



Department for  
Communities and  
Local Government



HM Treasury

# Consultation on further reform of the compulsory purchase system



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# Scope of the consultation

Topic of this consultation:	This consultation seeks views on further reform of the compulsory purchase system.
Scope of this consultation:	This consultation seeks views on a range of proposals aimed at making the compulsory purchase regime clearer, fairer and faster.
Geographical scope:	These proposals relate to England and Wales.
Impact Assessment:	A brief summary of the impacts and benefits can be found in the consultation paper. A full consultation impact assessment is being published alongside this document.

## Basic Information

To:	This consultation is open to everyone. However, we would particularly welcome views from: <ul style="list-style-type: none"> <li>• acquiring authorities</li> <li>• professional advisers on compulsory purchase; and</li> <li>• those whose land has been or is currently being compulsorily acquired</li> </ul>
Body/bodies responsible for the consultation:	Planning Directorate, Department for Communities and Local Government and HM Treasury
Duration:	This consultation will last for 8 weeks from 21 March 2016. The deadline for responses is 11.45pm on 15 May 2016
How to respond:	To respond to this consultation please use following link - <a href="https://www.surveymonkey.co.uk/r/PD2FS3L">https://www.surveymonkey.co.uk/r/PD2FS3L</a>
After the consultation:	A summary of responses will be published on the department's website within three months of the closing date.

# 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. Because the process interferes with the human rights of those with an interest in the land affected, there must be adequate safeguards in place to protect those rights.
2. A number of changes have been made to improve the system in recent years and the government consulted on a package of reforms<sup>1</sup> in March 2015 which are being taken forward in the Housing and Planning Bill.
3. In responding to the earlier consultation a number of respondents expressed the view that there was a need to go even further and they put forward a range of ideas for further reform of the compulsory purchase system. The government has considered these and other suggestions from the sector and developed this further package of reform.
4. Section 1 of the consultation sets out a number of proposed reforms to the principles of assessing compensation. Section 2 contains some proposals for technical process improvements. These further proposals are intended to make the compulsory purchase process clearer, faster and fairer.
5. In summary, the package of proposals is aimed at achieving the following outcomes:
  - a) the system will be clearer because the measures will:
    - i. set out a clearer way to identify market value when agreeing levels of compensation
    - ii. put mayoral development corporations on the same footing as new town and urban development corporations for the purposes of assessing compensation
    - iii. simplify the process by enabling transport and regeneration bodies to make combined orders
    - iv. repeal redundant legislation
  - b) 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. building on Housing and Planning Bill proposals to further encourage prompt payment of advance payments of compensation by setting the penalty interest rate for late payment

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<sup>1</sup> Technical consultation on improvements to compulsory purchase processes (March 2015): [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/413866/Technical\\_consultation\\_on\\_improvements\\_to\\_compulsory\\_purchase\\_processes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413866/Technical_consultation_on_improvements_to_compulsory_purchase_processes.pdf)

- 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) the system will be fairer for acquiring authorities because:
    - i. there will be consistent powers for all acquiring authorities to temporarily use land for the purposes of delivering their scheme
  - d) 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. In response to the consultation on Phase I reforms we received a number of responses requesting consolidation and full review of the compulsory purchase system. We acknowledge that it has been some time since there has been a fundamental review of the primary and secondary legislation on compulsory purchase, but a full scale consolidation would take considerable time and need significant resources to complete. Given the pressing need to ensure that compulsory purchase can more effectively support the delivery of the government's housing, regeneration and infrastructure objectives, we propose to take forward these reforms, having regard to the outcome of the consultation, at the earliest possible opportunity.

# Section 1: Changes to compensation assessment and process

## Clearer way to identify market value

7. A core principle of compulsory purchase compensation is that land should be acquired at market value in the absence of the scheme<sup>2</sup> underlying the compulsory purchase.
8. Since the principle was first established, over a century of case law has sought to clarify the basis upon which the land valuation in these circumstances is calculated, based around the principle of what is known as the '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.
9. 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. The House of Lords' decisions in 'Waters'<sup>3</sup> and 'Spirerose'<sup>4</sup> emphasise the need for reform. 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 lack of clarity also 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 reference to the Upper Tribunal.
10. A further issue the government is keen to explore in the context of the definition of the underlying project is the concept that an acquiring authority should not pay more for the land it is acquiring by reason of its own (or someone else's) public investment. A key example would be where there has been recent and substantial public investment in adjoining or nearby transport infrastructure.

## Proposals for change

11. In order to achieve a clearer way to identify market value of land we propose to establish the principle of the 'no scheme world' fairly and effectively in the valuation process by codifying it in statute and introducing a:
  - clearer definition of the project or scheme that should be disregarded in assessing value
  - clearer basis for assessing whether the project forms part of a larger 'underlying' scheme that should also be disregarded
  - more consistent approach to the date on which the project is assumed to be cancelled

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<sup>2</sup> The terms 'scheme' and 'project' have the same meaning in this section.

<sup>3</sup> Waters v Welsh Development Agency [2004] UKHL 19

<sup>4</sup> Spirerose Ltd v Transport for London [2009] UKHL 44

- broadening of the definition of the ‘scheme’ to allow the identification of specified transport infrastructure projects that are to be disregarded within a defined area, over a defined period of time
12. By defining the principle of the no scheme world in primary legislation, it is hoped that the definition will provide a clearer and fairer way of calculating land value. This would reduce delays in the assessment of compensation and provide more certainty for claimants and the acquiring authority alike before entering in to the process. This in turn may reduce the number or extent of compulsory purchase orders being required as greater certainty about the level of compensation that will be offered could lead to more purchases by agreement.

### **Clarifying the principle of the ‘no scheme world’**

13. The Law Commission report, [‘Towards a Compulsory Purchase Code \(2003\)’](#), noted that operating the ‘no-scheme’ or ‘Pointe Gourde’ rule is one of the most difficult and complex elements of compulsory purchase. Essentially, assessment of compensation payable for the acquired land should not take account of any increases or decreases in value attributable to the statutory project or scheme for which the land is acquired. However, the main problem arises from the lack of consistency in the many formulations of this rule, in statute and case-law.
14. The Law Commission’s general approach to tackling this problem was to identify the essential features of the existing law, to get rid of unnecessary complication and confusion, and to put what remains in a modern and codified form. The Law Commission proposed to ‘clear the decks’ and recommended that a new rule - referred to as ‘Rule 13’ - should supersede the ‘Pointe Gourde’ rule and all other statutory versions or case law relating to definition and disregard of the scheme.
15. We consider the Law Commission’s proposed Rule 13 to be a good starting point at setting out a fair and well-reasoned approach to the definition of the no-scheme world principle. The Law Commission’s recommended Rule 13 is set out below:

#### ‘A new Code

(1) All previous rules, statutory or judge-made, relating to disregard of “the scheme” will cease to have effect.

#### Defining the project

(2) In this Code, “the statutory project” means the project, for a purpose to be carried out in the exercise of a statutory function, for which the authority has been authorised to acquire the subject land.

(3) In cases of dispute, the area of the statutory project shall be determined by the Tribunal as a question of fact, subject to the following:

- (a) The statutory project shall be taken to be the implementation of the authorised purpose within the area of the compulsory purchase order, save to the extent that it is shown (by either party) that it is part of a larger project;
- (b) Save by agreement or in special circumstances, the Tribunal shall not permit the authority to advance evidence of a larger project, other than one



defined in the compulsory purchase order or the documents published with it.’

‘Disregarding the project

(4) In valuing the subject land at the valuation date:

(a) it shall be assumed that the statutory project has been cancelled on [the launch] date; and

(b) the following matters shall be disregarded:

(i) the effects of any action previously taken (including acquisition of any land, and any development or works) by a public authority, wholly or mainly for the purpose of the statutory project;

(ii) the prospect of the same, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function, or by the exercise of compulsory powers.

(5) Sub-rule (4) does not require or authorise (save to the extent specified in (b)) consideration of whether events or circumstances at any time (before or after the [launch] date) would have been different in the absence of the statutory project.’

16. In proposing to take the Law Commission’s recommendations as a starting point for a new statutory approach, it is important to note 3 key points:

(i) if adopted, there would be a presumption that the project is limited to the area of the compulsory purchase order but the acquiring authority could make the case for a wider statutory project for valuation purposes (ie the scheme that is to be disregarded) which could be larger than the area covered by that particular compulsory purchase order. This would however need to be done at the outset when making the order.

The extent of the wider project may be obvious in many cases, for example where the acquiring authority is only purchasing the few remaining interests in an estate regeneration scheme which itself is of wider geographical area. In other cases land may be linked to the scheme land but in a less obvious way, such as land needed for compensatory habitat replacement. Putting Rule 13(3) into statutory form would provide a clear basis for the acquiring authority to identify at the outset that the linked land was part of a larger project potentially avoiding grounds for disputes over valuation. When identifying a scheme for the purposes of valuation that extends wider than the land to be taken by the compulsory purchase order, the acquiring authority would need to set out clear policy objectives behind the proposal to support its justification for making the compulsory purchase order.

(ii) there may be some loss of flexibility if Rule 13 were adopted. Currently it is a question of fact for the Lands Chamber to decide what ‘the scheme’ includes which provides some flexibility in the system and the Lands Chamber has considerable latitude to determine what amounts to ‘fair compensation’ in any given case. Although there may be less flexibility we believe the benefit of having a clear approach set out in statute outweighs this potential concern.

(iii) the Law Commission recommended that the cancellation date should be the valuation date. We propose that the cancellation date should be the ‘launch date’

(ie the date the compulsory purchase order notices were issued) in order to be consistent with section 14 Land Compensation Act 1961 (as substituted by section 232 Localism Act 2011) which sets out how to take account of actual or prospective planning permissions in assessing the value of land.

Question 1: Do you agree with the proposal to codify the 'no scheme world' valuation principle in legislation?

Question 2: Do you consider that the proposal by the Law Commission (Rule 13) should be used as the basis on which to take forward amendments to the relevant legislation?

Question 3: Do you agree that the date on which the scheme is assumed to be cancelled should be the launch date, not the valuation date as proposed by the Law Commission?

### **Extending the definition of 'the scheme'**

17. A further issue arises when a regeneration scheme is made viable by investment in transport infrastructure 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. Where the projects are closely associated in both space and time, and the regeneration project is only viable because of the new transport scheme, it seems reasonable to be able to deem that the transport scheme forms part of the regeneration project. If this is so, it can be disregarded and the land for the regeneration project can be acquired at pre-transport scheme values. The main benefit being that the public purse will pay for the land at values unaffected by the public investment which it has already funded. Therefore, the landowner will receive less compensation than might otherwise have been available and the public purse will receive the benefit of its investment.
18. If a broader definition of the scheme is to be allowed, this could be achieved by introducing a power to specify named transport projects that are to be disregarded within a defined area, over a defined period of time when promoting a development project that depends on the previous project for its viability. This could be achieved by adding the enabling power as a sub-category to 'Rule 13' (4)(b) above, but views on whether this change should be introduced and, if so, how it could be delivered, would be welcomed.

Question 4a: Should the definition of the statutory project be extended to include an enabling power which would allow specific transport infrastructure projects to be identified that are to be disregarded within a defined area, over a defined period of time?

Question 4b: If yes, do you have any views on how the wider definition should be expressed?

Question 5: Should other types of infrastructure schemes also be included within an extended definition of the statutory project?

## Putting mayoral development corporations on same footing as new town and urban development corporations

19. For new town and urban development corporations, the whole of the designated new town or urban development area and all the development in those areas 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.

### Proposals for change

20. We propose to put mayoral development corporations (both in London and where a combined authority has a mayor) on the same footing as new town 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.
21. 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.

Question 6: Do you agree that for the purposes of assessing compensation the whole mayoral development corporation area and all development in it should be disregarded in the same way as it is for new town and urban development corporations?

### Review of the 'Bishopsgate' principle

22. 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 arising from the disturbance of that trade or business as a result of having to leave the land. In calculating this loss it is expressly provided for (in section 38(2) of the 1973 act) 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.
23. 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 the acquiring authority 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.

24. The difference between section 37 and section 20 can currently result 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.
25. This issue was raised in response to the March 2015 consultation.

### **Proposals for change**

26. The government wants to ensure that compensation entitlement where land is acquired by compulsion is fair to all claimants. We propose therefore, to amend the legislation to ensure that, in calculating the compensation due to those with an interest in the land arising from minor tenancies, account is taken of the period for which the land occupied by the tenant might reasonably have been expected to be available for the purpose of their trade or business.

Question 7: Do you agree that the compensation payable to those with minor tenancies should take account of the period for which the land occupied by the claimant might reasonably have been expected to be available for the purpose of their trade or business?

### **Reverse loss payment share for landlords and occupiers**

27. 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.
28. 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 - £25 per square metre of gross floor space up to a maximum of £25,000
29. There are different rates for the 'land amount' for agricultural land and non-agricultural land. For agricultural land it is calculated as the greater of £300 or £100 per hectare (for holdings not exceeding 100 hectares) or for holdings exceeding 100 hectares, £100 per hectare for the first 100 hectares and £50 per hectare for the next 300 hectares. For non-agricultural land it is calculated as the greater of £2,500 or £2.50 per square metre of the area of land.
30. 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.

31. However, it is the occupier who bears the burden of having to close down or relocate their business operation. The allocation of these loss payments is therefore, unfair to the occupier who incurs the greater cost.
32. There is a further minor related issue which we wish to address – the basis for calculating the buildings amount. At present this is based on gross external area. However, it has been suggested that is difficult to measure in practice and is also inconsistent with market practice for the measurement of most buildings.
33. This issue was raised in response to the March 2015 consultation.

### **Proposals for change**

34. The government considers that there is a need to ensure that the compensation paid to those whose land is acquired is fair. To achieve this we propose to:
  - amend the current rules setting 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
  - simplify the method of calculating the ‘buildings amount’

### **Adjust the balance of loss payments in favour of occupiers**

35. We consider that the best way to ensure that loss payments are fairly allocated is to reverse the basis of the current payments. This would mean that owners receive 2.5% of the market value of their interest in the land, subject to a maximum of £25,000.
36. Occupiers of non-agricultural land would receive, subject to a maximum of £75,000:
  - 7.5% of the market value of their interest in the land; or
  - £75 per square metre of building; or
  - the greater of £7,500 or £7.50 per square metre of land
37. Occupiers of agricultural land would receive, subject to a maximum of £75,000:
  - 7.5% of the market value of their interest in the land; or
  - £75 per square metre of building; or
  - the greater of £900 or £300 per hectare (for holdings not exceeding 100 hectares) or for holdings exceeding 100 hectares, £300 per hectare for the first 100 hectares and £150 per hectare for the next 300 hectares

Question 8: Do you agree that the current loss payments should be adjusted as set out in paragraphs 35 – 37 of this consultation paper?

### **Simplify the method for calculating the ‘buildings amount’**

38. The current calculation of the ‘buildings amount’ is based on gross external area. However, such measurements usually have to be made or estimated specifically for the calculation of the buildings amount compensation. On the other hand, lettable area is already established for the majority of premises which are commercially let. Freehold occupiers and long leaseholders may not have such figures readily to hand but we consider it would be easier to measure as the measuring practice is more straightforward.

39. We therefore, propose to change the method of calculating the ‘buildings amount’ from gross external area to net lettable area.

Question 9: Do you agree that the method of calculating the ‘buildings amount’ should be changed to the net lettable area?

## Penal interest rates to enforce the making of advanced payments

40. 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 ideas 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; and
  - interest on bridging finance to be claimable
- Around 10% of respondents felt there should be no sanctions.

41. The Government response to the consultation set out that:

“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 is contained in clause 174 of the Housing and Planning Bill<sup>5</sup>.

42. In setting this rate of interest we must therefore, strike a balance between the need to encourage swift payment of outstanding advanced payments and the imposition 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.

### Proposals for change

43. 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.

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<sup>5</sup> Version of the Bill as introduced in the House of Lords on 13 January 2016. See <http://services.parliament.uk/bills/2015-16/housingandplanning.html>.

44. We therefore propose to introduce a penal interest 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.

Question 10: Do you agree that the penal rate of interest should be set at 8% above base rate while debt remains unpaid?

## Statutory Blight

45. The current planning system enables 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.
46. 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.
47. There is a rateable value limit of £34,800 below which 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 revalued. The next revaluation is due on 1 April 2017.
48. Few properties within London fall within the rateable value limit owing to property being much 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.

## Proposals for change

49. The current system is unfair to occupiers and landowners of properties in high value areas because their properties exceed the rateable value limit, and they are therefore barred from serving a blight notice.
50. We consider that a more flexible system which sets a higher limit for London where land values are higher would be more appropriate. However, we recognise that any new London limit needs to be set so that it does not cause acquiring authorities unacceptable cash flow difficulties by having to purchase higher value sites earlier than they might have wished.
51. We propose, therefore, to set a higher rateable value limit for serving a blight notice within Greater London than elsewhere in the country. Further research is required to work out what would be an appropriate limit. However, the intention is that the new

London limit would be set at a level which would catch similar types of property to those which fall under the national limit in other parts of the country.

52. We would also welcome views on whether there are other areas where a higher rate is necessary.

Question 11: Do you agree with the proposal to increase the qualifying rateable value limit to serve a blight notice in London?

Question 12a: Do you consider there are other parts of the country that may need a higher rateable value limit?

Question 12 b: If yes, please state locations where a higher rateable limit should be set.

## Repeal of section 15(1) of the Land Compensation Act 1961

53. 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.’

54. The Law Commission report, [‘Towards a Compulsory Purchase Code \(2003\)’](#), 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.
55. 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 planning permission for the scheme would not be available to the claimant in the no scheme world, then the assumption that it is available has no effect and is discounted.

### Proposals for change

56. We propose to make the compulsory purchase system clearer by repealing section 15(1) of the Land Compensation Act 1961.



Question 13: Do you agree we should repeal section 15(1) of the Land Compensation Act 1961?

## Repeal of Part 4 of the Land Compensation Act 1961

57. 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.
58. This provision, although very rarely used, introduces an element of unknown risk and uncertainty for the acquiring authority in certain compulsory purchase order cases. This results in increased costs (such as payments of insurance premiums) for acquiring authorities. 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.
59. In its report, '[Towards a Compulsory Purchase Code \(2003\)](#)', the Law Commission recommended that this provision be repealed.

### **Proposals for change**

60. 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. The repeal of Part 4 would also cancel schedule 3 (application of Part 4 to disturbance, severance and injurious affection).

Question 14: Do you agree that we should repeal Part 4 of the Land Compensation Act 1961?

## Section 2: Further technical process improvements

### Allowing more authorities to bring forward compulsory purchase orders for joint purposes

61. The Government is keen to increase housing development on surplus or underused public sector land.
62. 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 to their statutory function. In the case of Transport for London, the statutory function is transport and not regeneration.
63. 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.
64. We consider that there is a need to address this issue to:
  - 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 a single compulsory purchase order
65. This issue was raised in response to the March 2015 consultation.

### Proposals for change

66. At the current time, only principal local authorities are capable of promoting a joint compulsory purchase order (on cross-boundary sites) under section 121(3) of the Local Government Act 1972. The government proposes to confer similar powers on the Greater London Authority and Transport for London to allow them to promote a joint compulsory purchase order for transport and regeneration purposes for one site. Such a change may be mirrored in new combined authorities with mayors where similar bodies and powers exist.

Question 15: Do you agree with the proposal to allow the Greater London Authority and Transport for London to promote a joint compulsory purchase order?

Question 16: Do you agree that the proposal should also apply to new combined authorities with mayors?

## Making provision for temporary possession

67. Acquiring authorities may need to use land on a temporary basis: for example to store materials needed for the development which is the subject of the compulsory purchase order. However, compulsory purchase orders can only authorise 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 compulsorily over the land they need (usually providing an assurance letter to the landowner confirming that the land will only be required for a certain period of time); or
  - enter into a commercial agreement with the landowner concerned
68. This can result in the acquiring authority being unable to obtain the land they need at a reasonable cost or the implementation of the scheme being delayed while negotiations take place.
69. There is a power to use land temporarily under Special Acts, Transport and Works Act Orders and power to enter and/or use land on a temporary basis is regularly sought in Development Consent Orders. However, the scope of the powers and how they should be used is not clearly defined in the legislation and the powers can be used in different ways on a scheme by scheme basis. This could result in instances where widened powers are secured which give rise to uncertainty for affected land owners and occupiers.
70. There are also associated issues concerning the assessment of compensation and the power to make advance payments.

## Proposals for change

71. The government is proposing to make the compulsory purchase system fairer for acquiring authorities by giving all bodies with compulsory purchase powers the same power to temporarily enter and use land for the purposes of delivering their scheme. In doing so we will set out the scope of the power and the basis for compensation so that those affected by compulsory purchase orders know what to expect.
72. The government believes that all acquiring authorities may need to enter and use land temporarily and proposes therefore, to amend the legislation to give all acquiring authorities the same power. There are various precedent and model provisions: for example, in Development Consent Orders and Transport and Works Act Orders. The government intends to use these provisions as the starting point for drafting the new legislation.

73. Precedent and model provisions in Development Consent Orders and Transport and Works Act Orders generally make provision for landowners to be compensated for any loss or damage arising from temporary possession of their land and include wording along the lines of:

‘The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.’

74. Two broad categories of losses may be suffered - those which are incurred during the occupation period only and others, such as permanent impacts on trade, which will be incurred on an ongoing basis.
75. However, the potential impacts on landowners arising from temporary possession of their land may vary widely depending on the particular circumstances of each case. The government considers therefore, that in order to maintain the necessary flexibility and avoid unintended consequences it would be better to set out ‘high-level’ principles on how compensation should be assessed in temporary possession cases rather than detailed rules.
76. The government is seeking views on whether the approach taken in precedent and model provisions should form the basis of the approach to compensation in temporary possession cases.
77. The standard advance payment regime for compensation (as amended by the Housing and Planning Bill<sup>6</sup>) will apply in temporary possession cases. However, we would welcome views on whether any modifications to this standard regime are required.

Question 17: Do you agree that all acquiring authorities should have the same power to take temporary possession of land?

Question 18a: If introduced, do you agree that the power should be based on precedent and model provisions and if so, which ones?

Question 18b: If not, what would you suggest instead?

Question 19: Do you have any views on whether modifications to the standard advance payment regime are required for temporary possession cases?

## New legislative requirement to bring orders into operation

78. 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

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<sup>6</sup> The main change to the advance payment regime is that in future these payments must be made by the date of the notice to treat rather than the notice of entry if the claim is made in time. See <http://services.parliament.uk/bills/2015-16/housingandplanning.html>.

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.

79. 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 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 become out-of-date.

### **Proposals for change**

80. Prior to 2004, section 15 of the Acquisition of Land Act 1981 required acquiring authorities to publish a notice stating that the order has been confirmed in local newspapers ‘...as soon as may be...’. However, rather than revert to similar wording, the government’s preference is to specify a set period to give greater certainty. We are therefore, proposing 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 unless the Secretary of State agrees a different period.

Question 20: Do you agree that a target timescale should be introduced from confirmation of an order to the date the notice of confirmation is published?

Question 21a: If introduced, do you agree that a 6 week target unless the Secretary of State agrees a different period is appropriate?

Question 21b: If not, what should the target timescale be?

# Impact Assessment

## Impact on acquiring authorities and claimants

81. A full consultation impact assessment is being published alongside this consultation.
82. A number of these measures may have an impact on claimants and acquiring authorities, including businesses. The business interests in individual compulsory purchase orders will vary. Some compulsory purchase orders are proposed by acquiring authorities who are private sector businesses, such as statutory undertakers or by local authorities who have an agreement with a private sector developer, for example, to deliver a town centre redevelopment scheme. Those whose interests are being compulsorily acquired (claimants) include business interests, such as land owners and businesses.
83. Some of the proposals will have a negligible impact on both acquiring authorities and claimants – these are:
  - new legislative requirement to bring orders into operation
  - repeal of section 15(1) of the Land Compensation Act 1961
  - repeal of Part 4 of the Land Compensation Act 1961
84. The following proposals will provide modest net benefits or have minimal impact on claimants:
  - allowing more authorities to bring forward compulsory purchase orders for joint purposes
  - review of the Bishopsgate principle
  - penal interest rates to enforce the making of advanced payments
  - blight
85. The proposals to identify a clearer way to identify market value, to define the ‘no-scheme’ world for mayoral development corporations and making provision for temporary possession are likely to have a cost impact for claimants. This is because potential claimants may receive less compensation than they might otherwise have done. Acquiring authorities will benefit from these proposals. However, we consider that the overall impact of these proposals will be small for the following reasons:
  - ‘windfall’ payments from related transport schemes are probably very rare
  - there are likely to be only a small number of mayoral development corporations
  - we do not think that ransom payments where only temporary possession of land is required are very large or occur very frequently

86. The proposal to reverse the loss payment share will benefit claimant occupiers who will receive more compensation but be a cost to claimant landowners who will receive less. Owner-occupiers will be unaffected. Acquiring authorities will benefit in relation to empty properties as they will pay less compensation to landowners. The maximum amounts will remain in place so to this extent the compensation payable will not increase. It is not clear what the impact on acquiring authorities will be where the maximum payments are not made.
87. The proposal to allow more authorities to bring forward compulsory purchase orders for joint purposes will benefit acquiring authorities as it will allow them to promote schemes which might otherwise be too complicated or uncertain to bring forward.
88. We consider the net costs of these proposals will be zero.
89. We are interested in views on the likely impact of these proposals on business, both individually and as a whole.

Question 22: Do you agree with our assumptions that:

- a) 'ransom payments' where land is required on a temporary basis are likely to be small and limited in number?
- b) there are likely to be 2 or fewer transport projects associated with regeneration promoted by public sector acquiring authorities backed by business per year?

Question 23: Do you have any evidence in relation to:

- a) the scale of 'windfall payments' to claimants where a compulsory purchase regeneration scheme is facilitated by transport improvements by the public sector?
- b) the number of compulsory purchase orders likely to be affected by each proposal?
- c) the impact on compensation payments for each proposal?

Question 24: Do you agree with our assumptions on the impact of the proposal to reverse loss payment share for landlords and occupiers?

Question 25: Do you have any further comments on the likely impact of these proposals on business interests both for the acquiring authority and claimants?

## Public sector equality duty

90. When formulating policy, the department must comply with the Public Sector Equality Duty which requires public authorities to have due regard to the need to:
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the act
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it
91. The relevant protected characteristics are:
- age

- disability
- gender reassignment
- pregnancy and maternity
- religion or belief
- sex and sexual orientation.
- race (which includes Romany Gypsies and Scottish and Irish Travellers)

92. We have undertaken an initial assessment and prepared an Equality Statement while developing these proposals for consultation.
93. These proposals are intended to make the compulsory purchase process clearer, faster and fairer for all those involved, including groups with protected characteristics. As set out in paragraphs 83 and 84 above the majority of the proposals will have either a negligible impact or net benefit for all claimants.
94. There are three proposals - identify a clearer way to identify market value, to define the 'no-scheme' world for mayoral development corporations and making provision for temporary possession - which may have cost implications for claimants as a whole as they may receive less compensation than they might otherwise have done. However, for the reasons set out in paragraph 85 we think the overall impact will be small.
95. There is a further proposal - reverse the loss payment share – which will benefit claimants who occupy land (who will receive more compensation) but be a cost to claimant landowners who will receive less compensation. However, we consider this allocation of payments more fairly reflects the inconvenience and costs incurred as a result of compulsory purchase.
96. After undertaking the initial assessment, we cannot envisage how the proposals as a whole will have a differential impact on those with protected characteristics as opposed to those who do not share these characteristics. However, we would welcome others' views on any potential equalities impacts arising from these proposed changes, especially those proposals where there is potential for claimants to receive less compensation.

Question 26: Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.



# Summary of consultation questions

Question 1: Do you agree with the proposal to codify the 'no scheme world' valuation principle in legislation?

Question 2: Do you consider that the proposal by the Law Commission (Rule 13) should be used as the basis on which to take forward amendments to the relevant legislation?

Question 3: Do you agree that the date on which the scheme is assumed to be cancelled should be the launch date, not the valuation date as proposed by the Law Commission?

Question 4a: Should the definition of the statutory project be extended to include an enabling power which would allow specific transport infrastructure projects to be identified that are to be disregarded within a defined area, over a defined period of time?

Question 4b: If yes, do you have any views on how the wider definition should be expressed?

Question 5: Should other types of infrastructure schemes also be included within an extended definition of the statutory project?

Question 6: Do you agree that for the purposes of assessing compensation the whole mayoral development corporation area and all development in it should be disregarded in the same way as it is for new town and urban development corporations?

Question 7: Do you agree that the compensation payable to those with minor tenancies should take account of the period for which the land occupied by the claimant might reasonably have been expected to be available for the purpose of their trade or business?

Question 8: Do you agree that the current loss payments should be adjusted as set out in paragraphs 35 – 37 of this consultation paper?

Question 9: Do you agree that the method of calculating the 'buildings amount' should be changed to the net lettable area?

Question 10: Do you agree that the penal rate of interest should be set at 8% above base rate while debt remains unpaid?

Question 11: Do you agree with the proposal to increase the qualifying rateable value limit to serve a blight notice in London?

Question 12a: Do you consider there are other parts of the country that may need a higher rateable value limit?

Question 12 b: If yes, please state locations where a higher rateable limit should be set.

Question 13: Do you agree we should repeal section 15(1) of the Land Compensation Act 1961?

Question 14: Do you agree that we should repeal Part 4 of the Land Compensation Act 1961?

Question 15: Do you agree with the proposal to allow the Greater London Authority and Transport for London to promote a joint compulsory purchase order?

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Question 25: Do you have any further comments on the likely impact of these proposals on business interests both for the acquiring authority and claimants?

Question 26: Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact DCLG Consultation Co-ordinator.

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