

RESPONSE FORM

DISCUSSION PAPER ON COMPULSORY PURCHASE

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gsi.gov.uk. Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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Summary of Questions and Proposals

PART 1: INTRODUCTORY AND GENERAL

Chapter 1 Introduction

1. The current legislation as to compulsory purchase should be repealed, and replaced by a new statute. (Paragraph 1.14)

Comments on Proposal 1

RTPI Scotland agrees with the proposal to repeal the current compulsory purchase legislation and replace it with a new statute.

PART 2: OBTAINING AND IMPLEMENTING A CPO; THE MINING CODE

Chapter 5 Procedure for obtaining a CPO

8. Compulsory purchase by local authorities under local Acts should be carried out by means of the standard procedure.

(Paragraph 5.5)

Comments on Proposal 8

RTPI Scotland agrees that compulsory purchase by local authorities under local Acts should be carried out by means of the standard procedure.

10. Is there any relevant legislation missing from that list?

(Paragraph 5.18)

Comments on Proposal 10

The Community Empowerment Bill was passed by the Scottish Parliament on 17 June 2015. We consider that this new legislation should be added to the list as the new powers for communities will be a consideration in the new Compulsory Purchase legislation drafting.

We also consider that the Historic Environment (Scotland) Act should be added to the list of legislation as well as the secondary legislation currently being prepared. This Act and its secondary legislation deals with list building consents and conservation area consents (amongst other things). These should be taken into consideration for any new CPO legislation.

14. Should the proposed new statute provide that Scottish Ministers must refer cases to the DPEA within a specified time limit and, if so, within what time limit?

(Paragraph 5.26)

Comments on Proposal 14

RTPI Scotland considers that new CPO legislation, regulations and guidance should be closely linked with planning legislation.

15. Should the DPEA have discretion over the process for determining objections to a CPO similar to that which they have in relation to planning matters?

(Paragraph 5.30)

Comments on Proposal 15

RTPI Scotland considers that new CPO legislation, regulations and guidance should be closely linked with planning legislation. We therefore agree that the DPEA should have discretion over the process for determining objections to a CPO in a similar way in which they have in relation to planning matters. We consider that there should be an opportunity for the reporter to select the most appropriate means of the objections being heard, this may not always be a full inquiry. We support more frequent use of written submissions and hearings as with planning matters.

16. The timescales for the process of securing CPOs should continue to be set out in subordinate legislation. (Paragraph 5.32)

Comments on Proposal 16

RTPI Scotland agrees that timescales for the process of securing CPOs should be set out within subordinate legislation.

17. Should all CPOs made by local authorities and statutory undertakers require to be confirmed by Scottish Ministers and, if not, in what circumstances should acquiring authorities be able to confirm their own CPOs?

(Paragraph 5.41)

Comments on Proposal 17

Planning reform has been moving towards a more streamlined plan-led system which recognises the primacy of the Development Plan. Therefore, it could be argued that if a CPO is set out within the Development Plan which has gone through a process of scrutiny by DPEA, a CPO may not require to be signed off by Ministers.

20. Should any conditions be attached to a revocation, so that the acquiring authority cannot initiate the same proposal within a certain period, or without specific consent of the Scottish Ministers?

(Paragraph 5.46)

Comments on Proposal 20

RTPI Scotland considers that any revocation of a CPO should be accompanied by clear reasons for that revocation. A revocation should not be able to be requested by objectors, but be a duty on the acquiring authority.

23. Should there be a new Register of CPOs, or should an entry be made in the Land Register?

(Paragraph 5.50)

Comments on Proposal 23

RTPI Scotland considers that information on land should be coordinated and monitored. The Scottish Government consultation on the Future of Land Reform in Scotland suggested that there should be better coordination of information on land, which would lead to better decision making for both the private and public sectors. Therefore we suggest that CPOs should be recorded as part of the Land Register, or another means of collating information on land rather than creating a new register for CPOs, which will be another document to monitor and update.

24. Is the current three year validity period of a confirmed CPO reasonable?

(Paragraph 5.59)

Comments on Proposal 24

RTPI Scotland suggests that a five year validity period of a confirmed CPO might be reasonable, with due consideration given to the current economic climate.

25. Should there be a precondition that a CPO will only be confirmed where there is clear evidence that the project is reasonably likely to proceed?

(Paragraph 5.59)

Comments on Proposal 25

The Institute considers that this may be an unnecessary step which duplicates other procedures. There is already a set time period for a CPO, therefore the validity of the Order does not continue in perpetuity. Furthermore, the planning system in the preparation of

Development Plans considers viability and deliverability of sites as a key consideration. The Action Programme sitting alongside each Development Plan is updated every two years, and monitors the delivery of the Plan, and the development set out within the Plan. Scottish Planning Policy (2014) sets a presumption in favour of development that contributes to sustainable development, and the viability of development is part of this.

26. Where the acquiring authority offer to replace a public right of way which will be affected by a proposed development, should the right to insist upon an inquiry be removed?

(Paragraph 5.64)

Comments on Proposal 26

RTPI agrees that there should be the right to insist on an inquiry being removed if the acquiring authority provides an alternative public right of way in place of one which may be lost due to a development proceeding.

27. Where there is to be an inquiry into the loss of a public right of way, should any such inquiry be combined with any inquiry into the making of the related CPO?

(Paragraph 5.64)

Comments on Proposal 27

RTPI Scotland agrees that where there is to be an inquiry into the loss of a public right of way, this should be combined with any inquiry into the making of the related CPO.

Chapter 9 The Mining Code

73. Should provision along the lines of the Code be included in the proposed new statute and, if so, should any additions or deletions be made?

(Paragraph 9.26)

Comments on Proposal 73

Consideration should be given not only to mining works, but also to other intrusive workings such as fracking, coal bed methane extraction and carbon capture and storage procedures.

Chapter 13 Valuation of land to be acquired – establishing development value

88. Should there continue to be a statutory assumption that planning permission would have been granted for the acquiring authority's proposals if it were not for the compulsory purchase?

(Paragraph 13.30)

Comments on Proposal 88

RTPI Scotland agreed that there should continue to be a statutory assumption that planning permission would have been granted for the acquiring authority's proposals if it were not for the compulsory purchase.

89. If so, should this continue to be limited (a) to planning permission which might reasonably be expected to be granted to the public and, (b) by the *Pointe Gourde* principle?

(Paragraph 13.30)

Comments on Proposal 89

RTPI Scotland agrees that this should be limited to planning permission which might reasonably be expected to be granted to the public, and by the *Pointe Gourde* principle.

90. The statutory assumption of planning permission for development in terms of paragraph 1 of Schedule 11 to the 1997 Act should be repealed.

(Paragraph 13.34)

Comments on Proposal 90

RTPI Scotland agrees that this statutory assumption of planning permission of development in terms of the above legislation should be repealed.

91. Should the statutory assumption of planning permission for development in terms of paragraph 2 of Schedule 11 to the 1997 Act be repealed?

(Paragraph 13.36)

Comments on Proposal 91

RTPI Scotland also agrees that this assumption should be repealed.

94. The scope of the underlying “scheme” to be deemed to be cancelled for the purposes of considering statutory planning assumptions, should be the entire scheme and not simply the intention to acquire the relevant land.

(Paragraph 13.61)

Comments on Proposal 94

RTPI Scotland agrees with the principle set out above.

177. Are there any other aspects of the current compulsory purchase system, not mentioned in this Paper, to which consultees would wish to draw our attention?

(Paragraph 20.29)

General Comments

While the detail of the new Compulsory Purchase legislation is of great importance, the Institute believes that some context or a preview to this would be useful, and is currently missing from the consultation document. It would be useful to set out why a CPO may be needed to make sure that all parties clearly understand the need for CPOs.

It would also be important, as part of this, to set out the main reasons that people object to a CPO – on the merits of the proposal, as a bargaining position for compensation, or to make a point. These reasons, and perhaps others, have implications for how an objection to a CPO would be taken forward, and some guidance on this would be useful for all parties involved in the CPO process. RTPI Scotland believes that there should be an opportunity to object, however consideration must be given to the process as a whole, not only the CPO procedure, including the allocation of a site within the Development Plan, and the Development Management process.

Recent and ongoing planning reform is seeing a transition to a plan-led system which is transparent, effective and efficient. The Development Plan allocates development across a plan area, and therefore establishes the principle of development for that use. It may be appropriate to set out within the Development Plan where there will be or may be a need for use of Compulsory Purchase powers. The Action Programmes which accompany adopted Development Plans could be a good place to include CPO opportunities, as these are regularly updated and monitored, and the flexibility of the Action Programmes could allow for amendments as and when necessary.

It will be important to link the new CPO powers with infrastructure delivery and development

effectively. Compulsory Purchase is one of the tools to enable development, and this will be more effectively done if it is linked with the planning system closely, and planning for infrastructure delivery. There is a role for Scottish Government in facilitating this. It is also important that the legislation is suitable and works for all users, one format for CPO which suits transport, may not suit planning and vice versa. The new legislation should be put in place with full input from all actors in CPO matters.

Consideration should be made to the new body Historic Environment Scotland which will replace Historic Scotland from 1st October 2015. The role of HES will be different from that of Historic Scotland, as a Non-Departmental Public Body. When considering the historic environment and approving powers, it must be clear as to the role of HES and the separate role of Scottish Ministers.

When considering legislation relating to allotments, we draw attention to the Community Empowerment (Scotland) Bill, passed by Parliament on 17 June 2015. This refers to powers for communities in relation to allotments, and may be an important consideration for CPO powers.

The Institute suggests that the new legislation should be produced in tandem with guidance and good practice support to ensure that all users of CPO procedures are comfortable and confident with the new powers as they come into force.

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.