

Legislation update and the Future

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Two new Acts - Overview

- 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....
- The outputs to date are:
 - Housing and Planning Act 2016
 - Neighbourhood Planning Act 2017
 - Further consolidation needed

Housing and Planning Act 2016 – Key provisions

- **Extended rights to enter and survey land during pre-application stage (s. 172 – 179)**
- Provides for Secretary of States to introduce target timeframes for confirming authorities to publish decisions (s. 180)
- Provides for Secretaries of State to delegate powers to confirm Order to Inspectors (s. 181)
- **Clarifies that NTT must be served and GVDs must be executed within 3 years of the CPO becoming operative (s.182)**
- **Simplifies the process and timetable for making a General Vesting Declaration (s. 183 – 185)**
- **Minimum period for taking possession following a Notice of Entry extended from 14 days to 3 months (s. 186)**
- **Power for claimant to serve a reverse notice of entry to force early acquisition (s. 187)**
- Regulations to impose further requirements on claimants detailing their compensation claim (s. 192). N.B. a template claim form has now been published.
- Amendments to advance payment provisions (s 194 to 197)

Housing and Planning Act 2016 – Powers of entry to survey

- ‘A person authorised in writing by an acquiring authority may enter and survey or value land in connection with a proposal to acquire an interest in or a right over land’.
- 14 days’ notice required
- Compensation available for ‘damage’
- Can be enforced by warrant

Housing and Planning Act 2016 – Reverse notice of entry

- Following receipt of a notice of entry an occupier may serve a counter-notice requiring the acquiring authority to take possession of the land by no later than a date specified in the counter-notice.
- If the occupier gives up possession of the land on or before the specified date the acquiring authority are to be treated as having taken possession on that date.
- The date specified in the counter-notice—
 - must not be before the end of the period specified in the notice of entry, and
 - must be at least 28 days after the day on which the counter-notice is served.
- A counter-notice has no effect if the notice to treat is withdrawn before the date specified in the counter-notice.
- Where a notice of entry is served on more than one occupier with the same interest in the land, a reference in this section to the occupier with an interest in land is to all of them acting together.

Housing and Planning Act 2016 – New claim form

- DCLG published a model claim form on 27th September, in accordance with the provisions of s. 192.
- The claim form and accompanying guidance can be found [here](#)
- DCLG state that the purpose of the claim form is to:
 - Ensure that anyone who may be affected by a compulsory purchase and has an entitlement to claim compensation is aware of what information needs to be provided to the acquiring authority (AA) for the consideration of any claim.
 - Ensure that a claimant provides the information as early as possible in the compulsory purchase process so that the AA can make an advance payment (if requested to do so) based on the full details of the claim.
 - Assist a claimant in complying with the requirement to make a detailed properly evidenced claim in section 4 of the Land Compensation Act 1961.
 - Claimants are also advised to instruct an appropriate chartered surveyor who specialises in compulsory purchase compensation; whose reasonable fees should be recoverable as part of the compensation payable.

Housing and Planning Act 2016 – Advance payments

- Claimant can make request for an advance payment immediately after CPO is confirmed (as opposed to waiting until NTT is served)
- Acquiring authority may request further information
- Payment must be made on date of service of notice of entry / execution of GVD (as opposed to date of possession)

Neighbourhood Planning Act 2017 – Key provisions

- **New process relating to temporary possession, and codification of compensation assessments (s. 18 – 31)**
- **Codifies the ‘no scheme principle’ to clarify that market valuations must be undertaken on the basis of a no scheme world, as if the scheme had been cancelled on the valuation date (s.32)**
- Repeals Part 4 of the Land Compensation Act 1961 that provided an avenue for claimants to have a second bite of the cherry if the acquiring authority obtains consent for a more valuable planning permission within 10 years (s.33)
- Requires Acquiring Authorities to serve and publish notice of confirmation of their Order within 6 weeks of it being confirmed. (s.34)
- **Supersedes the Bishopsgate principle by requiring that regard is to be had for what would likely have happened in the no-scheme-world in cases where a lease is outside the 1954 L&T Act or less than a year to run (s. 35)**
- Provides TfL and GLA with joint powers (s.36)
- Provides for Treasury to introduce an interest rate to be paid on compensation, running from valuation date (s.39)

Neighbourhood Planning Act 2017 – Temporary possession provisions

- The CPO must specify the total period of time for which each parcel may be subject to temporary possession
- Before taking entry the acquiring authority must serve a notice on all owners and occupiers of the land, specifying:
 - The date of entry (which must be at least three months later)
 - The period for which possession is to be taken on that particular occasion
- Within 28 days of receiving a notice of intended entry a landowner may serve a counter notice specifying that the total period of time for which the land may be subject to temporary possession is limited to
 - (a) 12 months where the land is or is part of a dwelling, or
 - (b) 6 years in any other case.
- On receiving a counter-notice the acquiring authority must decide whether to—
 - (a) accept the counter-notice,
 - (b) withdraw the notice of intended entry, or
 - (c) proceed as if the land were subject to compulsory acquisition

Neighbourhood Planning Act 2017 – No scheme world principle

The Act codifies the no-scheme-world assumptions in five rules:

1. It is to be assumed that the scheme was cancelled on the relevant valuation date.
2. It is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.
3. It is to be assumed that there is no prospect of the same scheme, 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 purchase powers.
4. It is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.
5. If there was a reduction in the value of land as a result of—
 - (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
 - (b) the fact that the land was blighted land as a result of the scheme,that reduction is to be disregarded.

Neighbourhood Planning Act 2017 – Abolition of Bishopsgate

The Act states that regard must be had to—

- (a) the likelihood of the continuation or renewal of the tenancy,*
- (b) in the case of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies, the right of the tenant to apply for the grant of a new tenancy,*
- (c) the total period for which the tenancy may reasonably have been expected to continue, including after any renewal, and*
- (d) the terms and conditions on which a tenancy may reasonably have been expected to be renewed or continued.*

The importance of early engagement

- In compliance with DCLG Guidance (October 2015)
 - ‘In the shadow of CPO’
- To mitigate issues in contention and objections
- Create goodwill for the scheme
- Seek to manage expectations on both sides