



<b>To</b>	Acquiring Authorities
<b>Subject</b>	Guidance for Acquiring Authorities: How do Scottish Ministers consider a Compulsory Purchase Order?
<b>Issued by</b>	Scottish Government: Planning and Architecture Division
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The Scottish Government considers powers to purchase land compulsorily to be an important tool for local authorities and other public bodies (collectively referred to as Acquiring Authorities) to use to acquire land needed to enable projects that are in the public interest to proceed, where this would otherwise not be possible.

In particular Ministers consider compulsory purchase powers to be important for helping to deliver housing, development and regeneration that create high quality places where people want to live, work and invest. Such projects will deliver social, economic and environmental improvement for the public benefit and, used properly, these powers can aid effective and efficient regeneration, the revitalisation of communities, and the promotion of inclusive economic growth.

Authorities are therefore encouraged to consider using their powers pro-actively when necessary and appropriate to ensure real gains are brought to communities without delay.

The Scottish Government vision for compulsory purchase is for:

*“A clear, accessible, consistent, effective and efficient system of legislation and policy which allows for the compulsory acquisition and purchase of legal interests in land and property for the public benefit. The provisions relating to any compensation should be fair and transparent and allow for timeous settlement.”*

This series of guidance notes are primarily aimed at Acquiring Authorities and are intended to provide information for those with no, or limited, experience of compulsory purchase. They comprise **both** good practice advice and guidance on the legal and procedural requirements that must be met at each stage of the Compulsory Purchase Order (CPO) process.

These notes draw from and are intended to complement Planning Circular 6/2011 (<https://beta.gov.scot/publications/scottish-planning-series-planning-circular-6-2011-compulsory-purchase-orders/>) which provides more detailed, technical advice on some aspects of the CPO process and which authorities may wish to continue to refer to.

These notes are intended to be read sequentially as follows:

- CPOGNAA/001 Can I use Compulsory Purchase?
- CPOGNAA/002 What should I do before developing a Compulsory Purchase Order?
- CPOGNAA/003 How do I prepare and submit a Compulsory Purchase Order?
- CPOGNAA/004 How do Scottish Ministers consider a Compulsory Purchase Order?
- CPOGNAA/005 Confirmed Orders – Next Steps

This fourth note in the series is intended to help Acquiring Authorities understand how they should go about submitting a CPO to Scottish Ministers for determination and how they will go about reaching their decision.

Whilst the general advice, guidance and principles contained in these notes will be applicable to all bodies with compulsory purchase powers it should be noted that Compulsory Purchase Orders promoted by Scottish Ministers or their Agencies are processed under distinct procedures which, while broadly similar, may differ in some regards. Furthermore, certain bodies can be empowered to purchase land compulsorily through special Acts of Parliament, or via other processes (e.g. through Transport and Works Act Orders).

Where necessary this guidance identifies instances where aspects of the process vary, but it does not seek to be comprehensive. Separate guidance is available for these specialist processes – for example for compulsory purchase related to Trunk Road projects promoted by Transport Scotland ([www.transport.gov.scot/publication/road-projects-guidance-on-compulsory-purchase-process-and-compensation/](http://www.transport.gov.scot/publication/road-projects-guidance-on-compulsory-purchase-process-and-compensation/))

**This guidance is not intended to be either prescriptive or definitive. It is also not intended to replace specialist legal advice.**

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# **1. Preparing to Send the Order to the Scottish Government**

- 1.1. In preparing to send the Order to Scottish Ministers for consideration, the Acquiring Authority should fully set out its case for the compulsory purchase in a 'Statement of Reasons'.
- 1.2. The 'Statement of Reasons' should include all information that Scottish Ministers will need when considering whether or not to confirm the CPO and should be as clear and comprehensive as possible.
- 1.3. There is no prescribed format for a Statement of Reasons, but it should usually include the following:

## The land to be acquired

- A brief description of the order land and buildings and their location, such as:
  - Topographical features;
  - Reference to any relevant development plan;
  - Identify within which community council area the land is located;
- The historical development of the site to understand the context of the proposal;
- Any special considerations affecting the land. For example, details of any ancient monument, listed building, conservation area, special category land, consecrated land.

## The Acquiring Authority's purpose

- The Acquiring Authority's purpose in seeking to acquire the land;
- How the Acquiring Authority proposes to use or develop the land or deliver the project after acquisition including (if applicable) details of any third party who may develop the land on their behalf;
- Description of any new rights being created, such as a right of access, and an explanation of why the new rights are needed;
- Which enabling Act<sup>1</sup> the Acquiring Authority intends to use to acquire the land, and why the Acquiring Authority has used this particular enabling power.

## Engagement with affected parties

- How the Acquiring Authority has engaged with the people affected by the proposal and the issues or concerns raised by them. If the Acquiring Authority altered its plans to address people's concerns it should explain how. Alternatively, the Acquiring Authority should explain why it was not able to address specific concerns. It should also explain what it has done or will do to lessen the impact on people, communities and businesses and/or to help them relocate. For example, it should include any proposals for rehousing displaced residents or relocating affected businesses;
- If the Acquiring Authority has listed any of the owners as 'unknown' in the schedule to the Order, details of the steps that it took to identify the owner(s);
- A list of any documents, maps and plans explaining the proposals that the Acquiring Authority have made publicly available and/or details of where people can see these documents.

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<sup>1</sup> See CPOGNAA/001 and CPOGNAA/003 for more details on Enabling Acts.

## Justification

- The Acquiring Authority's justification for making the compulsory purchase, focussing on the public benefit of the authority's proposed scheme and how the Acquiring Authority weighed this against the impact on the people affected;
- Details of how the Acquiring Authority assessed whether there were any feasible alternative or less intrusive ways of achieving the purpose and/or how the Authority assessed the feasibility of any suitable alternative sites;
- The case for the proposals (with reference to relevant plans and strategies), and the planning position of the site(s);
- Relevant information specific to the Acquiring Authority's purpose (e.g. crime reports or environmental studies).

## Funding and delivery plans

- A general indication of how the Acquiring Authority intends funding the acquisition and completing its scheme (including the status of any commitments from third parties);
- Any potential barriers to completing the scheme, and how the Acquiring Authority intends to overcome them;
- Details of any related order, application or appeal which may require a coordinated decision by Scottish Ministers, such as a planning application, planning appeal or road closure;
- If the Acquiring Authority intends disposing of the land to a third party, it should submit information about the prospective purchaser and, as far as they are known, the purchaser's proposed timescales for completion; or
- If the Acquiring Authority proposes to sell the land on the open market, it should include information about its proposals to dispose of the land and why it is satisfied that there is market demand for the land.

### ***Additional requirements for housing related CPOs***

- 1.4. In addition, if specifically acquiring land for housing, the Statement of Reasons should make clear how the need to provide further housing accommodation in the area has been identified (referring to the Local Housing Strategy(s), Housing Needs and Demand Assessment(s), and Strategic Housing Investment Plan(s) as appropriate). Furthermore, the Acquiring Authority should explain why it is satisfied that the proposed delivery method will provide suitable housing accommodation in an appropriate timescale.
- 1.5. When acquiring an empty home or substandard property for housing purposes the Acquiring Authority should say how long the property has been vacant, what steps it has taken to encourage the owner to bring it back into acceptable use, what the outcome of this was and whether the owner carried out any work to re-use the property for housing purposes.

### ***Additional requirements for listed buildings related CPOs***

- 1.6. Section 42 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 provides powers for a local authority to acquire a listed building compulsorily if reasonable steps are not being taken for properly preserving it.

- 1.7. In order to use Compulsory Purchase Powers for this purpose, in addition to the usual CPO considerations, an Acquiring Authority must meet the procedural requirements of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. This includes the authority:
- a. Demonstrating that it was expedient to make provision for the preservation of the building;
  - b. Serving a Listed Building Repairs Notice on the owner in accordance with the 1997 Act;
  - c. Providing evidence through the planning history of the site that demonstrates no reasonable steps are being taken by the owner for the proper preservation of the listed building and the building fabric continues to deteriorate, despite the Authorities efforts to resolve the situation; and
  - d. Adequately considering the public interest and providing a proportionate response in relation to the owners' rights.
- 1.8. Where the CPO relates to a listed building, the Acquiring Authority should therefore also include in its Statement of Reasons details of how it has met these statutory requirements.
- 1.9. A helpful tool kit exploring ways to tackle Scotland's historic buildings at risk can be found at: <https://www.buildingsatrisk.org.uk/toolkit>

## **2. Serving statutory notices and advertising the CPO**

- 2.1. As noted in guidance note CPOGNAA/003, when it is ready to submit the CPO to the Scottish Government the Acquiring Authority must serve notices on people with an interest in the land and advertise the CPO.
- 2.2. The wording of these notices and adverts is prescribed and can be found in the Compulsory Purchase of Land (Scotland) Regulations 2003 found here: [www.legislation.gov.uk/ssi/2003/446/pdfs/ssi\\_20030446\\_en.pdf](http://www.legislation.gov.uk/ssi/2003/446/pdfs/ssi_20030446_en.pdf)
- 2.3. When serving a notice, the Acquiring Authority should include a covering letter that explains as clearly and plainly as possible why it has sent the notice, what the notice means, what the person should do next and where they can go to get help and advice. In the case of acquisition of rights short of ownership, the Acquiring Authority should also set out if these are temporary or permanent and what, if any, mitigation measures are proposed.
- 2.4. The notice should also provide contact details for an individual in the Acquiring Authority who can be contacted for further information and/or to clarify the implications of the proposal.

## **3. Sending the Order to the Scottish Government for Determination**

- 3.1. After serving notices and advertising the CPO the Acquiring Authority is ready to submit it to the Scottish Government for determination. Before doing so, the Acquiring Authority must ensure that it has completed the appropriate internal procedures and has the necessary authorisation to make the Compulsory Purchase Order (see guidance notes CPOGNAA/002 and CPOGNAA/003).

3.2. The Acquiring Authority should also ensure that enough information is available to enable Ministers to weigh the public benefit of the proposed scheme against the private rights of those whose interests are being compulsorily acquired. The Acquiring Authority should send all documents, evidence and information that it considers relevant. Circular 6/2011 provides full details but, in summary, this will include:

- The original signed **hard copy** of the Order and 2 certified copies (**please note that Order must have at least two inches of space on the front or back of the Order to allow any docquets to be attached**);
- Copies of the Statement of Reasons, all plans and drawings and all adverts and public notices can be sent electronically;
- A General Certificate in support of the Order submission;
- A Protected Assets and Special Category Land Certificate.

3.3. The Acquiring Authority should also ensure that when submitting the CPO, that it includes enough information and evidence to satisfy Ministers that it has followed the correct procedures. The procedural requirements are generally contained in the amended 1947 Act and the Compulsory Purchase of Land (Scotland) Regulations 20032. However, some bespoke empowering legislation can also have additional requirements which must be followed. See CPOGNAA/001 for a list of common CPO powers.

3.4. Upon receipt of the Order and accompanying documents, the Scottish Government will seek to minimise the period of uncertainty for the people affected by reaching a decision as soon as is practicable. For example, depending on the complexity of the case officials will decide as quickly as possible whether an Inquiry is likely to be required and ask DPEA to schedule this into forward work plans.

3.5. Once an Order is submitted the Scottish Government will not normally agree to delay or postpone the decision making process unless there is a clear justification for doing so. Scottish Ministers will consider any requests to delay proceedings on its individual merits.

**3.6. The Acquiring Authority should therefore not resolve to make a CPO and submit this to the Scottish Government unless it is ready to proceed with its scheme.**

3.7. Progress updates or questions about a submitted CPO should be addressed to the appropriate Scottish Government Lead Officer.

### ***Related applications or appeals***

3.8. The Acquiring Authority should identify any related application(s) or appeal(s) that may need to be considered at the same time as the CPO.

3.9. The Acquiring Authority should consider carefully whether it can coordinate any other consenting procedures that it is responsible for (e.g. planning permissions, wayleaves, stopping up orders or any other consents) to allow Ministers to consider related applications or appeals in a coordinated way.

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<sup>2</sup> see <http://extwprlegs1.fao.org/docs/html/uk47641.htm>)

## **4. Objections to an Order**

- 4.1. Once an Order has been advertised and submitted there then follows a statutory period of 21 days where all interested parties can make objections. The 21 day objection period is the minimum period required in law, however, Acquiring Authorities may wish to adopt a longer period depending on the time of year the CPO is being advertised. Interested parties are known as either statutory objectors (i.e. those people whose land or rights are directly affected by the order) or non-statutory objectors (i.e. everyone else). Objections are submitted directly to the Scottish Government for consideration.
- 4.2. If there are no objections then Scottish Ministers will make a decision on whether or not to confirm the CPO based on the available information (see Section 6 of this note).
- 4.3. If objections are made to the Order the Scottish Government Lead Officer will send the Acquiring Authority a copy of them as they are received. This is to allow the Acquiring Authority to begin to consider how it might address the objections.
- 4.4. At the end of the statutory notification period, the Lead Officer will ensure the Acquiring Authority has received copies of all objections. Objections which are not considered valid will be clearly marked and the Scottish Government will contact the objector to let them know that their objection has been deemed invalid and why.
- 4.5. In cases where there are significant volumes of valid objections to the Order, made by statutory objectors, or the case is complex or contentious then the Scottish Government Lead Officer will alert the Directorate of Planning and Environmental Appeals (DPEA) to the fact that it is likely the case will be referred to them for consideration through Public Local Inquiry (PLI) or a Hearing. This allows DPEA to begin preparing for the case reaching them.
- 4.6. In all cases, the Scottish Government Lead Officer will ask the Acquiring Authority to reply with its comments in response to the objections made about the CPO.
- 4.7. The Acquiring Authority should normally reply to Scottish Government within 14 days with copies of all their individual comments for each objection made. The Acquiring Authority should tell Scottish Government whether it intends contacting the objectors and whether in their opinion they think it is likely to reach agreement with all objectors and thus secure the withdrawal of every objection. If an Acquiring Authority is not able to respond within 14 days, it should advise the Scottish Government Lead Officer and give reasons for this, and request an extension.
- 4.8. In some cases the Acquiring Authority may be able to alter its plans or provide assurances in writing to the objectors that may address their concerns and result in all objectors agreeing to withdraw their objection. If this is the case the Scottish Government Lead Officer should be informed immediately and the objectors will be required to confirm the withdrawal of their objection in writing or by e-mail.
- 4.9. In other cases the Acquiring Authority might consider that there is no realistic prospect of every objector withdrawing their objection and if this is the case the Acquiring Authority should tell the Scottish Government Lead Officer as soon as possible.



- 4.10. On receipt of the Acquiring Authority's comments on the objections these will be copied to the relevant objectors with a covering letter seeking their views on whether the Acquiring Authority's response sufficiently address their concerns, and asking them to confirm whether or not they intend to maintain their objection. Objectors are given 14 days to respond. If no response is received within this timeframe, then their objection is treated as being maintained.
- 4.11. If an objection<sup>3</sup> from a statutory objector is maintained then, unless there are exceptional circumstances and the Acquiring Authority requests it, the Scottish Government Lead Officer will arrange for the case to be transferred to Directorate for Planning and Environmental Appeals (DPEA) for the case to be heard.
- 4.12. If a Hearing or Inquiry is necessary it will be arranged as soon as possible. However, the Acquiring Authority should be prepared to continue to negotiate with objectors about their concerns. If the Acquiring Authority becomes aware that an objector has withdrawn their objection it should inform the Scottish Government Lead Officer /DPEA immediately.

## **5. Inquiries and Hearings**

- 5.1. **If any statutory objections remain unresolved, the Scottish Government will instruct the Government's Directorate for Planning and Environmental Appeals (DPEA) to arrange for the case to be considered and a report with recommendations to be prepared. The consideration of the case will be undertaken by an independent Reporter appointed by Scottish Ministers, who will normally be a specialist, such as a planner, surveyor, engineer, architect or lawyer.**
- 5.2. The Reporter will consider all relevant facts of the case, determine whether a PLI or Hearing is required, the form of submissions and representations and provide Scottish Ministers with a report and recommendations on whether the Order should be confirmed or not. It is for Scottish Ministers to ultimately decide upon the Order but the Reporter's report and recommendations will carry considerable weight.
- 5.3. Depending on the volume of objections, the nature of the objections and the Acquiring Authority's response to these, and the wishes of the objectors and the Acquiring Authority, it will be decided whether a Public Local Inquiry or Hearing is most appropriate (see schedule 2 for further details of how this part of the process works).
- 5.4. The Scottish Government will bear the administrative costs of holding the Inquiry. However, Scottish Ministers may also make an award to cover any legal expenses where a statutory objector to an Order is successful, unless there are exceptional circumstances for not doing so (See Circular 6/1990 at <http://www.gov.scot/Publications/1990/03/circular-6-1990><sup>5</sup>). In such circumstances meeting the award of expenses is the responsibility of the Acquiring Authority.
- 5.5. Ministers may also award expenses if they consider that the Acquiring Authority has acted unreasonably and the party claiming expenses has incurred unnecessary expense as a result.

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<sup>3</sup> One objection is sufficient.

<sup>5</sup> Most of this circular is out of date. However, Paragraph's 16 and 17 still apply.

5.6. Once the date of the Inquiry or Hearing is fixed DPEA will change it only for exceptional reasons. DPEA will not usually agree to cancel or postpone the Inquiry unless:

- All objections are withdrawn;
- The Acquiring Authority withdraws the Order; or
- Parties are not able to attend.<sup>6</sup>

5.7. After the Inquiry or Hearing has been completed and the views of all parties heard and considered the Reporter will write a report setting out their recommendations for Scottish Ministers and will submit this to the Scottish Government Lead Officer.

## **6. Scottish Ministers' Decision**

6.1. Scottish Ministers will consider all aspects of the case, including (where appropriate) the reporter's conclusions and recommendations. They may then either:

- Decide to confirm the CPO as presented by the Acquiring Authority;
- Decide to confirm the CPO with modifications; or
- Refuse to confirm the CPO.

6.2. The Scottish Government will write to the Acquiring Authority to inform them of the decision and the reasons why Scottish Ministers have reached that decision.

6.3. The Scottish Government will send a copy of this letter to everyone who maintained an objection to the Order whether they were represented at the Inquiry/Hearing or not<sup>7</sup>.

### ***Confirmed Orders***

6.4. In circumstances where an Order is confirmed (including those confirmed with modifications) the Acquiring Authority must publish notice of the confirmation and serve notice of the confirmation on everyone that it served with the notice of making of the order, as soon as is practicably possible.

6.5. The wording of this notice is prescribed by regulations and can be found in the Compulsory Purchase of Land (Scotland) Regulations 2003 found at [http://www.legislation.gov.uk/ssi/2003/446/pdfs/ssi\\_20030446\\_en.pdf](http://www.legislation.gov.uk/ssi/2003/446/pdfs/ssi_20030446_en.pdf)

6.6. The Acquiring Authority should notify the relevant Scottish Government Lead officer once it has done this.

### ***Modification of Orders***

6.7. Scottish Ministers may in certain circumstances confirm an order with modifications. However, the power of modification is used sparingly and will not be used to re-write CPOs extensively. There is no need to modify an Order solely to show a change of ownership where the Acquiring Authority has identified a relevant interest or interests after submitting the CPO.

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<sup>6</sup> DPEA will only consider postponing a PLI for example where there is clear evidence of ill health.

<sup>7</sup> Regulations only require Scottish Ministers to Inform those who attended the Inquiry, however, in interests of transparency, notification will extend to all those who maintained an objection to the Order.

- 6.8. Some minor mistakes or changes to circumstances can be corrected through the use of modifications, but not significant matters. An example of a possible modification would be to remove land included in the Order, which is no longer required to be included, as this has been acquired voluntarily. There is no scope for the Scottish Ministers to add to, or substitute, the statutory purpose(s) for which an Order was made or to add additional land to an order.
- 6.9. If it becomes apparent to an Acquiring Authority that it may wish Scottish Ministers to amend a CPO by modification the Acquiring Authority should write to Scottish Ministers as soon as possible, setting out the proposed changes and the reasons for seeking these. This will only be undertaken in **exceptional circumstances** and where the modifications will not significantly change the nature of the CPO.
- 6.10. This letter should be copied to each statutory objector, any other person who may be entitled to appear at the Inquiry or Hearing, and to any other interested persons who seem to be directly affected by the matters that might be subject to modification.
- 6.11. Where such potential modifications have been identified before the Inquiry or Hearing is held, the Reporter will normally wish to provide an opportunity for them to be debated.

### ***Unconfirmed Orders***

- 6.12. Unconfirmed Orders will result in the compulsory purchase of the land not being authorised. Scottish Ministers will explain their decision to all affected parties.
- 6.13. Acquiring Authorities will not be authorised to purchase the land compulsorily under that particular Order. However, they should consider the reasons for non-confirmation, and decide whether or not they wish to pursue a new Order or seek alternative resolutions to acquire the land.

### **CPOs promoted by Scottish Ministers**

CPOs promoted by Scottish Ministers (for example, by Transport Scotland) are not submitted to Scottish Ministers for consideration. Instead, a draft CPO is published for formal consultation. Following an objection period all representations and objections received are considered and a Public Local Inquiry may be organised to hear them and consider the supporting evidence. The Reporter will then submit a report with recommendations to Scottish Ministers, who will decide whether or not to proceed with the making of the CPO. If they decide to proceed, the publication of the final 'made' CPO is equivalent to the confirmation of a CPO promoted by another body.

# Schedule 1

## Hearings and Inquires Explained

### Hearings

A Hearing will explore the Acquiring Authority's justification for the Order and will consider all the documentation and evidence used by the Acquiring Authority to justify the case. Provision will be made for an informal hearing of the written evidence provided. This takes the form of a round the table discussion led by the Reporter.

This process is useful where there are particular issues that cannot be succinctly explained or clarified in writing or perhaps where there are a large number of issues to address, some of which may be more important than others. It enables the Reporter to ask direct questions to all parties, which may also include third parties such as the occupiers of neighbouring properties or local Councillors.

A Hearing will normally take a half day or whole day, and will be followed by a site visit by the Reporter with all interested parties in attendance.

### Inquiries

An Inquiry (or Public Local Inquiry) is the formal mechanism to consider a proposal. The procedure involves both written and oral evidence, with opportunities for the cross examination of all individuals who give evidence.

An Inquiry is particularly useful where professional evidence is required, for example to demonstrate that using established technical assessments or knowledge that the development causes no overall or major harm. The principal parties are normally represented by solicitor or an advocate who call the expert witnesses to give their evidence and cross examine the other side. The Reporter will lead the Inquiry and listen to the responses given to any cross examination, in addition to considering the written evidence provided.

The Inquiry may only take one day, although significant preparation is normally required by all parties. Some Inquiries may go on considerable longer and several days or even weeks if the matter is particularly complex or if there are large numbers of expert witnesses and objectors.

During the Inquiry a site visit will normally be made by the Reporter and all interested parties.

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