

Title: Compulsory purchase reform	Impact Assessment (IA)
IA No:	Date: 27/10/2015
Lead department or agency: Department for Communities and Local Government	Stage: Consultation
Other departments or agencies: HMT	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options

RPC Opinion: Green

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£m	£m	Yes IN

What is the problem under consideration? Why is government intervention necessary?

Compulsory purchase powers are an important tool for assembling land needed to help deliver social, environmental and economic change. Used properly, compulsory purchase can contribute towards effective regeneration. A number of changes have been made to improve the system in recent years and the government consulted on a further package of reforms earlier this year which are being taken forward in the Housing and Planning Bill. However, a number of respondents to that consultation felt there was a need to go even further, so that compensation better reflects the economic losses to affected parties and the system and legislation are simplified.

What are the policy objectives and the intended effects?

The government has developed a further package of technical improvements to make the compulsory purchase process clearer, faster and fairer for all parties with the aim of bringing forward more brownfield land for development. These measures will be the subject of a further consultation to be launched in late 2015 or early 2016. Implementation of the proposals will require primary legislation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing

Option 1: Implement a further package of reforms to compulsory purchase powers

We are keen to use non-regulatory approaches wherever possible. However, for the elements included in this package only amendments to legislation can deliver the proposed reforms.

Further information on options considered is set out in the detailed commentary.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 12/2021

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Brandon Lewis

Date: 18/12/15

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

As set out in the evidence base, we do not have the information to estimate the scale of the changes prior to consultation. We will use this to seek the required evidence from stakeholders.

Other key non-monetised costs by 'main affected groups'

There are increases in the compensation paid by acquiring authorities to the commercial tenants of affected properties as a result of this option. There are decreases in the compensation paid to land owners and landlords of commercial property. These are transfers between the relevant groups. Around 30% of orders are made by or on behalf of private businesses, but we expect there to be a net cost to business as a result of reductions in compensation.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

As set out in the evidence base, we do not have the information to estimate the scale of the changes prior to consultation. We will use this to seek the required evidence from stakeholders.

Other key non-monetised benefits by 'main affected groups'

There are increases in the compensation paid by acquiring authorities to the commercial tenants of affected properties as a result of this option. There are decreases in the compensation paid to land owners and landlords of commercial property. These are transfers between the relevant groups. Around 30% of orders are made by or on behalf of private businesses, but we expect there to be a net benefit to the public sector as a result of reductions in compensation.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The impact of this proposal on different stakeholders will be established after consultation on the basis of information received.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	IN

Evidence Base (for summary sheets)

OVERVIEW OF PACKAGE OF PROPOSALS

1. Compulsory purchase powers are an important tool for assembling land needed to help deliver social, environmental and economic change. Used properly, compulsory purchase can contribute towards effective regeneration. Because the process interferes with the human rights of those with an interest in the land affected, there must be adequate safeguards in place to protect those rights.
2. A number of changes have been made to improve the system in recent years and the government consulted on a further package of reforms earlier this year which are being taken forward in the Housing and Planning Bill.
3. In responding to the earlier consultation a number of respondents expressed the view that there was a need to go further and they put forward a range of ideas on what more could be done.
4. The government has considered these and other suggestions from the sector and agrees that it would be helpful to bring forward a further package of technical process improvements. These further proposals are intended to make the compulsory purchase process clearer, faster and fairer with the aim of bringing forward more brownfield land for development. These proposals build on the earlier reforms but comprise an entirely new package of measures and will therefore, be subject to a separate public consultation to be launched in early 2016. Primary legislation will be required to implement most of these further reforms if they are taken forward.
5. In summary, the package of proposals is aimed at achieving the following outcomes:
 - a) That the system will be **clearer** because the measures will:
 - i. repeal redundant legislation;
 - ii. set out a clearer way to identify market value;
 - iii. define the 'no scheme' world for orders made by Mayoral Development Corporations;
 - iv. simplify the process by enabling transport and regeneration bodies to make combined orders
 - b) That the system will be **fairer** for those whose interests are compulsorily acquired (claimants) because the measures will:
 - i. ensure that compensation due to those with an interest in the land arising from minor tenancies is calculated on the same basis as others who are in lawful possession but have no further interest in the land;
 - ii. ensure that those claimants who suffer the greatest inconvenience (ie occupiers) receive the greater share of loss payments;
 - iii.
 - iv. encourage prompt payment of advance payments of compensation by introducing penalty interest rates on late payments;
 - v. ensure that claimants in properties with rateable values higher than the current threshold are not systematically excluded from issuing blight notices in areas of the country with high land values, such as London
 - c) That the system will be **fairer** for acquiring authorities because:
 - i. they will all have the power to temporarily use land for the purposes of delivering their scheme
 - d) That the system will be **faster** for all parties because:
 - i. there will be a new legislative requirement to bring compulsory purchase orders into operation within a certain period
6. It is important to note that there is strong cross-sectorial support for making the compulsory purchase process clearer, fairer and faster. Just before the Autumn Statement 2014, the British Chamber of Commerce called on the Government to take steps to speed up infrastructure projects, including

better use of compulsory purchase powers. Following the Autumn Statement 2014, the British Property Federation strongly welcomed the Chancellor's announcement calling for Government to work with partners to identify improvements to make the system more transparent, predictable and workable. The response to the consultation on the Phase I reform proposals earlier this year was very positive with a number of respondents in favour of further reform. Our informal testing of these emerging proposals with experts from the sector suggests that this package of proposals will be broadly welcomed by interested parties.

7. There are two main groups who will be affected by these proposals:

- **acquiring authorities** – these can be either public sector bodies (mainly local authorities) or private sector bodies (mainly utilities companies). Average figures for compulsory purchase orders in the last 3 years (2012, 2013 and 2014) show that of an average of 167 submitted per year, only 16 were from private sector acquiring authorities. However, we estimate some 33 compulsory purchase orders made by local authority acquiring authorities are done in collaboration with developers ie there is an indemnity agreement between the local authority and the developer and any costs incurred by the authority are passed directly to the developer.
- **claimants ie those who interests who are being compulsory purchased** – within this group there are two main types – businesses and residents. Each compulsory purchase order will have a unique array of business and residential interests and we do not hold detailed information on the type and nature of interests being acquired. Based on the experience of the National Planning Casework Unit, which is the Secretary of State's decision-making branch, in handling around 75% of compulsory purchase orders each year, we estimate that around 10% involved business as the only claimants; a further 20% involved some (but not all) claimants as private business; with the remainder mostly involving households. How we arrived at these estimates is explained in more detail on pages 15-16. The National Planning Casework Unit, as the decision branch, receives all compulsory purchase orders submitted to the Secretary of State for Communities and Local Government for confirmation; all objections to the compulsory purchase order; arranges inquiries with the Planning Inspectorate; receives the Inspectors' Reports; and makes decisions on whether to confirm compulsory purchase orders on behalf of the Secretary of State.

8. There are, therefore, interests on both sides of these proposed changes. So a change which might result in cost savings or benefits to acquiring authorities might impose a cost on a claimant whose interest in land is being acquired and *vice versa*. In our commentary on each measure, we will examine the likely impact on both acquiring authorities and claimants, drawing upon the limited detailed information that is available.

9. In terms of the quantitative impact of these proposals, we have undertaken a review of available evidence about the number of orders submitted each year across all Whitehall departments. In addition, we have worked closely with the National Planning Casework Unit (who deal with the majority of orders) to obtain information about timescales for handling casework. There is no source of comprehensive information about the stages in the process once the order has been confirmed, (when central government involvement in the process has stopped). Nor is there comprehensive information on the levels of compensation paid. This is because the level of compensation paid is a matter for the parties concerned and is not a matter of public record, unless it has been determined by the Upper Tribunal (Lands Chamber). Only a limited number of cases are dealt with each year and even where a case has been so determined, it will not necessarily cover all the compensation paid for the compulsory purchase order, especially for large schemes.

10. While many of these proposals arise from suggestions put forward by respondents to the consultation earlier this year, those respondents did not provide any evidence to support the need for these further changes in their responses.

11. Attempting to collect comprehensive information would involve disproportionate cost and may not be obtainable in some instances. However, we propose the following steps to seek to better quantify the likely level of impact of these measures:

- a) consultation on the draft proposals - we propose to use the consultation paper not just to seek views on proposals but also to test our assumptions and initial conclusions on the impacts of **all** the proposals, and to seek further evidence. (NB: we have used similar assumptions to those used in the March 2015 consultation as these were supported by respondents.)
- b) impacts seminar - during the consultation exercise we propose to hold a seminar of leading practitioners which is specifically focussed on testing our understanding of the likely impact of these measures and the assumptions underpinning that understanding
12. We have considered whether there would be any familiarisation costs associated with these proposals and do not expect there to be familiarisation costs for acquiring authorities or claimants. This is because:
- **acquiring authorities** – in many cases, an acquiring authority would not have carried out a compulsory purchase order before, or at least not recently enough to not need to review the legislation thoroughly. Given the importance of compulsory purchase orders in assessing the viability of acquiring authorities' projects and the bespoke nature of compulsory purchase orders, even in instances where an acquiring authority or an individual in an acquiring authority has carried out a compulsory purchase order before, we would expect them to need to consult the legislation thoroughly regardless of whether or not it had changed. Any costs to an acquiring authority of familiarising itself with the regulations would therefore, also be incurred in the counterfactual. This is consistent with the arguments made in the validation impact assessment on reducing planning regulations to support housing, high streets and growth (ref. RPC14-FT-CLG-2147(2)).
 - **claimants** – it would be very unlikely that a claimant would have been subject to a compulsory purchase order before or at least recently enough to not need to review the legislation thoroughly. Therefore, as with acquiring authorities, any costs to a claimant of familiarising itself with the legislation would also be incurred in the counterfactual.

We will however, seek to confirm this is the case through the consultation.

13. Acquiring authorities and claimants in most cases make use of professional advisors. We do not expect the amount of professional advice required or the associated costs of this advice to acquiring authorities or claimants to change as a result of the proposed changes.

INDIVIDUAL MEASURES IN THE PACKAGE

ALLOWING MORE AUTHORITIES TO BRING FORWARD COMPULSORY PURCHASE ORDERS FOR JOINT PURPOSES

14. The Government is keen to increase housing development on surplus or underused public sector land.
15. Transport for London often has to compulsorily purchase land to bring forward transport schemes; however, if they want to compulsorily acquire land for regeneration purposes (outside of Transport Works Act Order, Development Consent Order or specific Act to bring a large infrastructure project forward) they face significant difficulties. This is because public bodies can only use their compulsory purchase powers in relation for their statutory function. In the case of Transport for London this is transport and not regeneration.
16. 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 within any new development proposals and it can cause confusion to third parties.
17. We consider that the best way to ensure only one compulsory purchase order is required is to allow Transport for London and the Greater London Authority to promote a joint compulsory purchase order for transport and regeneration purposes for one site.
18. In summary, these proposals should:
 - make it easier to bring forward comprehensive development schemes;
 - significantly speed up the development process;
 - reduce the administrative burden by bringing forward one compulsory purchase order instead of two;
 - reduce confusion for claimants and third parties by having only one compulsory purchase order

Proposals for change

19. At the current time only principal local authorities are capable of promoting a joint compulsory purchase order (on cross-boundary sites) under the Local Government Act 1972. We are proposing to confer similar powers on the Greater London Authority and Transport for London. Such a change may be mirrored in new combined authorities with mayors where similar bodies and powers exist. This proposal will require primary legislation.

Expected level of impact

20. This will be beneficial for acquiring authorities as it will enable Greater London Authority/Transport for London to promote schemes that would otherwise be too complicated or uncertain to bring forward. This might lead to a few more compulsory purchase orders coming forward than at present.
21. The impact on claimants will be minimal, on the assumption that the only change is to combine two compulsory purchase orders currently submitted at the same time for a comprehensive scheme. If the number of compulsory purchase orders increased, so would the number of claimants. However, there would be no net impact on such claimants as they would be fully compensated for any losses.
22. These changes will therefore be neutral in terms of impact on business, as the relevant acquiring authorities are public sector bodies. There is a positive wider economic impact from more efficient use of compulsory purchase orders.

MAKING PROVISION FOR TEMPORARY POSSESSION

23. All acquiring authorities may need to use land on a temporary basis eg to store materials needed for the development which is the subject of the compulsory purchase order. However, compulsory purchase orders only allow for the permanent acquisition of land or the acquisition of permanent new rights. Therefore, where land is required on a temporary basis currently the acquiring authority must either:

- obtain a permanent right 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

The risk is that they cannot obtain the land they need at a reasonable cost or that the implementation of the scheme is delayed while negotiations take place.

24. The power to use land temporarily is available under Special Acts, Transport and Works Act Orders and is regularly sought in Development Consent Orders. However, the scope of the powers available and how they should be used is not clearly defined in the legislation – it relies on either precedent or model clauses. There is also an associated issue concerning the assessment of compensation. At present it is only done on a “loss or damages incurred” basis and there is no power to make advance payments.

25. We therefore, propose to:

- give all bodies with compulsory purchase powers the same power to temporarily use land for the purposes of delivering their scheme;
 - provide that the basis for compensation is clearly defined and also how it should be paid
- This will require primary legislation.

Expected level of impact

26. We do not have accurate figures on the proportion of compulsory purchase orders where temporary possession is required. We would expect that there may some increase in the number of temporary possessions.

27. Acquiring authorities – impact is likely to be beneficial because:

- currently, acquiring authorities often work round the issue by acquiring the land (or a right over it) permanently, but providing assurance to the owner that the land will be returned after a certain period. Alternatively they have to opt for a sub-optimal construction approach. Providing for temporary possession should therefore allow acquiring authorities to reduce project costs and speed up project delivery;
- setting out the basis of compensation may reduce payments, because acquiring authorities would not be at risk of making ‘ransom payments’ where claimants attempt to extract more of the value of the development than their own losses;
- less time wasted negotiating with landowners.

28. Claimants – the impact is likely to be marginally beneficial as they will:

- have greater certainty that their land will be returned within a certain period;
- obtain compensation for temporary works more quickly

However, claimants will be less able to extract ‘ransom payments’ from acquiring authorities.

29. Although some acquiring authorities are, or act on behalf of, private sector bodies, we expect the proposed changes will have a marginal cost impact on business by allowing a more focussed and streamlined approach. The gross cost to claimants will be the value of 'ransom payments' currently extracted when negotiating temporary use. We expect that these are small and limited in number, but we will consult on this point. As this loss represents a reduction in an economic rent – an amount extracted from the system in excess of economic costs - it is unlikely to be burdensome for the affected businesses. There is a positive wider economic impact from more efficient use of compulsory purchase orders.

NEW LEGISLATIVE REQUIREMENT TO BRING ORDERS INTO OPERATION

30. Once a Secretary of State has confirmed a compulsory purchase order it is returned to the acquiring authority to be brought into effect under section 15 of the Acquisition of Land Act 1981. A confirmation notice is required to be served on interested persons and published in the local press. The date that notice is published in the press is the date that the order becomes operative and is the start of the six week challenge period, during which a person aggrieved by an order may apply to the Court under section 23 of the Acquisition of Land Act 1981 and also the start of the three year period within which the compulsory powers must be exercised.

31. Whilst most acquiring authorities are keen to bring a confirmed order into effect at the earliest opportunity, there is no statutory requirement for a notice to be published within a specific timescale. There are some acquiring authorities which, for differing reasons, delay publishing the notice. This could be for financial reasons, because the acquiring authority is continuing negotiations with objectors, or are even reconsidering the need for an order. A delay in bringing an order into effect prolongs the uncertainty faced by those with the threat of an order hanging over them and can stagnate development proposals. If the notice of publication is delayed for several months this could increase the risk of a successful challenge to the order should the issues that were relevant in consideration of the order have become out-of-date.

32. We propose therefore, to introduce a statutory period of [6 weeks] from the date of confirmation of an order for an acquiring authority to publish notice of confirmation. This proposal will require primary legislation.

Expected level of impact

33. Acquiring authorities – there will be no measurable impact. It will not affect the date possession is taken as it just starts the 3 year implementation period running. Acquiring authorities will still be able to continue negotiating with claimants to reach a better compensation settlement.

34. Claimants – impact will be minimal, although claimants will have greater certainty on the timescale by when an order is likely to be brought into effect.

35. Overall the impact of this proposal is expected to be de minimis.

CLEARER WAY TO IDENTIFY MARKET VALUE

36. A core principle of the compulsory purchase process is that compensation is offered at market value in the absence of the scheme underlying the compulsory purchase order.

37. Successive case law has sought to clarify the basis upon which the land valuation in these circumstances is calculated, based around the principle of a “no scheme world”. The basic premise is that valuation of the land being compulsorily purchased should disregard any land value uplift or decrease that is caused by the proposed scheme. The legislation provides that the project underlying the compulsory purchase order is assumed to have been cancelled on the launch date.

38. The technique of assuming a cancellation date for the underlying project is now familiar to practitioners. The no scheme world principle has, however, been interpreted in a number of complex and often contradictory ways in over 100 years of case law. The lack of clarity around this key principle may make it very difficult to establish the basis for calculating market value in some cases.

This causes significant delays and uncertainty in the determination of compensation as various different interpretations of case law and how they should be applied in each circumstance colour negotiations and may require a reference to the Upper Tribunal.

39. We propose therefore, to establish the principle of the 'no scheme world' fairly and effectively in the valuation process by codifying it in statute and to provide a clearer definition of what constitutes 'the scheme' in this context.
40. A further issue arises when a regeneration scheme is facilitated by transport improvements paid for by the public sector. Land values will rise locally, which means that the compensation for land required for regeneration will have been inflated by the transport investment, so the public pays twice and landowners receive a windfall gain. The reason for this is that the transport project will be pre-existing and so form part of the no-scheme world for the regeneration project.
41. As a consequence of this, we are also seeking views on a proposition that a named transport project can be deemed to be part of a subsequent development project which is only viable because of the new transport infrastructure
42. The intended effect of these changes is to make compensation negotiations less contentious and faster and therefore, administratively cheaper. We also want to ensure that the public benefits from increases in land values arising from investment in transport infrastructure rather than private interests.
43. These proposals will require primary legislation.

Expected level of impact

44. The impacts for the key proposals under this element of the package are set out below.
45. Establishing the principle of the 'no scheme world' and clarifying the definition of what constitutes a scheme, will not change the amount of compensation which is paid but will make the process of agreeing the compensation easier. It will benefit both acquiring authorities and claimants by reducing the costs associated with negotiating and reaching agreement.
46. In terms of potentially widening the definition of what constitutes the scheme to include transport infrastructure projects, the impacts will vary.
47. Acquiring authorities – the proposal to ensure that the public and not private interests benefit from transport infrastructure projects will benefit acquiring authorities because they will have to pay less compensation or in some cases no more compensation than they would otherwise have had to.
48. Claimants – the proposal to ensure that the public and not private interests benefit from transport infrastructure projects will mean that potential claimants will receive less compensation than they would otherwise have done. In addition, many of the acquiring authorities bringing forward these regeneration schemes will be backed by private sector business (who will therefore pay less compensation). There is no readily accessible information on the number of regeneration compulsory purchase orders backed by private sector business. Based on historical activity, we would expect around 10 transport projects per year to be associated with regeneration. Around 20% of all public sector compulsory purchase orders are backed by a business; although we expect that fewer, if any, transport compulsory purchase orders will be backed in this way. However, we will seek to confirm the position through the consultation. In some cases, we would expect potential claimants to bring forward alternative regeneration plans in order to realise the value of their land, rather than passively waiting for public intervention, though we recognise that the benefits of change in behaviour should be treated as indirect.
49. These measures are likely to impose a net cost on business, although for the reasons stated the net impact on business may be limited. The gross cost to potential claimants will be the 'windfall' payments foregone as a result of the changes in definitions, and we will attempt to establish the possible scale of such payments through the consultation.

DEFINING ‘NO-SCHEME’ WORLD FOR MAYORAL DEVELOPMENT CORPORATIONS

50. For new towns and urban development corporations the whole area designated as the new town or urban development corporation and all the development in those areas, that takes place after designation, is disregarded for the purposes of assessing compensation for compulsory purchase orders. This means that the compensation for later compulsory purchase orders in those areas is assessed on the same basis as the first order ie it is not influenced by the development undertaken in earlier phases.
51. We propose to put Mayoral Development Corporations (both in London and where a combined authority has a Mayor) on the same legal footing as new towns and urban development corporations. To achieve this we propose to add Mayoral Development Corporations to the table in Schedule 1 to the Land Compensation Act 1961 such that the scheme to be disregarded is the whole designated Mayoral Development Corporation area and all development within it after designation. This proposal will require primary legislation.
52. The intended effect of these changes is to make compensation negotiations clearer and faster and therefore, administratively cheaper. We also want to ensure that the public benefits from increases in land values arising from public investment, rather than private interests. The revised level of compensation will better reflect the private economic costs borne by claimants.

Expected level of impact

53. The key impacts are set out below.
54. Acquiring authorities (and in 20% of cases businesses who are backing CPOs) – will benefit because they will have to pay less compensation or in some cases no more compensation than they would otherwise have had to.
55. Claimants – will receive less compensation than they would otherwise have done.
56. There is likely to be a net impact on business, however this impact is likely to be limited as there are likely to be only a small number of Mayoral Development Corporations.

REPEAL OF SECTION 15(1) OF THE LAND COMPENSATION ACT 1961

57. Section 15(1) of the Land Compensation Act 1961 provides:

“In a case where—

(a) the relevant interest is to be acquired for purposes which involve the carrying out of proposals of the acquiring authority for development of the relevant land or part of it, and

(b) planning permission for that development is not in force at the relevant valuation date, it is to be assumed for the purposes of section 14(2)(a) and (b)(i) and (4)(a) that planning permission is in force at the relevant valuation date for the development of the relevant land or that part of it, as the case may be, in accordance with the proposals of the acquiring authority.”

58. The Law Commission Report (Volume 1: 2003), recommended that the planning assumptions for assessing compensation should reflect the planning permissions that would be available in the market. The Law Commission’s proposal effectively subsumed the concept of whether planning permission would be available for the scheme in the no-scheme world, into the general planning assumptions. This recommendation has been taken forward and is now reflected in section 14 of the Land Compensation Act 1961, as substituted by section 232 of the Localism Act 2011.

59. In this scheme of legislation, therefore, section 15 (substituted version as set out above) is not necessary. This is because if planning permission for the scheme would have been available to the claimant in the no-scheme world, then it will be picked up by the main planning assumptions in section 14. If it would not be available, then assuming it would is effectively discounted anyway.
60. We propose therefore, to repeal Section 15(1) of the Land Compensation Act 1961. This proposal requires primary legislation.

Expected level of impact

61. Acquiring authorities – there is likely to be no measurable impact in terms of compensation payments. It may provide marginal benefits for acquiring authorities by reducing complexity in the process of agreeing compensation.
62. Claimants – there is likely to be no measurable impact in terms of compensation payments. It may provide marginal benefits for claimants by reducing complexity in the process of agreeing compensation.
63. The impact on business will therefore be minimal.

REPEAL OF PART 4 OF THE LAND COMPENSATION ACT 1961

64. Part 4 of the Land Compensation Act 1961 provides that in certain circumstances, if the scheme for which the land was acquired changes and a more valuable planning permission is granted within 10 years, the claimant is entitled to additional compensation, as the original settlement would have been on a false basis. It does not apply to compulsory purchase orders made by the Homes and Communities Agency, Urban Development Corporations, New Towns or for certain listed buildings orders.
65. This provision, although very rarely used (we are only aware of two cases in the last 10 years), 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 the payment of insurance premiums) for acquiring authorities. Given that the statutory planning assumptions in relation to the calculation of compensation already allow for the prospect of achieving alternative forms of development, it can be argued that this provision provides the opportunity for an unearned windfall for the claimant. The Law Commission recommended that this provision be repealed.
66. We propose therefore, to repeal Part 4 of the Land Compensation Act 1961 which will harmonise the arrangement that no additional compensation is paid after the original settlement for any compulsory purchase order. This proposal requires primary legislation.

Expected level of impact

67. Acquiring authorities – this will reduce the need for insurance and therefore, reduce costs. It will remove an unnecessary administrative burden on acquiring authorities arising from having to keep former owners notified of planning consents issued.
68. Claimants – given this provision is so rarely used, the impact is likely to be minimal.
69. This proposal will therefore have minimal impact on business as there is little or no experience of these powers being used.

REVIEW OF THE *BISHOPSGATE* PRINCIPLE

70. Under section 37 of the Land Compensation Act 1973, persons in lawful possession of, but without any further interest in, land to be compulsorily acquired (licensees) are entitled to disturbance payments for being displaced. The payment covers removal expenses and, where the person is carrying on a trade or business on the land, the loss sustained by reason of the disturbance of the trade or business consequent on having to quit the land. In calculating this loss it is expressly

provided for (section 38(2)) that regard should be had to the period for which the land occupied by the claimant might reasonably have been expected to be available for the purpose of his trade or business.

71. Section 20 of the Compulsory Purchase Act 1965 provides for compensation where the interest in the land to be acquired is through a minor tenancy. Case law (*Bishopsgate Space Management v London Underground* [2004] 2 EGLR 175) has held that for these purposes you should assume that the landlord terminates the tenant's interest at the first available opportunity following notice to treat, whether that would happen in reality or not. The effect of this assumption is to severely reduce the occupier's entitlement to compensation.
72. The difference between section 37 and section 20 results in unfairness because it means that licensees with no interest in the land are entitled to more generous compensation than short term tenants and lessees with a break clause in their leases.
73. We propose therefore, to amend the legislation to ensure that, in calculating the compensation due to those with an interest in the land arising from minor tenancies, account is taken of the period for which the land occupied by the tenant might reasonably have been expected to be available for the purpose of his trade or business. This proposal requires primary legislation.

Expected level of impact

74. Acquiring authority – this will result in additional costs to acquiring authorities. However, these are unlikely to be significant in the context of total scheme costs. Some of the cost will be borne by public sector acquiring authorities.
75. Claimant - affected claimants will benefit from receiving more compensation.
76. Overall the impact of this proposal on business will be positive as all the tenancies are in relation to commercial, not residential, properties and some of the transfer payments will be borne by the public sector.

REVERSE LOSS PAYMENT SHARE FOR LANDLORDS AND OCCUPIERS

77. Sections 33A-33F of the Land Compensation Act 1973 provide for loss payments to be made to owners and occupiers of land to be compulsorily acquired. These payments are in acknowledgement of the fact that a party is displaced from property against their will. The loss payments are in two parts – the Basic loss payment and the Occupier's loss payment. The Basic Loss payment is available to owners with an interest in the land. The Occupier's Loss payment is only available to those in occupation of all or part of the land. Owner-occupiers therefore receive both parts.
78. The Basic loss payment is 7.5% of the value of the owner's interest in the land up to a maximum of £75,000. The Occupier's loss payment is the greater of:
- 2.5% of the value of the occupier's interest
 - the land amount
 - the buildings amount
- up to a maximum of £25,000. (The 'land amount' for agricultural land is calculated at a different rate to 'other land', but both are subject to same maximum.)
79. The most common situation for commercial premises is to have an investor landlord with a valuable freehold or long leasehold interest in the land and an occupying business tenant with a lease at a market rent. Because the lease has little or no market value, the Occupier's loss payment the tenant receives will be based on the land or buildings amount. However, it is the occupier who bears the burden of having to close down or relocate its business operation. The allocation of the payments is therefore, unfair to the occupier who incurs the greater cost.

80. We propose therefore, to amend the current rules which set out how loss payments are allocated to owners and occupiers to reflect the fact that it is occupiers who suffer the greater disruption and inconvenience from the compulsory acquisition. We also propose to alter the method of calculation of floor space of buildings affected, from “gross external area” to “net lettable” area. The aim of this measurement change is to simplify the calculation as net lettable area information is more readily available than gross external area. This proposal requires secondary legislation.

Expected level of impact

81. Acquiring authorities - owner-occupiers will not be affected by reversing the loss payment share and so acquiring authorities would not incur any additional costs in these circumstances. The maximum amounts will remain in place so to this extent the compensation payable will not increase. It is not clear, where the maximum payment is not made, if there will be an overall increase or decrease in compensation. For vacant properties it will mean lower payments as the owner will in future get 2.5% instead of 7.5%.

82. Claimants – reversing the loss payment share will mean that occupiers will benefit from greater payments; owners will receive less; owner-occupiers will not be affected.

The change to the method of calculating the floors pace will reduce the payments using the ‘building amount’. However, this will only have an impact in those cases where the ‘buildings amount’ is the greater amount (see para 68 above). Although occupiers will not receive as much as they would have if the method of measurement had not changed, they will still benefit because of the reversal of the loss payment shares. The change to the method of calculating the floor space will have no separate impact on owners or owner-occupiers because their loss payment entitlement is not calculated on the basis of the ‘buildings amount’.

83. Owner-occupier businesses will not be affected, other business interests that are claimants will either gain or lose from this measure. All the claimants in this case will be businesses whereas some acquiring authorities are public sector bodies. Given that the maximum levels of compensation have been swapped rather than increased and there are positive and negative impacts on business the net effect on business interests may be neutral. Clearly the picture is complex in terms of winners and losers; consultation will allow us to test our assumptions about impact further.

PENAL INTEREST RATES ON ADVANCE PAYMENTS PAID LATE

84. In the March 2015 Compulsory Purchase reform consultation proposals were put forward for a new faster mechanism for determining the amount and enforcing the making of advance payments by acquiring authorities. There was considerable support for the proposal to introduce a fast track procedure and a variety of suggestions were put forward for possible sanctions for delayed payments. These included penal rates of interest; penalty payments (possibly based on percentage of claim); indemnity costs at the Upper Tribunal; no entry to land before payment made; interest on bridging finance to be claimable. Around 10% of respondents felt there should be no sanctions.

85. Having carefully reviewed all the responses to consultation, the government response stated: “Having considered the various suggestions put forward on sanctions against acquiring authorities who do not make payments on time, the government considers that penal rates of interest on outstanding payments is most appropriate. A power to set such a rate of interest will be taken and further consideration of what the rate of interest should be, will be undertaken.”

86. In setting this rate of interest we therefore must strike a balance between the need to encourage swift payment of outstanding advanced payments and the creation of an unacceptable cost on acquiring authorities. Given that advance payments are vital for many individuals to finance their relocation the speed at which they receive money has a great impact. As such the balance of this judgement should be in the claimant’s favour.

87. There are a range of examples of where government and organisations charge punitive interest rates on late payments. We consider the most appropriate example to base any penal rate on is the

interest a business can charge if another business is late paying for goods or a service. This is known as 'statutory interest'. The statutory interest rate is 8% plus the Bank of England base rate.

88. We therefore suggest a rate of 8% above base rate. This reflects the need to establish a sufficiently punitive rate which reflects the impact of late payment to businesses and individuals. We will seek views on whether this level is appropriate.

89. This proposal requires secondary legislation.

Expected level of impact

90. Acquiring authority – the proposal will apply a financial cost to late payments made by acquiring authorities. However, the impact is likely to be minimal as the penal interest rate will act as a deterrent to making late payments.

91. Claimants – swifter advance payments are vital for many individuals to finance their relocation before their land is compulsorily acquired.

92. The net impact of this is likely to be swifter payment of compensation. In the event that a punitive rate of interest is charged, there is likely to be a net benefit for business, on the basis that a higher proportion of claimants are businesses than acquiring authorities. If authorities make payments earlier to avoid this penal rate, businesses receiving or paying compensation more quickly will place a greater value on the same monetary sum, as they will tend to discount payments further in the future.

BLIGHT

93. The current compulsory purchase order system compensates owner-occupiers of properties or businesses that are affected by statutory blight from proposed development to require the acquiring authority to purchase their property on compulsory purchase terms. There are around 20 different forms of statutory blight, including allocation for statutory purposes in a development plan, safeguarding, designation as an urban development area and inclusion in a compulsory purchase order. These are set out in Schedule 13 to the Town and Country Planning Act 1990.

94. A claimant can submit a blight notice requiring the scheme promoter to acquire their property at open market value (excluding the impact of the blight), the acquiring authority can either accept the notice or challenge it through the Lands Chamber of the Upper Tribunal.

95. There is, a rateable value limit of £34,800 before owner-occupiers of non-residential and non-agricultural properties are able to submit a blight notice. In essence this only applies to business premises. The definition of statutory blight is contained in Chapter 2 of Part 6 of the Town and Country Planning Act 1990. The rateable value limit is set out in the Town and Country Planning (Blight Provisions) (England) Order 2010 and is reviewed when rateable values are reviewed. The next revaluation is on 1 April 2017.

96. Few properties within London fall within the rateable value limit owing to property being consistently more expensive in the capital. Furthermore, a qualifying condition based on rateable value is a very blunt tool as it does not take account of differing land values across the country.

97. We propose, therefore, to raise the rateable value limit to allow more businesses to serve blight notices in Greater London with a lower limit (similar to the existing) for the rest of the Country. This proposal will require secondary legislation and possibly also primary legislation.

98. The intended effect of this measure is to make the system fairer for owners and occupiers in London. In addition, we intend to seek views on whether there needs to a general increase of the Rateable Value limit for commercial property ie that more businesses should be able to serve a blight notice.

Expected level of impact

99. Acquiring authority – this proposal will have an effect on cash-flow as owner-occupiers of properties in London that are currently unable to serve a blight notice will be able to do so.
100. Claimant – the proposal benefits businesses in London that would like to relocate before the acquiring authority requires their property.
101. Although overall compensation levels may not change, the impact of this proposal for business interests is likely to be beneficial, as relocation under a blight notice should be more orderly than under a compulsory purchase order as it is fully under the control of the claimant: there may, therefore, be fewer costs.

TOTAL COST OF THE PROPOSALS

102. Where we expect the impact of these proposals to be significant, this is due to changes in compensation paid by acquiring authorities to claimants. However, this is a simple transfer of costs, ie there is a change in the distribution of costs. Our best estimate of the total cost of these elements of the proposals is therefore zero, although there may be a small economic cost if the number of cases taken to Tribunal increases. This is consistent with paragraph 5.23 of HM Treasury’s The Green Book - transfer payments may change the distribution of income or wealth, but do not give rise to direct economic costs. This is also consistent with the argument used in a previous final Impact Assessment (RPC-3047(2)-CLG) on compulsory purchase orders which received a ‘fit for purpose’ rating from the Regulating Policy Committee.

103. There are four areas in which these proposals result in a change to compensation:

Table 1: Proposals affecting compensation and affected parties

Proposal	Creates a benefit for	Creates a cost for
Making provision for temporary possession	Acquiring authorities	Land owners
Clearer way to identify market value (reduces ‘windfall payments’ where land values have increased solely as the result of related public transport investment)	Acquiring authorities	Land owners
Defining the ‘no scheme’ world for Mayoral Development Corporations	Acquiring authorities	Claimants
Review of the <i>Bishopsgate</i> Principle (increases assumed length of continued occupancy for some businesses)	Short term commercial tenants and commercial lessees with a break clause in their leases.	Acquiring authorities
Reversing the loss payment share for landlords and occupiers & changing how compensation is calculated in some cases	Legal occupiers of commercial property and acquiring authorities	Commercial landlords
Penal interest on advance payments paid late	Claimants	Acquiring authorities
Blight (allows more businesses to serve blight notices, bringing forward compensation and movement from affected sites)	Occupiers of commercial property above the current rateable value limit	Acquiring authorities

104. Where we expect the proposals to decrease negotiation times or clarify the compulsory purchase order process, with benefits to both acquiring authorities and claimants, we have not been able to quantify these benefits.

OVERALL IMPACT ON BUSINESS

105. In order to estimate the annual net cost to business, we need to understand the proportion of compulsory purchase orders where the acquiring authority is a business or local authority acting on behalf of business and the proportion of claimants that are businesses. Ideally we would also know the value of compulsory purchase orders where the acquiring authorities are businesses or local authorities acting on behalf of businesses, and also the value of compulsory purchase compensation claimed by businesses but data on the amounts of compensation paid in respect of each compulsory purchase order is not available. This is because the level of compensation paid is a matter for the parties concerned and is not a matter of public record, unless it has been determined by the Upper Tribunal (Lands Chamber). Only a limited number of cases are dealt with each year and even where a case has been so determined, it will not necessarily cover all the compensation paid for the compulsory purchase order, especially for large schemes.
106. The table below shows our estimate of the annual number and percentage of compulsory purchase orders where the acquiring authority is a business or a local authority acting on behalf of a business. The analysis is based on data we have collected on the total number of compulsory purchase orders and the number where the acquiring authorities are private businesses. We have combined this with estimates of the proportion of the compulsory purchase orders that the National Planning Casework Unit handles that involve public sector acquiring authorities acting on behalf of private business. For compulsory purchase orders that are not handled by the National Planning Casework Unit, it is very rare for public sector acquiring authorities to act on behalf of private businesses. The National Planning Casework Unit is the Secretary of State's decision-making branch, handling around 75% of compulsory purchase orders each year.

Table 2 - average annual number and percentage of compulsory purchase orders in 2012, 2013 and 2014, by acquiring authority type

Type of acquiring authority	Number of compulsory purchase orders per year	% of compulsory purchase orders
Private business	16	10%
Public sector backed by private business	33	20%
Public sector	117	70%
Total	167	100%

Note: Numbers may not add up due to rounding

107. The table below shows our estimate of the number and percentage of compulsory purchase orders where the claimants are exclusively private business or could include private businesses. Again, this is based on the experience of the National Planning Casework Unit. This information is not relevant to the consideration of whether a compulsory purchase order should be confirmed and so is not systematically collected. It could only be obtained by reviewing all the case files to analyse the identity of all the claimants: this is not necessarily reliable, especially for private landlords.
108. We applied the same percentages to the compulsory purchase orders not handled by the National Planning Casework Unit since we have no reason to expect these to systematically differ in terms of their proportional impact on private business¹.

¹ The one exception to this is housing compulsory purchase orders, which differ in nature and the National Planning Casework Unit has given us advice specific to this type of compulsory purchase order, which we have incorporated into our analysis.

Table 3 - average annual number and percentage of compulsory purchase orders in 2012, 2013 and 2014, by claimant type

Types of claimants	Number of compulsory purchase orders per year	% of compulsory purchase orders
Private business are the only claimants	18	11%
Some but not all claimants private business	36	22%
No claimants are private business	113	68%
Total	167	100%

Note: Numbers may not add up due to rounding

109. Therefore approximately 54 Orders per year (33%) result in compensation being paid to private businesses. This is balanced to an extent by the 49 cases (30%) in which compensation is paid by a private business. Furthermore, different proposals will offset one another by creating costs and benefits to the same party e.g. increases in compensation paid by acquiring authorities are partly offset by other decreases.

110. In order to estimate the scale of changes to compensation, we require more information on the number of Orders which each proposal will affect, and the approximate size of these impacts. We will seek this information during consultation.

111. However, we expect the majority of these impacts to be small, and that they will not have a significant impact on business activity. For example, we do not think that ‘ransom’ payments extracted by land owners where acquiring authorities seek temporary use of land are very large or occur very frequently. ‘Windfall’ payments from related transport investment are probably very rare, as we estimate that less than 10 orders per year are for significant transport investment. The maximum possible impact on a landlord as a result of reversing the loss payment share is £50,000 – the difference between the current and proposed cap in compensation – and this is balanced to an extent by a benefit to their commercial tenant. Preliminary analysis, which may not be representative of all activity, suggests that there may be a significant total cost to businesses as a result of this change. All the changes, including the reductions, in compensation to businesses are nevertheless designed to better reflect their losses as a result of compulsory purchase orders.

112. *As we are currently unable to establish that the direct, gross cost to business as a result of these proposals is less than £1m a year, we have not sought to access the Regulatory Fast Track for this Impact Assessment.*

SMALL AND MICRO BUSINESSES

113. Where we have identified substantial costs to businesses, we would expect these to be considerably smaller for small and micro businesses; we expect that businesses of this size would rarely hold valuable interests in land, and would never be a local authority’s development partner in bringing forward a scheme. They are therefore less likely to be funding compensation or receiving some forms of compensation. On the other hand, they are more likely to be commercial tenants and therefore to benefit from changes which increase compensation paid to the commercial occupier of affected properties.

SUMMARY OF HOW CONSULTATION PROPOSALS WILL BE DELIVERED

114. The table below summarises how each of the proposals, if taken forward, would be delivered.

Table 4: Summary of how consultation proposals will be delivered

Proposal	Primary legislation	Secondary legislation	Comments
Allowing more authorities to bring forward compulsory purchase orders for joint purposes	x		
Making provision for temporary possession	x		
New legislative requirement to bring orders into operation	x		
Clearer way to identify market value	x		
Defining 'no-scheme' world for Mayoral Development Corporations	x		
Repeal of section 15(1) of the Land Compensation Act 1961	x		This proposal removes redundant legislation
Repeal of Part 4 of the Land Compensation Act 1961	x		This proposal removes redundant legislation
Review of the <i>Bishopsgate</i> principle	x		
Reverse loss payment share for landlords and occupiers		x	
Penal interest rates on advance payments paid late		x	
Blight	Possibly	x	This may require secondary legislation only