



Department for  
Communities and  
Local Government



HM Treasury

# Technical consultation on improvements to compulsory purchase processes

Government response to consultation



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October 2015

ISBN: 978-1-4098-4711-3

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# Introduction

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 and the delivery of housing.
2. In March 2015 the government published 'Technical consultation on improvements to compulsory purchase processes' which sought views on a range of proposals aimed at making the compulsory purchase process clearer, fairer and faster for all.
3. A total of 75 responses were received. The largest group of respondents was professionals and professional institutions (41%). The other responses came from local authorities (15%); other public sector bodies (15%); professional associations and industry representative bodies (13%); voluntary/charity/community organisations (7%); individuals (5%) and landowners (4%).
4. All the proposals were supported by the majority of respondents and in many cases there were high levels of support. The government welcomes this support.
5. This document provides a summary of the responses to each proposal and sets out the government response.

# Section One: Improving guidance

## Existing guidance on the compulsory purchase process

6. The existing compulsory purchase guidance needed to be updated to reflect legislative changes and case law since 2004. Therefore, in a separate document alongside the consultation, the government published updated guidance in a new web-based format for comment.
7. A small number of responses were received and these have been carefully considered. Some minor amendments have been made to take on board points made and the guidance has now been finalised. It is [available online](#) on gov.uk

## Encouraging public authorities to offer good levels of compensation

8. The consultation sought views on whether guidance relating to compulsory purchase orders should be updated to encourage public acquiring authorities to offer more reasonable initial offers of compensation. Draft wording for the proposed guidance was included in the consultation.

### Summary of responses

9. The overwhelming majority of those who responded agreed that public sector bodies should be given more flexibility in their compensation offers at an earlier stage. A number of those who supported the proposal emphasised the need for the new guidance to be clear. Respondents who objected to the proposal argued that the status quo should be maintained.
10. There was also overwhelming support from respondents that the draft wording set out in the consultation provided helpful guidance. Some highlighted the need for the wording to be widely discussed and fully tested. Others suggested that further additional guidance was required.

### Government response

11. The government recognises the need for the guidance to be clear and, in response to the comments received, has discussed and tested the proposed wording further with key partners. The final wording has now been included in the updated guidance on the compulsory purchase process referred to in paragraphs 6 and 7 above.

# Section Two: Improving the development and confirmation processes

## Powers of entry for survey prior to a compulsory purchase being made

12. The government recognises that all acquiring authorities may need to enter land to undertake a survey in order to decide whether to include the land in a compulsory purchase order. However, only some acquiring authorities have the power to do so at present. The consultation, therefore, sought views on proposals to extend the power of entry for survey purposes prior to a compulsory purchase order being made to all acquiring authorities. It also proposed that there should be provision to obtain a warrant in certain circumstances and owners and occupiers should be given a minimum of 14 days' notice of entry.

### Summary of responses

#### Aligning powers of entry

13. There was overwhelming support from respondents for the proposal to give all acquiring authorities this power of entry. The main reason given was that aligning the powers would simplify the process and make it clearer for all those involved. Some respondents also felt that it would help to avoid protracted and expensive negotiations with landowners, especially where a survey shows the land is not suitable for inclusion in a compulsory purchase order. Other points made by a few respondents included:
  - compensation should be payable to the landowner/occupier for any costs incurred in allowing access to their land
  - the power of entry should cover all compulsory acquisition including under the Transport and Works Act, Hybrid Bills and Private Bills.
14. Reasons given for disagreeing with the proposal included that it would reduce pressure on acquiring authorities to engage with landowners and reach agreement; it would cause disruption to ongoing businesses and concern over extending power to non public sector organisations.

#### Warrant provision

15. There was overwhelming support for the introduction of a warrant provision. Reasons given included that it is a necessary tool in circumstances where agreement cannot be reached. Some respondents made the point that the acquiring authority must be required to demonstrate that it made reasonable efforts to gain entry by negotiation before a warrant is granted. While supportive of the principle of a warrant, a small number of respondents disagreed with some of the grounds for obtaining a warrant eg it should not be available where refusal is apprehended.
16. Those who did not support the proposal either did not agree with the extension of the power of entry at all or felt that there should be an automatic power of entry following service of notice.

### **Standardising notice periods for entry**

17. There was considerable support from respondents who were in favour of the proposed notice period of a minimum of 14 days. Many felt it would give greater certainty and strike a reasonable balance between interests of the acquiring authority and the landowner.
18. Many of those who did not support the proposed change agreed that a standard notice period would give greater certainty but disagreed with the proposed timeframe. Two thirds thought a longer period (most saying 28 days) was required to allow sufficient time to make necessary arrangements eg moving livestock or seeking professional advice. Some also felt that surveys, especially intrusive surveys, may need to be planned well in advance and therefore, more notice could reasonably be given. Comments from those in favour of a shorter period, typically suggested that 7 days would be adequate and proportionate and a shorter period could apply for unoccupied land.

### **Government response**

19. The government will take forward the proposals to extend the powers of entry to all acquiring authorities and that owners and occupiers should be given a minimum of 14 days notice of entry. The government will also make provision for acquiring authorities to be able to obtain a warrant to gain entry in certain circumstances.
20. In the light of comments received we will encourage, in guidance, acquiring authorities to consider the particular circumstances of each case in deciding whether a longer notice period would be more appropriate. The new power of entry will also include provision for compensation to be claimed for any damage or disturbance caused as a result of the exercise of this power.

### **Streamlining government processes**

21. The process of confirming a compulsory purchase order once it has been submitted to the authorising authority can be lengthy and the timescales for a decision unclear. The government therefore, wants to streamline the process and make it more transparent.
22. The consultation sought views on introducing statutory targets and timescales for the confirmation stage of the compulsory purchase process; introducing a statutory reporting requirement on timescales for decisions; allowing delegation of certain decisions to inspectors and enabling decision letters to be communicated electronically.

### **Summary of responses**

#### **Statutory targets for the confirmation stage of the compulsory purchase process**

23. There was overwhelming support for the principle of having statutory targets and timescales to help speed up the process and improve certainty and transparency for all parties. However, a number of responses noted that targets and timescales should not be introduced at the expense of good decision-making or people's opportunity to engage fully in the process.

24. There was also overwhelming support that the proposed timescales and targets for cases dealt with by written representations set out in the consultation were reasonable and a real improvement on the current situation. For cases subject to a public inquiry, there was significant support for the statutory target of 10 days for acquiring authorities to be advised of the timescale for a decision.

### **Monitoring and reporting performance**

25. Again, respondents overwhelmingly supported the introduction of a statutory requirement for each Secretary of State with confirmation powers to report annually to Parliament on performance in meeting the targets. Respondents felt it would speed up the process and provide greater transparency and scrutiny. However, it was felt that the proposed threshold for reporting ie only where the Secretary of State has decided more than 5 cases per annum should be removed.

### **Allowing the Secretary of State to delegate certain decisions on orders to an Inspector**

26. A significant number of respondents supported the principle of certain decisions being delegated to Inspectors. The main reasons given in support were that this would improve the speed and efficiency of the decision-making process and save costs.

27. Those who did not support the proposal commented that compulsory purchase is a significant infringement of private rights and decision-making powers should only be exercised by a democratically elected person. It was also suggested that the proposal might lead to more challenges negating any time or cost savings.

28. Over two thirds of respondents agreed that it would only be appropriate to delegate decisions that do not raise issues of more than local importance. However, the majority of respondents commented that it would be difficult to draw a distinction between local and otherwise and that the parameters of what constitutes 'local importance' would need to be clearly defined. Those who did not support the proposal felt that it is the forceful acquisition of land that is important not how many are impacted or how wide the impact is. Others felt that all cases should be delegated unless there is a compelling case in the public interest for the Secretary of State to recover the decision.

29. The majority of respondents agreed that, if cases were delegated, the Secretary of State should retain the right to recover cases for his own determination.

### **Enabling decision letters to be communicated to interested parties electronically**

30. All respondents supported this proposal on the basis that it would speed up the process, reduce spending and provide more reliable delivery. A number of respondents noted that hard copies of decision letters should still be available where required.

31. It was suggested by some respondents that decision letters should also be available on the department's and acquiring authority's websites and that greater use generally should be made of online resources to publicise the whole compulsory purchase order process.

## **Government response**



32. The government is committed to speeding up the processing of compulsory purchase orders and therefore, will take forward all of the proposals as consulted on and as outlined in this section. The government understands the reservations expressed by some respondents about the criteria for the delegation of decisions to Inspectors and will therefore, consider further what criteria would be appropriate.

## Reforming High Court challenges

33. The government wants, where appropriate, to allow faster reconsideration of a compulsory purchase order that has been successfully challenged and to ensure that the process of challenging decisions is clear and fair for all.

34. The consultation sought views on widening the remedies available to the Courts to allow them to quash a decision to confirm a compulsory purchase order as an alternative to quashing the order; whether there is a need to change the method of challenging a decision not to confirm an order from judicial review to statutory High Court challenge and whether there is a need to extend the time allowed to implement an order in the event of an unsuccessful legal challenge.

### Summary of responses

#### **Remedies available to the Courts**

35. There was overwhelming support from those respondents for the proposal to widen the remedies available to the Courts on the basis that it would remove unnecessary delays and costs.

#### **Method of challenge**

36. There was strong support from respondents who thought there was a need to change the method of challenge for decisions to confirm a compulsory purchase order from judicial review to statutory High Court challenge. They considered that adopting the same method of challenge as for decisions not to confirm an order was sensible.

37. Comments from those opposed to the proposal, including key interested parties from the legal profession, included that the need to obtain permission to bring a judicial review was an important requirement which should be retained and that the scope of judicial review is limited to considering the lawfulness of a decision and is therefore, more appropriate for challenges by aggrieved acquiring authorities.

#### **Stopping the clock**

38. Respondents overwhelmingly agreed that there was a need to extend the time to implement a compulsory purchase order where there is an unsuccessful legal challenge. Respondents felt that it would ensure that acquiring authorities were not disadvantaged and would act as a deterrent to 'tactical' challenges aimed solely at delaying the compulsory purchase order to the point where it is no longer viable.

39. Those against the proposal thought that 3 years was sufficient time within which to implement an order even if there was a legal challenge and that extending the period would give rise to greater uncertainty and slow the process down.

40. There was strong support, from those who expressed a preference, for a flexible period for the extension of the time to implement a compulsory purchase order. Comments in support of this approach included that it would be hard to predetermine a universal set period of extension. From those who preferred the fixed period extension, two time periods were put forward – 6 months and 1 year – with most support for 1 year.

### **Government response**

41. There is a case currently being considered by the courts (October 2015) which asserts that the courts already have the power to quash the secretary of state's decision as well as quashing the compulsory purchase order itself. The government considers that the Courts should have these wider remedies in order to speed up the compulsory purchase process and will therefore take this proposal forward, irrespective of the outcome of the case.
42. Having carefully considered all the responses on whether there is a need to change the method of challenging a decision not to confirm a compulsory purchase order, the government is not persuaded that a change would be beneficial. Notwithstanding the overall level of support for change, no compelling reasons were given in support and there is no evidence to suggest that the existing process is not working effectively. On balance, the government agrees with the view of those respondents, including a number of bodies representing legal interests, who argued that the permission stage associated with the current judicial review process (to filter out unmerited challenges) is appropriate in these types of cases. Therefore, this proposal will not be taken forward.
43. The government will take forward the proposal to stop the clock. The government agrees with the majority of respondents that the time limit should be extended for a flexible period. However, in response to concerns about prolonging the uncertainty for those affected by the order, the government will provide for the time for implementing the order to be extended for a flexible period until the legal proceedings are decided or 1 year, whichever is the shorter.

# Section Three: Improving the implementation stage

## Entry to take possession of acquired land

44. Once a compulsory purchase order has been confirmed, the acquiring authority can begin the process of taking possession of the land. However, there can be a lack of consistency and certainty in the acquisition process.
45. The consultation, therefore, sought views on how to give greater certainty as to when entry to take possession will take place. There were five proposals: to extend and harmonise the notice of entry period; to enable the claimant to require the acquiring authority to take possession; to give additional protection for acquiring authorities when new interests in land are discovered late in the day; to confirm the date of exercise of powers under a general vesting declaration and to repeal a redundant procedure for obtaining the right of entry.

### Summary of responses

#### **Extending and harmonising the notice of entry period**

46. There was strong support, from those who responded to this question, for the proposal to increase the notice period to 3 months. The main reasons given included that a longer notice period would bring greater consistency and certainty and would offer a reasonable balance between the needs of the acquiring authority and the landowner. Some respondents felt that while 3 months may be appropriate in most cases, there should still be flexibility to have a different period if appropriate eg for unoccupied land.
47. Of those who did not support the proposal, a number acknowledged that a consistent approach would be beneficial. However, there was no consensus on what alternative notice period might be appropriate. The main reasons given by those opposed to the proposal included that a longer period would introduce unnecessary delay as landowners do not require more notice especially where the land is unoccupied; acquiring authorities already act reasonably so there is no need for change and a shorter time period is sometimes critical for delivery of the scheme.
48. A few respondents suggested that an additional associated change should be made to the general vesting declaration process to bring it into line with the proposed change under the notice to treat process ie to give 3 months notice of entry to land. Currently, under the general vesting declaration process, a notice of intention to make the general vesting declaration is published 2 months before the declaration can be made. However, this does not place an obligation on the acquiring authority to execute the general vesting declaration and so the occupier has no certainty as to when, or if, the acquiring authority will ever execute the general vesting declaration and pay any compensation. It was suggested that this 2 month's notice of intention could be removed and the current notice period for the execution of the general vesting declaration extended from 28 days to 3 months.

#### **Enabling the claimant to require the acquiring authority to take possession**

49. Respondents overwhelmingly supported the principle of introducing a mechanism to enable a claimant to require the acquiring authority to take possession after the specified date of entry. They considered it represented a fair balance between acquiring authorities and landowners. Reasons given by those who did not support the proposal included that the issue that this proposal seeks to tackle rarely arises.
50. There was considerable support from those who expressed a view and who preferred the mechanism set out in option 1 of the consultation ie to allow the claimant to serve a reverse notice of entry. The main reason was that it would give greater flexibility to both parties. Those favouring option 2 ie that the acquiring authority should be deemed to have entered and taken possession on the 'on' date whether or not they had actually done so felt it would be simpler and offer greater certainty without adding a further administrative burden on the claimant.
51. Overwhelmingly, respondents agreed that if option 1 was taken forward the defined period, where a reverse notice of entry can be served, should be 28 days after the earliest date for entry. The main comments from those who supported the proposal were that 28 days was a reasonable time period and that there was a need for guidance to clarify how the process would work. There was no consensus amongst those who did not support the proposal on the best time period for serving the notice.

**Additional protection for acquiring authorities when new interests in land are discovered after notice of entry has been given, but before entry is taken**

52. Respondents overwhelmingly supported the introduction of an expedited process where new interests in land come to light after notice of entry has been given but before entry is taken. In supporting the proposal, respondents commented that it was a sensible approach which would help to avoid unnecessary delays in the process. A few respondents put forward suggestions for further criteria to be taken into account in developing this proposal:
- where the acquiring authority had relied on information from the occupier of the land and this subsequently proves to be incorrect, they should be allowed to continue to take possession of the land without further notice
  - an owner who wishes to challenge the extent of an acquiring authority's diligent enquiries should be able to do so through statutory challenge
  - the making and confirmation of a compulsory purchase order should be recorded on the Local Land Charges Register
  - there should be a statutory obligation on landlords to notify tenants when an order is made and confirmed.
53. Those who did not support the proposal commented that it would benefit inefficient acquiring authorities.

**Confirming the date of exercise of powers under a general vesting declaration**

54. There was strong support from respondents for the proposal to amend the legislation to clarify the date of exercise of powers under a general vesting declaration as they felt it would give greater clarity and certainty.
55. Comments from those who did not support the proposal mainly focused on the time period for exercising the powers, with some suggesting it should be longer and others saying it should be shorter or decided on a case by case basis.

### **Repealing a redundant procedure for obtaining right to entry**

56. This proposal was overwhelmingly supported by respondents who agreed that the procedure was outdated and rarely used.

### **Government response**

57. The government will take forward all the proposals as set out in the consultation paper and as outlined in this section, including the helpful suggestion reported in paragraph 48 above about amending the general vesting declaration process.

### **Advance payments of compensation**

58. The government considers that the process of obtaining advance payments of compensation is not fair or fast enough for those subject to compulsory purchase. The consultation sought views on introducing a statutory claim form; bringing forward the earliest date on which an advance payment can be made; introducing a faster mechanism for determining the amount and enforcing the making of the advance payment.

### **Summary of responses**

#### **A new requirement for the claimant to submit a formal claim form to obtain an advance payment**

59. Respondents overwhelmingly supported the principle of introducing a claim form. However, several respondents felt the form should not be prescribed, but that a model form should be issued as guidance instead. The main reason for this was that much of the information can be detailed in nature and hard for some claimants to easily ascertain. A prescribed form might, therefore, become a burden for claimants with limited resources. Many respondents stressed the need for detailed guidance on the claim process.

#### **Bringing forward the earliest date when advance payments can be made to before the date of entry**

60. Respondents strongly agreed that the earliest date when advance payments can be made should be brought forward to before the date of entry.

61. There was considerable support from respondents who agreed that the earliest date on which an advance payment can be made should be brought forward to two months after a claim or the date of the notice to treat or execution of the general vesting declaration, whichever is later. Of those who had concerns, some wanted the payment date to remain as the date of entry as that is the valuation date. However, there was a large body of support for allowing the acquiring authority to make a payment at any time in response to a claim. This is important for some authorities who cannot pay in advance of the current statutory provision as the payment would then be a loan and *ultra vires*. Some respondents thought that reducing the processing time to two months was untenable as the current three months were fully taken up. Some groups representing claimants thought that entry and taking possession should be prohibited until an advance payment (if requested in time) had been made.

### **A new faster mechanism for determining the amount and enforcing the making of advance payments by acquiring authorities**

62. There was considerable support from respondents who agreed that there should be time limits on requests for additional information from acquiring authorities when processing claims for advance payments. Those who did not support the proposal were concerned that as claims were complex, there may be a need to ask follow-up questions. However, they acknowledged that a claim form should help in this regard.
63. The consultation suggested a time limit of 21 days from receipt of the claim to ask for further information. Less than a third of respondents agreed with this time limit; just over a third favoured 28 days; a quarter preferred a longer period (2 or 3 months) and the remainder felt there should be no time limit.
64. The consultation paper asked whether there should be a fast-track procedure for resolving disputes about advance payments, including what the method should be, who should provide it and who should pay for it. There was considerable support from respondents who thought that there should be a procedure but there was no consensus as to how it should be provided. Those who disagreed thought that a procedure would lead to more delay in settling claims and progressing schemes.
65. A variety of suggestions were put forward in response to the question about what sanctions there should be against acquiring authorities who do not make payments on time. These included penal rate of interest; penalty payment (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.

### **Government response**

66. The government will take forward the proposal to introduce a claim form. The form will cover both main compensation claims and requests for advance payments. In light of the comments received, this will be done through guidance rather than legislation initially. As this is a new process, a non-statutory model form will be more flexible and easier to amend if necessary. However, as a back-stop, the government will also take an enabling power to prescribe a claim form should the model form in guidance subsequently prove ineffective. In taking forward these proposals the government will consider the need for supporting guidance.
67. The government will take forward the proposals to:
- allow a claim for advance payment to be made at any time from the date the compulsory purchase order becomes operative; and
  - bring forward the earliest date on which an advance payment must be made to 2 months after a claim or the date of the notice to treat or execution of the general vesting declaration, whichever is the latest
- In response to comments received, the government will give acquiring authorities the power to make advance payments at any time after the date of operation of the compulsory purchase order if they so wish.

68. The government will introduce time limits on requests for additional information from acquiring authorities when processing claims for advance payments but the limit will be 28 days rather than 21 days proposed in the consultation.
69. Having considered the responses to the proposal to introduce a fast track decision process the government believes that only a system which delivers a binding award would be effective. Although various methods of alternative dispute resolution were available, these are non-binding. As capacity in the Tribunal system was an issue, this proposal is not being taken forward at present.
70. 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.

## Improved interest rates on outstanding compensation

71. Compulsory purchase orders require the payment of compensation by the acquiring authorities to claimants for loss of property. Claims are often not settled by the date of entry and to compensate for these delays simple interest is payable. At present, the rate is set at 0.5% below the basic rate, meaning that the rate has been set at 0% since April 2009. The consultation sought views on introducing improved interest rates.

### Summary of responses

#### **Changing the prescribed rate**

72. Respondents strongly agreed that the rate of interest should be pegged to the Bank of England base rate. The main reason given was that this would create a fair system that would be difficult to 'game' for advantage. Those who disagreed did so for different reasons. Some believed that the proposed change would not provide claimants with sufficient compensation, arguing that the rate should be set higher, perhaps at the judicial rate of 8%. Other respondents indicated that they disagreed with the proposal on the grounds that they wanted to maintain the status quo.
73. There was strong support from respondents who agreed that the rate should be set at 1% above the Bank rate. While most accepted the proposal without explanation, some indicated that they supported a 1% rate above the base as a minimum.
74. Roughly half the respondents who disagreed with the question did so because they considered the rate to be too low. They argued that it should be closer to the judicial rate of 8% or the commercial rate of 4% above the Bank of England base rate. Other respondents, predominantly councils that would have to pay the higher rate, objected on the grounds that the rate was too high. They suggested it was punitive to councils and might encourage 'game' playing.

#### **Applying compound interest**

75. There was considerable support from respondents who agreed with the proposal that compound interest should apply. Many of those who agreed did not offer an

explanation for their support, but some argued that this would expedite acquiring authorities paying compensation.

76. Respondents that answered 'no' supported their case by arguing that: this was out-of-keeping with judicial interest rates for compensation claims; that it would require primary legislation which could introduce unintended consequences; that this would be expensive to acquiring authorities; and might mitigate against early settlements.

#### **Introducing a floor to the prescribed rate**

77. There was considerable support from respondents who agreed that a 1% interest rate floor would be fair. Those opposed to the proposal argued that a floor was unnecessary; would add complexity; would be arbitrary; and a 1% floor was too low.

### **Government response**

78. The government considers that the level of interest for compensation should be tied to the Bank of England base rate. This anchors interest rates to comparable returns achievable from 'risk-free' investments that would accrue elsewhere. The government considers that this is the most simple and transparent way of setting interest that is fair to both acquiring authorities and claimants.

79. The government agrees with the vast majority of all respondents that the rate should be more favourable to claimants than the current 0.5% below the base rate. The objective is to reach an equitable and fair settlement between claimant and acquiring authority. Several respondents found that an interest rate that is higher than the proposed 1% uplift would be more reflective of the return that a claimant could expect elsewhere. It would also be more comparable to standard judicial and commercial rates of interest. The government agrees with this proposition, but also needs to ensure that the rate is not set so high as to be punitive for acquiring authorities.

80. In response to these competing concerns, the government will set a rate at 2% above the Bank base rate. This is proportionate and would achieve a greater degree of fairness and balance for all parties.

81. The government considers that the concerns raised by those opposed to the proposal to require compound interest ie that a compounding interest rate would put compulsory purchase compensation at odds with comparable rates and could have unintended consequences are important and compelling objections. For these reasons, and a broader concern that this would add undue complexity to the system, the government therefore considers it preferable to set an equitable interest rate that does not compound.

82. The consultation highlighted that an interest rate floor would add complexity to the system. However, the consultation also brought to light the exceptional circumstances that would have to obtain for a 1% floor to come into force. An alternative option would be to set the floor at a higher rate, but this would reintroduce an incentive for 'game' playing when interest rates are low. Given the strongly endorsed view that a rate equitable to all parties is one tied to the base rate, the government considers setting a higher base rate to be undesirable. For these reasons, the government will not take the proposal to set a 1% interest rate floor forward.



## Transferring mortgages to avoid negative equity

83. A compulsory purchase order causes any negative equity to 'crystallise' and leaves the claimant with a large unfunded debt to repay, causing them financial hardship and severely eroding their credit worthiness. The consultation sought views on working with mortgage lenders and the Financial Conduct Authority to secure a voluntary agreement on porting mortgages of compulsory purchase claimants that are in negative equity and thereby avoid the debt materialising.

### Summary of responses

84. Respondents were overwhelmingly supportive of a voluntary agreement by lenders. Respondents agreed with the principle of addressing these unintended consequences of the compulsory purchase process. However, several respondents (most notably from the finance industry) acknowledged this was a very complex area and there are a number of challenges that would need to be addressed.

85. Again respondents overwhelmingly agreed to implementing protections through legislation should a voluntary solution not be possible in practice.

### Government response

86. The government is committed to making the system fairer for all and a fundamental part of this is ensuring that the compulsory purchase regime does not unfairly impact on claimants' credit worthiness. Responses indicate that cases are rare, but can have adverse consequences for affected parties. The government acknowledges the strong support for pursuing a voluntary solution and will work with lenders and regulators to achieve this. If this is not successful, the government will seek a remedy through legislative means.

## Extending powers to override easements and restrictive covenants

87. To deliver effective regeneration, an acquiring authority often compulsorily acquires land on behalf of a third party development partner. To ensure that there are no impediments to the proposed regeneration, it may be necessary to deal with restrictive covenants and easements affecting the land acquired. Some acquiring authorities like local planning authorities and the Homes and Communities Agency have statutory powers to override easements and restrictive covenants.

88. The consultation sought views on extending the existing statutory powers to acquiring authorities, such as statutory undertakers, who do not already have the powers. It also sought views on the basis of compensation where overriding is to facilitate commercial development on land acquired for public works being open market value, rather than diminution of value.

### Summary of responses

89. Respondents overwhelmingly agreed that existing powers to override covenants and easements should be extended to other acquiring authorities, acting in their capacity as statutory undertakers or in the exercise of their public functions. Most respondents thought that this was a sensible measure to improve clarity and simplicity. It was also stressed that the easements etc of statutory undertakers should continue to be protected and that the development taking place on the land should continue to have the benefit of planning permission (or equivalent).
90. Those against were mainly rural interests, who thought that there was scope for misuse by some statutory undertakers.
91. In general, acquiring authorities were opposed to the change in the basis of compensation in relation to schemes to facilitate commercial development on land acquired for public works and those representing landowners interests were in favour. Of the 'neutrals' (mainly professionals and professional organisations) opinion was evenly split: some thought that it was fair that public authorities should not have an advantage over private developers who would have to pay market value (rather than diminution of value) in these circumstances; others thought that having two bases of compensation would be confusing and that it was reasonable for public authorities to pay diminution of value because the profits from any additional commercial development would be ploughed back into the undertaking for the public good.

### **Government response**

92. The government will take forward the proposal to extend the existing statutory power to override easements and restrictive covenants to all acquiring authorities. The existing power, which is only available to local planning authorities and regeneration bodies, already includes protection for statutory undertakers and requires the development to have planning permission. This will be widened to encompass equivalents to planning permission, such as development consent orders and Transport and Works Act Orders.
93. The government has decided not to take forward the proposal to change the basis of compensation in relation to schemes to facilitate commercial development on land acquired for public works. On balance, the government considers that as the profits of any such commercial development would ultimately be ploughed back into works which would benefit the public sector; and given the likely complexity in trying to define the circumstances in which a different basis of compensation would apply, this proposal should not be taken forward.

### **Taking part of a claimant's land – 'material detriment'**

94. Land needed for development projects often cuts across 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. There are two different procedures that allow acquiring authorities to exercise compulsory purchase powers, a 'notice to treat' or a 'general vesting declaration'.

95. The consultation sought views on harmonising the treatment of material detriment under both the notice to treat process and the general vesting declaration process. Two alternative options were put forward. It also sought views on introducing a provision to allow acquiring authorities to disapply material detriment when acquiring rights through subsoil.

### **Summary of responses**

96. There was strong support from respondents who preferred option i. to allow entry to land and vesting of title before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures. Those in favour cited the need to prevent delay to schemes as it can take up to two years for cases to be determined by the Upper Tribunal. Some noted that the issue of whether the claimant's land should be taken will already have been aired at the inquiry, so schemes should not be delayed while a similar point was argued before the Tribunal.

97. Those against (mainly rural interests, but also some professionals) thought that it would be unfair for a claimant to suffer severance when it was not certain whether that would be confirmed. If material detriment was eventually allowed, more compensation due to the severance might become payable.

98. More than half of respondents agreed with the proposal to allow the material detriment provisions to be disappplied in compulsory purchase orders for the acquisition of rights through subsoil. However, there were few unqualified comments in favour: most of those who commented said that the issue should be considered on a case by case basis.

### **Government response**

99. The government will set out provisions to allow entry to land before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures.

100. The government will also take forward the proposal to allow acquiring authorities to disapply material detriment provisions in the circumstances set out in the consultation in their particular compulsory purchase order.

# Section Four: Assessments

## Impact Assessment

101. The consultation sought views on the likely impact of the proposals on business, both individually and as a whole.

### Summary of Response

102. The majority of respondents to the consultation questions on the Impact Assessment supported the assumptions made, and considered that the proposed package of measures would, overall, provide modest net benefits or have negligible impact. The only matter to raise a negative response was in relation to the assumption, that there is an average of 15 household claimants per compulsory purchase order. There were a considerable number of respondents who disagreed with the assumption, but no clear alternative was offered.

### Government Response

103. The government welcomes the support on the assumptions made in the Impact Assessment. In response to the concerns raised on the average number of household claimants, the government considers that in the absence of an alternative approach or proposition, and in the light of the general level of support for the Impact Assessment assumptions from respondents, the impact remains assessed on the basis of 15 households.

## Public Sector Equalities Duty

104. The consultation sought views on whether there are potential equalities impacts arising from any of the proposals.

### Summary of Response

105. Very few respondents replied to the questions on the potential equalities impacts that may arise from the proposals outlined in the consultation. Of those who commented the majority agreed that the proposals would not give rise to potential equality impacts. Those who provided a response suggested that acquiring authorities need to be provided with effective guidance to ensure that they consider the equality impacts of any proposals when considering the use of compulsory purchase powers. A very small number of comments suggested that there would be some impacts particularly where the acquiring authority compulsorily purchases land in an area of regeneration. In these cases it was considered that the occupiers of the properties may sometimes be the more vulnerable/least resourced and this needs to be given careful consideration by the acquiring authority.

### Government Response

106. The government notes that overall the response to the consultation did not raise concerns about equality impacts and that the concerns which were raised were about ensuring acquiring authorities give proper consideration to equality issues rather than the proposed reforms. The government's guidance on compulsory purchase powers provides information on compliance with the Public Sector Equality Duty.

## Next steps

107. In line with the outcome of the government's consideration of the consultation responses outlined above, the following measures require primary legislation and have been included in the Housing and Planning Bill introduced to Parliament on 13 October:

- Making powers of entry for survey fairer and more consistent for all acquiring authorities
- Streamlining government processes
- Reforming High Court Challenges
- Extending and harmonising the process of taking entry to take possession of acquired land
- Allowing claims and payments of advance payments of compensation to be made earlier
- Extending powers to override easements and restrictive covenants
- Amending the approach in relation to 'material detriment'

108. Further detailed work is required before the following measures which also require primary legislation can be taken forward:

- the introduction of a fast track decisions process over claims for advance payments of compensation
- facilitating the transfer of mortgages to avoid negative equity

109. Some measures only require secondary legislation and will be taken forward at the earliest opportunity, including:

- enabling decision letters to be communicated to interested parties electronically
- improving the minimum rate of interest on unpaid compensation

110. The final Impact Assessment for the measures to be included in the Housing and Planning Bill will be published alongside the Bill (<http://services.parliament.uk/bills/2015-16/housingandplanning/documents.html> ).

111. A number of additional proposals have been received from this consultation exercise. As a result, the government announced in the Productivity Plan ("*Fixing the foundations: Creating a more prosperous nation*") that it is considering the case for these additional compulsory purchase reforms to further modernise the system, and will bring forward proposals in the autumn.