

Chapter 2 - Overview: How compulsory purchase works

1 Do you agree that legislation governing compulsory purchase procedures and compensation in Scotland should be brought into a single statute?

Yes

2 Do you have any specific concerns in relation to the repeal of existing legislation on CPO procedures and compensation that we should consider?

Please use this text box to share any concerns:

No

Chapter 3 - Enabling powers

3 With the exception of SOSE and Network Rail, are there any gaps in acquiring authorities' enabling powers?

Please use this text box to provide specific examples:

We are supportive of enterprise agencies such as SOSE having CPO powers to support land assembly and housing delivery.

4 Are local authorities' compulsory purchase powers sufficiently broad to cover the circumstances in which they may need to compulsorily acquire land in carrying out their statutory functions?

Yes

Please use this text box to give us your views:

In addition to the list, there should be an option for local authorities to consider the use of CPOs to support nature restoration schemes that can support the delivery of the Scottish Biodiversity Strategy and support net zero objectives. There are examples of this in England and other European countries. Alongside strong community engagement, this could support a more strategic, coordinated and plan-led approach to delivering green infrastructure and directing biodiversity enhancement activity.

5 Should there be a general power for acquiring authorities to create new rights in land and to attach conditions to such rights?

Yes

6 Should there be a general power for acquiring authorities to seek temporary possession of land?

Yes

7 Do you agree with the proposed list of matters that should be addressed in any new temporary possession power?

Yes

If not, please use this text box to give details:

8 How might the use of back-to-back CPOs be further encouraged?

Please use this text box to give your suggestions:

There is an opportunity for third sector organisations and community groups, if enabled, to participate in back-to-back CPOs. This could support community wealth building efforts and directly address local housing or infrastructure needs. Local aspirations may be included in local place plans, for example.

Back-to-back CPOs could also be used to support wider social and environmental outcomes by working with environmental non-governmental organisations, public bodies or community groups to deliver nature restoration schemes.

Chapter 4 - Early engagement and preliminary steps

9 Do you agree that early and effective engagement is best promoted through non-statutory measures (e.g. guidance) rather than legislative requirements?

Yes

10 How might early and effective engagement between acquiring authorities and affected parties be further encouraged?

Please use this text box to give your suggestions:

Early engagement is strongly encouraged and supported by the Scottish Land Commission's research findings on the value of early engagement in land use change. This suggests there are many benefits, including financial, of engaging at an early stage of a project.

https://www.landcommission.gov.scot/downloads/5ee1fa960b190_20200611%20SLC%20REPORT%20Value%20of%20Early%20Engagement%20in%20Planning.pdf

Early and effective engagement can be encouraged by increased coordination and joining up potential CPO schemes with wider planning processes ranging from Local Place Plans, Local Development Plans and regional spatial plans/strategies. Embedding CPO engagement within a wider process ensures that the intervention is seen within the context of directly delivering local place priorities.

The Scottish Government's land rights and responsibilities statement sets out that there should be "meaningful collaboration and community engagement in decisions about land". Good practice advice and protocols to support this have been developed by the Scottish Land Commission.

11 Would it be helpful to introduce a general power for acquiring authorities to require specified parties to provide information about ownership, occupation and other interests in land?

Yes

Please use this text box to explain your views:

Yes, information of this nature would be helpful and could help improve/speed up decision-making. However, more broadly, it would support wider efforts to improve land data and transparency which is required for effective land use decision-making.

12 Do you agree that acquiring authorities should have a general power of entry prior to the making of a CPO for the purposes of surveying etc?

Yes

13 Does the outline proposal for a general power of entry strike a reasonable balance between the needs of acquiring authorities and rights of the owner/occupier?

Not Answered

Please use this text box to give us your views:

Chapter 5 - Making a CPO

14 Are any changes required to the legislation which prescribes the form and content of CPOs?

Not Answered

If so, please use this text box to give details:

15 Should any or all of the following documents be placed on a statutory footing?

Should docs be statutory - Statement of Reasons:

Should docs be statutory - General Certificate:

Should docs be statutory - Protected Assets and Special Category Land Certificate:

16 Do you agree that the notification requirements for CPOs should be prescribed through secondary rather than primary legislation?

Yes

17 Should heritable creditors be added to the list of parties who must be individually notified of a CPO?

Not Answered

17A Should heritable creditors have the status of statutory objectors?

Not Answered

Please use this text box to explain your views:

18 Are any other changes required to the list of people to be individually notified?

Please use this text box to give us your views:

19 Do you agree that the CPO (and map) should be published on a suitable website, in addition to being made available for inspection at a specified physical location?

Yes

20 Should newspaper notices continue to be used to publicise the making of CPOs?

Yes

21 What alternative approaches might be appropriate for publicising CPOs – either in addition to or instead of newspaper notices?

Please use this text box to give us your views:

In addition to newspaper notices, we recommend the use of newsletters and community notice boards. Further examples for engaging communities in decisions relating to land can be found on the Scottish Land Commission's good practice webpages.

https://www.landcommission.gov.scot/downloads/628e17641fd5d_Comm_Engagement_Protocol_2021.pdf

22 Should Scottish Ministers have a power to prescribe (through secondary legislation) common data standards for compulsory purchase documentation?

Yes

Please use this text box to explain your reasons:

23 Should acquiring authorities be able to serve compulsory purchase notices by electronic means, if a party agrees to this in writing and provides an address for this purpose?

Yes

Please use this text box to explain your reasons:

Chapter 6 - Deciding a CPO - Considering objections

24 Should there be a statutory time period within which an opposed CPO should be referred to a Reporter after it has been submitted for confirmation?

Yes

Please use this text box to explain your reasons:

25 If there is to be a statutory time period, how long should it be?

Please use this text box to give us your views:

26 Should express provision be made in legislation for objections to be considered through written submissions?

Not Answered

27 Should the procedural rules for hearings and written submissions for CPO cases be set out in secondary legislation?

Not Answered

28 Do you agree that statutory objectors' right to be heard at either a PLI or a hearing should be retained?

Not Answered

29 Should Scottish Ministers continue to decide whether a PLI or hearing is used?

Not Answered

Please use this text box to give us your views:

30 Should provisions on awards of expenses be extended to cover cases where objections are considered through hearings and written submissions?

Not Answered

Chapter 6 - Deciding a CPO - Decisions

31 Does the public interest test, as currently set out in Circular 6/2011, strike a fair balance between private and public interests?

Yes

Please use this text box to explain your views:

Yes, the test as set out and its application is a useful framework for decision-making. It allows for flexibility and wider context to be considered on a case-by-case basis. However, a review of circular 6/11 is required to ensure it reflects the current legislative and policy context.

32 Do you agree that the public interest test should continue to be policy-based rather than statutory?

Yes

33 Should acquiring authorities be empowered to confirm unopposed CPOs?

Yes

34 If acquiring authorities are empowered to confirm unopposed CPOs, which approach would be preferable?

Option 2

Please use this text box to explain your views:

Local authorities must be adequately resourced to have the capacity to deliver option 2.

35 Should Reporters be empowered to take CPO decisions, subject to published criteria regarding delegation by Scottish Ministers?

Yes

Please use this text box to explain your views:

Yes, this appears to help simplify and streamline the process.

36 Is additional scrutiny still needed for CPOs which include particular land?

Not Answered

36A If yes, which of the four current special categories of land should this apply to?

37 If additional scrutiny of certain CPOs is needed, could there be alternative ways to achieve this other than Special Parliamentary Procedure?

Please use this text box to outline your suggestions:

38 Should the restriction on confirmation of CPOs that include statutory undertaker land apply only where a relevant objection is made by the undertaker whose land is included in the Order?

Not Answered

Please use this text box to explain your reasons:

39 Do you agree with the proposals regarding the interaction between CPOs and public rights of way?

Not Answered

Please use this text box to explain your reasons:

Chapter 6 - Deciding a CPO - Scope, timing and challenges

40 Should there be a mechanism that would allow statutory objections to be addressed during the confirmation process, so avoiding unnecessary hearings or PLIs?

Yes

41 If provision for such a mechanism were made, what procedures or safeguards would need to be put in place to ensure fairness? Could either of the suggestions in Q40 achieve this?

Please use this text box to give us your views:

A form of mediation would likely be helpful in some cases.

42 Would a power to confirm CPOs subject to conditions be helpful in terms of overall project delivery?

Not Answered

Please use this text box to explain your views:

43 If conditional CPOs were taken forward, what additional procedures and safeguards would need to be in place to ensure fair and proportionate use?

Please use this text box to give us your views:

44 Do you agree that the Scottish Government should publish target timescales for the issuing of CPO decisions, rather than having binding statutory time limits?

Yes

Please use this text box to explain your reasons:

45 If targets (statutory or otherwise) are not met, what sanctions might be appropriate?

Please use this text box to give us your views:

46 Should the Scottish Government be required to report on compliance with any target timescales for CPOs?

Yes

47 Do you agree that the grounds on which a confirmed CPO may be legally challenged should be retained?

Not Answered

Please use this text box to explain your reasons:

48 Should the 6-week period within which a confirmed CPO may be legally challenged be retained?

Not Answered

Please use this text box to give us your views:

49 If a legal challenge is successful, should the court have discretion to quash just the confirmation decision, rather than its only remedy being to quash the Order itself?

Not Answered

Chapter 8 - Compensation - Market value

65 Do you agree that compulsory purchase compensation in Scotland should continue to be based on the principle of equivalence?

Yes

Please use this text box to explain your reasons:

This reflects our research findings and advice in our report: Land for Housing: Towards a Public Interest Led Approach to Development (https://www.landcommission.gov.scot/downloads/611ba5365de67_Land%20for%20Housing%20Review%20FINAL.pdf).

However, further consideration should be given to identify to compulsory purchase land closer to existing use value and the uplift used to fund infrastructure and place-making. Proposals for this are included in answer 67 and set out in section 8.33-8.35 of the consultation.

66 Should compensation for land acquired compulsorily continue to be based on an assessment of its market value (disregarding increases/decreases attributable to the CPO scheme)?

Yes

67 Should acquiring authorities have the power to request that, for a specific CPO, compensation would take no account of the prospect of planning permission being granted for alternative development?

Yes

Please use this text box to give us your views:

This may be likely in areas where land values increase as a result of a CPO scheme to deliver infrastructure.

68 Should the no-scheme principle be codified in the legislation?

Yes

69 If the no-scheme principle is codified, do you agree with the outline proposal?

Yes

Please use this text box to explain your views:

70 Should the planning assumptions be repealed and re-written?

Yes

71 Do you agree with the broad outline for how the planning assumptions might be reformed?

Not Answered

Please use this text box to give us your comments:

72 Should CAADs be retained as a tool to establish development value in a CPO context, or should they be abolished?

Not Answered

Please use this text box to explain your reasons:

73 If CAADs were to be retained, how could they be made more effective, efficient and equitable?

Please use this text box to give us your views:

74 Should Part V of the 1963 Act be repealed and not re-enacted?

Yes

Chapter 8 - Compensation - Injurious affection & disturbance

75 Do you agree that the method of valuation for injurious affection should be dealt with in guidance rather than set in legislation?

Not Answered

76 Should set-off of betterment continue or be removed from the legislation?

Continue

Please use this text box to explain your reasons:

Yes, it should be continued. Publicly created land value uplifts (through planning policy for example) should be captured and re-invested by the local authority to deliver related public infrastructure/interest outcomes.

77 Please provide details of any acquiring authorities which you believe would need new powers to enable them to carry out accommodation works on a discretionary basis.

Please use this text box to provide details:

78 Do you agree that separate statutory provision should be made for compensation for disturbance?

Not Answered

Please use this text box to explain your reasons:

79 Should compensation for disturbance be able to cover losses incurred from the date on which the notice of making of the CPO is published ?

Not Answered

Please use this text box to explain your reasons:

80 Should compensation for disturbance be payable to those who have a compensable interest in land included in the CPO when it is made, even if that land is not ultimately acquired?

Not Answered

81 Should owners who do not occupy the property be able to claim a wider range of disturbance compensation than at present?

Not Answered

82 Would it be helpful to provide guidance on compensation in cases of complex corporate structures?

Yes

83 Do you agree that the impecuniosity rule should be removed?

Not Answered

84 Do you agree with the proposals on mitigation, including compensation for business relocation and extinguishment?

Not Answered

Please use this text box to give us your views:

85 Should the jurisdiction of the LTS should be extended to cover discretionary as well as mandatory disturbance payments?

Not Answered

Chapter 10 - Compulsory Sale and Lease Orders

106 Should local authorities be able to instruct the sale of a property without permission from the property owner?

Yes

Please use this text box to explain your reasons:

Yes, local authorities should be able to instruct the sale of a property via an auction process as suggested by the SLC's CSO proposal (2018). Our proposal set out that planning authorities should be required to make contact with the owner as soon as possible after a problematic site has been identified that it believes may be an appropriate subject for a CSO.

In our view, the strength of CSOs is the ability to facilitate constructive dialogue with owners of problematic sites. By providing a formal framework for engagement it is anticipated that the CSO process could provide an effective stimulus to regeneration even in cases where the power is not implemented. Local authorities should be able to instruct a sale via a CSO as a last resort to be used where all other attempts to bring a site back into productive use have failed.

Full details of the proposal can be found here: [5dd6a16d88752_CS0-Proposal-final.pdf](#)

107 In what circumstances might compulsory sale be justified, and what benefits or drawbacks might there be?

Please use this text box to give us your views:

The CSO power has been designed as a tool to tackle vacant and derelict land or buildings that are detrimental to a local area and there must be a strong public interest case for justifying a compulsory sale. The SLC suggested several circumstances where CSOs could be applied and that distinguishes the process from CPOs.

We believe CSOs would be suitable for sites that are relatively small (i.e. do not have major development potential), are not used for any productive purpose, are causing demonstrable harm to the surrounding community, are located within or on the immediate periphery of existing settlements; and have previously been developed (i.e. brownfield rather than greenfield sites).

The sale and auction can be justified where the owner is unwilling to act and the amount of evidence available about a site's condition, history and context amounts to a strong case for the use of a CSO.

Many of the sites that would be eligible for CSOs are likely to be in a poor physical condition, but this will not always or necessarily be the case. It is perfectly possible for vacant sites that are not visibly neglected to be causing harm by preventing communities from realising their full potential. Evidencing this kind of harm is however significantly more challenging than evidencing physical harm.

There may be other routes to bringing sites into productive use depending on the specific context, including CPO or using the ownerless property transfer scheme (<https://www.kltr.gov.uk/ownerless-property-transfer-scheme-opts/>). However unique features of the CSO process offers several advantages. The auction aspect is an efficient mechanism for revealing the true market price of a site at any given point in time. One of the reasons why some sites remain vacant for extended periods is that the owner has unrealistic expectations about the value of the site. This mismatch between the price the market would be willing to pay and the price that the owner may be willing to accept can lead to sites remaining unused indefinitely as the owner waits for the market to improve in the expectation that prices will improve. This difficulty is exacerbated in urban areas where vacant land changes hands relatively infrequently and there is little comparative data available on which to base a realistic valuation. Using an auction would allow a market transaction to take place that automatically reflects the extent of structural change within the area, without undergoing a valuation or estimate of the price. It would provide a more reliable measure for valuing vacant and derelict urban sites that are difficult to value due to a lack of comparative transactions data.

Another benefit of the CSO process is that there is no requirement for the planning authority to acquire the land. Instead, it manages the sale process which makes it less costly than using a CPO.

However, planning authorities must be sufficiently resourced and have the skills/capacity to implement CSOs and accompanying planning processes.

108 If a CSO process was introduced, would the procedures involved in preparing a CSO need to be equivalent to those that apply to a CPO?

No

Please use this text box to give us your views:

CSOs and CPOs have different procedures. The full proposed process can be found here: [5dd6a16d88752_CS0-Proposal-final.pdf](#).

A key difference is that following a preliminary investigation stage, where an owner is able to work with the planning authority to bring the site into a productive use, the planning authority makes a decision whether or not to force the sale of the site. This is done via an auction process led by the planning authority.

When preparing a CSO, planning authorities should be expected to draw on a wide variety of different sources in making their case, including reports of nuisance, previous enforcement action or evidence of locally orchestrated public campaigns relating to the site that are supported by representative community groups. We also recommended that when identifying sites, planning authorities would be expected to take due cognisance of local aspirations by considering sites identified through locally based plans, prepared in collaboration with community groups such as Local Place Plans.

Unlike a back-to-back CPO, there is no buyer or 'scheme' identified. Instead, to ensure that sites being returned to productive use, we propose that planning authorities should attach conditions of sale to sites that are subject to CSOs. Guidance as to what would be considered 'productive use' would be provided as part of a planning statement prepared prior to issuing the CSO. The conditions should include a requirement for the new owner to complete the development and bring the site into a productive use within a fixed period of time. To facilitate this, it is proposed that the new owner would need to submit a planning application and that the planning authority should be expected to determine this within a reasonable time-frame.

To ensure that the original owner and the new owner receive equal treatment it will be important that the planning statement is available to the new owner are consistent with those available to the original landowner.

As with a CPO, the owner and any other parties with a legitimate interest must be notified. The SLC proposal contains opportunities for the owner to appeal.

109 What governance or regulatory frameworks would need to be introduced to ensure that any future CSO process is used fairly and effectively?

Please use this text box to give us your views:

Wider enforcement and monitoring frameworks are required. We recommend that the planning authority issuing the CSO is responsible for monitoring implementation. After an agreed time, the planning authority would be expected to inspect the site and make a judgement as to whether it had been brought back into productive use. Providing the inspection is satisfactory the authority would then be expected to issue a completion certificate. Once the completion certificate has been issued then the process would be complete and the CSO should be removed from the property title.

A strict timetable must be part of the CSO process to ensure procedures are fair and transparent.

110 What measures could be taken to control the use of the property by the new owner?

Please use this text box to give us your views:

Our proposal suggests that the planning authority would provide a planning statement to indicate to prospective purchasers of the range of potential uses for the site that the planning authority would find acceptable. These should be linked to the local development plan. Further guidance would be required that would set out exactly what would be required in the planning statement but in principle planning authorities should be encouraged to provide all relevant information that can be made publicly available as part of the sale.

We propose that an explicit statutory condition should be attached to the sale which would give the planning authority the right to purchase the site if the new owner fails to comply with the conditions of sale and does not bring the site into a productive use within a specified time period.

Where planning permission and site investigations take longer than expected due to unforeseen reasons, it is proposed that the planning authority should have the power to extend the development deadline providing the new owner can prove sufficient efforts have been made to bring the site into productive use.

111 How long should a property subject to a CSO remain on the market?

Please use this text box to give us your views:

This should be determined on a site specific basis; however this should be a minimum of 3 months. A clear timetable is required for completing sale and development of the site.

112 What should happen if the property does not sell?

Please use this text box to give us your views:

In case of a non-sale, the planning authority concerned should be given the option to acquire the site via compulsory purchase. We propose that if the site remains unsold then there should be a period of three years before a further CSO could be initiated.

113 Should local authorities be able to instruct the lease of a property without permission from the property owner?

No

Please use this text box to explain your views:

Unsure (neither yes or no)

114 In what circumstances might compulsory lease be justified, and what benefits or drawbacks might there be?

Please use this text box to give us your views:

115 If a CLO process was introduced, would the procedures involved in preparing a CLO need to be more onerous than those that apply to a CPO?

Not Answered

Please use this text box to explain your views:

116 If you think there are any other measures or issues that we need to be aware of as part of our consideration of CLOs, please tell us more about these.

Please use this text box to give us your views:

117 Do you think that the introduction of either Compulsory Sale Orders or Compulsory Lease Orders in Scotland would add any benefits beyond a reformed CPO process, as a tool for tackling long-term vacant or derelict properties?

Please use this text box to provide details:

Given the complexity and resource-intensive nature of CPOs, CSOs and CLOs would give relevant authorities additional, more cost-effective options to create opportunities for regeneration and stimulate local economic and social productivity. The cumulative impact of unlocking wider regeneration through a range of mechanisms would be significant.

The added value of a CSO is that it expects local authorities to initially contact the landowner and hopefully move the site forward through dialogue. CSOs are suitable only where landowners themselves are the main constraint and should be considered a last resort if dialogue breaks down significantly.

About you

What is your name?

Name:

Katherine Pollard

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Land Commission

Further information about your organisation's response

Please add any additional context:

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:

katherine.pollard@landcommission.gov.scot

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Where did you hear about this consultation?

Consultation newsletter, Scottish Government website, Social media/email of an organisation you follow, Other

If other, please say where::

Evaluation

How satisfied were you with this consultation?

Neither satisfied nor dissatisfied

Please enter comments here.:

How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Neither satisfied nor dissatisfied

Please enter comments here.: