

RTPI in Scotland



RTPI

mediation of space · making of place

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9 May 2011

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Dear Ann

Compulsory Purchase Consultation

The Royal Town Planning Institute is grateful for the opportunity to respond to the above consultation. The RTPI is the UK body chartered to represent the planning profession and offers these comments from the point of view of a diverse and politically-neutral professional body committed to supporting devolved government in Scotland. The Institute has approximately 2200 members in Scotland, working across all sectors of central government, local government, government agencies, the voluntary sector, private consultancy, the development industry and higher education.

Since devolution, the Institute has empowered its RTPI in Scotland Office, together with its Scottish Executive Committee, with the responsibility for working with government and public bodies generally for the improvement of the planning system in Scotland. This is in accordance with its charter obligation to work for the public interest.

Our detailed responses to the questions set out in the consultation paper are given in full in Annex 1 attached to this letter. The Institute is pleased that Scottish Government has recognised the need to issue guidance and advice on Compulsory Purchase. Compulsory Purchase Orders can contribute to achieving sustainable economic growth but this will require planners, and other development professionals, to be confident in their use. This in itself depends on establishing clarity of processes and procedures to be undertaken. It also needs to balance the need for a nimble process with the involvement of key interests. And it needs to ensure that the end result achieves sustainable development, successfully incorporating economic, social and environmental considerations.

Given the above, the Institute agrees that it is appropriate to update the guidance, but would also suggest that, subject to the findings of the Scottish Law Commission, Scottish Government commits to a comprehensive review of compulsory purchase procedures once the Commission has completed its study. As part of that review the Institute would like to see recognition being given to values of association with place and community over time: these 'softer', more people-focused aspects must not be overlooked.

The Institute believes that compulsory purchase procedures are essential parts of the planning toolkit. The excellent SG webpages devoted to CPO and the meetings of the Advisory Group could be effectively developed further if some Scottish good practice examples were added. Ultimately, such good practice examples should form the basis of a Planning Advice Note as part of a suite of advice and support resources.

The Institute feels that, rather than providing generic guidance on Compulsory Purchase, there would be more impact if guidance and advice was contextualised for particular circumstances. The Institute would wish to see good practice guidance for acquiring authorities, with consideration being given to the standard of management of their existing stocks of properties. Public authorities should aim to maintain properties and have coherent plans for their futures. It might be that the 5-yearly review of Local Development Plans provides the context for potential property purchase, compulsory or otherwise, and for an audit of publicly-owned properties. The futures of any properties then believed surplus to requirements could be fully considered in the context of community needs and aspirations as expressed in the Development Plan.

The Institute assumes that future work on Compulsory Purchase will be taken forward by the Directorate of the Built Environment in conjunction with other parts of Scottish Government. It is particularly important that it is progressed in tandem with the "Building a Sustainable Future" Regeneration Discussion Paper promoted by the Directorate of Housing and Regeneration. The Institute is responding separately to that consultation paper.

The Institute trusts that these comments are of assistance, and has no objection to them being made available to the public in the usual way. If you wish any clarification or further assistance, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in brown ink, appearing to read 'Craig McLaren', with a stylized flourish at the end.

Craig McLaren
National Director

Appendix 1

CONSULTATION SEEKING VIEWS ON DRAFT COMPULSORY PURCHASE GUIDANCE

General Points

The Institute is pleased that Scottish Government has recognised the need to issue guidance and advice on Compulsory Purchase. Compulsory Purchase Orders can contribute to achieving sustainable economic growth but this will require planners, and other development professionals, to be confident in their use. This in itself depends on establishing clarity of processes and procedures to be undertaken. It also needs to balance the need for a nimble process with the involvement of key interests. And it needs to ensure that the end result achieves sustainable development, incorporating economic, social and environmental considerations.

Given this, the Institute agrees that it is appropriate to update the guidance, but would also suggest that, subject to the findings of the Scottish Law Commission, Scottish Government commits to a comprehensive review of compulsory purchase procedures once the Commission has completed its study. As part of that review the Institute would like to see recognition being given to values of association with place and community over time: these 'softer', more people-focused aspects must not be overlooked.

The Institute believes that compulsory purchase procedures are essential parts of the planning toolkit. The excellent SG webpages devoted to CPO and the meetings of the Advisory Group could be effectively developed further if some Scottish good practice examples were added covering *inter alia* the topics of the bullet points in the following paragraph. Ultimately, such good practice examples should form the basis of a Planning Advice Note and/ or suite of advice and support resources.

The Institute feels that, rather than providing generic guidance on Compulsory Purchase, there would be more impact if guidance and advice was contextualised for particular circumstances. Although there are, of course, common features, the Institute would prefer to see separate guidance on, for example:

- Development Planning;
- Development /Design Briefing;
- Amenity Notices (S179 of the 1997 Town & Country Planning (Scotland) Act);
- Buildings of Special Architectural & Historic Interest (Listed Buildings);
- Scheduled Ancient Monuments;
- Back-to-back purchase/disposals; and
- 'Best value' transactions where price might not be the sole determining factor but where the end use and its contribution to context and community are also taken into account.

The Institute would wish to see good practice guidance for acquiring authorities, with consideration also being given to the standard of management of their existing stocks of properties. Public authorities should aim to maintain properties and have coherent plans for their futures. It might be that the 5-yearly review of Local Development Plans provides the context for potential property purchase, compulsory or otherwise, and for an audit of publicly-owned properties. The futures of any properties then believed surplus to requirements could be fully considered in the context of community needs and aspirations as expressed in the Development Plan.

The Institute assumes that future work on Compulsory Purchase will be taken forward by the Directorate of the Built Environment in conjunction with other parts of Scottish Government. It is particularly important that it is progressed in tandem with the “Building a Sustainable Future” Regeneration Discussion Paper promoted by the Directorate of Housing and Regeneration. The Institute is responding separately to that consultation paper.

Finally, in this day and age when consultees are encouraged to read and respond electronically to consultations, the Institute would wish to see (p3, third paragraph) consultation responses available on the Scottish Government website as well as in the Scottish Government library at Saughton House.

Please note that paragraphs for which the Institute would like to see clarification are set out below. Suggestions for rewording are **emboldened**.

DRAFT CIRCULAR 1: GUIDANCE ON USING COMPULSORY PURCHASE

The Institute has generally understood that Circulars set out Government Policy, and good practice guidance is more usually provided in the form of Planning Advice Notes. It is hoped that a PAN on ‘Planning for CPOs’ will be produced as a matter of urgency. Given the somewhat multifaceted nature of Compulsory Purchase in all its guises from various Acts, however, provision of the suite of tailored guidance booklets mentioned would be valuable, similar in approach perhaps to Historic Scotland’s *Managing Change* series. It is clear from p6 para 3 that some clarification is required as to the different CPO circumstances that can arise.

Presumably those (p6 para 5) whose properties may be purchased should also be encouraged to seek professional advice.

Consultation question 1:

Does draft circular 1 include clear, comprehensive guidance on the justification for using compulsory purchase? If not, what areas require further clarification?

See above and below.

Introduction

There should be a specific reference, in the Introduction, of the general need to relate any proposed CPO action to Development Plan proposals and policies, and to the need for positive planning. There should be a reminder that, throughout the Circular, use of the word ‘land’ refers to land and buildings.

para 1

It would be useful to introduce a list of potential acquiring authorities, to cite or list all known examples where CPO can be appropriate, and also to explain in each case why this is.

para 2

...within reasonable timescales **and costs**.

para 3

Fair compensation should recognise length of association as a factor.

Figure 1 (Overview)

might more usefully be an Appendix to the Circular

Design of the Scheme

This should specifically mention reference to the need for early consultation with Key Agencies and Community Councils.

Investigating Ownership

This should specifically mention consultation with Community Councils and any local history and amenity groups.

Objection Period.

21 days is too short a period within which to encourage effective representations, especially from community groups. There also seems no provision for representations to be fed back to the acquiring authority so that they can reconsider their proposals and thus potentially resolve any concerns of third parties. At the very least representations should be copied to the acquiring authority: they, perhaps, should then have the same period for representations (21 days?) to comment. Better, though, for an opportunity to have been available to air such issues before the Order is made.

Arranging and Holding a Public Local Inquiry or Hearing

There should be a time limit set by which the PLI or Hearing is to be held. It is not clear whether there is a difference between *statutory* and non-*statutory* objectors. Will the Reporter be the sole arbiter of the topics to examine, and whether there will be a PLI or a Hearing? If there are restrictions as to only '*planning merits*' rather than valuation/compensation issues being considered at this point, then that should be made clear.

Sending the Reporter's Report

Perhaps a draft report could be circulated to interested parties. There should be a timescale set for circulation of any draft report.

Scottish Ministers' Decision

There should be a time limit here too for a decision by Scottish Ministers.

CPO Not Confirmed

Perhaps some reference to compensation or lack of it could be made in this box.

Challenging the Validity of the Order

There should be a better option by which to challenge the validity of the Order than to do so at the Court of Session, something well outwith the reach of most ordinary folk: should there be some mention here of the possibility of a Protective Expenses Order?

Compulsory Purchase Powers

Para 6

The list of enabling Acts should be complete, probably with a health warning about further legislation, as well as a commitment to regular updating.

Para 8

...If an acquiring authority changes its plans for the land it should take particular care to make sure that the **powers used still relate to the purpose for which it seeks to acquire the land.**

Para 9

For some purposes **only general powers may be available**, or an authority...

Para 10

However, an acquiring authority should not use a general power where a more specific **and appropriate** power is available.

Justification for Compulsory Purchase

Para 12

In terms of sustainable development, the public benefit might not **just** be economic, **but should also have clear environmental and social benefits.**

Para 13

..., amongst other things, priorities that it has adopted in its Single Outcome Agreement, or **proposals, projects and** policies adopted in the Authority's Development Plan(s), Housing Plan(s), **Community Plans and SOAs**, or other **planning** documents, including Supplementary Planning Guidance such as Masterplans.

Para 14

...The more comprehensive **and comprehensible** a justification ...

Para 15

Reasonable should be within 12 months and should indicate short, medium and long term actions anticipated.

Para 17

...the benefits of **other possible** sites. **The site does not have to be *the cheapest!!* A range of factors might include the economic, social and environmental, not forgetting Climate Change (including carbon emissions, for example).**

Para 19

...appropriate in light of the provisions of the Development Plan **including any** other material considerations.

Para 20

...implications of acquiring the land and implementing the scheme, **and over what timescale.**

Para 21

Land assembly should not hold up the finalisation of the details of the scheme. Other bodies should include **the private and/or third sectors.**

Para 22

There is a case for reducing the statutory three-year period if the value of CPOs is seen as supporting the delivery of development. Ideally, adequate funding should be paid in so that the compulsory acquisition can be dealt with immediately on confirmation by Ministers. In some circumstances the whole point of CPO will be to address urgently matters of dereliction or the protection of at-risk and deteriorating heritage.

Para 23

Planning consents and the like should be obtained and submitted with the Order seeking confirmation.

Para 25

...an acquiring authority should seek to acquire the land it needs by agreement before **or in parallel with** compulsory purchase procedures.

Para 26

... before **or in parallel with** compulsory purchase procedures.

Para 27

...if an acquiring authority **has resolved** to use its compulsory purchase powers if necessary.

Para 30

...to **consider** carefully...

Paras 31 and 32

There is a particular need here for a local planning authority to be seen to be acting in the public interest, ensuring that it is not seen as using the CPO or planning process for financial gain. There may well be cases where local authorities will have an interest in the CPO and, given this, there is a need to ensure that there are clear, transparent and binding processes that allow for this to be done. For example, it is assumed that acquiring authorities should not be the one which grants planning permission?

Consultation question 2:

Do you agree that the justification criteria set out in the guidance are appropriate and comprehensive? Can you think of any circumstances where compulsory purchase might be appropriate that fall outside the scope of this guidance?

See notes above on paras 12 - 32.

Para 36

Proposals included within Local Development Plans are to be consulted upon to owners, occupiers and neighbours as part of that process. See comments above about other consultees, including Key Agencies and community councils.

Para 38

It is unfortunate that the series of guides is not listed nor included in draft form as part of this consultation exercise.

Para 39

The information about the scheme should come first, explaining to those affected what is proposed, why, and the anticipated benefits for the wider community. The acquiring authority should always meet those affected, both in a public forum and as individuals. Early engagement is rightly stressed in the draft.

Para 40

An acquiring authority **must** appoint a specified **professionally qualified planner or valuation surveyor** to whom those...

Para 41

...the authority will repay those fees **and when**.

Para 42

Accommodation works should always be integral parts of the scheme so that it can be cut and dried as early as possible. The contract should include and reflect the terms of any agreement with the claimant.

Para 43

...farming and **other** business issues.

References in this paragraph to the benefits of agent appointment should surely apply to all CPO circumstances. An appropriate agent will be a coordinator who has an appreciation of matters economic, environmental, and community.

Para 44

Users and neighbours should also feature here in those consulted.

Para 45

These paragraphs should be recast to be more generic in nature: there should certainly be at least one explanatory booklet for farmers, however.

Para 46

An even greater level of disruption, economic, environmental but particularly social can be experienced by domestic relocation, and this should be recognised by reference here.

Para 47

The pre-planning stage should be mentioned, with specific reference to the benefits of pre-application consultation with those potentially affected and with other stakeholders, including local communities.

Para 48

There should be a maximum timescale between resolution and order. Is 3 months an unreasonable target?

Para 50

Will there be any implications for neutral valuations, or for funding?

Para 51

It is not clear what exactly is the *spirit of the guidance*. The Institute's introductory comments outline

- how the guidance should aim to support sustainable economic growth through ensuring confidence in Compulsory Purchase by providing clarity for users
- that processes should balance the need for a nimble process with the need to involve key interests; and
- the need to ensure that the end result achieves sustainable development, encompassing economic, social and environmental considerations.

Consultation question 3:

Does draft circular 1 include clear, comprehensive guidance on engaging with those affected? If not, what areas require further clarification?

See comments above

Para 53

Given that these activities are taking place before any decision has been taken, perhaps preliminary would be a more neutral term than preparatory. Similarly Para 54 could be redrafted in more neutral terms.

Para 55

The Statement of Reasons should **include the Planning Case, and should** be as **concise, clear and** comprehensive as possible.

Para 57

In the event of any discrepancy between map and written description clarification would be helpful as to which will be taken to be the more authoritative.

Para 58

Owners, users, occupiers, neighbours and community councils should all be relevant here.

Para 60

Listed Building Consent might be added to the examples given.

Para 62

The position of Paragraphs 61-63 seems to rather obscure their very real significance. Might they be better placed towards the start of the document, and indeed a more chronological approach taken generally to the layout?

Para 64

A technical defect of the Order **will almost certainly** cause delays and increase the period of uncertainty...

The Confirmation Process

Para 68

Should the Statement of Reasons include details of any Pre-application discussions?

Para 71

This paragraph should be rewritten in plain English. When the Law Commission examines the existing processes, and subsequently, consideration should be given to the status of Community Councils and Key Agencies.

Para 72

A standard form should be developed for national use. This could be varied dependent on the relevant legislation being used. The form(s) should make it absolutely clear that the level of compensation is not a relevant ground for objection.

Para 73

This seems a rather convoluted way of doing it (see comments above) but, if it is the best way, there should then be a clear maximum period both for Scottish Ministers to relay the representations, and for the acquiring authority to respond: it is suggested that the time period in total might be the same as the time allowed for representations in the first place.

Para 76

Clarification is required as to the process used to determine whether an Inquiry or a Hearing is used.

Para 79

...Ministers confirm the Order, **confirm the Order with modifications, or refuse to confirm the Order.**

Para 80

A copy of the decision letter should also be sent to owners, tenants, occupiers, neighbours, community council, Key Agencies and any other consultees.

Para 81

Perhaps some clarification/explanation of the position where Scottish Ministers confirm with modifications might be helpful – what happens next in such circumstances?

Implementation of the Order

Para 82

There may be an opportunity to accelerate the process if the notice of confirmation of the order could be served by Scottish Ministers, rather than by the acquiring authority.

Para 83

The last sentence of this paragraph might be moved to the end of Para 82.

Para 84

Three years to complete compulsory acquisition seems too long. Might consideration be given to reducing this to, say, one year? See also, comments on Para 22 above.

Para 85

There should be a single point of contact for owners and occupiers at the acquiring authority.

Para 88

The disruption caused to households, especially where schooling is involved, should also be recognised.

Para 90

Surely acquisition of part of a land holding will have been obvious far earlier in the procedures: would it not make sense for such discussions to be concluded by Scottish Ministers at the point of confirmation or otherwise?

Para 93

See comment on Para 90 above.

Para 94

An example or two of abandonment would be useful here. It is difficult to imagine a circumstance where, on abandonment, there would be no obligation to pay compensation, and an example of this would also be illuminating.

It would also be useful to explain the terms 'home loss payment' and 'farm loss payment' and what the process is with payments to businesses.

Para 100

There might be logic, in the context of church reinstatement particularly, for the possibility of re-use of a redundant church or other redundant building to be a viable option worthy of examination.

Para 102

Ideally, advance payment should surely be made on taking possession rather than up to three months later.

Paras 103-4

Advance payments should be automatic and not depend on claims being made for them.

Para 107

Reference should be made here to the relevant Planning Advice Note and other guidance material which should be prepared for the benefit of those advising acquiring authorities. The Institute also suggests that reference be made to Planning Aid for Scotland, giving its contact details, and that these be also included in any guidance booklets made available for use by more general readers. The Institute will be happy to comment on consultation drafts of such guidance materials.

Appendix A

If it was not too exhaustive, it would be better to have an authoritative and complete list rather than a selection here. Items listed should all have hyperlinks to the actual Acts so that there is minimal difficulty in checking the precise wording of the relevant Acts, as stressed in A1. There should certainly be specific mention of the Amenity Notice available to address derelict land. Where planning powers are being exercised it may be more accurate to use the term *planning authority* rather than *local authority* since in Scotland National Parks can also have statutory planning powers.

Appendix B

Para B12

This should mention the Development Plan.

Para B13(i)

The phrasing about Material Considerations requires clarification.

Appendix E

Para E13

Will other properties be blighted...

Appendix G

Para G2

This should include references to the relevant Development Plan, and should identify within which Community Council area the site is located. Buildings should also be contained within any description: it might also be helpful to refer briefly to the historical development of the site to understand the context of the proposal.

Para G8

This requires to be much clearer. A checklist might well be of value: some of the material contained within the PAN on Design Statements (PAN 68) could be valuable.

Appendix H

Para H8

The acquiring authority should always make at least one accompanied site visit, taking (dated) digital photographs which can then, in normal circumstances, be added to the public record on the authority's website and elsewhere.

Appendix M

M5-6

The Community Council should also be notified in such cases.

Appendix Q

To this list should be added

- Sites within the Inventory of Gardens and Designed Landscapes in Scotland
- Historic Battlefields
- World Heritage Sites
- National Scenic Areas
- National Parks
- Sites of Special Scientific Interest
- Sites of Nature Conservation Interest eg RAMSAR sites
- Inalienable land owned by the National Trust for Scotland

and their settings..

Consultation question 4:

Are any parts of draft circular 1 unclear or ambiguous? If so, which parts require additional clarity and why?

Paragraphs for which the Institute would like to see clarification are identified above. Suggestions for rewording are shown in **bold**.

Consultation question 5:

How could we improve draft circular 1?

See comments above

Consultation question 6:

Apart from issuing draft circular 1, what else could the Scottish Government do to promote good practice in the appropriate and effective use of compulsory purchase?

See comments above. Early production of the guidance booklets, and a Planning Advice Note, would be particularly helpful.

Consultation question 7:

Local authority stakeholders have been telling the Scottish Government that in some local authorities there is a lack of experience, expertise and/or confidence in using compulsory purchase. What is the best way to address this, how might local authorities best share their experience and expertise and what could the Scottish Government do to help facilitate this?

See comments above

Consultation question 8:

Might a compulsory purchase advisory and consultancy service that was provided by a public body offer benefits to local authorities?

Planning authorities should be able to access key expertise to enable proper exercise of their planning powers, particularly in the field of Development Planning, but also in the maintenance of high environmental standards. Given this, there is a need for a general understanding of the processes and to mainstream within planning authorities the skills and knowledge required for successful CPOs. This could be done through training programmes. A 'one-stop shop' or signposting service for detailed and more technical knowledge could be useful where planning authorities do not have the capacity to host this expertise in-house.

DRAFT CIRCULAR 2 : DISPOSAL OF SURPLUS GOVERNMENT LAND - THE CRICHEL DOWN RULES

Consultation question 9:

In draft circular 2, do you consider the proposals to reduce the reliance on printed publications and to introduce a requirement to utilise the appropriate website to be appropriate?

The Community Council should also be notified. The advert should be carried on the website of the local authority, and in the nearest local library.

Consultation question 10:

In draft circular 2, do you consider the proposed timescales for the negotiation of the price to be adequate?

No comment

Consultation question 11:

In draft circular 2, do you consider the introduction of a mechanism for referral to a third party for determination to be helpful in agreeing the price?

No comment

Consultation question 12:

In draft circular 2, do you consider the proposal to specify the use of an independent expert, rather than an arbitrator to be fair and helpful to the parties?

No comment

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