

<b>Title:</b> Compulsory purchase reform  <b>IA No:</b>  <b>Lead department or agency:</b> Department for Communities and Local Government  <b>Other departments or agencies:</b> HMT	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 13/07/2016		
	<b>Stage:</b> Final		
	<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: Fit for purpose</b>

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?
£m	£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, including a package of reforms which have been taken forward in the Housing and Planning Act 2016. A number of respondents to the March 2015 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 further 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 were the subject of an eight week consultation from 21 March 2016. Implementation of many of the proposals will require primary legislation, which are being taken forward through the Neighbourhood Planning and Infrastructure Bill. The remaining proposals will be implemented through secondary 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.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 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.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</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>	
				<b>Non-traded:</b>	

*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: 13 July 2016

# 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'

Not available: see evidence base for more details.

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

Components of this option act in different directions on the level of compensation paid by public sector authorities and private businesses to land owners. A more detailed summary of the different measures is presented on pages 6-16. 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'

Not available: see evidence base for more details.

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

Components of this option act in different directions on the level of compensation paid by public sector authorities and private businesses to commercial tenants of affected properties. A more detailed summary of the different measures is presented on pages 6-16. 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 and to commercial tenants.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
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## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	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, with the latest being taken forward through the Housing and Planning Act 2016.
3. In responding to the consultation related to the Housing and Planning Act 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 considered these and other suggestions from the sector and agreed 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. The government consulted on these proposals earlier in 2016. There was general support for the proposals. With primary legislation being required to implement most of these reforms, they are being taken forward in the Neighbourhood Planning and Infrastructure Bill.
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. encourage prompt payment of advance payments of compensation by introducing penalty interest rates on late payments;
    - iv. 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 in 2015 was very positive with a number of respondents in favour of further reform. With the exception of one minor proposal – how to measure the area of a building to calculate the buildings amount for an occupier's loss payment - a clear majority of respondents to the 2016 consultation supported each of the proposals.

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 latest 3 years we have comprehensive information on (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 18-19. 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. 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 a consultation in 2015, those respondents did not provide any evidence to support the need for these further changes in their responses.

Prior to the 2016 consultation, we considered that attempting to collect comprehensive information would involve disproportionate cost and may not be obtainable in some instances. We decided to use the 2016 consultation not just to seek views on our proposals but also to test our assumptions and initial conclusions on the impacts of **all** the proposals, and to seek further evidence. We also held an

Impacts Seminar, during the consultation, with leading practitioners which was specifically focused on testing our understanding of the likely impact of these measures and the assumptions underpinning that understanding. Despite taking this specific, focussed action, we were unable to obtain substantial further information which would enable us to quantify the impact of the proposals.

11. 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.
12. The responses to the consultation confirmed this view, with no respondents raising it. However, during the Impacts Seminar, a few participants disagreed, stating that there must be familiarisation costs because there was a necessary change. We agree that there is necessary change, but as described earlier, we consider that each compulsory purchase is unique, so the legislation would have to be reviewed for each one.
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. Given the variety and complexity of compulsory purchase orders, we would expect even professional advisers to have to refer to the detailed regulations and case law in each instance. We concede that, for the rare individual who was very familiar with the legislation, there may be small familiarisation costs, but that these costs may be offset by the reduction in relevant case law which requires reviewing.

## **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 (including businesses which partner Transport for London to deliver the regeneration element).
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 and is being taken forward through the Neighbourhood Planning and Infrastructure Bill.

### **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. However, we are not aware of any plans by the Greater London Authority and Transport for London to introduce new, joint compulsory purchase orders. In any cases that are brought forward, all additional claimants will be compensated for the full value of their economic loss, including transaction costs. The consultation overwhelmingly supported these proposals.
21. It was suggested in the Impacts Seminar that this could reduce the compensation payable. We do not agree: this measure alone has no impact on levels of compensation paid. However, it is likely that

the compensation would be affected by other changes in this package (detailed below in paragraphs 38-54), which reduce compensation to exclude any 'windfall' from public investment.

22. 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, including costs of negotiations and of moving premises.
23. These changes will therefore be neutral in terms of impact on business, as the relevant acquiring authorities are public sector bodies. There will be a benefit to the public sector from promoting and administering one joint scheme rather than two separate, but related, schemes. There is a positive wider economic impact from more efficient use of compulsory purchase orders.

## **MAKING PROVISION FOR TEMPORARY POSSESSION**

24. 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.

25. 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.

26. 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 and is included in the Neighbourhood Planning and Infrastructure Bill.

## **Expected level of impact**

27. 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. For acquiring authorities, the 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. There was strong support for this proposal in the consultation. The consultation specifically asked whether the number of 'ransom payments' where land is required on a temporary basis are likely to be small and limited in number. Respondents were largely supportive. Two organisations representing rural business interests were either not aware of ransom payments or thought them to be so small as to be negligible. A key representational body considered that this was not an issue because payments were assessed on the basis of loss or damage. Of those who opposed this assumption, some thought that 'ransom payments' would be more numerous, but did not provide any further supporting information with regards to frequency or size.
30. A couple of respondents to the consultation noted that, especially in the case of rail authorities who had more limited acquisition powers than other utilities, 'ransom payments' did occur, with landowners being paid more than their loss, thereby increasing the cost of delivering and maintaining infrastructure. Reference was made to 'Realising the potential of GB rail - final independent report of the rail value for money study - detailed report'<sup>1</sup>, published in May 2011. This Report stated that 'ransom payments' linked to temporary acquisition of sites cost Network Rail at least £5m per annum in additional costs. The impact of reducing compensation payments to the level of loss, without inflated 'windfall' costs, will be of net cost to business, since all of the £5m will remain with Network Rail, a public sector body: previously 'ransom payments' would have been made to businesses, individuals and the public sector. However, only a small proportion of the £5m will be affected by the proposals, which only relate to new schemes. Therefore the additional cost to business will be less than this amount.
31. Although some acquiring authorities are, or act on behalf of, private sector bodies, we expect the proposed changes will have only a small gross benefit 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. 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. This loss will be a benefit to the acquiring authority or a supporting business. Overall, we expect the net impact on business to be small but negative, as currently many claimants of ransom payments are not businesses. There is a positive wider economic impact from more efficient use of compulsory purchase orders, and quicker and more certain delivery of projects.

## **NEW LEGISLATIVE REQUIREMENT TO BRING ORDERS INTO OPERATION**

32. 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.
33. 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.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/4204/realising-the-potential-of-gb-rail.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4204/realising-the-potential-of-gb-rail.pdf), Section 8.2.4



34. 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 and is included in the Neighbourhood Planning and Infrastructure Bill.

### **Expected level of impact**

35. 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.

36. 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.

37. Overall any impact of this proposal is expected to be small. Participants in the Impacts Seminar broadly agreed with these impacts. There was overwhelming support for this proposal in the consultation.

### **CLEARER WAY TO IDENTIFY MARKET VALUE**

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. As a consequence of this, we are implementing a change so that a transport infrastructure project can be deemed to be part of a subsequent development project which is only viable because of the new transport infrastructure.

44. 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. This will also align compensation more closely with the economic loss of claimants as a result of compulsory purchase i.e. the value of their asset prior to the announcement of the transport scheme, including any previous potential for development. Claimants will retain the right to challenge the level of compensation on this basis through the Upper Tribunal.

45. These proposals will require primary legislation.

### **Expected level of impact**

46. The impacts for the key proposals under this element of the package are set out below. A good majority of the respondents to the consultation supported these measures, including among those representing business, land and property interests.
47. Establishing the principle of the 'no scheme world' and clarifying the definition of what constitutes a scheme will make the process of agreeing the compensation easier. The purpose of this measure is to simplify and speed up the calculation of compensation, not to change the basis on which it is assessed. We do not expect it to result in different levels of compensation being agreed. It will benefit both acquiring authorities and claimants by reducing the costs associated with negotiating and reaching agreement. A good majority of responses to the consultation supported these proposals. Respondents to the consultation, and stakeholders at the subsequent impacts seminar, did not suggest that this clarification would affect the level of compensation. They generally supported our assumption that this change would potentially benefit the acquiring authority and the claimant by reducing the costs of negotiation.
48. The impact of widening the definition of the scheme to include transport infrastructure projects will vary. These will depend particularly upon the size and location of the scheme and the existing development potential of the land ('hope value'), which would continue to determine the level of compensation paid. For example, in areas of Central London, transport investment would be unlikely to affect the potential for development and therefore the impact on compensation payments would be limited.
49. 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.
50. 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. Not all claimants will be businesses – approximately two thirds of all current compulsory purchase orders do not include any private businesses as claimants, and a further fifth include at least some non-business tenants.
51. In addition, some of the acquiring authorities bringing forward these regeneration schemes will be backed by private sector business (who would be responsible for paying compensation costs, and therefore benefit from a reduction in the compensation payable). 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, which would equate to 2 transport projects annually. However, we expect that fewer, if any, transport compulsory purchase orders will be backed in this way. The consultation asked specifically whether respondents agreed with the assumption that there were likely to be 2 or fewer joint projects per year. Just under half of respondents agreed. Of those who disagreed most thought that this was an under estimate, and that London alone could account for at least 2 projects. One respondent suggest that numbers could fluctuate widely over time. However, no respondents provided any supporting evidence for their thinking or what the numbers may be.
52. 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.
53. We sought to test these assumptions through the consultation and Impacts Seminar. We did not receive substantive evidence on the level of the impact. It was suggested that comparing land values in the Olympic Park, Stratford, with other areas of East London, would indicate the effect of HS1, a public sector transport investment. However, any uplift in property values could be due to a huge range of factors. Whilst it may be possible to obtain some estimate of these values, we do not know what compensation payments were paid, so we would still be unable to quantify the effect. In

addition, any payments made for HS1 would not be representative of projects of differing size, on different sites and in different locations, as land values will vary widely. The approach to compensation in relation to HS2 Phase I will not be changed by these measures, nor will they impact on the package of bespoke supplementary arrangements put in place for that scheme. Given that the fundamental approach to compensation is not changed, any impacts of these changes in relation to compensation for Phase II will be very limited and, again, would not impact on any bespoke supplementary arrangements.

54. One representational organisation considered that this change to compensation would be only a transfer of benefit from the claimant to a private developer. However, as stated above, this would only be the case for transport compulsory purchase orders which are backed by private developers who would be ultimately responsible for paying compensation costs.
55. 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. As no evidence on the impact of previous compulsory purchase orders is collected centrally from the hundreds of acquiring authorities, and in particular compensation payments may be commercially sensitive, we have been unable to establish the possible scale of such payments, even after engagement with stakeholders in the consultation and Impacts Seminar.

## **DEFINING 'NO-SCHEME' WORLD FOR MAYORAL DEVELOPMENT CORPORATIONS**

56. 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.
57. 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 and is being taken forward in the Neighbourhood Planning and Infrastructure Bill.
58. 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 i.e. the value of their asset prior to designation as a Mayoral Development Corporation, including any previous potential for development.

### **Expected level of impact**

59. The key impacts are summarised below, but are closely comparable to the changes to the definition of market value described in detail in the previous section.
60. Acquiring authorities – will benefit because they will have to pay less compensation in some cases.
61. Claimants – some will receive less compensation than they would otherwise have done.
62. No issues relating to the impact of this proposal on Mayoral Development Corporations were raised by stakeholders. The responses to the consultation strongly supported this proposal.

63. 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 and not all will require more than one compulsory purchase order.

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

64. 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.”

65. 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.

66. 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.

67. We propose therefore, to repeal Section 15(1) of the Land Compensation Act 1961. This proposal requires primary legislation and is being taken forward in the Neighbourhood Planning and Infrastructure Bill.

## **Expected level of impact**

68. 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.

69. 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.

70. Those stakeholders who expressed a view on this issue were broadly in agreement with the assessed impacts. There was considerable support for this proposal in the consultation.

71. The impact on business will therefore be minimal.

## **REPEAL OF PART 4 OF THE LAND COMPENSATION ACT 1961**

72. 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.

73. 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.
74. 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 and is being taken forward in the Neighbourhood Planning and Infrastructure Bill.

#### **Expected level of impact**

75. 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.
76. Claimants – given this provision is so rarely used, the impact is likely to be minimal.
77. This proposal will therefore have minimal impact on business as there is little or no experience of these powers being used. Over half of the responses to the consultation supported this proposal.

#### **REVIEW OF THE BISHOPSGATE PRINCIPLE**

78. 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.
79. 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.
80. 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, but who are contracted out of the provisions of the Landlord and Tenant Act 1954 (unprotected tenancies).
81. 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 and unprotected 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 and is being taken forward in the Neighbourhood Planning and Infrastructure Bill.

#### **Expected level of impact**

82. 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 business, if it is the acquiring authority, or working with the acquiring authority.
83. Claimant - affected claimants will benefit from receiving more compensation.

84. There was overwhelming support in the consultation for this proposal. Stakeholders were broadly in agreement with this assessment of impact, although it was noted that it may be more complicated to assess how long a tenancy might have been expected to continue, but practitioners are used to making these assessments in other circumstances. This slight extra complication would be outweighed by the benefit of increased compensation.
85. Overall the impact of this proposal on business will be positive as all the tenancies are for commercial, not residential, properties – and therefore all claimants are businesses. Where the acquiring authority is in the public sector, there is a net transfer to business, with the transfer of payments from the public to private sector. Where the acquiring authority is in the private sector, there is a redistribution of costs within the private sector.

## **REVERSE LOSS PAYMENT SHARE FOR LANDLORDS AND OCCUPIERS**

86. 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.
87. 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.)
88. 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.
89. 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 an industry recognised standard, which we will discuss further with the Royal Institution of Chartered Surveyors. The aim of this measurement change is to simplify the calculation. This proposal requires secondary legislation.

### **Expected level of impact**

90. 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%.
91. 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.
92. There was considerable support in the consultation to this proposal. The public engagement demonstrated strong support for our assumptions. Some thought, including two organisations representing land and property interests, that there may be a benefit to acquiring authorities, due to

lower payments for vacant properties and occupiers being even less likely to reach the maximum threshold than landowners. One organisation representing rural businesses suggested that landowners also suffer disruption and additional costs, with an impact on investment in new premises. However, no quantifying evidence was submitted by respondents.

93. The change to the method of calculating the floor space will simplify the payments compared to using the 'building amount'. This may not affect some occupiers, and may be of benefit to others. This will only have a cost implication in those cases where the 'buildings amount' is the greater amount (see para 88 above). Although occupiers in these cases 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'.
94. Owner-occupier businesses will not be affected, but 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.

### **PENAL INTEREST RATES ON ADVANCE PAYMENTS PAID LATE**

95. 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.
96. 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." The power to make regulations setting the rate of interest is in section 196 of the Housing and Planning Act 2016.
97. 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.
98. 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.
99. 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.
100. This proposal requires secondary legislation, which the government intends to introduce on commencement of the relevant advance payment provisions within the Housing and Planning Act, on 6 April 2017.

### **Expected level of impact**

101. 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, although one respondent to the consultation stated that this provision would affect all their compulsory purchase projects to some extent.
102. Claimants – swifter advance payments are vital for many individuals to finance their relocation before their land is compulsorily acquired.
103. 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. There was considerable support for this proposal in the consultation. Feedback from the Impacts Seminar agreed with this positive impact on claimants and minimal impact on acquiring authority.

## **BLIGHT**

104. 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.
105. 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.
106. 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.
107. 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.
108. 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, to be in place for the revaluation date on 1 April 2017, and possibly also primary legislation.
109. 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**

110. 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.
111. Claimant – the proposal benefits more businesses in London that would like to relocate before the acquiring authority requires their property.



112. Although overall compensation levels may not change, the impact of this proposal for business interests in London and other areas with higher rateable values 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. There was strong support in the consultation for this proposal.

**TOTAL COST OF THE PROPOSALS**

113. 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 net economic 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. However, the net impact on business is unclear, and is set out in more detail in paragraphs 119 to 130.

114. There are seven 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, such as in London and other higher rateable areas	Acquiring authorities

115. Unfortunately, the impact of these proposals on businesses cannot be readily predicted, as there is no representative evidence available from comparable, historic cases: Compulsory Purchase Orders of the kinds which will be affected by each measure are both rare and extremely varied in their impacts. For example, the closest comparators to Mayoral Development Corporations – areas

designated for redevelopment and supported by CPOs - are Urban Development Corporations, of which there have been 18, of varied size and location, since 1981.

116. Questions in the consultation on compensation, and at the Impacts Seminar held with a range of expert practitioners in the compulsory purchase process, have not revealed any evidence on 'typical' or 'average' compensation payments; the consensus has been that this varies too widely between schemes.
117. There is no source of comprehensive, collated information about the stages in the Compulsory Purchase process once the Order has been confirmed by the Secretary of State, nor is there comprehensive information on the levels of compensation paid. This is because the level of compensation paid is a (potentially commercially sensitive) 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 by the Tribunal 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 (such as those affected by these proposals).
118. 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**

119. 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. Contributions to the consultation and Impacts Seminar did not provide any additional information to assist quantification.
120. 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

121. 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.
122. 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 business<sup>2</sup>.

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<sup>2</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.

**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

123. 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.

124. 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 sought this information during the consultation and Impacts Seminar, with only one substantive response, from an acquiring authority, who indicated that most, if not all, of their compulsory purchases orders and development consent orders, where relevant, would be affected by many of the changes to compensation. There was no indication of what the impact may be in terms of costs and benefits to the acquiring authority or affected businesses.

125. We have considered how we would approach estimating the impact of these proposals if more evidence was available, and identified the following factors:

- a **The change in land values following the announcement or implementation of public investment.** The market value of a given site is determined by its size; the local value of the land and/or existing buildings in a particular use (depending on the stream of market rents, maintenance and holding costs); site specific factors e.g. the available transport and utility infrastructure; and the potential to gain permission for a more valuable use. This last component is commonly referred to as 'hope value' by industry participants and valuation professionals<sup>3</sup>. The Department holds estimates of illustrative land values per area by use and by region, produced by the Valuation Office Agency.

The change in values will however depend upon the nature of public investment and the site to be purchased. Different forms of public investment will have different impacts on land values, depending on the characteristics of the site. For example, new transport infrastructure will increase the potential for residential development in areas which are not currently residential, or could increase the density – and hence value – of permissible development. Some evidence on the impact of transport investment on property values is collated in a report by the What Works Centre on Local Economic Growth<sup>4</sup>. Mayoral Development Corporations would have a differential impact, and 'windfall' would depend on the development which had already taken place within the area at the time of purchase.

<sup>3</sup> For example, the HMRC manual on valuation of land for tax purposes, at IHTM 36275 - <http://www.hmrc.gov.uk/manuals/ihtmanual/ihtm36275.htm>. The term is also used in the Royal Institute of Chartered Surveyors (RICS) manual *Valuation – Professional Standards* within the definition of 'market value' (PS3.2) – referenced in a guidance note on the assessment of the commercial viability of development at E.1.2, [http://www.pas.gov.uk/c/document\\_library/get\\_file?uuid=0c6ecae8-2330-4b7d-b43f-8ed0d8f4cf2f&groupId=332612](http://www.pas.gov.uk/c/document_library/get_file?uuid=0c6ecae8-2330-4b7d-b43f-8ed0d8f4cf2f&groupId=332612). Reference is also made in a 2006 report by Knight Frank for the British Property Federation, the House Builders Federation, RICS and the Confederation of British Industry - [http://www.hbf.co.uk/?eID=dam\\_frontend\\_push&docID=20600&filename=PGS\\_Audit\\_Final\\_Report\\_18\\_September\\_2006.pdf](http://www.hbf.co.uk/?eID=dam_frontend_push&docID=20600&filename=PGS_Audit_Final_Report_18_September_2006.pdf)

<sup>4</sup> <http://www.whatworksgrowth.org/policy-reviews/transport/>

- b **The proportion of affected sites owned by businesses ownership.** We consider the majority of landowners to be businesses (including holding companies and residential landlords). However, some land affected by the measures may be in public ownership or owned by private individuals (for example, households living in a home they own). This proportion will vary widely between schemes.
- c **The number of schemes affected per annum**

126. The average annual cost to business of these proposals would be given approximately by **a x b x c**. However, **a** and **b** vary between schemes to such an extent that we would be unable to estimate an average or typical value, even if we were to collate the limited available evidence from all relevant, historic schemes. We also believe that collating this information would require a disproportionate effort as it is not currently collected.

127. 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. The only evidence we received on this estimated that 'ransom' payments cost Network Rail £5m per annum. However, only a small proportion of that amount is affected by the proposals. '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. 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. In all cases, the Upper Tribunal (Lands Chamber) will remain the final arbiter in disputes which cannot be resolved directly between the claimant and the acquiring authority, and will ensure that the appropriate, fair level of compensation is paid.

128. In looking at current compulsory purchase projects, we considered how these changes may affect HS2. With HS2 already underway, the impact of these changes will depend on the timing of the legislation coming into effect and the transitional provisions contained within it. The impact will be greater on schemes starting after commencement of the provisions, such as further phases of HS2. The main impact will be on the way the different types of compensation are calculated. Some businesses will benefit from the proposals, such as occupiers or those whose land value has dropped. Other businesses will bear a cost, such as from loss of windfall payments, and landowners from change in loss payment share. Large projects, such as HS2, are implemented through specific legislation, alongside existing compulsory purchase powers, and as such are subject to Parliamentary scrutiny.

129. *In the earlier Consultation Impact Assessment (RPC-DCLG-3240) we explained that we were unable to quantify the impact of our proposals. We were asked by the RPC when they gave their opinion on the Consultation Impact Assessment to 'use the consultation to gain evidence to monetise the impacts', including by gathering evidence relating to the likely impacts on the number and cost of CPOs, and the number and size of claims. However, as we have demonstrated, despite engagement with stakeholders and interested persons through the consultation, and with expert practitioners during the Impacts Seminar, we remain unable to monetise the impact. However, we consider that these changes are beneficial to make the system clearer, fairer and faster.*

## **SMALL AND MICRO BUSINESSES**

130. 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. Where we have identified 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. Overall, we consider that these proposals will have a positive impact on small businesses and that, therefore, no mitigations are required.

## SUMMARY OF HOW CONSULTATION PROPOSALS WILL BE DELIVERED

131. 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	<b>Possibly</b>	x	This may require secondary legislation only