

Consultation Response

Compulsory Purchase Reform in Scotland

December 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law and the Property and Land Law Reform sub-committees welcome the opportunity to consider and respond to the Scottish Government consultation: *Compulsory Purchase Reform in Scotland*.¹ The sub-committees have the following comments to put forward for consideration.

Questions

2. Overview: How compulsory purchase works

Legislation and guidance

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

Yes, we consider it appropriate and vital that the law on compulsory purchase procedures is codified, simplified and updated.

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?

No, we have no specific concerns.

¹ [Compulsory purchase reform - gov.scot](https://www.gov.scot/publications/consultations/compulsory-purchase-reform/pages/12.aspx)

3. Enabling powers

Question 3: With the exception of SOSE and Network Rail, are there any gaps in acquiring authorities' enabling powers? Please provide specific examples.

We have no comments.

Question 4: Are local authorities' compulsory purchase powers (set out on page 13-14) 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.

We are not aware of any issues concerning the scope of local authorities' compulsory purchase powers and consider that the powers are sufficiently broad. There also exists a "catch-all provision" within section 71 of the Local Government (Scotland) Act 1973 for a Local Authority to use a compulsory purchase order (CPO) for the purposes of any of its functions.²

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

Yes, we consider that the general ability to create rights of full acquisition would be helpful. We highlight that there is an inconsistency in existing legislation as some authorities have such rights either in general powers or otherwise. Such legislation includes:

- Paragraph 1, schedule 3 of the Electricity Act 1989³
- Section 9(3) of the Gas Act 1986⁴
- Edinburgh Tram (Line One) Act 2006⁵
- Forth Crossing Act 2011⁶

We highlight that this is We consider that such a general power could be more flexible, provided it is designed so as to be appropriate to the range of scale and types of schemes undertaken by acquiring authorities. Furthermore, we consider that such a power would be more proportionate, as an acquiring authority would only need to acquire such rights as required, and would be less intrusive for landowners.

² [Local Government \(Scotland\) Act 1973](#), section 71

³ [Electricity Act 1989](#), paragraph 1, schedule 3

⁴ [Gas Act 1986](#), section 9(3)

⁵ [Edinburgh Tram \(Line One\) Act 2006](#)

⁶ [Forth Crossing Act 2011](#)

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

Yes, we consider that a general power to take temporary possession would be helpful. Permanent acquisition is not always necessary and availability of temporary powers would allow permanent rights to be tailored to what is required in the circumstances.

Furthermore, such powers can be useful in progressing a scheme and are already provided for some acquiring authorities, e.g. to create access or construction areas. We reiterate our answer to Question 5 regarding inconsistencies in existing legislation.

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.

Yes, we consider the proposed list of matters that should be addressed in any new temporary possession power appropriate. There already exists the statutory use of such powers in Scotland, which broadly reflect this proposed approach. We note that there exists similar statutory provision in England which covers these points. The Neighbourhood Planning Act 2017 introduced powers (sections 18-31)⁷ to allow all acquiring authorities to seek compulsory temporary possession, although these specific provisions are not yet fully in force, and for Nationally Significant Infrastructure Projects (NSIPs), temporary possession powers are available through Development Consent Orders under the Planning Act 2008 and orders made under the Transport and Works Act 1992.

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

We are aware of some instances where back-to-back CPOs have facilitated development which may not otherwise happen, for example in a housing context where the local authority has to take a project forward but the costs are underwritten by the developer, or for city centre regeneration.

As acknowledged in Circular 6/2011,⁸ back-to-back CPOs can be initiated by either (i) a developer who requests that an authority use its acquisition powers to help complete land assembly for their project; or (ii) an authority who wishes to see a project delivered but requires a third-party to deliver that project.

⁷ [Neighbourhood Planning Act 2017](#), Sections 18-31

⁸ [Planning Circular 6/2011: Compulsory purchase orders - gov.scot](#)

There is currently limited guidance on the use of such back-to-back CPOs and we consider that more detailed guidance may help to set expectations for both parties on what is involved in pursuing a back-to-back CPO and give authorities the confidence to use their powers, particularly in the second scenario outlined above. Such guidance should reflect the difference between the two scenarios, including the procurement legislation which might apply and statutory tests to be met at the point of disposal to the third party (e.g. under section 191 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”)).⁹ Such guidance should include case studies.

If back-to-back CPOs are to be more widely encouraged, then appropriate safeguards must be in place to reduce the risk of this process being used to circumvent more stringent requirements of other statutory processes such as community right to buy. We consider that they should be restricted to deliver outcomes which are within the scope of the public authority and that it should not be possible for a private or voluntary sector body to use them to acquire land they would not otherwise have had access to for purposes outwith the scope of the acquiring authority’s remit. To enable flexibility, we would consider it useful if the Planning and Environmental Appeals Division (DPEA) publishes a circular paper to include examples of projects undertaken by non-public sector bodies that are within the public interest, such as those included within local development plans.

We note that there is some potential overlap between use of back-to-back CPOs and Compulsory Sales Orders (CSO), both of which allow the ownership of the land to pass to entities outwith the acquiring authority. As such, similar safeguards for the original owner’s interests should be maintained, whilst allowing development which is in the wider public interest to take place.

4. Early engagement and preliminary steps

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

Yes. We do not think such engagement could be effectively accounted for in legislation and do not consider it helpful to be overly prescriptive by setting out the type of engagement that should be undertaken as this will vary in the circumstances. Acquiring authorities need to justify their approach as part of the confirmation process and we are not aware of any issues stemming from this. We consider that there is a potential role for guidance in setting out what is considered good practice in place of formal legislative requirements.

⁹ [Town and Country Planning \(Scotland\) Act 1997](#), section 191

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

We consider that there should be a greater emphasis in any guidance on early and effective engagement being demonstrated as part of justification for any CPO. We would welcome clearer guidance alongside practice notes showing examples of good practice.

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.

Yes. We consider that the availability of a general power might be useful to assist in land referencing where information is required but the parties are unwilling to engage. We would, however, stress that the use of this power would need careful consideration on the behalf of the acquiring authority as it could potentially undermine consultation with affected landowners.

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?

Yes, we consider that a general power of entry would be a helpful power for acquiring authorities to possess. As noted in the consultation, the current provisions are inconsistent and archaic,¹⁰ so provisions which provide uniformity and fairness would be welcomed.

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

Yes, we consider these appropriate as they are consistent with other existing statutory powers which allow entry. We stress the importance of balancing the rights and interests of acquiring authorities and rights of the landowners.

¹⁰ [Compulsory Purchase Reform Consultation Paper](#), page 21

5. Confirmation procedures – Making a CPO

Form and content of a CPO

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

We do not consider that major changes are necessary. We concur with the consultation paper that if new general powers are introduced to create new rights on land and temporary possession that these should be set out in different schedules to powers of full acquisition. We note that these may also require changes to the main part of the relevant order, in order to set out the extent of compulsory powers which apply to the various schedules.

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

We do not see a need for these documents to be placed on a statutory footing. We concede that in the case of the General Certificate, this may differ if acquiring authorities are to be permitted to self-confirm in certain circumstances.

Notification and advertisement of a CPO

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

Yes. We do not consider that this level of detail is appropriate for primary legislation.

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?

We would highlight that there is confusion in practice in relation to the status of heritable creditors in CPO processes. It would be helpful if this was clarified, as it should be possible for heritable creditors to be readily identified.

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

No, we have no further comments regarding the list of people to be individually notified.

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?

Yes. We highlight that information of this type would normally be available online and consider it appropriate that this information is published in regard to CPOs.

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

We consider it appropriate that the use of newspaper notices continues as some communities and individuals still lack access to high-quality internet service.

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

We consider that it may be useful to have a centralised online resource where information is available on proposed CPOs in each local authority area.

Digitisation

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.

We request further clarification on the intention of the Scottish Government as regards this power of prescription. We have concerns about prescribing common standards in legislation rather than guidance, which we consider can be more flexible.

Given this, we suggest that, should regulations be brought forward, they set out a broad framework only, with guidance providing the necessary details as to the contents of documents afterwards in order to maintain flexibility.

In general, we stress the importance of robust and broad consultation on such secondary legislation, to provide an opportunity for scrutiny and critical comment

from stakeholders on the details of the measures. We also would again stress the need for appropriate levels of parliamentary oversight and scrutiny regarding any secondary legislation.

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.

We consider service by electronic means with the agreement of the party appropriate as it would provide flexibility on service options to acquiring authorities whilst ensuring no one is digitally excluded.

6. Confirmation procedures – Deciding a CPO

Considering objections to a CPO

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.

We highlight our previous comments regarding the *Scottish Law Commission Discussion Paper 159: Compulsory Purchase*.¹¹ We previously suggested that there should be a statutory three-month period and would reiterate these comments. We consider that clarity on time periods for referral to the DPEA would be helpful to provide more certainty and avoid undue delay.

Should the Scottish Government not opt for a statutory time period, we consider that guidance would be the most appropriate second choice. We note that this may enable more flexibility than a statutory approach, but on balance consider a clear time period in statute our preferred approach.

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

We have no comments.

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

Yes, but only in the circumstances where an objector has explicitly consented to the use of written submissions. See our response to Question 28 below.

¹¹ [Law Society of Scotland Response to Discussion Paper on Compulsory Purchase \(DP No 159\)](#)

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

We refer to our answer to Question 22. Rather than prescriptive legislation, we suggest that any regulations brought forward introduce a high-level framework for procedural rules, whilst allowing for flexibility in order to account for ongoing evolution and changes to procedural rules. We also reiterate our comments in our answer to Question 22 as regards ensuring the appropriate level of parliamentary scrutiny and stakeholder consultation.

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

Yes. We would recommend that a cautious approach is taken to any restrictions on the right to a hearing or inquiry. Restricting the right to be heard, either by hearing or PLI, reduces the quasi-judicial aspect of proceedings. In a compulsory purchase process, where the subject matter is the compulsory acquisition of property, we consider that such a restriction could increase the risk that the procedure would be found to be non-compliant with Article 6 of the European Convention on Human Rights (ECHR) (Right to a Fair Hearing).¹² Therefore, the right to be heard at a hearing or inquiry should be maintained.

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?

Yes, we consider that the decision on whether to hold a public local inquiry (PLI) or hearing should remain with the Scottish Ministers.

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

Yes, we think it appropriate that the power to award expenses be extended.

¹² [European Convention on Human Rights - Article 6 | European Union Agency for Fundamental Rights](#)

How CPOs are decided

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.

Yes, we consider that the public interest test strikes a fair balance.

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

Yes. We consider that the public interest test should continue to be policy-based.

Who takes CPO decisions

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

We consider that in the event that there are no objections to a CPO there would be merit in a self-confirmation procedure. However, a CPO is a significant interference with property rights and thus it is important that the procedure ensures that there is adequate supervision of the process to guard against the risk of abuse.

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

On balance, we would suggest Option 1 as it ensures that there is a procedural safeguard by Scottish Ministers. We have doubts about a procedure that is controlled by the acquiring authority and where they have control over when the order is sent for confirmation, given that a compulsory purchase is a direct interference with Article 1 Protocol 1 rights of the ECHR.¹³ We consider that it is important that safeguards are in place in relation to such interference and that this is better achieved through Option 1.

However, we recognise that there are benefits to Option 2, including the potential to streamline notices as noted by the consultation.¹⁴

¹³ [Guide on Article 1 of Protocol No. 1 – Protection of property](#)

¹⁴ [Compulsory Purchase Reform Consultation Paper](#), page 40

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

We understand the rationale in delegated decision-making from an efficiency perspective but as per our answer to Question 34, reiterate that a CPO is a direct interference with Article 1 Protocol 1 rights and there is more political accountability in relation to a decision made by Scottish Ministers, which is preferable.

We would highlight that the approach in England sets criteria for when applications will generally be delegated if it appears unlikely to:

- Conflict with national policies on important matters
- Raise novel issues
- Give rise to significant controversy
- Have impacts beyond the local area.¹⁵

We consider that a similar approach could potentially be taken in Scotland.

Special category land

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 land
- land held inalienably by the National Trust for Scotland (NTS)
- land forming part of a common or open space

We are unclear as to the rationale for why these categories of land require additional scrutiny in the form of special parliamentary procedure. We are also unconvinced that strict procedural requirements of any kind are justified for local authorities, NTS land or common/open space. Impacts, and the need for mitigation, should be capable of being taken into account in determining where the public interest lies in relation to the proposed order. The position of statutory undertakers is different as they may have apparatus in land which is affected by

¹⁵ [Guidance on the compulsory purchase process](#)

compulsory purchase and we consider that some level of protective provision is appropriate to ensure that services are not adversely impacted by the purchase.

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.

We do not consider that a special parliamentary procedure is appropriate and can see no reason for this to be in the form of primary legislation as opposed to secondary legislation. We consider that the impacts here are matters which Reporters and Scottish Ministers should be capable of dealing with. If there are impacts that require particular attention and a mandatory level of mitigation then this can be prescribed (as acknowledged in paragraphs 6.52 to 6.54 of the consultation paper for statutory undertakers).¹⁶ We consider that it would be appropriate if this was accompanied by a mandatory public inquiry unless the affected party consents to another form of procedure.

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.

Yes, we consider this appropriate.

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

Yes, we consider this appropriate.

Scope and timing of CPO decisions

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?

Yes, we consider this appropriate.

¹⁶ [Compulsory Purchase Reform Consultation Paper](#), pages 44-45

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 Q40 achieve this?

We consider that both suggested examples in Question 40 might be useful but have no specific comments.

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

Yes, we consider a power to confirm CPOs subject to conditions appropriate. However, we would stress that conditions should only be imposed where the circumstances of the case justify it– for example, where reasonably necessary to allow the statutory purpose of the enabling legislation to be met and/or the public interest test to be satisfied. Currently, uncertainty on matters such as funding or other necessary consents are considered against a test of reasonable prospects that the funding, consents etc will be obtained within a reasonable period. Where that test is satisfied, the exercise of the powers should not be made conditional as the condition would not be reasonably necessary.

It may be necessary to recognise a distinction between (i) conditions which require to be satisfied before compulsory purchase powers may be exercised (at all) and (ii) other conditions regulating relations between acquiring authorities and affected parties, as category (i) extends the period during which the CPO is “hanging over affected parties”/blighting effects may be experienced. In addition, category (ii) would typically be the subject of separate, binding agreements between the parties – this should remain the standard approach. Guidance may be necessary to supplement any statutory provisions.

We also consider that schedule 14 of the 1997 Act may need to be amended to recognise conditional CPOs (i.e. category (i) above).¹⁷

We understand that, through the course of their practise, our members have experienced situations where it would have been useful if a CPO could be confirmed subject to conditions, or the rights within a CPO be subject to conditions. Such a power would have allowed the CPO to proceed whilst also addressing the concerns of the objector.

In the absence of such a power, our members have also seen acquiring authorities provide undertakings to objectors to comply with conditions. However, these do not have a statutory footing, and the lack thereof may not provide comfort to affected parties in respect of their ability to enforce such undertakings.

¹⁷

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?

We consider it appropriate that all parties affected by proposed conditions should be provided with an opportunity to comment on them prior to any decision on confirmation of the CPO. For conditions to be effective, there must also be an effective means of enforcing the conditions. Consideration should be given as to how conditional CPOs would operate in relation to blight. For example, would an acquiring authority need to be able to show that it had sufficient funding to meet compensation payments?

Furthermore, for category (i) conditions, we consider it appropriate that the discharge process be governed by the relevant Scottish Government directorate. We agree that there should be an opportunity for objectors or affected parties to make relevant representations (on the subject of discharge only), but the process should be based on written representations only, subject to a statutory right of appeal for aggrieved parties.

We highlight that legislation may provide for a longstop period for discharge, such as 3 years. This could be shortened if justified in the circumstances of the case.

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.

Yes, we consider this appropriate.

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

We have no comments.

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

We have no specific comments on the reporting requirements for Scottish Government but would consider it useful to have reports on the CPO confirmation processes.

Challenges to a CPO

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.

Yes, we consider this appropriate.

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?

Yes, we consider this appropriate.

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?

Yes, we consider providing the court with the discretion to quash just the confirmation decision appropriate. This would provide a proportionate remedy in circumstances where the problem is with the confirmation process not the order-making process.

7. Implementation

Procedure

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?

We consider that a potential advantage of the notice to treat and notice of entry procedure is that it can allow earlier entry to the land. This can be important for certain types of projects. It is not clear from the proposed Compulsory Purchase Vesting Declaration (CPVD) procedure whether that would allow early entry or if the timings would be similar to the current general vesting declaration (GVD) procedure. We would therefore welcome clarity from the Scottish Government on this point.

Objection to severance

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.

We have no comments.

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?

We consider it logical for the objection to severance to prevent the land from vesting in the acquiring authority. If it continues to vest in the acquiring authority then we consider that this could impact the landowner negatively in terms of finance, if it is a genuine severance issue and they are left with unproductive land.

Timing

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?

We agree that certainty is preferable and consider that the current position can lead to uncertainty as to when the confirmation of the order will be published.

We therefore consider it useful to have a fixed timescale dating from the confirmation of the order, as long as the date of confirmation is notified to the parties, in order to ensure that there is certainty about when the time period begins.

The consultation document refers to a time limit for the service of the confirmation notice and also a fixed period within which they must be published.¹⁸ We consider it appropriate to ensure it is clear that the 6-week period relates to both service and publication.

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

In the interests of ensuring certainty for parties, we consider that it would be preferable for there to be a maximum standard implementation period which is as short as is reasonable to allow the scheme to be completed, whilst minimising the disturbance for the landowner.

¹⁸ [Compulsory Purchase Reform Consultation Paper](#), page 55

However, we highlight that some schemes may be of such complexity that 3 years may be insufficient, even if the scheme is carried out efficiently. We therefore consider that in those cases where a longer period is envisioned as being reasonably required from the outset, there should be a process whereby the acquiring authority can demonstrate that additional time is needed. However, it should not be open ended and we consider that a reasonable fixed time period should be the default option in this case, in place of an open-ended deadline.

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

We consider that in the same way as in exceptional circumstances, where there is evidence to justify it, an implementation period could be extended, but, there should be an ability for a landowner to appeal or for an acquiring authority to specify a shorter period where that is reasonable and a longer period could be shown to be unreasonable.

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

We consider it reasonable to be able to suspend the implementation time during a court challenge as to validity of the CPO. This could be achieved by ensuring that a court challenge was a reasonable ground to justify an extension as referred to in our answer to Question 54. The latter may safeguard the landowner's interests more proportionately so that extensions are only granted if in fact the court challenge resulted in the acquiring authority being unable to implement the scheme in time and suspension is not the default.

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.

We have no comments.

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?

We refer to our answer to Question 50 regarding whether there may be merit in retaining a mechanism to allow for earlier entry.

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

We envision situations where the details of the persons with an interest in the land have changed. As such, we consider that there is justification for allowing time to source these details as this will be needed for compensation, which is fundamental to ensuring a balanced process.

Effect on title

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.

In principle, we have no objection to this proposal. We consider that it may be unclear what is meant by defects. It is unclear whether it means overlapping boundaries, gaps in titles, or conveyance of more than was intended, or more than owned by the person notified and compensated for the CPO? We query whether defects include historic planning conditions such as section 75 agreements, and would welcome clarity from the Scottish Government on this point. We would also welcome further information from the Scottish Government on how it envisions this process working in practice and suggest that the Government consult widely concerning these elements, including hypothetical case studies to demonstrate their proposals in action, prior to laying the proposed legislation.

If the new CPVD is to be cleared of all real burdens, servitudes and securities, we assume that this would also include a right of a community body or agricultural tenant registered or in the process of being registered against the property and wayleave agreements, overage and option agreements and other contracts and agreements which are not registered against the title and that these would feature in the compensation negotiations.

We query if, in the situation where the CPO property forms part of a large landholding as defined by Part 1 of the Land Reform (Scotland) Act 2025,¹⁹ would the CPO property be excluded from the lotting and community right to buy provisions under sections 2 and 4 of the Act? We would welcome clarity from the Scottish Government on this point.

We consider that if the new CPVD clears the title of all real burdens and servitudes this must be, as currently provided for, subject to anything specified in the CPVD. We also highlight that when the removal of burdens and servitudes is being considered, thought must be given as to which rights, if any, will be needed once the CPO is completed and any subsequent development / works are

¹⁹ [Land Reform \(Scotland\) Act 2025](#), Part 1

completed. Those persons who previously benefited from servitude rights and burdens may require new rights to replace those lost.

For example, on the compulsory purchase of land required for new roads infrastructure, adjoining properties which previously benefited from servitudes of access and/or for installing and maintaining services, will need real property rights, i.e. servitudes if the road/verge/pavement adjoining their land which is the subject of the CPO is not adopted by the acquiring authority. Our members have come across this issue in practice, and have highlighted that it affects the marketability and funding of such properties adversely affected by the CPO. Similar attention must be paid when land is the subject of a CPO for building a bridge or elevated roadway. Access for services and other purposes beneath the bridge or elevated road may still be required by the owners who previously enjoyed the benefit of servitudes.

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.

Yes, we consider this acceptable provided the legislation is clear that the acquiring authority has the power to do this and makes clear that any acquisition agreement or CPVD should specify the powers to address the point.

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.

Yes, we consider that this could be helpful in land assembly for redevelopment.

We highlight that whilst some of the current procedures for taking title to land involve conveyances which refer to the sale of land, the new procedure under a CPVD could be devised to resemble a notice of title which is confirming that the acquiring authority in the exercise of its CPO powers takes or holds title to the land concerned. This would capture both land being acquired from third parties and land which the authority already owns without offending the rule that one party cannot convey land to themselves. It would also result in a much clearer title and potentially avoid a patchwork of titles.

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.

Yes, we consider adding a note to the title sheet in the Land Register stating that the title was acquired by compulsory purchase appropriate. Adding a note to the

title would assist with any future dealings with the property. We would also suggest that a note be added to any title from which the benefit of servitude rights and real burdens has been removed and the remainder of any title which is still subject to a standard security which covered the remaining property and the property which is the subject of the CPO. This exercise would highlight the need for any new rights referred to above in Question 60.

Rights subordinate to ownership

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

We highlight that the benefit of all leases being extinguished is the certainty that it provides in terms of the timing for taking possession of the property and consistency of treatment, although it may result in a higher compensation bill for the acquiring authority.

However, whether all leases should be terminated may depend on the complexity and size of the property subject to a CPO. It may suit both the acquiring authority and the tenants for a lease to continue. The tenants will have more time to relocate and the acquiring authority will not inherit an unoccupied property and the maintenance, insurance, rates and health and safety responsibilities which come with an empty property. It may therefore be preferable for the acquiring authority to have the choice as to whether the leases are extinguished or continue until expiry.

8. Compensation

Value of land acquired

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.

We would defer to expert valuers on matters of valuation but consider that the principle of equivalence is a longstanding, well understood principle and infers fairness in the process. Moving away from that would need to be carefully considered and justified by evidence of the need for change.

We consider that any reforms which could put the landowner at a disadvantage or effectively in the position of part-funding the scheme are likely to lead to poorer relationships, increase the likelihood of a legal challenge and create more conflict in the process. We do not consider that putting the landowner at a loss in the CPO process will improve the process. We therefore consider retaining the principle of

equivalence as a means to ensuring a fair outcome, in practice and in perception, would be preferable.

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.

We reiterate our comments in our answer to Question 65 regarding established practices. The existing system of assessment is well understood and has developed over many years of practice and we consider it appropriate that open market value (OMV) should be retained as the central means of valuing compensation.

In doing so, we consider it appropriate for an acknowledgment that “hope” or development value is an intrinsic part of market value. We consider that the CPO scheme needs to be demonstrably in the public interest but do not consider this sufficient justification for less than OMV to be paid to the landowner. Other parties involved in delivering a scheme – suppliers of services, labour and materials- will all have tendered to make a profit. The landowner is a key stakeholder and fostering positive relationships between all stakeholders is essential for the health of the overall process.

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?

We have no specific comments regarding the power of local authorities to request that compensation would take no account of the prospect of planning permission being granted for alternative development and consider this to be a matter of policy.

We highlight our previous comments regarding excluding development potential from compensation in our previous answers and consider that the Scottish Government should consult widely with affected stakeholders regarding any proposed legislation regarding providing acquiring authorities this power.

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

In principle, codification of the no-scheme principle is welcome. However, this process could result in further complexities if not carefully drafted, which could lead to further litigation or disputes should there be any ambiguity in the legislation. Therefore we would urge caution in regards to codification, unless there is a clear justification to codify the law into statute, and again reiterate the need to take detailed advice from stakeholders in this area prior to any legislation being laid before Parliament.

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

Yes, subject to exercising due caution and undertaking appropriate consultation regarding legislation as per our answer to Question 68, we consider that the points listed in the outline proposal for codification are appropriate.

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

Yes, we consider it necessary that the planning assumptions are updated. We would urge that the Scottish Government consult on the creation of these new assumptions.

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

Yes, we consider the broad outline for how the planning assumptions might be reformed appropriate.

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.

We recognise the benefits to both abolition and retention of Certificates of Appropriate Alternative Development (CAAD). The former would enable value to be determined through the Lands Tribunal of Scotland²⁰, ensuring independence, whilst the latter retains CAADs as a helpful mechanism establishing an acceptable form of development in the no-scheme world.

We consider that CAADs do require updated guidance on their usage from the DPEA and would welcome the DPEA consulting on such guidance. Please see our answers to Question 73 for further suggestions on making CAADs more effective, efficient and equitable.

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

We highlight that CAAD applications are uncommon and can therefore be challenging for planning authorities to tackle. We note that there is Scottish Government guidance on CAADs, published in 2018.²¹ We consider that the approach in the guidance is helpful as it refers to examples of CAADs. We consider that it may be helpful to update the guidance and also consider case law from England such as *Secretary of State for Transport v Curzon Park Limited and others [2023] SC 30*²² which deals with how multiple CAAD applications for the same type of development should be addressed. Consideration should perhaps be given to whether this sort of issue should be addressed in primary legislation and whether the provision of independent oversight of the valuation process would still be required to provide confidence in the process.

²⁰ We highlight that a Bill to merge the Lands Tribunal with the Scottish Land Court is currently before the Scottish Parliament

²¹ [Compulsory Purchase in Scotland: Guidance for Acquiring Authorities](#)

²² [Secretary of State for Transport \(Appellant\) v Curzon Park Ltd and others \(Respondents\) - UK Supreme Court](#)

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

We do not consider the rare usage of a statutory provision as a credible reason to repeal it. We consider that the existence of the legislation may encourage voluntary negotiation which would not take place if the statute had not provided a backstop. We would therefore welcome further information from the Scottish Government to explain the justification for repeal. Whilst we appreciate that the existence of such a provision may create potential uncertainty for acquiring authorities, we consider that this potential uncertainty needs to be balanced against the need for fairness in the process for the claimant.

Injurious Affection

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

We consider that there are benefits to both approaches. Establishing the required approach in legislation has the benefit of certainty for landowners and acquiring authorities. However, in circumstances where a different approach gives a fairer result to the assessment of compensation, then guidance may be preferable, as this could set out the potential circumstances where the alternative approaches might best be used.

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

We have no definitive view on the continuation of set-off of betterment. We consider that betterment conflicts with the principle of equivalence and is also contrary to the no-scheme principle but recognise that there is a question for fairness from both the acquiring authority's perspective and the landowner's perspective. We consider that, at this stage, this is a question of policy and do not consider it appropriate for us to provide a view.

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.

We are unaware of any acquiring authorities requiring new powers. We are unclear as to the meaning of "discretionary" in this context and would welcome clarity on this point. We highlight that, in practice, accommodation works are negotiated and we are unaware of a particular problem with how the system is working at present in this context.

Disturbance

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

We consider that we need more information to comment further on the feasibility of separate statutory provision for compensation disturbance. As per our answer to Question 75, we have no definitive view on the establishment of a separate statutory provision. We understand the benefits of codification, which would provide certainty in this area. However, as per our comments regarding codification of the no-scheme principle in our answer to Question 68, we note the risks of layering statutory provisions where the law has developed over years and is well understood by practitioners.

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.

Yes, we consider it appropriate that in the interests of balance and fairness in the process that compensation should apply to costs/losses from the date of the CPO. We also have concerns that a 6 year cut off does not always allow for full snagging to be known, for example in drainage projects. We further consider that a reserved right to claim future damages would be useful in this context and that it may also be necessary to cross-reference to second bite compensation. We suggest that as a safeguard, the Scottish Government should consider introducing a catch-all reserved right to claim future damages.

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?

On balance and in the interests of fairness, we consider it appropriate that in the CPO process, all abortive costs should be recoverable.

We understand and note that this could potentially add significantly to compensation liability for acquiring authorities.

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

There may still be occupation in the wider legal sense of the word in terms of the right to control the property or exclude others and so we consider correct that

physical occupation is not the only compensable interest. As such, where there are losses as a result of the CPO, we consider it appropriate that they should be subject to compensation.

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

Yes, we consider that guidance on compensation in cases of complex corporate structures would be appropriate.

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

Yes, we consider it appropriate that the impecuniosity rule be removed. The acquiring authority should be expected to take the claimant as they find them, and as long as reasonable steps are still taken to mitigate losses then they should be able to be compensated.

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

We agree with the proposals on mitigation for similar reasons as stated in our answer to Question 83. For similar reasons, we also agree with the proposals on relocation and extinguishment.

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

Yes, we consider the extension of the jurisdiction of the LTS to cover discretionary as well as mandatory disturbance payments appropriate.

Loss Payments

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?

We have no comments.

Question 87: How should the amount of HLP be calculated – linked to value, flat rate, or graded rate? Please add any comments on these options or other approaches.

We have no comments regarding valuation issues but note that ensuring occupiers feel fairly compensated will ultimately make the process of compulsory acquisition smoother, quicker and more efficient.

Option 2 has the benefit of simplicity but does not have the flexibility to take account of specific situations. Linking payment to length of occupation would provide for some flexibility, taking account of the level of distress and inconvenience if an occupier is displaced after a long period of occupation, although there may be other relevant factors too such as familial connection. Each case may differ and we therefore highlight that a blanket mechanism may be too blunt.

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?

Yes, we consider eligibility for a loss payment appropriate as, given the current state of the land market, a person may not be able to find a suitable alternative farm within 3 years.

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?

We have no comments.

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

We have no comments.

Question 91: If a new approach to calculating FLP is taken forward, which option would you prefer – market rate, flat rate or graded rate?

We have no comments.

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

We consider it appropriate that where interests in the property acquired are detrimentally impacted then it is fair that all of those affected should be able to receive payment. We consider that the framing of appropriate qualifying criteria for those affected may be difficult, and suggest the Scottish Government undertakes appropriate consultation.

9. Compensation procedures

Making a claim

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

Yes, we consider a requirement to advise owners of their rights to compensation and how to claim it fair and reasonable. This could potentially speed up the general process of project implementation and would align the GVD process (as now contained within the 1997 Act) more with the Notice to Treat (NTT) process provided for in the Lands Clauses Consolidation (Scotland) Act 1845,²³ which requires the acquiring authority to serve an NTT on each person with an interest in the land, and invite them to respond with a statement of their claim for compensation. We consider that a single approach to the process of claiming compensation alongside more transparency and clarity on how to do so seems just and reasonable and would make the process more equitable, effective and easy to understand.

²³ [Lands Clauses Consolidation \(Scotland\) Act 1845](#), section 17

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

The information required to allow the acquiring authority to make its own calculation of compensation due should be clearly set out by the acquiring authority to the affected landowner. We make no comment on whether a statutory claim form is the most efficient way to elicit that information, but consider that a universal approach would be helpful to landowners.

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

Yes, we consider a requirement to provide information on assumptions relating to compensation on request appropriate. It seems reasonable and fair to allow the landowner to consider the compensation offered in an informed manner, to take any necessary professional advice and to compile and present any additional evidence to rebut any such assumption. In general terms, assumptions influence valuation calculations and the reasonableness of the valuation ultimately reached is tied to the reasonableness of the assumptions on which that valuation is based. Misunderstandings at this stage can lead to disputes later on in the process.

This approach could assist in leading to a more collaborative approach to negotiation by ensuring all parties have the same information available and trust the integrity and relevance of that information.

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

Yes. Although requiring authorities to offer compensation would be a change in the current process, it would seem this approach could assist in leading to a more collaborative approach to negotiation. As mentioned in the consultation document, it is likely that the acquiring authority has already carried out some sort of valuation, if only for budgeting purposes.²⁴

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.

We consider that the current system by which different forms of process exist can be confusing for landowners. As such, we consider that a single approach and transparent information about how calculations have been reached would assist.

²⁴ [Compulsory Purchase Reform Consultation Paper](#), page 89

The nuances of the current legislation will be lost on the average landowner and make the procedure complex for them to navigate.

Time limits

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?

Yes. It is important that landowners are given the opportunity to take advice and all parties have been permitted to make representations. See also our answer to Question 100.

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

At present, the time limit for application under the GVD procedure is 6 years but there appears to be no time limit on the NTT. This would not appear to be a fair and reasonable approach. In addition, there is at present some discussion about when that 6 year period begins and this should be clarified if possible.

In order for any provision on a final time limit to be fair and reasonable, we consider that there should be a requirement that any final date ties in with general legal principles to do with prescription. However, if the landowner does not have the full facts at that time, we consider that there should be flexibility, including where the acquiring authority has not acted reasonably in making any information available.

Furthermore, we suggest that the Lands Tribunal of Scotland's should be enabled to allow late claims, at its discretion.

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

We consider it appropriate that there should be a single timeframe for claims, regardless of how the compulsory acquisition is being processed or under which present system. The timescales at present, whereby for a GVD the vesting date must be no less than 28 days from when the declaration is made but there is then a 30 day period for reference to the Lands Tribunal of Scotland, are confusing. It may be of assistance to enshrine in legislation that any Lands Tribunal of Scotland cases can be paused to allow for further information to be obtained without the determination of the referral being precluded by passage of time, provided the referral has been made by the appropriate deadline.

Advance payments

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

We cannot comment on whether new powers are required to enable acquiring authorities to make discretionary advance payments, but acknowledge that Clause 3.1 of the consultation document notes “*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.*”²⁵ If the present powers do not permit advance payments, consideration should be given as to whether this would be of assistance in ensuring that projects can avoid deadlocks, run to timetable and to assist with any known disturbance payments relating to accommodation works and relocation (e.g. relocation of livestock and new stock proof fencing to keep livestock contained).

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

We highlight that enabling advance payments to be made to heritable creditor would require the landowner’s agreement, as there is no contractual nexus between the acquiring authority and the heritable creditor and in the interests of fairness and transparency the landowner should be afforded the opportunity to approve the payment which will represent sums owed by the landowner to the creditor. The landowner may query or object to any quantification made solely by the heritable creditor (especially, for example, if only part of a landholding is subject to the compulsory acquisition or the heritable creditor seeks repayment of a disproportionate element of the borrowing when comparing the land affected to the whole landholding) and the result could be that the landowner is in a position where very little of the compensation is available once the heritable creditor has been repaid but costs have nevertheless been incurred by the landowner in vacating the property required by the acquiring authority.

²⁵ [Compulsory Purchase Reform Consultation Paper](#), page 11

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

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

In terms of interest calculation, we consider that a question arises as to when an “advance payment” becomes due and payable. It is unclear whether it is from the date the value of the advance payment was agreed or whether it is to be calculated from the date of the offer to the date of the final payment of compensation. This ties in generally with the questions on timing of payments and when they become due. We would welcome clarity from the Scottish Government on this point.

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?

Yes, if the level of compensation (or minimum sum) is agreed, advance payment may assist some landowners – see our answer to Question 101. If an Advance Payment has been made, the interest should be restricted only to the outstanding amount.

Interest rates

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)

We have no comments.

10. Compulsory Sale and Lease Orders

Compulsory Sale Orders

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

A compulsory sale order (CSO) could potentially be seen as a mechanism to promote the development of land where land is vacant on a long-term basis or derelict, and the landowner is not bringing forward proposals for redevelopment. However, there are also powers for acquiring authorities to purchase land on a compulsory basis and sell it on for development with a back-to-back agreement. The latter approach can give the acquiring authority contractual control over subsequent development of the land. It is not clear how CSOs would operate to control subsequent development.

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

As this would be compulsory sale, Article 1 Protocol 1 of the ECHR would be engaged. It would be necessary to demonstrate that the sale is in the public interest with procedural protection for the landowner.

Part 3A of the Land Reform (Scotland) Act 2003 ("the 2003 Act") could potentially be drawn on as a model for circumstances when a compulsory sale order might be appropriate. Eligible land is defined as:

(a) wholly or mainly abandoned or neglected, or

(b) the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.²⁶

However, for the community right to buy to be granted, the Scottish Ministers must give consent. The tests for giving consent include:

(b) that the exercise by the Part 3A community body of the right to buy under this Part is

(i) in the public interest, and

(ii) compatible with furthering the achievement of sustainable development in relation to the land; and

(c) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner.²⁷

It is unclear how similar tests might be met by an acquiring authority with a CSO if the land is to be sold on the open market.

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?

We consider that the initial procedures would appear conceptually similar to a CPO in relation to the making of an order, lodging of objections and presumably confirmation by Scottish Ministers. However, thereafter the procedures would require to differ.

The acquiring authority would not be acquiring title and so a new procedure would be required for how the compulsory sale process would be managed and what role the acquiring authority would play in this. The procedures for the compulsory transfer of land could be based on sections 97Q²⁸ and 97R²⁹ of the 2003 Act which could deal with the mechanics of the actual land transfer. However, section 97D of the 2003 Act is in favour of an identified community body,³⁰ in the same way as a CPO is promoted by an identified acquiring authority. That would not necessarily be the case with a CSO where it might be envisioned that the sale would be to a more open market. Consideration would also need to be given as to how land value would be ascertained. Again, although there is a mechanism in section 97S for the assessment of the value of land for Part 3A,³¹ it is not clear how this would work for a CSO where there may be competitive bids. We would welcome clarity from the Scottish Government on this point.

²⁶ [Land Reform \(Scotland\) Act 2003](#), section 97C

²⁷ [Land Reform \(Scotland\) Act 2003](#), section 97H

²⁸ [Land Reform \(Scotland\) Act 2003](#), section 97Q

²⁹ [Land Reform \(Scotland\) Act 2003](#), section 97R

³⁰ [Land Reform \(Scotland\) Act 2003](#), section 97D

³¹ [Land Reform \(Scotland\) Act 2003](#), section 97S

Furthermore, we highlight in the case of CPOs, the acquiring party and the purposes for acquisition are tightly defined. We would welcome clarity from the Scottish Government on its intentions for CSOs and whether the whole of the sale value would be payable to the owner, even if the sale price is higher than the compensation value.

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

As per our answer to Question 29, we consider that governance frameworks would need to detail how the sales process would be managed including what role the acquiring authority would play. Appropriate powers would need to be granted to allow the acquiring authority to market the property and regulate how that is done.

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

It is unclear how measures to control the use of the property by the new owner would operate as an acquiring authority would not own the land. Economic development burdens can be imposed as title conditions in favour of an acquiring authority pursuant to section 45 of the Title Conditions (Scotland) Act 2003 for the purpose of promoting economic development.³² One option might be a mechanism to allow such a burden to be imposed to control use by the new owner.

We highlight that title conditions are not a guarantee. They may be varied, discharged etc by the Lands Tribunal of Scotland; there may be failures in drafting that make them unenforceable etc. Planning conditions could also be imposed.

We would welcome clarity from the Scottish Government on which parties it envisages buying property under a CSO. We would welcome clarity on whether, following the initial CSO, the Scottish Government intend to be able to continue to impose restrictions on who may own the property and what it may be used for?

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

We have no comments.

³² [Title Conditions \(Scotland\) Act 2003](#), section 45

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

It is unclear what would happen if the property does not sell. If the CSO has a limited timescale then the land would continue to be owned by the original landowner but the CSO would no longer be enforceable.

Compulsory Lease Orders

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

We have no comment.

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

We have no comment.

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.

We have no comment.

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.

A Compulsory Lease Order (CLO) would be a long-term contractual arrangement. As such, we would welcome clarity from the Scottish Government as to whom they envision acting as the landlord for that prolonged period and whether it is envisaged that local authorities would be the landlord. We also query whether the whole rent would be paid to the landowner, and under what deductions.

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.

We have no specific comments on the benefits of either CSOs or CLOs as a tool for tackling long-term vacant or derelict properties. CSOs could potentially be a tool for tackling vacant land if there is a market for the land and use is being held up by an uncooperative landowner.

We question whether there is a need for a reserved price for the property, to ensure that the landowner is not subject to unfair loss of compensation.

We consider that CLOs would be subject to a higher risk of a challenge under Article 1 Protocol 1 of the ECHR.

We would also welcome clarity from the Scottish Government regarding the general scope of CLOs.

11. Assessment of impacts

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

We have no comments.

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.

We have no comments.

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.

We have no comments.

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.

We have no comments.

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.

We have no comments.



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