling District Council.

The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations.

We set out our response to your proposals, using your question template. In the main we support these measures to make the process clearer, fairer, and faster for authorities and claimants. Where we disagree we give our reasons.

We are surprised that some of the principles and major points of process have not been considered as part of this review, particularly to enable large scale development to benefit from land value uplift to provide much of the resource for infrastructure and amenity. Our members have been involved in the conception, master-planning and implementation of many large-scale, mainly residential developments including Garden Cities, and Sustainable Urban Extensions. We believe that the CPO process has lost some of its purpose and power in recent decades and that a review is necessary.

We believe that a revised CPO process would give greater effect to private negotiation between authorities and those with an interest in the land. CPO would remain as a last resort in land assembly.

We see a steady trend for hope value to be included in compensation because of approaching development of nearby or adjacent land as our towns and cities expand, and because, prior to determining compensation, the land in question has been allocated in development plans. Authorities are now almost without exception expected to show detailed plans for the use of the land to achieve an order which in itself gives rise to increased expectations on hope value.

Furthermore the time periods in the main notices consequent on an order are too short for our largest scale developments of say 1,000 hectares over 40 years where on much of the land the physical development may be several decades away and where the final development may, through changed market conditions or through changed aspirations, not be the same as the original plan.

We propose that the statutory arrangements be changed so that:

1. The Secretary of State may by parliamentary order approve a suitable body whether public or private, existing or new, to use CPO powers that include a power by that body to designate an area of land to meet its purpose, for example a Garden City Foundation, a Development Corporation or a Community Land Trust.

2. That the designation is based on overall intent and not on detailed plans.
3. That the date of designation determines the existing use to be the basis of existing use valuation for later compensation purposes. Actual amounts will be determined by the current value, at the date of transfer, of the existing use at the date of designation, without regard to any change of use in the interim of that land or nearby land. Current value will reflect any improvements or investment in land and buildings since designation, where these have value, provided that these are relevant to the existing use.
4. That notices to treat should time expire after ten years and not the current three and that extensions by way of notice should last a further ten years not the current three.
5. That the total compensation be the existing use value of the land and property plus 20% with further amounts for relocation and business disruption costs, home loss and material detriment. This should be irrespective of the future land use of the land and/or property concerned.

We have considered the possibility that our proposal might increase planning “blight”. Our observation, however, is that most owners and businesses wish to maintain and invest in their land, buildings and business right up to valuation date whereas most “blight” in the past has been caused by the authority that purchased not making best use of the asset pending development. There are increasing examples of good practice by authorities negotiating continued use right up to a relocation date nearer to the new development date, or encouraging “meanwhile” uses. Both methods enhance economic value, and often increase desirability and marketability of the new development.

We would welcome the opportunity to contribute to a debate on these fundamental reforms and to the design of detailed proposals.

## 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:

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:

It would be useful if this wording could be issued to private sector bodies exercising CPO powers as guidance.

## 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:

**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:

**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:

# 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 proposal is good in principle but runs the risk of adding another potential "trip hazard" for the authority. The more each step in the process is prescribed or time bound the more likely that error will occur or challenges will be mounted.

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 comment above

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 comment above

**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:

**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:

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:

Better to leave to Secretary of State to use discretion as each case will vary on the circumstances such that a predetermined threshold (of importance) is bound to be arbitrary.

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:

We suggest that this should be for the Secretary of State to decide as each case will vary on the circumstances such that a predetermined threshold (of importance) is bound to be arbitrary.

**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:

## 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:

### 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:

### 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:

It would be hard to predetermine a universal period of extension. Each case will vary. A fixed period also creates another "trip hazard" for the authority.

## 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:

### 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:

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:

This is a clearer and more straightforward mechanism for the claimant who may have good cause (relocation) to retain a measure of control over timing.

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:

**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:

**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:

We believe this period should be increased to 6 years for those authorities (public or private) that are given powers to assemble land for large developments over say 30 year timescales (Garden City, New railroad, etc). See accompanying submission. Authorities should be able to make a case to the Secretary of State for a period longer than 6 years in exceptional cases.

**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:

We believe this could be a useful alternative method in some (limited) cases, and the option should be retained.

## 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:

**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:

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:

**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 advanced payments?

Yes

No

Comments:

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

Comments:

Two months

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

Yes

No

Comments:

A “fast-track” mechanism will develop its own set of rules (and case law) in parallel to the main procedure. This added complication (and “trip hazard” to the authority) is not justified by the potential benefit.

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

Comments:

19. e) Who might provide such a service?

Comments:

Comments:

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

Comments:

There are plenty of remedies in place already including the possibility of compounded interest.

## Improved interest rates on outstanding compensation

### 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:

Whilst this may seem (simple and) attractive today, it is almost certainly going to get out of date. We may have many years where near zero or negative Bank rate become the norm and impact on cost of money – hard to conceive of this now but times can and do change.

**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:

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:

Open market value should be the basis around which compensation is assessed where covenants and easements are overridden.. See our accompanying submission in relation to compensation in all other cases being limited to Existing use Value + 20%..

## 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:

Material detriment forms part of most but not all claims and even then is often a small proportion of the total claim. With the basis of assessment (and the current proposal to improve information provided to support claims) already lodged then entry should not effect the outcome of that part of the claim but acquisition of the whole is an unnecessarily heavy hand pre-condition.

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:

We cannot envisage the full range of "sub-soil rights". Some may have a material effect on the land use and value.

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

Comments:

Not to our knowledge.

# 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:

Not only are many businesses larger in value than a dwelling value but the worth of a business is often significantly more than the value of land and property it occupies.

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:

We don't agree with average of 15 being representative. It is a somewhat arbitrary outcome from recent orders. There is no underlying dynamic which would tend to this figure in future orders. However, we accept your methodology in the impact assessment as a "best guess".

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:

The impact assessment is reasonable given the uncertainties involved.

# 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: