

<b>Title:</b> Technical consultation on improvements to compulsory purchase processes <b>IA No:</b> <b>Lead department or agency:</b> Department for Communities and Local Government <b>Other departments or agencies:</b> HM Treasury	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 03/03/2015			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> Robert Segall - robert.segall@communities.gsi.gov.uk; 0303 444 1717				

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> GREEN
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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, Two-Out? Measure qualifies as
£0m	£-7.6m	£0.7 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. However, there continues to be concern that the existing process is too convoluted and complex.

**What are the policy objectives and the intended effects?**

The Government has developed a package of technical improvements to make the process clearer, faster and fairer. All parties will be better informed by clearer, more accessible guidance and benefit from a faster system. The system will also be fairer for both those whose interests are compulsorily acquired and for the acquiring authorities.

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

We are keen to use non-regulatory approaches where ever possible. Key elements of this package include updated Government guidance on the compulsory purchase process from end to end and revised guidance to encourage public authorities to offer good levels of compensation to avoid the need for compulsory purchase. In addition, we propose a voluntary agreement approach to improve the transfer of mortgages to avoid negative equity. For a number of elements of the package, however, only an amendment of legislation can deliver the proposed reform. 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:** 12/2020

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0	<b>Non-traded:</b> 0	

*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: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	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	0	0	0

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

We have not been able to monetise the costs to acquiring authorities but they are offset by the benefits to claimants. We estimate the net cost to private business of the change in advance payments and interest paid on outstanding compensation to be approximately £880,000 per year. This is very approximate and something we intend to test at consultation.

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

Acquiring authorities will in some cases: incur increased costs in relation to the earlier payment of compensation and higher interest paid on outstanding compensation; and may find entry onto land delayed by a matter of weeks.

Those subject to compulsory purchase (claimants) will in some cases be unable to delay the process to the same degree or achieve ransom levels of 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	0	0	0

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

We have not been able to monetise the benefits to claimants but they are offset by the costs to acquiring authorities.

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

Acquiring authorities will, in some cases: obtain power of entry to survey; get faster decisions on the confirmation of orders; be able to override restrictive covenants and easements.

Those subject to compulsory purchase (claimants) will, in some cases: obtain greater notice of entry onto land; obtain earlier advance payments of compensation; and achieve higher levels of interest on outstanding compensation.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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- when offsetting orders where the acquiring authority involves a business interest with orders where the claimants are businesses, we have assumed that on average each order has the same value
- when there is an acquiring authority with a business interest and claimants that are all households we have assumed there are 15 households on average with homes of average value
- we have assumed acquiring authorities and claimants have a 7% cost of capital

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0.7	Yes	IN
Benefits: 0.0		
Net: -0.7		

## 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. A number of changes have been made to improve the system in recent years. However, there continues to be concern that the existing process is too convoluted and complex.
2. The Government has, therefore, put together a further package of proposals for technical process improvements and guidance to make the process clearer, faster and fairer with the aim of bringing forward more brownfield land for development. These proposals will be subject to a public consultation to be launched at Budget 2015.
3. In summary, the package of proposals is aimed at achieving the following outcomes:
  - a) That the system will be **clearer**
    - i. because all parties will be better informed by more accessible guidance
    - ii. the procedures to settle disputes about material detriment will be harmonised
  - b) That the system will be **fairer** for those whose interests are compulsorily acquired (claimants) because the measures will:
    - i. encourage a more positive negotiating stance by acquiring authorities towards achieving the acquisition of land by agreement
    - ii. ensure longer minimum periods of notice before entry and taking possession, while not lengthening the overall process
    - iii. allow advance payments to be claimed and made earlier
    - iv. improve the minimum rate for interest on unpaid compensation after entry; and
    - v. facilitate the transfer of a mortgage where the claimant is in negative equity
  - c) That the system will be **fairer** for acquiring authorities because:
    - i. the power to enter land for survey purposes before making a compulsory purchase order will be extended to all acquiring authorities
    - ii. a warrant provision will be added to enable acquiring authorities to obtain entry if it is refused or as a matter of urgency; and
    - iii. existing powers to override easements and restrictive covenants will be extended to all acquiring authorities, which should enable more schemes to be better designed and avoid unnecessary expenditure on insurance and windfall compensation claims
  - d) That the system will be **faster** for all parties because:
    - i. streamlined processes within government will enable decisions to be made faster and to a known timetable; and
    - ii. giving the Court powers to quash a decision to confirm a compulsory purchase order where the decision is flawed will avoid the need to remake the order
4. 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, 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, 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. Most of the improvements we have identified in this package of measures build on earlier proposals for reform made by the Law Commission and the Compulsory Purchase Association. Our informal

testing of the emerging proposals with experts from a range of sectors suggests that the package of proposals will be broadly welcomed by interested parties.

5. Some elements of the package will have no substantive impact on business and therefore, do not form part of this impact assessment<sup>1</sup>. The elements of the package which may impact on business are:
  - Streamlining Government processes
  - Powers of entry for survey prior to a compulsory purchase order being made
  - Reforming High Court challenges
  - Entry to take possession of acquired land
  - Advance payments of compensation
  - Improve interest rates on outstanding compensation
  - Transfer of mortgages
  - Extending powers to override easements and restrictive covenants
  - Taking part of claimants land - 'material detriment'
  
6. 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 authorities (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 19 and 20. 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.
  
7. 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.
  
8. 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

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<sup>1</sup> BRE have confirmed that proposals for: updated guidance on the compulsory purchase process, updated guidance to public sector bodies on managing public money and allowing the greater use of electronic communications by confirming authorities are out of scope as they affect public authorities only and where there is an effect on business is it indirect.

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.

9. 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 our assumptions about the nature and scale of impacts
  - 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
10. 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.
11. 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

## STREAMLINING OF GOVERNMENT PROCESSES

12. The process of confirming a compulsory purchase order can be lengthy and the timescales for a decision unclear. The lack of clarity about timescales is unhelpful for all parties involved in this process, not just the acquiring authority. It is also difficult to monitor performance or identify where systemic problems may exist. In addition, some relatively straight-forward cases are unnecessarily delayed because of a need to refer the final decision to the Secretary of State.
13. We therefore, propose to make two important changes to:
  - a) introduce statutory targets for the timing of the confirmation stage of the compulsory purchase order process
  - b) allow the Secretary of State to delegate decisions on orders to an Inspector

### Expected level of impact

14. Acquiring authorities – the proposals to shorten the timescales for the consideration of orders by the Secretary of State will have a beneficial impact on all acquiring authorities as they will result in quicker decisions, thus reducing the overall timescale of the process and bringing greater certainty for project planning.
15. Claimants – there will be no substantive impact from these proposed changes on claimants. No changes are proposed to either the ability of claimants to make representations or the timescale for doing so, as the changes of timescales will be focussed on shortening the period after all the parties have submitted their evidence. While they may ultimately mean that the date of entry to take possession is earlier than might otherwise have been the case, these changes will not impose additional costs and may provide some benefit in providing certainty earlier to claimants about when a compulsory purchase order will be implemented.
16. Overall these changes impose no substantive costs on claimants including those who are businesses and should benefit all acquiring authorities, both public and private sector.

## POWERS OF ENTRY PRIOR TO A COMPULSORY PURCHASE ORDER BEING MADE

17. All acquiring authorities may need to enter land for survey purposes prior to a compulsory purchase order being made, for example, to identify the location of utilities or to ascertain whether there are any subterranean structures or areas of contamination which might hamper a proposed scheme. However, at present, the only acquiring authorities with powers of entry for these purposes are local authorities or other public bodies.
18. Without these powers, private sector acquiring authorities, such as utilities companies and Transport for London, must negotiate with the landowner if they require entry to land they may wish to include in a compulsory purchase order. For these acquiring authorities, the compulsory purchase process can be considerably delayed because of unwillingness on the part of a landowner to allow a proper survey, or alternatively schemes are developed without the benefit of full information which can then mean subsequent delays, and additional costs to address constraints that emerge.
19. There is no justification for the difference in the powers of entry available to acquiring authorities which currently exists. All acquiring authorities may need to have the power to enter land at an early stage to assess whether their proposals are viable. We propose therefore, to amend the legislation to give all acquiring authorities the same power of entry in these circumstances with the same period of notice required to gain entry. In developing these proposals we have had regard to the Home

Office's Power of Entry Gateway Guidance 2011<sup>2</sup>. In line with that guidance we are proposing to introduce a warrant provision for circumstances where entry is refused or is required urgently.

20. The intended effect of these changes is to make the compulsory purchase process fairer and more consistent by giving all acquiring authorities the same powers of entry for surveying purposes prior to making a compulsory purchase order, while ensuring that there is a clear and fair process in place to resolve any disputes about whether entry is necessary

### Expected level of impact

21. Acquiring authorities – the main impact of this proposal will be on businesses which are **private sector acquiring authorities** (as other acquiring authorities already have the powers). The acquiring authorities who do not already have a power of entry account for around 16 compulsory purchase orders a year (10% of the total). The proposed change will be beneficial as it will give them the power to enter land to obtain information that is necessary to decide if or how they take forward a compulsory purchase order scheme. It will mean that they are able to progress a compulsory purchase order more quickly as there will not be any delays associated with having to negotiate with landowners/occupiers for entry to the land. It will remove the need to obtain insurance to guard against later risk. It will also reduce the risk of delays or costs later in the process arising from a lack of information about the land in question and potentially therefore, could have a significant positive impact. The impact of bringing all the timescales for notifying parties into line and introducing warrant provisions will be marginally beneficial for all acquiring authorities in giving greater certainty in process.
22. Claimants – **landowners/occupiers** of land which is included in a compulsory purchase order may be affected by this proposal, but it is difficult to see that there will be any substantive additional impact. In both the counterfactual (no change in policy) and the proposed policy, survey work is likely in most cases to be very limited in scale and duration. The acquiring authority will have to give notice of entry and they will be liable for compensation for any damage caused. If landowners/occupiers refuse entry there will be a clear and fair process – applying to a justice of the peace for a warrant – if acquiring authorities want to pursue the matter. Whether a survey has been allowed or refused will not impact on whether the order is confirmed or not.
23. There are no non-legislative options to secure the necessary changes in approach. We have also considered the Information Commissioner's document, *Conducting privacy impact assessments code of practice*, and undertaken an initial screening of impacts on which we concluded that a Privacy Impact Assessment is not necessary.
24. Overall, the proposed changes will have a positive impact for private sector acquiring authorities.

### REFORMING HIGH COURT CHALLENGES

25. Confirmed compulsory purchase orders can be challenged by any aggrieved person who wants to question the validity of the order or any of its provisions through an application to the High Court under section 23 of the Acquisition of Land Act 1981. At present, the Court has the power to quash the whole or any provision of the order. Where a challenge is successful and the whole compulsory purchase order is quashed, an acquiring authority would have to restart the whole compulsory purchase process if it still required the land, with significant time and cost implications.
26. However, where a challenge is solely on the grounds of an error in the Secretary of State's decision in considering and confirming the order and it is successful, it would be more proportionate for the Courts to have the power to send the order back to the Secretary of State for reconsideration rather than quash the whole compulsory purchase order.
27. We propose therefore, to consult on a proposal to widen the remedies available to the Courts where there is a successful challenge to a decision to confirm a compulsory purchase order. We also intend to seek views (ie there are no firm proposals) on whether:

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/98386/powers-entry-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98386/powers-entry-guidance.pdf)

- the process for challenging the decision not to confirm a compulsory purchase order (currently through judicial review) should be the same as for challenging to the validity of a confirmed order ie by means of a statutory High Court challenge
  - provision should be made to ‘stop the clock’ on a compulsory purchase order pending the outcome of a legal challenge to allow acquiring authorities sufficient time to implement the order if the challenge fails
28. The intended effect of these changes is to allow, where appropriate, faster reconsideration of a compulsory purchase order that has been successfully challenged and ensure that the process for challenging decisions is clear and fair.

### **Expected level of impact**

29. Figures for the last 3 years (2012, 2013 and 2014) show that there have only been four statutory High Court challenges in that period and none of the challenges were successful. Therefore it is likely that this proposed change will only have an impact in very rare cases where there is a successful challenge and the reason it is successful is an error in the Secretary of State’s decision.
30. Acquiring authorities - where such a case arises, the proposed change will be beneficial to the acquiring authority as they are likely to save considerable time and costs from not having to restart the compulsory purchase process from the beginning.
31. Claimants – the proposed change is likely to be beneficial to claimants by providing certainty earlier that a compulsory purchase order will or will not proceed and may reduce costs as the process does not have to restart from the beginning. The proposed change may mean that if the compulsory purchase order is subsequently confirmed, entry to take possession may occur earlier than would be the case if the whole order had been quashed but this would not lead to additional costs to business.
32. Overall these proposals impose no substantive costs on claimants, including those who are businesses. They will provide benefits for acquiring authorities in rare cases where the confirmation is quashed and it is procedurally acceptable not have to restart the compulsory purchase process from the beginning.

### **ENTRY TO TAKE POSSESSION OF THE ACQUIRED LAND**

33. Once a compulsory purchase order has been confirmed, the process of acquisition of the land by the acquiring authority may commence. The main problem is that there is a lack of consistency and certainty in the timing of the acquisition process, with differing and, in some cases, inadequate notice periods for those affected by an order (the claimant). In some cases, the acquiring authority does not take possession on the expected date, leaving claimants in an uncertain position.
34. A further problem is that the quality of data used to prepare the notices relies on responses from third parties and if inaccuracies are discovered before possession then it lengthens the time required to take possession as a new notice of entry must be served. There is currently no protection from delay for the acquiring authority, even where it has diligently taken all appropriate steps to obtain the necessary information to serve a notice.
35. The current system benefits neither claimant nor the acquiring authority and so unnecessarily increases cost, programme time and risk.
36. We propose therefore, to make three principal changes to the current arrangements:
- a) extend and harmonise the process for taking entry following compulsory purchase powers becoming available to provide a minimum of 3 months’ notice before entry (from 14 or 28 days, depending on the procedure)
  - b) either:



- enable a claimant to require entry by serving a notice on the acquiring authority once the date specified in the notice by when entry could be taken has passed (this is called a reverse notice of entry); or alternatively
- make acquiring authorities responsible for the property as if they had actually entered and taken possession (whether they done so or not) on the date they have specified as the entry date

c) assuming a longer period of notice, provide additional protection for acquiring authorities when new interests in land are discovered after notice of entry has been given, but before entry is taken

37. We also propose to make two small related improvements to the process:

d) clarify that it is the execution of a general vesting declaration that exercises the power of compulsory purchase rather than the preliminary notice; and

e) repeal the obsolescent Schedule 3 Compulsory Purchase Act 1965 method of obtaining entry

38. The intended effect of these changes is to give certainty to claimants as to when entry on to land will take place.

### **Expected level of impact**

39. The impacts for the key proposals under this element of the package are set out below.

40. Acquiring authorities – the impact of these changes will be minimal:

- in terms of extending the period of notice – this does not impose any additional requirement/action on the acquiring authority and current good practice is to offer notice periods longer than the minimum. So the number of cases where this applies is likely to be limited
- furthermore, properly organised acquiring authorities should have no difficulty in conforming to the new notice period and it should not, therefore, delay the date on which they take possession
- the reverse notice of entry is simply designed to enforce the timescales the acquiring authority has itself imposed on the claimant – it does not impose an additional cost or burden
- the expedited notice process, when a new interest is discovered late in the process and the new party is not in occupation, will reduce the time delays if a new interest comes to light and thus potentially benefit all acquiring authorities (including private sector ones)

41. Claimants - the impact of these changes will be beneficial:

- although the number of cases may be limited, the longer periods for notice of entry may enable claimants to re-order their affairs with more certainty. Having a guarantee of a minimum period of notice does allow the claimant to plan more effectively and in a very limited number of cases may very significantly assist a business to relocate successfully
- a reverse notice of entry or the alternative of making the acquiring authority responsible for the property from the specified date of entry regardless of whether they take possession in reality will benefit businesses and other occupiers of affected land because they will be able to move at a time of their choosing (if the acquiring authority does not take possession on the date in the notice of entry). This will reduce any double costs for renting two sets of premises, for example
- the new provision to allow an expedited notice process would only apply in relation to new interests which were not in physical occupation of either land or buildings on the site. Given there are no logistical or physical matters to resolve, a shortened notice period would have no discernable impact on any businesses that may be caught by this new procedure

42. The minor related proposals associated with this element of the package will have no discernable impact on business or other parties because:
- the proposal to clarify the implementation date for general vesting declarations is a codification measure reflecting best practice
  - repealing the Schedule 3 method of obtaining entry - these provisions are obsolescent and no longer used
43. Overall these measures are marginally beneficial for claimants, which could include both business and/or residential interests.

## **ADVANCE PAYMENTS OF COMPENSATION**

44. The process of obtaining payments in advance of final settlement of compensation claims is not fair or fast enough for claimants.
45. At present, statute provides for the making of an “advance payment” on account of compulsory purchase compensation where an acquiring authority has taken possession of land. In response to a request for an advance payment, the acquiring authority must pay 90% of their estimate of the compensation due (or 90% of the compensation agreed to be due) within 3 months of the request or on the date of entry and taking possession, whichever is the later. This means that the claimant must make a claim at least 3 months in advance of the date of entry in order to receive payment on that date.
46. The purpose of advance payments is to put the claimant in a financial position, so far as is possible and as early as is possible, so that they can re-order their affairs and go about life with the minimum of disruption. However the phrase “advance payment” means a payment in advance of the final settlement. As described above is it currently not possible to make a payment in advance of the date of entry of the acquiring authority on the property.
47. In the majority of cases, the claimant will find it necessary either to move house, or to move to other business premises, in order to avoid closure of their business. Yet, even if the advance payment is made on time, this may be after the claimant has had to vacate the premises but will almost inevitably be after the date on which payments must be made for new premises (eg rent in advance). Such payments would have to be financed from their own resources or from a bridging loan. This can cause undue stress and economic hardship, particularly to individuals and small businesses. In extreme cases, it can make relocation impossible and effectively the activity or business is terminated.
48. A further aggravating factor is that acquiring authorities do not always make advance payments within the 3 month period required by statute. The current legislation does not provide a sanction for failing to make a payment, nor require that the offer must be realistic in terms of quantum.
49. The explanation often given by acquiring authorities for delayed payment is that claimants have not provided sufficient information to enable an assessment of compensation upon which an advance payment can be based.
50. We therefore, propose a comprehensive overhaul of the current process, focused on four key changes:
- a) have a new formal claim form which claimants must submit to obtain an advance payment
  - b) bringing forward the earliest date when advance payment can be made
  - c) a new mechanism for settling disputes more quickly about the quantum of the acquiring authority’s offer
  - d) a new mechanism for enforcing the making of advance payments by acquiring authorities

51. The intended effect of these changes is to provide for an improved system of advance payments with more coherent claims and earlier payments, in particular, advance payments of compensation before entry.

### **Expected level of impact**

52. Acquiring authorities – the impacts are:

- a formal claim form should ensure that as full information as possible is provided in preparation of a claim for compensation, including advance payment. This will focus the assessments by claimants and should be beneficial for acquiring authorities who will have better information on which to assess claims
- acquiring authorities will face financing costs associated with having to pay compensation up to 3 months earlier than a present. We have included this in respect of claimants that are businesses in our estimate of the net annual costs of business of our proposals below
- introducing mechanisms to settle disputes and enforce payments are broadly neutral in impact – faster resolution of disputes should not result in higher payments. Earlier advance payments are offset by a reduction in balance of compensation due at final settlement. Enforcing payment seeks to deliver what has already been agreed by the parties.

53. Claimants - the impact of these changes will be largely beneficial:

- a formal claim form will not add to the costs of business, as it is not proposed to expand or change the information that is already required to accompany a claim, merely to make the position clearer for all parties
- bringing forward the date of advance payments will result in cost savings to claimants. We have included this for claimants that are businesses in our estimate of the net annual costs of business of our proposals below. In extreme cases, bringing forward the earliest date on which advance payments may be made will potentially save claimants that are businesses from going out of business, where they cannot finance these costs themselves. In some cases it will save claimants the inconvenience of having to finance relocations before compensation is paid where claimants were able to do so
- introducing a mechanism for enforcing the making of advance payments will help claimants by enabling them to receive disputed advance payments or enforce the actual payment of claims as there is no effective method at present

### **IMPROVE INTEREST RATES ON OUTSTANDING COMPENSATION**

54. The acquisition of land following a compulsory purchase order requires the acquiring authority to pay compensation to claimants for loss of property. The valuation date, when compensation becomes payable, is the date of entry, but the level of compensation has often not been agreed by this date. Although claimants can obtain an advance payment of compensation (see above), there will be an amount outstanding after entry. Simple interest is payable – at a rate of 0.5% below the base rate – on any outstanding balance of compensation.

55. In recent years, the amount of interest paid has been at levels widely believed to inadequately reflect the impact of a compulsory purchase. Since April 2009, the rate of interest paid has been nil as the base rate has been set at 0.5%. Claimants allowed access to their compensation would likely invest it in some form, whether in new property, business costs or a savings account; all with an anticipated rate of return above 0%.

56. We propose, therefore, to make interest payments fairer by reflecting the return claimants might be expected to achieve were they able to access their compensation. We will consult on:

- a) tying the statutory interest rate to base rate plus 1%
  - b) introducing a 1% floor to protect against negative base rates; and
  - c) whether interest should remain simple or become compound to reflect the wider market
57. The measure is intended to help ensure that the compensation retains its value while claimants are unable to access it. Claimants, many of whom will be businesses, will be treated more fairly and be financially better off under these proposals.

**Expected level of impact**

58. Acquiring authorities - increasing the interest paid on outstanding compensation will increase costs for acquiring authorities. We have included this in respect of claimants that are businesses in our estimate of the net annual costs of business of our proposals below.
59. Claimants - will make cost savings as a result of the increased interest paid on their outstanding compensation under these proposals. We have also included this in respect of claimants that are businesses in our estimate of the net annual costs of business of our proposals below.
60. The overall impact of this measure is discussed in detail in last section of this assessment which reviews the gross cost to business of all the proposals.

**TRANSFERRING MORTGAGES TO AVOID NEGATIVE EQUITY**

61. The compulsory purchase regime ensures fair compensation for expropriated land and associated property (at its market value, plus any loss payment and related 'out-of-pocket' costs (disturbance)), which can be used to pay down debts secured on the property in order to move to new premises.
62. In a small number of cases, claimants are in a negative equity position (as the secured debt exceeds the property's value). The compulsory purchase order causes the theoretical negative equity to 'crystallise' and leaves the claimant liable to pay the debts over and above the compensation settlement.
63. There are currently 150,000 households in positions of negative equity, approximately 1.5% of all mortgages in the UK. A large number of these properties are in parts of northern England, Northern Ireland and parts of Scotland. These measures will apply in England only, although the Welsh Government may decide to also take them forward.
64. There could be a material increase in the future, for example, where large projects may commence in areas experiencing higher levels of negative equity or wider macro-economic factors drive a general fall in property values. Were this to happen these proposals would be vital in protecting claimants from the effects of negative equity.
65. The principal changes are intended to put lenders and claimants in the same position as if the compulsory purchase event had not occurred by:
- avoiding a position of negative equity crystallising by encouraging the transfer of the existing mortgage to the new property
  - allowing lenders to take the usual course of remedial action in cases of bad or doubtful debts

**Example:** The claimant decides to buy a new property for £75,000

<b>Calculation of equity position</b>	<b>Existing property £</b>	<b>New property £</b>
The property value at the purchase date (A)	100,000	75,000
Loan outstanding * (B)	80,000	80,000

Current value of property (C)	75,000	75,000
Effective negative equity (C – B)	-5,000	-5,000

Where

<b>* New loan value is calculated as</b>	<b>New loan value £</b>
Original loan outstanding *	80,000
Less compensation awarded	-75,000
Plus loan for new property (B)	+75,000
<b>New loan value</b>	<b>80,000</b>

The equity position is the same for all parties, both before and after the transfer.

66. We intend to consult on this proposal and are working with the Council of Mortgage Lenders to attempt to achieve a voluntary agreement with lenders. However, if this is not possible, it would also be possible to legislate to ensure that claimants are protected.

67. The consultation will also seek views on how to ensure that compensation for the original property is paid in a timely fashion.

### **Expected level of impact**

68. **Acquiring authority and claimant** - the cost to acquiring authorities and claimants, is likely to be negligible:

- under the proposals the acquiring authority will pay for the cost of the bank transferring mortgage. We estimate this will be in the region of a typical mortgage setup fee of between £1,000 - £2,000
- the number of cases is likely to be extremely low and the number of those cases promoted by a business far fewer still
- the lender would be in a financially neutral position and has an increased likelihood of securing repayment on the entire loan
- claimants would be protected from negative equity by these proposals

### **Impact on lenders**

69. The lender would be left in a financially neutral position, as the lender would have powers to ensure both the property type and indebtedness would be the same as for the existing property. Therefore, the risk of default from unsecured debt; interest rate risk and property-specific risks would remain the same. However, the lender is still able to take remedial action where default is likely or highly-likely to occur.

### **Implementation preferred through voluntary agreement**

70. Our aim is to promote this proposal by voluntary agreement and therefore any regulatory burden will not be imposed. A further, more recent, regulatory safeguard is the announcement at Autumn Statement that businesses have the right to ask the Regulatory Policy Committee to independently review a voluntary scheme's impact<sup>3</sup>.

71. If we are unable to secure voluntary agreement then there is an option to legislate. While this is not our preferred route, given the very low volume of negative equity cases each year, we will seek views on the principle of this approach as a backstop, through a consultation question. If a legislative approach is necessary, we will then review the need for an impact assessment.

## **EXTENDING POWERS TO OVERRIDE EASEMENTS AND RESTRICTIVE COVENANTS**

72. To deliver regeneration, an acquiring authority often intends to sell on land that has been compulsorily acquired to a third party developer. To ensure that the proposed regeneration is implementable, it is often important to ensure that a number of restrictive covenants and easements benefiting both the land to be developed and neighbouring properties (known as third party rights) no longer act over the land. These are typically rights of light and covenants restricting development to certain uses or density.
73. Under the Town and Country Planning Act 1990, the regeneration Acts and the Planning Act 2008, promoters (acting through the public authority or directly) are able to get the power to override third party land rights. The land owners with the benefit of the rights are entitled to compensation under the Compensation Code.
74. However, no such rights exist for compulsory purchase powers authorised under different legislation such as road schemes under the Highways Act; transport schemes under the Transport and Works Act; or transport schemes by Transport for London under the Greater London Authority Act. They may be present in hybrid legislation: the Crossrail Act 2008 does not contain such powers, but the High Speed 2 Bill<sup>4</sup> does.
75. To protect the acquiring authority from injunctions in relation to both the purpose for which it was acquired and any development of surplus land, our proposal is to consult on extending rights under the Town and Country Planning Act 1990 and equivalent legislation to other relevant compulsory purchase enabling Acts.

### **Expected level of impact**

76. Acquiring authorities - this measure will benefit all acquiring authorities who do not already have the powers. These bodies will be freed from restrictive covenants and easements on their developments, the need for insurance against these rights and will have greater certainty at the outset as to the development potential of sites.
77. Claimants - any beneficiaries of the easements or covenants overridden by this measure will lose the opportunity to demand ransom levels of compensation and receive compensation code levels instead.
78. The overall effect on acquiring authorities of this measure would be positive. The total benefits to acquiring authorities who do not currently have these powers must always be greater than the total dis-benefits to the beneficiaries of third party rights, because acquiring authorities will always pay compensation according to the Code, rather than be at risk of ransom claims. They will also no longer have to take out insurance policies or be vulnerable to injunctions.

## **HARMONISING THE PROCEDURES FOR SETTLING DISPUTES ABOUT MATERIAL DETRIMENT**

79. Land needed for development projects often cuts across numerous parts of landowners' property. In such cases, developers would only seek to compulsorily purchase the relevant parts required. Where a partial purchase cannot be taken without "material detriment" to the remainder of a landowner's property, claimants can apply to the Upper Tribunal (Lands Chamber) to compel the acquiring authority to purchase the entire property.
80. There are two different procedures that allow acquiring authorities to exercise compulsory purchase powers, a 'notice to treat' or a 'general vesting declaration'. Where claimants wish to challenge the acquiring authority's proposal to take only part of their land, because of the material detriment that will be suffered to their retained land, they can serve a counter-notice on the acquiring authority. The acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

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<sup>4</sup> High Speed Rail (London – West Midlands) Bill

81. There is a difference in process between the two acquisition procedures. When a general vesting declaration has been served, the procedure is set out in statute. Reference to the Upper Tribunal will prevent entry to land being taken until the issue of material detriment is resolved. Decisions on material detriment currently take around two years to conclude and this can mean that the acquiring authority has no programme certainty as to when work will commence. For some schemes, this would constitute an unacceptable programme risk and cause a project to fail.
82. Under notice to treat, there is no statutory procedure for requiring the acquiring authority to purchase the whole of land: the procedure is established in case law. Unlike the statutory procedure for general vesting declarations, the title does not vest until compensation is settled, which can create a number of delivery issues, particularly where sub-soil for tunnels is required. This was a problem for the High Speed 1 (Channel Tunnel Rail Link), but subsequent hybrid legislation has solved this problem for the projects concerned by disapplying the material detriment provisions for acquisitions of subsoil. While this approach could also be followed for development consent orders and Transport and Works Act orders, it would not be possible for standard compulsory purchase orders unless specific legislative provision was made.
83. We propose to provide a unified statutory system that clearly allows for claimants to serve a counter-notice requiring the whole of their land to be taken if taking only part would cause material detriment to their retained land. There are two alternative ways of achieving this:
- i. the first alternative would be to ensure that under both the general vesting declaration and notice to treat procedures entry can be taken and title vested before the issue of material detriment is decided by the Upper Tribunal, in the same way that entry can be taken and title vested – and works could therefore commence - before the issue of compensation is decided by the Tribunal in the event of a dispute.
  - ii. the second alternative would be to harmonise the procedures on the lines of the existing statutory procedure to be followed when a general vesting declaration has been served. This would follow Recommendation 21 of the Law Commission in their report “Towards a Compulsory Purchase Code: (2) Procedure” (2004). This would continue to mean that acquiring authorities risk delay while the Upper Tribunal considers the case, but claimants’ land would not be severed whilst there was still a possibility that their counter-notice, forcing the acquiring authority to take all of the land, would be upheld.

## **Expected level of impact**

### *Acquiring authority*

84. Under the first alternative, acquiring authorities will not be subject to any extra expense because, by being able to start works according to their preferred schedule, they will not have to decide whether to wait for the dispute to be settled or accept material detriment and buy the entire land holding if the land is absolutely necessary for their scheme. They would still be able to withdraw if they could adjust the scheme to do without the part of the land they originally wanted.
85. Under the second alternative, the acquiring authority would have to decide whether to wait for the dispute to be settled or accept material detriment and buy the entire land holding.

### *Claimants*

86. Under the first alternative, claimants would suffer the disruption they were trying to avoid if works start before the dispute is settled. If the dispute is settled in the acquiring authority’s favour, then there would be no impact on the claimant. If not, the acquiring authority would take the rest of the land and may have to pay compensation for any business losses incurred while waiting for a determination by the Upper Tribunal.
87. Under the second alternative, the claimant would be able to continue undisturbed until the dispute was settled or, the acquiring authority would accede to the material detriment claim because it could not wait. Either scenario would be beneficial to claimants.

*Overall impact*

- 88. Material detriment claims are likely to be very rare for standard compulsory purchase orders. Hybrid Acts, development consent orders and Transport and Works Act Orders can all modify legislation such as the material detriment provisions to enable, in effect, the first alternative to be followed. Claims for material detriment using standard compulsory purchase orders are most likely to arise in linear schemes, such as roads built by local highway authorities. Even where land is severed, material detriment disputes are not inevitable. Some cases will be clear cut, so the dispute provisions would not be engaged.
- 89. We have not been able to find any cases at the Upper Tribunal since 2012 where material detriment was at issue.
- 90. The sub-soil provisions, which would disapply material detriment where subsoil is required for tunnels, would also have little impact. The compensation for such land is usually nominal (£50) and hybrid Acts etc can already do this. Acquiring authorities would benefit from those rare occasions when tunnelling was an issue for relevant schemes – such as for local authority roads.

**TOTAL COST OF THE PROPOSALS**

- 91. As stated on page 6, we do not expect there to be any familiarisation costs associated with our proposals.
- 92. The two elements of this proposal that we estimate will have a material financial impact on different parties are the changes to the legislation about advance payments of compensation (page 11) and the improvement of interest rates on outstanding compensation (page 12).
- 93. However, in both cases, there is a simple transfer of costs, ie there is a change in the distribution of costs. In particular, while there is a cost to acquiring authorities who will have to pay 90% of the estimated compensation 3 months earlier and incur a higher interest rate on the remaining balance (approximately 10%, depending on how closely the final agreed amount matches up with the estimate), there is an equal cost saving for other directly affected claimants who receive this compensation earlier and earn this higher interest rate on the balance. As this is a simple transfer of costs, we consider the total costs of these two elements of the proposal to be zero. 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.
- 94. The above is assuming that the cost of capital of all parties is the same. We envisage that overall there could even be a negative cost, since claimants typically are likely to be of a smaller size than acquiring authorities or private developer backers, meaning that they are more likely to have a higher cost of capital or suffer from cash-flow issues as a result of the timing of the payments.
- 95. Despite the costs and cost savings at the very least summing to zero, ideally we would estimate the total cost of the two measures on acquiring authorities (typically public sector or businesses) and the offsetting cost savings to claimants (typically businesses or households) to understand the distributional impact.
- 96. The acquiring authority and claimant types and the material financial impact types are illustrated below.

**Table 1 – acquiring authority and claimant types**

Acquiring authority types	Costs
<ul style="list-style-type: none"> <li>• Private business (usually utilities)</li> <li>• Local authorities on behalf of private developers</li> <li>• Local authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Cost of borrowing associated with earlier payment of advance payment</li> <li>• Higher interest cost incurred on outstanding compensation</li> </ul>
Claimant types	Cost savings



<ul style="list-style-type: none"> <li>• Private businesses (a variety of sizes and types)</li> <li>• Households</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced borrowing costs as a result of receiving advance payment earlier</li> <li>• Reduced financial risk as a result of no longer having to incur costs (which it is not necessarily always possible to borrow against) before receiving advance payment</li> <li>• Higher interest received on outstanding compensation</li> </ul>
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97. We have collected data on the number of compulsory purchase orders over the most recent three years, 2012, 2013 and 2014. On average there have been 167 compulsory purchase orders submitted for confirmation per year.

98. Tables 2 and 3, which follow paragraphs 104 and 106, below, show our estimate of the breakdown of compulsory purchase orders by different types of acquiring authority and claimant.

99. In order to estimate the total cost to acquiring authorities and cost savings to claimants, we would need to know the average amount claimed in respect of each compulsory purchase order. This is because the costs associated with making and receiving payments earlier, or paying or receiving a higher interest rate on outstanding compensation form a proportion of the total value of the compulsory purchase order.

100. To go one step further and estimate the total cost or cost saving to the different types of acquiring authorities and claimants (typically businesses or households), we would need to know the amounts paid and claimed by each of these types of organisation.

101. Unfortunately there is no data available on the value of compulsory purchase orders. 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.

102. As discussed above, we intend to seek further evidence on this through the consultation process and through further engagement with practitioners specifically on the impact assessment assumptions. Since this is a consultation stage impact assessment this approach and the detail of the analysis that follows (taking account of data available, no direct costs, and the burden not falling on any one sector in particular) is consistent with Section 2.2 of the Better Regulation Framework Manual.

## **ANNUAL NET COST TO BUSINESS OF ALL THE PROPOSALS**

103. 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 extent that this is offset by 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 as discussed above, data on the amounts of compensation paid in respect of each compulsory purchase order is not available. The analysis that follows is therefore based on evidence on the number of compulsory purchase orders and the types of acquiring authorities and claimants. 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.

104. 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 handed by the National Planning Casework Unit, it is very rare for public sector acquiring authorities to act on behalf of private businesses.

**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

105. 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.

106. We applied the same percentages to the compulsory purchase orders not handed 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 business<sup>5</sup>. It is also worth noting that 75% of all compulsory purchase orders in 2012, 2013 and 2014 were handed by the National Planning Casework Unit so their indication on the proportion with private business claimants provides a high level of coverage.

**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

107. As stated above, to estimate the change in the distribution of annual net costs to business, we estimate:

- a) the number of compulsory purchase orders where there are increases in costs to private business that are acquiring authorities or have local authorities acting as acquiring authorities on their behalf

<sup>5</sup> 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.

- b) the number of compulsory purchase orders where there are decreases in costs to claimants that are private businesses; and
  - c) the extent that the changes in costs associated with these compulsory purchase orders are likely to offset each other
108. We then consider what the costs to the remaining acquiring authorities that are private businesses or local authorities acting on behalf of private business would be.
109. For our analysis, we can therefore exclude the 117 instances where the acquiring authority is public sector (not acting on behalf of a private business) and the 113 instances where we estimate that no claimants are private businesses.
110. This leaves us with 49 compulsory purchase orders where the acquiring authority is a private business or acting on behalf of a private business, and on the other side of the equation, 18 compulsory purchase orders where all the claimants are private business and 36 compulsory purchase orders where some but not all claimants are private business.
111. On proportionality grounds we have assumed that on average each compulsory purchase order involves the same amount of claim. Also on proportionality grounds we have assumed that the amount of payment brought forward by 3 months and increase in interest payments in respect of 18 of the compulsory purchase orders where the acquiring authorities are private businesses or local authorities acting on behalf of private business is directly offset by an equivalent amount of payment brought forward and increase in interest payments received by the 18 compulsory purchase orders where private businesses are the only claimants. This is a simple transfer of costs as described above.
112. This then leaves us with 31 compulsory purchase orders where the acquiring authority is acting on behalf of a private business and 36 compulsory purchase orders where some but not all claimants are private businesses. For these compulsory purchase orders, we do not know the proportion of the total amount claimed that was by private business. We have assumed 50% but if the consultation results in evidence in this area, we will amend this assumption accordingly.
113. Typically we would expect individual claims by businesses to be larger than those by households, since individual businesses often occupy much larger areas of land and there may be multiple business interest in an individual plot, including land owners/freeholders, businesses who are tenants and in some cases sub tenants of land and buildings. So, we regard the 50% assumption as fairly conservative, i.e. is more likely to result in us overstating the annual net costs to business than understating them.
114. If we make this conservative assumption then this would be equivalent to 18 compulsory purchase orders where the private businesses are the only claimants and 18 where none of the claimants are private business. If we offset the 18 against the 31 acquiring authorities acting on behalf of private business, this leaves us with 13 acquiring authorities acting on behalf of private businesses where none of the claimants are private businesses. We consider the costs to these businesses.

### **Impact of change to advance payments**

115. As discussed in the above section on the impact on acquiring authorities of the change in advance payments, a cost will arise as a result of them having to pay claimants earlier than before the change. We feel it reasonable and proportionate to assume that they will need to increase their debt for 3 months by an amount equivalent to the amount that is paid 3 months earlier. Private businesses that local authorities act as acquiring authorities on behalf of will typically be private developers. In an impact assessment on planning appeal procedures (RPC12-CLG-1423(4)), we assumed their cost of capital is 7% and we do not have any reason to expect this to have changed since then (though if the consultation results in evidence to the contrary we will amend this

assumption)<sup>6</sup>. Private acquiring authorities form a range of organisations, including those associated with energy and other utilities. Network utilities typically have a lower cost of capital<sup>7</sup>.

116. If we assume a 7% per annum cost of capital in respect of the advance payments, this would imply that bringing advance payments forward by 3 months would result in acquiring authorities incurring a cost of capital representing approximately 1.75%<sup>8</sup> of 90% the total value of the compulsory purchase order<sup>9</sup>.

### Impact of combining interest rates

117. On the assumption that there is a 1 year gap between the date of entry and the final compensation being paid, then an increase in the interest rate on outstanding compensation by 1.5 percentage points<sup>10</sup> would result in acquiring authorities incurring an increase in interest cost representing 1.5% of 10% of the total value of the compulsory purchase order.<sup>11</sup> We think it unlikely that the average time that would lapse between the date of entry and the final payment would be as much as 1 year, and therefore regard our assumption as conservative, ie is more likely to result in us overstating the annual net costs to business than understating them.

### Combined impact

118. We do not hold figures on the average number or value of houses captured by individual compulsory purchase orders. Based on the cases dealt with by the National Planning Casework Unit, the majority of cases involve a small number of residential properties (i.e. less than 10 units). Of the cases that involve a larger number of units, a majority do not involve either private sector acquiring authorities or local authorities acting on behalf of the private sector.

119. On this basis, we think a conservative assumption would be that there are an average of 15 claimants that are householders for the 13 compulsory purchase orders where the acquiring authority is a private business or a local authority acting on behalf of a private business, and none of the claimants are private businesses.

120. However, this assumption is very dependent on the proportion of compulsory purchase orders that contain a large number of claimants and how many claimants there are in each of these. As discussed above, while there is no systematic data on the number of claimants within each compulsory purchase order, we intend to improve our understanding of the value of compulsory purchase orders and the number of claimants.

121. The average house price in the United Kingdom in 2013 was £261,000<sup>12</sup>, so if there are 15 household claimants in respect of each of these 13 compulsory purchase orders, the total value of the orders would be £51m<sup>13</sup>.

122. Overall, we estimate the cost to businesses of paying the households the advance payment 3 months earlier would be approximately £800,000<sup>14</sup> and the cost to businesses of paying a higher rate of interest on the outstanding 10% would be approximately £80,000<sup>15</sup>. **In total this makes**

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<sup>6</sup> If anything, it could be argued that as a result of the continuation of the base rate being at 0.5%, that our estimate of 7% could be decreased but it certainly should not be an overestimate.

<sup>7</sup> For example, Ofgem proposed a 3.8% cost of capital for five electricity distribution companies in its February 2014 Equity Market Return consultation <https://www.ofgem.gov.uk/press-releases/equity-market-return-consultation-reducing-cost-capital-electricity-distribution-companies> and 4.4% and 4.6% costs of capital for National Grid electricity and gas transmission in its December 2012 proposals for National Grid electricity transmission and National Grid gas transmission <https://www.ofgem.gov.uk/ofgem-publications/53602/4riiot1fpfinancedec12.pdf>.

<sup>8</sup> 1.75% is ¼ of 7%

<sup>9</sup> The advance payment only relates to 90% of the acquiring authority's estimate of the compensation due.

<sup>10</sup> The current rate is 0.5 percentage points below the base rate and the policy proposal that would have the most impact would increase the rate to 1 percentage point above the base rate, which gives a 1.5 percentage point increase. For simplicity, and in light of what the base rate has been historically, we have assumed that the base rate remains above zero.

<sup>11</sup> Based on the fact that claimants will have already been paid 90% of their compensation under advanced payment of compensation rules, there should be 10% outstanding, assuming that on average the estimated valuations used for the advance payments are correct.

<sup>12</sup> Source: ONS

<sup>13</sup> 15 houses at £261,000\* 13 compulsory purchase orders= 15\*261,000\*13 = £51m

<sup>14</sup> £51m\*90% advance payment\*7% cost of capital\*3/12

<sup>15</sup> £51m\*10% outstanding payment\*1.5% increase in interest rate

**approximately £880,000 per annum.** The ten year net present value of this cost is therefore approximately £7.6m. As discussed this is a very approximate estimate designed to give our best estimate given the evidence of the annual net costs to businesses arising from our proposals – this demonstrates the proposal is likely to have limited costs for business in limited circumstances. However the proposal is considered to be zero net cost as explained at the head of this section since the changes amount to transfers between parties and transfers are not considered to be direct costs (The Green Book).

123. The following are also worth taking into account:

- Private businesses that are acquiring authorities or have a local authority acting as an acquiring authority on their behalf are usually large developers or utility companies. Claimants, on the other hand, will be households and businesses of varying sizes, including small businesses. Claimants are therefore more likely to benefit from a reduction in cash flow problems and the corresponding financial consequences than acquiring authorities will suffer from an increase in cash flow problems.
- It is unlikely claimants will on average have a cost of capital as low as the 7% we have assumed in respect of businesses that are acquiring authorities or have local authorities acting as acquiring authorities on their behalf, as they will be made of businesses of a mixture of sizes, some much smaller and with a higher cost of capital. Therefore the cost saving to claimants that are businesses of earlier advance payments may outweigh the financial costs to businesses that are acquiring authorities or have a local authority acting as an acquiring authority on their behalf.
- Small and Micro Business Assessment - these proposals will impact on acquiring authorities and claimants. Businesses are represented in both categories, but only claimants will be small or micro- businesses. It is not possible to estimate the number of small businesses which will be affected by these proposals as that will depend on the particular circumstances of each compulsory purchase order. However, our analysis of the impact of these proposals on claimant businesses in general shows that many of the proposals will have no substantive or minimal impact. The two proposals which are likely to have the greatest impact – advance payments of compensation and improved interest rates on outstanding compensation – will be beneficial to claimant businesses, including small businesses, because they will be able to receive advance payments earlier and will receive more interest on outstanding compensation payments.
- Overall, we consider that these proposals will have a positive impact on small businesses and therefore, that no mitigations are required.