



Factsheet: Compulsory Purchase (clauses 14-36)

Background

Effective regeneration of areas, and therefore the delivery of large amounts of new housing, may as a last resort require the compulsory purchase of land or property. The Government has made a number of changes to improve the compulsory purchase system in recent years, yet there is room for further reform of the process, which remains in part convoluted and complex.

Following the reforms introduced by Part 7 of the Housing and Planning Act 2016, the Bill makes further changes to the law on compulsory purchase. It will seek to do this by clarifying the statutory framework for compensation, which will not affect the fundamental principles on which it is assessed. The Bill will also make further technical changes, such as introducing a general power to obtain temporary possession of land and a requirement to bring compulsory purchase orders into operation within a set period of time. These measures were the subject of a public consultation which closed on 15 May. The Government has since responded to this consultation¹.

Introduction

This document covers individual fact sheets for each main element of the proposed improvements to the compulsory purchase system. The principal improvements fall into the following areas:

1. Temporary possession of land
2. Reform of the no-scheme principle
3. Repeal of Part 4 of the Land Compensation Act 1961
4. Time limit for confirmation notices
5. Compensation for disturbance (the Bishopsgate principle)
6. Greater London Authority and Transport for London: joint acquisition of land.

There is no fact sheet for clauses 32 to 36 because these contain technical amendments to the Housing and Planning Act 2016 (or legislation amended by that Act) and therefore contain no new policy.

January 2017

¹ <https://www.gov.uk/government/consultations/further-reform-of-the-compulsory-purchase-system>



Factsheet: Compulsory purchase - temporary possession (clauses 14 - 26)

What is temporary possession?

All acquiring authorities (e.g. local authorities and certain agencies, and statutory undertakers etc.) may need to enter and use land on a temporary basis to help deliver the scheme which is the subject of compulsory acquisition. For example, an acquiring authority may need land to store materials which are needed to construct the scheme - once the scheme is completed the land will no longer be required. There is currently a discrepancy in the availability of temporary possession powers. The power to use land temporarily is available under Special Acts², Transport and Works Act Orders³ and Development Consent Orders⁴ but not for Compulsory Purchase Orders, which can only authorise the permanent acquisition of land or the acquisition of permanent new rights. Also, where temporary possession powers currently exist, there is difficulty in assessing the compensation and there is no power to make any advance payment.

What is the policy hoping to achieve?

This measure is about making the compulsory purchase process fairer for all. It will give all acquiring authorities the power to take temporary possession of land where this is absolutely necessary to deliver their scheme. It will protect land owners and occupiers from extended periods of uncertainty as to the occupation and purchase of their land by defining the scope and operation of temporary possession powers. The measure will also include the power to make an advance payment of compensation.

Acquiring authorities will be required to justify the need for temporary possession in the same way as they have to robustly justify the need for compulsory acquisition. Compensation will also be payable to those affected and the power will be subject to safeguards, such as allowing owners and occupiers to require the acquiring authority to compulsorily acquire the land in certain circumstances.

Where are we now?

The power to use land temporarily is available under Special Acts, Transport and Works Act Orders and Development Consent Orders but not for Compulsory Purchase Orders, which can only authorise the permanent acquisition of land or the acquisition of permanent new rights. Therefore, where land is required on a temporary basis to carry out development for which a compulsory purchase order has been made, currently the acquiring authority must either:

- obtain a permanent right compulsorily over the land they need (usually providing an assurance letter to the landowner confirming that the land will only be required for a certain period of time); or
- enter into a commercial agreement with the landowner concerned.

² Special Acts are needed for very large schemes, such as the Crossrail Act 2008.

³ Orders under the Transport and Works Act 1992 can authorise guided transport schemes and certain other types of infrastructure project in England and Wales. A Transport and Works Act order can grant compulsory acquisition powers.

⁴ Development Consent Orders, under the Planning Act 2008, grant planning and other consents for nationally significant infrastructure projects, such as power stations and electricity transmission lines.



This can result in the acquiring authority being unable to obtain the land they need at a reasonable cost or the implementation of the scheme being delayed while negotiations take place.

Why is legislation needed?

Temporary possession interferes with people's use of property. It is important therefore, that the framework for temporary possession is set out in primary legislation just as it is for compulsory acquisition.

How do we see this working in practice?

This measure will give all acquiring authorities the power to enter and use land temporarily where it is necessary to deliver the scheme. The temporary possession will be subject to the same authorisation process as the compulsory acquisition. Acquiring authorities will need to set out how long and for what purpose the land is needed. Landowners and occupiers will be entitled to compensation with the right to request advance payments. There will be safeguards to protect the interests of owners and occupiers. For example, leaseholders will be able to require the acquiring authority to acquire the land rather than take temporary possession where that is the better option for them.

There will need to be variations to how these provisions operate in certain circumstances. These can be specified in regulations made under the power in clause 24. Further information on how the Government may use them has been published⁵.

Key questions & answers:

Acquiring authorities don't need temporary possession powers – can't they just use their compulsory purchase powers and give the land back when they've finished with it?

- Allowing acquiring authorities to take temporary possession of land where that is all that is needed may be less onerous than compulsory purchase. Our reforms will also give those whose land is being occupied temporarily greater certainty about when the land will be returned.
- If compulsory powers are used to acquire the land permanently, compensation must be paid on that basis. If it were to become surplus later and the original owner wanted to buy back the land there may be attendant transaction costs. Temporary possession would avoid any such costs.

Where acquiring authorities already have temporary possession powers (eg through Transport and Works Act Orders) they seem to be able to do what they want?

- The scope of the new temporary possession power and the compensation provisions will be clearly set out in the legislation giving all those affected greater certainty and clarity about what is allowed. Acquiring authorities will have to include details of exactly what land they need, what it is needed for and how long it is needed for at the outset and this will have to be justified through the authorisation process.

⁵ [Further information on how the Government intends to exercise the Bill's delegated powers](#)



Factsheet: Compulsory purchase – no-scheme principle (clause 27)

What is the No-scheme principle?

The ‘no-scheme principle’ is the longstanding principle that any increase or decrease in the value of the land which is solely attributable to the particular purpose for which it was acquired, and the need for the land for that purpose, is to be disregarded when assessing compensation. The principle has been interpreted in a number of complex and often contradictory ways over the years and the lack of clarity around this key principle makes it very difficult to establish the basis for calculating market value in some cases. This measure will codify the principle in statute.

What is the policy hoping to achieve?

This measure is intended to achieve a clearer way to identify market value of land by establishing the principle of the ‘no scheme world’ fairly and effectively in the valuation process by codifying it in statute and introducing a:

- clearer definition of the project or scheme that should be disregarded in assessing value
- clearer basis for assessing whether the project forms part of a larger ‘underlying’ scheme that should also be disregarded

The new statutory definition of the ‘scheme’ will also allow the identification of specified transport infrastructure projects that are to be disregarded within a defined area, over a defined period of time.

The Government is not trying to change the existing fundamental principle that compensation should be based on the current market value of the land.

Where are we now?

The no-scheme principle is currently set out in various statutory provisions as interpreted by over 100 years of sometimes conflicting case law.

Why is legislation needed?

Primary legislation is required to codify the no-scheme principle into a clearer system.

How do we see this working in practice?

The no-scheme principle is defined and a series of clear rules created, to establish the methodology of valuation in the no-scheme world. We have also clearly set out how to identify the ‘scheme’ that must be disregarded. The default position is that the scheme to be disregarded is the scheme of development underlying the compulsory acquisition (usually a compulsory purchase order). If the acquiring authority wants to assert that the ‘scheme’ covers a larger area than the underlying scheme, it can do so if it is identified at the outset in the authorising instrument and any documents made available with it. If there is a dispute as to what is the ‘scheme’ to be disregarded then the Upper Tribunal can determine this as a question of fact.

Special provision is made for new towns, urban development areas and Mayoral development areas, which establishes that all development within the designated area forms part of the ‘scheme’ to be disregarded. This means that the value of later acquisitions will not be influenced by earlier development.



Special provision is also made for regeneration or redevelopment schemes made possible by 'relevant transport projects'. New transport projects will often raise land values around nodes or hubs. Where this makes regeneration or redevelopment attractive, but the private sector is unable to bring a scheme forward, public authorities would have to step in. In these circumstances, the regeneration or redevelopment scheme will be able to include the relevant transport project as part of the 'scheme' to be disregarded in the no-scheme world. The land will therefore be valued without the uplift caused by the public investment in the transport project. This is subject to four safeguards:

- the prospect of regeneration or redevelopment must have been included in the initial published justification for the transport project;
- the regeneration or redevelopment scheme must be in the vicinity of the transport project;
- any compulsory purchase for regeneration or redevelopment must be authorised within five years of the transport project coming into use; and
- if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 (the first day after the Bill was introduced into Parliament) the underlying scheme will not be treated as if it included the transport project.

Key questions and answers:

Where did the ideas for this reform come from?

- This codification and simplification is based on the Law Commission's "Rule 13" from their 2003 Report⁶ – reconsidered in the light of subsequent case law.

Compensation should be based on existing use value not market value – why haven't you changed this?

- Compensating owners at less than market value is inherently unfair and is unlikely to be compatible with the European Convention on Human Rights
- It would drive up opposition to new development which needs compulsory purchase - slowing down the process and increasing costs
- The 'no-scheme' provision in the Bill is intended to simplify and speed up the calculation of compensation, not to change the basis on which compensation is assessed
- The fundamental principle that compensation should be paid at **market value** in the absence of the scheme underlying the compulsory purchase remains
- Clause 27 is a significant reform – it will make negotiations over compensation easier and faster by setting out a clearer and fairer way to identify the scheme that must be disregarded before assessing compensation

⁶ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc291_Towards_a_Compulsory_Purchase_Code1.pdf



What planning assumptions should be made in respect of the ‘no-scheme world’ under the new arrangements? Will it still be possible to apply for a certificate of appropriate alternative development?

- The planning assumptions will remain the same as now – new section 6A(10) of the Land Compensation Act 1961 (inserted by clause 27(3)) contains a cross reference to the planning assumptions in section 14 of the 1961 Act which provide that actual or prospective planning permission can be taken into account when assessing the market value of land as part of the exercise of assessing compensation.
- Section 14 also creates an assumption that the value of land could take into account planning permission for other appropriate alternative development. It will still be possible to apply for a certificate of appropriate alternative development under section 17 of the Land Compensation Act 1961 under the new rules.

Won’t the ‘relevant transport project’ provisions be unfair to those buying land near (for example) the stations of proposed new railways?

- Any uplift in value in these areas is likely to be caused by the public expenditure on new or improved transport links: it is therefore an unearned windfall to the landowner, which the public purse ought not to pay for again.

The ripple effect of transport projects can be widespread. Isn’t it unfair on those with land inside a regeneration scheme that those just outside will be able to reap the benefit of the uplift in value?

- Any proposal which has a ‘red line’ will inevitably mean that there will be different effects on each side.

Why do you specify both ‘regeneration’ and ‘redevelopment’? Isn’t it all redevelopment?

- This is to align the provision with the powers to acquire land of the bodies likely to undertake these schemes. The Homes and Communities Agency (Greater London Authority in London), Urban Development Corporations and Mayoral Development Corporations can acquire land for ‘regeneration’. Local planning authorities have the power to acquire land for ‘development, redevelopment or improvement’.



Factsheet: Compulsory purchase – Repeal of Part 4 of the Land Compensation Act 1961 (clause 28)

What is Repeal of Part 4 of the Land Compensation Act 1961?

Part 4 of the Land Compensation Act 1961 provides that in certain circumstances a person whose land has been acquired compulsorily (claimant) may be entitled to claim additional compensation, if within 10 years, planning permission is granted for development on the land which causes an increase in its value which was not taken into account in the original assessment of compensation. Compensation under the ordinary rules reflects the full market value of the land at the valuation date, with all its present and future potential, including any hope value for future development. Under Part 4, a claimant is treated as though they have retained their investment in the acquired land, until any potential development value has become a certainty. No such expectation would arise on an ordinary sale in the private market. The Law Commission recommended, and the Government agrees, that it should be repealed on the basis that it is anomalous and a little used right.

What is the policy hoping to achieve?

The current provision introduces an element of unknown risk and uncertainty for the acquiring authority in certain compulsory purchase order cases. This results in increased costs (such as payments of insurance premiums) for acquiring authorities. It also provides the opportunity for an unearned windfall for claimants. Repealing the provision will make the compulsory purchase process clearer and fairer for all.

The Government is not undermining the existing fundamental principle that compensation should be paid at full market value, with all its present and future potential, including any hope value for future development disregarding the scheme underlying the compulsory purchase. This measure is about removing the risk and uncertainty that this anomalous provision creates.

Where are we now?

The current provision has been in place for a number of years.

Why is legislation needed?

Primary legislation is required as this policy is to repeal a statutory provision.

How do we see this working in practice?

Although very rarely used, Part 4 introduces an element of unknown risk and uncertainty for the acquiring authority in certain compulsory purchase order cases. It results in increased costs, such as payments of insurance premiums, for acquiring authorities. Its repeal will reduce the risk and uncertainty for acquiring authorities while still maintaining the principle of fair compensation to claimants.

Key questions and answers:

Why do we need to do this?

- Compensation under the ordinary rules is intended to reflect the full market value of the land at the valuation date, with all its present and future potential, including any hope value for future development. The claimant is then free to use the money for alternative investments. There is no obvious reason why



he should be treated as though he had retained his investment in the acquired land, until any potential value had become a certainty. No such expectation would arise on an ordinary sale in the private market, in the absence of a specific provision in the contract of sale for 'clawback' of future development value.

Won't this encourage acquiring authorities to not disclose their true motive for seeking to compulsory purchase land until after the order is confirmed?

- An acquiring authority must demonstrate that they have a compelling case in the public interest to acquire the land for the scheme underlying their compulsory purchase order, including that the scheme is deliverable before the compulsory purchase order is confirmed. When compensation is being assessed, the prospects of more valuable planning permissions being obtained should be picked up by the reformed planning assumptions, which make specific reference to the market.

What about land acquired by regeneration agencies, where the shape of future development isn't known?

- Part 4 has never applied to New Towns, Urban Development Corporations or the Homes and Communities Agency.



Factsheet: Compulsory Purchase - Time limit for confirmation notices (clause 29)

What is time limit for confirmation notices?

To bring a compulsory purchase order into effect once it has been confirmed the acquiring authority (e.g. local authorities and certain agencies, and statutory undertakers etc.) needs to serve a confirmation notice on interested persons, to attach a confirmation notice on or near the land; and to publish it in the local press. The date that the confirmation notice is published in the local press is:

- the date that the compulsory purchase order becomes operative;
- the start of the six week legal challenge period; and
- the start of the three year period within which the compulsory powers must be exercised.

Currently, there is no statutory requirement for confirmation notices to be served or published within a specific timescale. Whilst most acquiring authorities are keen to bring a confirmed compulsory purchase order into effect at the earliest opportunity, for a variety of reasons, others delay publishing the confirmation notice. This measure will introduce a statutory timeframe for publishing the confirmation notice.

What is the policy hoping to achieve?

Delays in publishing confirmation notices can prolong the uncertainty for those affected by the compulsory purchase order and delay the delivery of much needed new housing or other development. If there is too much delay in confirming the compulsory purchase order it could increase the risk of a successful legal challenge should the issues that were relevant in consideration of the compulsory purchase order become out-of-date. This measure is therefore, intended to speed up the compulsory purchase order process, reduce the uncertainty for claimants and the risk of legal challenge.

The Government is not trying to impose a 'one size fits all' solution. We consider that 6 weeks is a reasonable timescale for publication of the confirmation notices in most cases. However, we recognise that there may be particular cases where there is a genuine need to have a longer period. Where this is the case, the acquiring authority and the confirming authority will be able to agree an appropriate timescale.

Where are we now?

Prior to 2004, section 15 of the Acquisition of Land Act 1981 required acquiring authorities to publish a notice stating that the order has been confirmed in local newspapers '...as soon as may be...'. This requirement was lost when section 15 was amended in 2004. At the time, it was assumed that acquiring authorities would always be keen to make their compulsory purchase orders operational, having spent time and money to make one and get it confirmed. Unfortunately, this has proved not to be the case with some compulsory purchase orders and so we are introducing a statutory timeframe.

Why is legislation needed?

The process for serving and publishing confirmation notices is set out in primary legislation. That process needs to be amended to introduce a time limit for serving and publishing confirmation notices.



How do we see this working in practice?

At present there is no statutory time limit for an acquiring authority to serve and publish the confirmation notice which brings the compulsory purchase order into effect and triggers the start of the 6 week legal challenge period and 3 year period within which the compulsory purchase order powers must be exercised. Under this new measure, acquiring authorities will be required to serve and publish the confirmation notice within 6 weeks (or a longer period if agreed between the confirming authority and the acquiring authority) of the compulsory purchase order being confirmed. In default, the new measure provides for the confirming authority to issue the confirmation notices and recover the costs of so doing from the acquiring authority. This will speed up the compulsory purchase order process and reduce the uncertainty faced by those who have the threat of compulsory purchase hanging over their heads.

Key questions and answers:

Why do some acquiring authorities delay serving and publishing confirmation notices?

- Acquiring authorities can delay confirmation for a variety of reasons. For example, for financial reasons, because the acquiring authority is continuing negotiations with objectors and may be considering whether or not to use the compulsory purchase order to acquire the land.

Why is this a problem now?

- Prior to 2004, section 15 of the Acquisition of Land Act 1981 required acquiring authorities to publish a notice stating that the compulsory purchase order has been confirmed in local newspapers ‘...as soon as may be...’. However, when section 15 was revised in 2004 to include site notices, this requirement was lost. At the time, it was assumed that acquiring authorities would always be keen to make their compulsory purchase orders operational, having spent time and money to make one and get it confirmed. Unfortunately, this has proved not to be the case with some compulsory purchase orders and so we are introducing a statutory timeframe.



Factsheet: Compulsory Purchase - compensation for disturbance (clause 30)

What is compensation for disturbance?

Part of the compensation payable to people whose land is taken by compulsion is for the costs and losses incurred as a result of being disturbed from occupation of their land. Under the current arrangements, there is an anomaly where businesses with minor⁷ or unprotected⁸ tenancies with an interest in the land taken are entitled to less generous compensation for disturbance of their business than licensees⁹ with no interest in the land taken.

What is the policy hoping to achieve?

The Government wants to ensure that where land is acquired by compulsion the compensation entitlement is fair for all business tenants. We believe that the current difference in how compensation for disturbance is calculated is not justified. This measure therefore, removes the anomaly and ensures that disturbance compensation for all business tenants and licensees is assessed on the same basis.

The Government is not trying to reduce the compensation payable in these cases. This measure will align the disturbance compensation entitlement for those businesses with minor or unprotected tenancies with the more generous basis for compensation payable to licensees.

Where are we now?

The current provisions relating to the assessment of compensation for disturbance have been in place for a number of years.

Why is legislation needed?

The current provisions relating to the assessment of compensation for disturbance are set out in primary legislation. To amend those provisions to align the compensation entitlement for all tenants and licensees we need to amend existing legislation.

How do we see this working in practice?

At present, if land occupied by a licensee or a business with a protected tenancy¹⁰ is subject to compulsory acquisition the legislation allows:

- account to be taken of the period they could reasonably have expected the land to be available for the purposes of their trade or business (licensees); or
- their right to renew the tenancy (protected tenancies).

When assessing the compensation entitlement for disturbance of their business. However, for those with minor tenancies or unprotected tenancies with a break clause or a short unexpired term, case law (*Bishopsgate Space Management v London Underground* [2004] 2 EGLR 175) has held that for these purposes it has to be assumed that the landlord would terminate the tenant's interest at the first available

⁷ Minor tenancy - one with less than a year left to run, or a tenancy from year to year

⁸ Unprotected tenancies - those contracted out of Part 2 of the Landlord and Tenant Act 1954

⁹ Licensees - a person in lawful possession but with no further interest in the land

¹⁰ Protected tenancy - the right to renew the tenancy under Part 2 of the Landlord and Tenant Act 1954



opportunity following notice to treat, whether or not that would happen in reality. This measure will provide that, in future, the assessment of compensation payable to those with minor or unprotected tenancies will be on same basis as for licensees and protected tenants. Account will be taken of the period for which the tenancy may reasonably have been expected to continue for the purposes of their trade or business.

Key questions and answers:

Won't this mean that acquiring authorities will have to pay more compensation?

- This measure may mean that acquiring authorities are liable to pay more compensation. However any increased costs are unlikely to be significant in the context of the overall costs of the scheme for which the land is being acquired.
- This measure is about being fair to all claimants. The current situation where some businesses with no interest in the land are entitled to more generous compensation for the disturbance than businesses with an interest in the land is unfair.

Factsheet: Compulsory purchase – Greater London Authority and Transport for London: joint acquisition of land (clause 31)

What is measure on the Greater London Authority and Transport for London: joint acquisition of land about?

Currently, to take forward a comprehensive development scheme which also involves improved transport infrastructure in London, two compulsory purchase orders must be promoted; one for the transport related elements of the scheme by Transport for London; and another by the Greater London Authority for the regeneration element. The artificial division of the project adds complexity and potential delay to the process, it discourages Transport for London from maximising the amount of housing or other development associated with transport proposals and it can cause confusion to third parties. This new measure will allow the Greater London Authority and Transport for London to promote joint compulsory purchase orders for transport and regeneration purposes on one site.

What is the policy hoping to achieve?

The Further Alterations to the London Plan¹¹ (published March 2015) identify a housing need in London of between 49,000 and 62,000 new homes per annum between 2015 and 2026. It is, therefore, essential that we speed up the building process. This measure will make it easier to bring forward comprehensive development schemes in London which need compulsory purchase increasing housing development and other regeneration opportunities and speeding up the development process.

The Government is not trying to extend Transport for London and the Greater London Authority's powers to acquire land by compulsion. This is about allowing them to use their existing powers more effectively by enabling them to promote joint compulsory purchase orders. They would still need to demonstrate a compelling need in the public interest for the joint compulsory purchase order.

Where are we now?

Currently, to take forward a comprehensive development scheme which also involves improved transport infrastructure in London, two compulsory purchase orders must be promoted; one for the transport related elements of the scheme by Transport for London; and another by the Greater London Authority for the regeneration element.

Why is legislation needed?

Transport for London and the Greater London Authority's powers to acquire land by compulsion are set out in primary legislation. This primary legislation needs to be amended to allow them to promote joint orders.

How do we see this working in practice?

This measure will allow the Greater London Authority and Transport for London to bring forward comprehensive development schemes more effectively. For example, a joint transport and regeneration compulsory purchase order could be used to

¹¹ <https://www.london.gov.uk/what-we-do/planning/london-plan/past-versions-and-alterations-london-plan/further-alterations-london>



deliver the necessary land for a new transport interchange and housing in a sustainable location. At present, the artificial division of the comprehensive development scheme into two compulsory purchase orders enables objectors to challenge whether the land is primarily required for regeneration/redevelopment use or transport use. The need for two separate compulsory purchase orders may make it difficult for Transport for London and the Greater London Authority to argue that the “compelling need in the public interest” test is met for individual schemes but the need could be justified for the combined schemes.

Key questions and answers:

There are other acquiring authorities in London with sufficient powers to allow regeneration and transport schemes – isn’t another process unnecessary?

- This measure is necessary to allow Transport for London and the Greater London Authority to promote joint compulsory purchase orders with more than one purpose.

Isn’t the practical effect of this measure extending acquiring authorities’ powers beyond the minimum necessary to carry out their statutory functions?

- No, this measure won’t give either Transport for London or the Greater London Authority more compulsory purchase powers. This measure is just about enabling them to make more effective use of the powers they have by allowing them to work together to promote a joint multi-purpose compulsory purchase order.

What sorts of transport projects are envisaged?

- These will be the projects covered by Transport for London’s powers under Schedule 11 to the Greater London Authority Act 1999. These may be transport interchanges and improvements, bus stations etc. They would not include large-scale projects that require hybrid Acts of Parliament (eg Crossrail or Crossrail 2) or Transport and Works Act Orders (eg Battersea Northern Line extension).

January 2017