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2011

COMPULSORY PURCHASE ORDERS

■ circular

Scottish Planning Series

PLANNING CIRCULAR 6 2011

COMPULSORY PURCHASE ORDERS

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CIRCULAR 6/ 2011: COMPULSORY PURCHASE ORDERS

1. This circular sets out Scottish Government policy on the use of compulsory purchase orders in Scotland.
2. The circular covers compulsory purchase authorised by an order made under Part I of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 ('the 1947 Act'). The 1947 Act regulates most uses of compulsory purchase. However, compulsory purchase powers can also be derived from private legislation or by an order under the Transport and Works (Scotland) Act 2007 ('TAWs')¹. The procedure to be used in these cases is different but much of the policy in this circular is still relevant.
3. Compulsory purchase orders promoted by Scottish Ministers or Ministers of the UK Government are processed under separate but very similar procedures². Transport Scotland has published separate guidance on the procedures that Scottish Ministers follow when using compulsory purchase for road projects³.
4. This circular cancels and replaces circular 42/1976. It also amends circular 21/1991 and circular 17/1998.
5. In this circular the word 'land' means all interests in land and any buildings on that land. The word 'authority' means any organisation with the power to make a compulsory purchase order. Unless the context suggests otherwise, where the circular refers to 'people' affected by compulsory purchase, it means individuals, businesses or organisations.
6. This circular is not a statement of the law and is not meant to replace professional advice.
7. You can find out more about compulsory purchase, including updates from the Scottish Government and contact points, at www.scotland.gov.uk/cpo . Any enquiries about this Circular should be addressed to The Scottish Government, Directorate for the Built Environment, Area 2H, Victoria Quay, Edinburgh, EH6 6QQ. Telephone: 0131 244 7888. Copies of this circular can be obtained from the Scottish Government's website:
www.scotland.gov.uk/Topics/Built-Environment/planning

¹ Scottish Ministers have published general guidance on TAWs at: www.scotland.gov.uk/TAWsGeneral . Detailed technical guidance is available at: www.scotland.gov.uk/TAWsTechnical

² As set out in Part II of the First Schedule to the 1947 Act

³ www.scotland.gov.uk/TSCPOguide

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INTRODUCTION

1. A compulsory purchase order can allow various organisations⁴ to acquire land without the owner's permission, where there is a strong enough case for this in the public interest. This can help local authorities and other public bodies to assemble the land they need where it is impossible or impractical to buy the land by agreement. Indeed, without compulsory purchase many projects in the public interest would not be possible.
2. Depriving an individual or business of their rights is a serious step that the authority should consider carefully. However, compulsory purchase can play a vital role. It can help deliver urban and rural regeneration, revitalising communities, creating jobs and promoting business.
3. Scottish Ministers encourage authorities to recognise that in some cases acquiring all interests by agreement will not be possible or practicable in a reasonable time or at a reasonable cost. In these cases Ministers encourage authorities to use compulsory purchase positively and proactively, to promote sustainable economic growth, improve quality of life and bring real benefits to Scotland's communities.

ENGAGING EARLY WITH THE PEOPLE AFFECTED

4. Scottish Ministers strongly encourage authorities to involve people in the decisions that affect them. The authority should seek to listen to, consult and engage with the people affected before, during and after the compulsory purchase process.
5. Engaging early with the people potentially affected by a compulsory purchase order can help allay concerns, let people know what the authority is proposing and how it will affect them. Such engagement can help identify and address difficulties and potentially save time and money. It can even remove the need for compulsory purchase by identifying another suitable way to realise the authority's purpose.
6. As well as the people directly affected, the authority should consider engaging with key agencies, community councils and community planning partnerships, where appropriate.⁵

Attempting to buy the land by agreement before making a compulsory purchase order

7. Where practicable, the authority should try to buy the land it needs by agreement before making a compulsory purchase order. However, Scottish Ministers recognise that in some cases it may be impossible or impracticable for the authority to acquire all interests by agreement in the project timeframe or at a reasonable cost. The lack of an attempt to purchase by agreement will not prevent Ministers from confirming a compulsory purchase order, as long as the authority can justify its approach.

⁴ See Appendix B for a selected list of Acts of Parliament with compulsory purchase powers, and the acquiring authorities that can use them.

⁵ Whether, and to what extent, this may be necessary will depend on the circumstances. For example, in many cases the authority may already have consulted and engaged about its proposals when preparing its local development plan or other strategic documents.

Scottish Ministers do not expect the authority to attempt to purchase by agreement where this would not be practicable⁶. The authority should take a realistic view, depending on the circumstances, on whether it is practicable to attempt to acquire the land by agreement. The date by which the authority needs entry to the land may be particularly important in determining the approach that it takes.

8. There is little to be gained in prolonging unproductive negotiations if the authority is prepared to make a compulsory purchase order. Given the amount of time that the compulsory purchase process can take, it may often be appropriate to make a compulsory purchase order at an early stage. In some cases there may be benefits in making a compulsory purchase order in parallel with negotiations to purchase by agreement⁷. In larger schemes with multiple interests it may be effective and avoid delays for the authority to decide at an early stage to make a compulsory purchase order to acquire the whole site.

JUSTIFICATION FOR MAKING A COMPULSORY PURCHASE ORDER

9. The authority should be satisfied that the purposes for which it is making a compulsory purchase order justify interfering with the rights of the people affected. The justification for making a compulsory purchase order will, subject to the requirements of the law, be a matter of fact and circumstance in each case. This circular does not attempt to list all circumstances where compulsory purchase might be justified.

10. In deciding whether to confirm a compulsory purchase order Scottish Ministers will weigh up the public benefit in the authority's proposals against the interests of the people affected. The authority should be able to justify its proposals at any inquiry and, if necessary, in the courts. The clearer and more comprehensive a justification that the authority puts together, the stronger its case is likely to be.

Assessing other ways to realise the authority's purpose

11. The authority should assess whether there is a suitable alternative way for it to realise its aims. It should also properly consider whether any alternative proposals put forward by other people would be appropriate. In some cases the authority may be able to serve statutory notices or use some other legal powers or it may be possible to use a management agreement or some other binding contract. In some cases, the authority may not need to acquire ownership of the land itself. For example, if all that it needs is a right of access over the land, it may be sufficient (if legislation allows) to obtain a servitude right instead⁸.

⁶ For example, it may not be practicable to purchase by agreement in the project timescale or at a reasonable cost when acquiring numerous interests, when an owner has unrealistic aspirations about the value of their land or an owner is unwilling to engage with the authority.

⁷ The authority can continue to negotiate with the owners over matters such as the compensation to be paid, the entry date and alterations to the scheme.

⁸ See also paragraphs 18 to 31.

12. Where there is more than one site on which the scheme could be located, the authority should be satisfied that it has properly assessed the suitability of any alternative sites.

Assessing the public interest

13. The authority should properly assess the public benefit in its proposals and the impact on the people affected. Where appropriate, it should engage with the wider community, key agencies, community councils and community planning partnerships as part of this process⁹.

14. There are a wide range of projects for which it may be possible for the authority to put forward a sufficiently strong case to justify compulsory purchase. These may range in size from a major scheme to regenerate a large area to a small individual scheme to bring a single derelict property or empty home back into use. In some cases the scheme might benefit the immediate population, whereas in others the scheme may benefit the wider public. In some cases the public benefit in a scheme may be economic – for example it may create jobs, encourage investment or promote sustainable economic growth. In other cases the public benefit might be environmental or social, such as providing a public service, improving the amenity of an area, providing infrastructure to facilitate regeneration or delivering a network of paths to enable access.

15. In assessing the public benefit a local authority may wish to consider, amongst other things, priorities that it has adopted in its single outcome agreement or proposals, projects and policies adopted in its development plan, housing plans, community plans or other strategic or planning documents, including supplementary planning guidance such as masterplans. The authority may also wish to consider priorities in the strategic documents approved by the boards of urban regeneration companies or other bodies set up by Scottish Ministers to deliver regeneration and renewal. It may also wish to consider the statutory plans of national bodies and agencies and regional bodies such as regional transport partnerships.

16. The authority should be satisfied that all of the land it seeks to acquire compulsorily is needed to complete its scheme.

Human rights

17. Compulsory purchase will not breach the European Convention on Human Rights where it is authorised by law, is proportionate and where it can be demonstrated to be in the public interest. This reinforces the requirement that the authority should use compulsory purchase only where it is a proportionate response in the circumstances and there is a strong enough case for this in the public interest. The authority should therefore properly assess the public benefit in what it proposes against the impact on the people likely to be affected. It should also properly assess any reasonable alternative ways that it might realise its aims.

⁹ In some cases the authority may have already consulted and engaged with such organisations when formulating its development plan or other strategic documents.

Using the appropriate compulsory purchase power

18. Various Acts of Parliament (known as 'enabling acts') give authorities powers to compulsorily purchase land for specific purposes¹⁰. The purpose for which the authority seeks to acquire land is therefore vitally important, as this will determine whether it has relevant powers and which power is most appropriate.

19. The authority should use the most specific power available for the purpose for which it intends to acquire the land. The purpose must relate to the powers in the enabling act. If (before Scottish Ministers decide whether or not to confirm an order) the authority changes its plans for the land, it should make sure that the powers it is using still relate to the purpose for which it seeks to acquire the land.

20. For some purposes there may be no specific power available, or the authority might seek to acquire the land for more than one purpose. In this situation it may have the option of using a more general power¹¹. However, it should not use a general power where a more specific and appropriate power is available¹². The authority should not attempt to use more than one power for the same purpose.

21. A power to acquire land compulsorily does not necessarily allow the authority to create rights short of ownership over that land (such as a right of access). If the authority seeks to acquire rights short of ownership it must identify specific enabling legislation that authorises it to create the rights that it seeks.

Compulsory purchase under planning powers¹³

22. A planning authority has compulsory purchase powers that it may use to assemble land where this is necessary to carry out the proposals in its development plan or other strategic planning documents. It can use these powers to assemble land for regeneration and other schemes where the range of activities it proposes means that no other single specific compulsory purchase power would be appropriate. It can also use them to provide infrastructure and/or assemble and prepare sites to make them available for the private sector to develop or to acquire an individual property that needs redevelopment or improvement, such as a derelict or abandoned property or empty home.

Planning policy

23. The authority should be satisfied that its proposals generally accord with prevailing planning policy. It may be possible for the authority to show this by referring to the adopted or approved development plan or National Planning Framework. It may also refer to non-statutory planning guidance or a masterplan that has been consulted upon and adopted for development management purposes.

¹⁰ See Appendix B for a selected list of enabling acts, the authorities that can use them and the purpose for which they can be used.

¹¹ For example, section 71 of the Local Government (Scotland) Act 1973 gives a local authority a general power to compulsorily purchase land for the purpose of any of its functions (including the general power to advance well being in section 20 of the Local Government in Scotland Act 2003).

¹² Scottish Ministers may refuse to confirm an order if they consider that the authority is using a general power in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which has been explicitly excluded from a specific power, or by attempting to avoid a more procedurally onerous specific regime (such as found in the listed building legislation requiring service of a repairs notice before going down the CPO route).

¹³ Section 189 (1) of the Town and Country Planning (Scotland) Act 1997

24. It may not always be possible or appropriate for the authority to wait until the full details of its proposals have been developed, and planning permission obtained, before it proceeds with an order. In some cases the order might form part of a longer-term strategy which needs to be able to adapt to changing circumstances. As a result, it may not be possible for the authority to show with certainty exactly how some or all of the land in the order will be used after acquisition in implement of that strategy. If this is the case the authority should be satisfied that it can justify the case for acquisition in advance of resolving the uncertainties.

25. If planning permission will be required, and has not yet been granted, the authority should be satisfied that there is no obvious reason why planning permission might not be granted. In particular, it should be satisfied that the proposals that are the subject of the planning application are broadly in accordance with, or not obviously in conflict with, the development plan for the area.¹⁴

Compulsory purchase under housing powers¹⁵

26. A local authority has compulsory purchase powers that it may use to assemble land for housing and ancillary development (such as access roads, shops and recreation grounds)¹⁶. It may also use these powers to acquire land to make it available for private development or to bring empty or derelict homes back into use.

27. The authority should be satisfied that the need for further housing accommodation in the area justifies making a compulsory purchase order. Where appropriate, it should refer to local housing strategies and housing needs and demand assessments.

28. The authority need not propose to undertake the activity or achieve the purpose itself. It may dispose of the land to a third party to carry out its purpose. The authority need not necessarily have identified a prospective purchaser at the time it makes a compulsory purchase order¹⁷. However, it should be satisfied that its proposals will provide the housing accommodation in the intended time.

29. The authority may be able to justify acquiring an empty property where there appears to be no other prospect of it being brought back into residential use. However, it should be satisfied that it has first done everything that it reasonably can to encourage the owner to restore the property to full occupation. It may also be able to justify using housing powers to acquire a sub-standard property in some cases¹⁸.

¹⁴ However, it may be possible to obtain planning permission for proposed development that does not accord with the development plan where material considerations indicate that the proposal is otherwise acceptable.

¹⁵ See section 10 of the Housing (Scotland) Act 1987 and Appendix B for other housing powers

¹⁶ When using housing powers the authority should carefully consider whether it proposes to do anything that is not ancillary to housing. If it has any doubt it may be more appropriate to use planning powers (see paragraphs 22 to 23 and 30 to 31).

¹⁷ For example, negotiations may be proceeding or the authority may propose to sell the land on the open market.

¹⁸ An authority may also be able to use the compulsory purchase powers in the 1987 Act in conjunction with its power to designate a Housing Renewal Area under the Housing (Scotland) Act 2006. See also Appendix B for a list of other powers.

However, it should be satisfied that it has first done everything that it reasonably can (such as serving statutory notices) to bring the property up to a standard to provide acceptable housing.

Choice between powers

30. In some cases there may be more than one appropriate compulsory purchase power and the authority may need to choose which power to use. For example, it may have a choice between using planning or housing powers. In such cases, Scottish Ministers are unlikely to refuse to confirm an order solely on the grounds that the authority could have made the order under another power, as long as the authority can justify the choice of power used and it does not give rise to any prejudice.

31. When deciding whether to confirm an order, Scottish Ministers will consider policies relevant to the authority's proposals. For example, where it seeks to assemble land under planning powers for housing development, Ministers will take planning and housing policies into account.

Funding implications of the scheme

32. The authority should be satisfied that it has a reasonable prospect of securing enough funding to acquire the land within the statutory three year period¹⁹ and completing the scheme over a reasonable timescale. It should be satisfied that it has properly estimated the likely levels of compensation that it will need to pay. It should also be satisfied that it could make enough money available immediately to cope with any acquisition resulting from a blight notice²⁰.

33. However, in some cases the authority may be able to justify acquiring the land where the long term funding is not guaranteed. Scottish Ministers recognise that funding streams for projects can be unpredictable and their sources can change over time. The authority may not intend the scheme to be independently financially viable, or it may be unable to finalise details until it has assembled the land. In such cases it should be satisfied that there is a reasonable prospect that it can meet any potential shortfalls. This may include considering the degree to which other bodies (including other public bodies, the private and/or third sector) have agreed to contribute or underwrite the scheme and on what basis other bodies will contribute or underwrite. In some cases a strict time limit on the availability of funding may justify proceeding with the order before the authority finalises details of the scheme.

Barriers to completing the scheme

34. The authority should be satisfied that there are no barriers likely to prevent it completing its scheme. These might include the programming of any infrastructure work or remedial work that may be required or any permission, consent or licence that will be needed. It should be satisfied that there is a reasonable prospect of carrying out any work required or securing any such permission, consent or licence.

¹⁹ Three years after the authority publishes notice of the confirmation, the compulsory purchase power will lapse if the authority has not implemented the power.

²⁰ see paragraphs 90 to 91.

Compulsory purchase in partnership with a third party

35. Under many enabling acts the authority need not carry out its purpose itself. It may dispose of the land to a third party after acquisition. The authority might enter into what is commonly called a 'back to back' agreement with another public body, a private developer or other third party. The terms of these agreements vary, but generally the authority undertakes to use its compulsory purchase powers to acquire the land and dispose of it to the third party. In return, the third party undertakes to carry out the development (at the third party's expense) and indemnify the authority's costs. This can help the authority to realise a scheme in the public interest that may otherwise not be possible.

36. Conversely, a third party can approach the authority. The third party might be unable to assemble the land that it needs for a scheme that it considers to be in the public interest. In this situation the third party can ask the authority to use compulsory purchase to acquire the land. The authority should consider any such requests. If the authority considers that the public interest in the scheme justifies compulsory purchase, it may agree²¹.

37. In some cases, a local authority may wish to compulsorily purchase land to dispose of it to a community group or other third party to carry out the authority's purpose.

38. An authority working with a third party should remember that the authority remains ultimately responsible for the compulsory purchase. The onus is on the authority to weigh the public interest in the proposals against the interests of the people affected in the same way it would when considering making any other compulsory purchase order. It should ensure that it meets all legal requirements and that the people working on the scheme follow good practice, including the guidance in this circular. It must also comply with all relevant procurement legislation and any relevant legislation about disposing land to a third party²².

39. When deciding whether to confirm a compulsory purchase order involving a third party, Scottish Ministers will weigh up the public interest in the proposals against the interests of the people affected in the same way Ministers will for any other compulsory purchase order.

Local authority resolution to use compulsory purchase

40. A meeting of the full council, or a meeting of a committee with delegated powers, must pass a resolution authorising the making of a compulsory purchase order. The report to the council or committee should explain the public benefits to be delivered by the scheme and explain why these over-ride the interests of the people affected. The extent of the land to be acquired should be shown on a map attached to the council meeting papers. The resolution must refer to the acquisition of all land included in the order, for the purpose identified in the order. An authority cannot use

²¹ Usually in such a case the third party will agree to indemnify all costs that the authority incurs during the compulsory purchase process, including the costs of acquisition and any costs at an inquiry or hearing.

²² Such as the provisions in s.191 of the Town and Country Planning (Scotland) Act 1997 or s. 74 of the Local Government (Scotland) Act 1973.

an order to acquire more land than has been authorised in the resolution, or to acquire land for a different purpose than that authorised in the resolution.

41. The authority may find it helpful to adopt a two stage approval process (approval in principle, then approval to make the order). This can help the authority to ensure that it has fully considered the justification for the order, engaged with the people affected and drafted the order correctly, before it formally resolves to make the order.

The statement of reasons

42. The authority should set out its case for the compulsory purchase in a document called a 'statement of reasons'. This should include all information that Scottish Ministers will need when considering whether to confirm the order. The statement of reasons should be as concise, clear and comprehensive as possible. See also Appendix D.

ENGAGING WITH THE PEOPLE AFFECTED AFTER MAKING A COMPULSORY PURCHASE ORDER

43. The authority should seek to listen to the people affected at every stage of the process. It should do what it can to understand their concerns and where possible address those concerns. It should consider appointing a specified case manager to whom people have direct, easy and face to face access.

Information and advice for the people affected

44. As soon as possible after the authority has decided to make a compulsory purchase order it should tell people as clearly and plainly as possible how the compulsory purchase process works, what rights they have and where they can go for advice. The Scottish Government has published an easy read 'Guide to compulsory purchase and compensation' for this purpose²³. Scottish Ministers strongly encourage the authority to send a copy of this guide to everyone affected by the order.

45. The authority should explain to people in plain, easy to understand language why it needs to acquire their land. It should explain the purpose for which it seeks to acquire the land, the powers that it is using, what the public benefits will be and what alternative sites (if any) it has considered. If it has not done so already, it should meet owners, tenants, occupiers and anyone else affected as early as possible.

Serving statutory notices

46. At various stages of the process the authority must serve notices on people with an interest in the land. The wording of these notices is prescribed by statute and some people may find them difficult to understand. When serving a notice, the authority should therefore 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. The authority may wish to refer to the Scottish Government's easy read guide²⁴ in this letter.

²³ Copies of this guide can be downloaded from www.scotland.gov.uk/cpo

²⁴ Copies of this guide can be downloaded from www.scotland.gov.uk/cpo

Professional fees

47. The authority should tell people what professional fees they are entitled to reclaim. It should also explain how it will repay those fees and when it will pay them. It may wish to refer to the Scottish Government's easy read guide for owners²⁵, which contains information about professional fees.

Accommodation works²⁶

48. If acquiring only part of someone's land, the authority should consider at an early stage the possible benefits of offering and agreeing a package of accommodation works. To avoid misunderstandings or disputes any agreement about accommodation works should be in writing. The authority should ensure that contractors know what it has agreed to and that contractors carry out the accommodation works as agreed.

Agricultural or business land

49. When seeking to acquire agricultural or business land, the authority should pay particular attention to farming and business issues. It should consider the value of consulting a suitable qualified and experienced land agent or chartered rural surveyor to identify issues early. It should also consider the benefits of ensuring that officials who speak to land owners and occupiers have an awareness of farming and/or business issues.

50. If the authority is seeking to acquire only part of a property it should fully consider the effect of this on the future viability of the farm or business. In some cases a slight change in the amount of land taken can dramatically lessen the impact and/or the need for expensive accommodation works.

51. If a business needs to relocate, the authority should do what it can to help find alternative premises for the business. As well as alleviating hardship this may help the local economy. It may also reduce the amount of any compensation claims.

52. The authority should explain to the people affected how any construction works may affect them. It should listen to any concerns and alleviate the impact where possible.

Residential properties

53. When seeking to acquire someone's home the authority should do what it can to help the person find suitable alternative accommodation. A local authority has a duty to secure suitable alternative accommodation on reasonable terms, if none is available.²⁷

Alternative dispute resolution

54. Scottish Ministers have published information about the use of mediation in the planning system²⁸. Ministers encourage authorities to consider the potential benefits

²⁵ Copies of this guide can be downloaded from www.scotland.gov.uk/cpo

²⁶ Accommodation works are mitigating works that the authority may carry out on land retained by the owner.

²⁷ See section 36 of the Land Compensation (Scotland) Act 1973

²⁸ www.scotland.gov.uk/mediationinplanning

of mediation or other forms of alternative dispute resolution at all stages of the compulsory purchase process, from planning and preparation through to agreeing compensation. This can save time and money for both parties, while its relative speed may help to reduce the period of uncertainty for the people affected²⁹. In some cases the authority may wish to consider whether it might represent best value to pay for and facilitate mediation or other alternative dispute resolution techniques³⁰.

Advance purchase

55. The compulsory purchase process can cause a long period of uncertainty for the people affected. Rather than waiting until the end of the compulsory purchase process an owner might ask the authority to purchase the land earlier, on compulsory purchase terms. Where possible, and particularly when acquiring residential land, the authority should consider such requests.

Early negotiation about compensation

56. In some cases it may significantly speed up the process and help remove uncertainty if the authority begins negotiations over compensation early, instead of waiting until Scottish Ministers have decided whether to confirm the order. However, this may not be practicable in every case.

Contractors

57. The authority should ensure that contractors and other people acting on its behalf follow good practice (including the advice in this circular) when dealing with people. It should do what it can to ensure that contractors carry out any agreed work and repair any damage that they cause. It should also do what it can to resolve any dispute.

SENDING THE ORDER TO SCOTTISH MINISTERS FOR CONFIRMATION

58. As soon as possible after it makes the compulsory purchase order, the authority should send the order and supporting documents to the relevant Scottish Government Directorate³¹. To avoid delay, the authority should ensure that it sends all the documents and information that Ministers will require³².

59. Scottish Ministers will seek to minimise the period of uncertainty for the people affected. Ministers will therefore decide as quickly as possible whether an inquiry is required and hold any inquiry as soon as possible, depending on the circumstances. Ministers will not normally agree to delay or postpone the decision making process unless the authority no longer wishes to pursue the order. The authority should not therefore make a compulsory purchase order unless it is ready to proceed.

60. Scottish Ministers will decide as quickly as possible whether to confirm the compulsory purchase order. Ministers will consider each order on its merits and may

²⁹ For example, long running disputes over compensation that had been scheduled to be heard by the Lands Tribunal for Scotland have instead been resolved by mediation.

³⁰ This might be particularly true if resolving a dispute would avoid the need for more lengthy and expensive procedures, such as an inquiry or a referral to the Lands Tribunal for Scotland.

³¹ A list of Scottish Government contact points is available at www.scotland.gov.uk/cpo.

³² See Appendix K for a checklist of the documents and information that the authority should send to Scottish Ministers.

take longer to make a decision on some orders than on others, depending on the circumstances. Ministers will publish indicative timescales and a list of contact points at www.scotland.gov.uk/cpo. Anyone who wishes to check progress or ask any questions about an order that Ministers are considering should contact the relevant Scottish Government Directorate.

Related applications or appeals

61. The authority should identify any related application or appeal that Scottish Ministers may wish to consider at the same time as the compulsory purchase order³³. This will allow Ministers to consider whether a joint inquiry might be appropriate. The authority should ensure that it carries out any procedures that it is responsible for at the right time to allow Ministers to consider related applications or appeals in step.

Objections to the order

62. Scottish Ministers will send the authority a copy of all objections and will ask the authority to reply with its comments about the objections. The authority should reply to Ministers as quickly as possible. It should tell Ministers whether it intends contacting the objectors and whether it is likely to reach agreement with all objectors to secure the withdrawal of every objection. It should also include any general comments it wishes to make.

63. In some cases the authority may be able to alter its plans or provide assurances to the objectors that may address their concerns and result in all objectors withdrawing their objection. If this is the case it should tell Ministers. However, in other cases the authority might consider that there is no realistic prospect of every objector withdrawing their objection. This might be because of the number of objections, the grounds for objection or because the authority is already aware of the objectors' concerns and has exhausted attempts to negotiate. If the authority does not consider it likely that every objector will withdraw their objection it should tell Ministers as soon as possible.

64. If Scottish Ministers consider that an inquiry is likely to be necessary they will arrange the inquiry as soon as possible. However, the authority can continue to negotiate with objectors about their concerns in the meantime³⁴. If the authority becomes aware that an objector has withdrawn their objection it should tell Scottish Ministers as soon as possible.

³³ Examples include an order stopping up a public road or an appeal against the refusal of planning permission.

³⁴ An objector may withdraw their objection at any time, even after the date for the inquiry has been set.

The inquiry

65. If an inquiry is necessary Scottish Ministers will decide whether a public local inquiry session or a hearing session is most appropriate in the circumstances³⁵.

The Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) will arrange and hold the inquiry before an independent reporter appointed by Scottish Ministers. The reporter will usually be a specialist such as a planner, surveyor, engineer, architect or lawyer.

66. In general, Scottish Ministers will bear the administrative costs of holding the inquiry. If a statutory objector to an order is successful, an award of expenses will usually be made in their favour, unless there are exceptional circumstances for not doing so.³⁶ Ministers may award expenses if a party has acted unreasonably and the party claiming expenses has incurred unnecessary expense as a result.

67. Once the date of the inquiry 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 or the authority says it no longer wants to pursue the order.

Scottish Ministers' decision

68. After the inquiry the reporter will write a report with recommendations for Scottish Ministers. Scottish Ministers will consider the merits of the case, including the reporter's conclusions and recommendations then decide to confirm the order (with or without modifications³⁷) or refuse to confirm the order. Scottish Ministers will write to the authority to tell it of their decision and the reasons for reaching that decision. Scottish Ministers will send a copy of this letter to everyone who maintained an objection to the order.

69. As soon as possible after Ministers have confirmed the order, the authority should publish notice of the confirmation and serve notice of the confirmation on everyone that it served with the notice of making of the order. It should notify the relevant Scottish Government Directorate³⁸ once it has done this.

Challenge to the validity of the order

70. There is a six week period, beginning from the date that the authority first publishes notice of the confirmation of the order, in which the validity of the order can be challenged in the Court of Session. The challenge may be made on the grounds of the lawfulness, rather than the merits, of the decision. If the challenge is successful, the court may quash the compulsory purchase order in whole or part.

³⁵ An inquiry session and a hearing session both involve people presenting their case in person in front of the reporter. A Hearing session takes the form of structured discussion led by a reporter. Inquiry sessions are normally more formal events where witnesses give their evidence to the reporter and can be cross examined by other parties. Generally, an inquiry may be most appropriate if there may be handling difficulties because of the complexities of a case, the objections raise complicated matters of policy or complicated legal issues or it is likely that either party will need cross-examination to test the opposing case. In other cases a hearing may be more appropriate.

³⁶ Circular 6/1990 www.Scotland.gov.uk/publications/1990/03/circular-6-1990

³⁷ Scottish Ministers may confirm the order with modifications, but no extra land can be added to the amount of land being acquired unless everyone with an interest in that land agrees.

³⁸ See www.scotland.gov.uk/cpo for a list of Scottish Government contact points

TAKING POSSESSION AND LEGAL TITLE TO THE LAND

71. If the authority does not implement the order within three years from the date that it published notice of the confirmation of the order the compulsory purchase order lapses. The authority should aim to minimise the period of uncertainty for the people affected. Generally, it should take possession and legal title to the land, and pay any compensation due, as quickly as possible. However, in some cases it may be in the best interests of the people affected for the authority to wait until it is ready to proceed with the next stage of its scheme³⁹. Engaging properly with the people affected may help the authority to identify and address people's concerns.

Notice to treat procedure

72. Under this procedure the authority could get entry to the land in as little as 14 days⁴⁰. If using this procedure the authority should consider the steps that the people affected will need to take to vacate their properties. Where possible it should adopt a timetable that takes into account the needs of owners, tenants and occupiers. Even when that is not possible, it should give people as much notice as possible of proposed events. For example, when serving the notice to treat, it should give an indication of approximate date that it intends taking entry.

73. When acquiring agricultural land or business premises the authority should be aware that owners or tenants may need to know the entry date earlier than others, because of (for agricultural owners) crop cycles and/or the need to find alternative premises. It should also be aware that short notice periods often result in higher compensation claims.

74. If the authority is acquiring part only of someone's land the owner may have the right to serve a notice of objection to severance⁴¹. It is good practice for the authority to advise the owner of this at the time it serves the notice to treat.

General Vesting Declaration (GVD)

75. Under GVD the authority can get title before it has agreed compensation with the owner, and without having to satisfy itself as to the owner's title. Also, using a GVD can reduce the administration burden, particularly if the authority is acquiring multiple interests.

76. After acquiring title by GVD the authority may lease the land back to the former owner or tenant if it does not need entry to the land immediately. However, it should draw up the lease carefully to ensure that the authority can take possession of the land when it needs to.

77. If the authority is acquiring only part of someone's land the owner or tenant may have the right to serve a notice of objection to severance. The owner is advised of this at the time the authority serves the notice stating the effect of the GVD.

³⁹ For example, if the authority intends to provide alternative accommodation for the people affected it may be in everyone's interests for the authority not to take title until the alternative accommodation is ready.

⁴⁰ However, it will not get legal title to the land until it has agreed compensation with the owner and completed the conveyancing.

⁴¹ This seeks to force the authority to compulsory purchase the whole land because in the case of a house, building or factory taking part of the land causes material detriment, or in the case of a park or garden, seriously affects the amenity or convenience of the house.

COMPENSATION

78. Assessing compensation can be complicated and is governed by extensive and continually evolving legislation and case law. This circular does not attempt to provide detailed advice on compensation.

Basic principles

79. The authority should adopt a facilitative approach to the process of negotiating compensation. Whether a person is entitled to compensation, and how much compensation they are entitled to, will depend on the circumstances. But compensation may take account of the following:

- The open market value of the interest
- Compensation for severance and/or injurious affection⁴²
- Compensation for disturbance and other losses not directly based on the value of the interest. This includes certain reasonable professional fees
- Additionally, a home loss payment⁴³ or farm loss payment⁴⁴ may be made, where applicable

80. Alternatively, where the land is used for a purpose for which there is no general demand or market and the owner intends to reinstate elsewhere, they may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement.

Assessing open market value

81. Open market value is based on what a person could expect to get if they willingly sold their interest in the land on the open market, without the threat of the compulsory purchase. This means that any reduction or increase in value because of the compulsory purchase order (and the scheme behind the compulsory purchase) is ignored.

Certificates of appropriate alternative development (CAADs)⁴⁵

82. The open market value of the land may take into account development value. A CAAD can, in certain circumstances, be a useful way to help establish whether the land being acquired has development value. A claimant or the authority may apply to the planning authority for a CAAD to establish what development would have been permitted on the land if it was not for the scheme behind the compulsory purchase.

The valuation date

83. The date on which the land is valued for compensation purposes depends on the method the authority uses to acquire title. Under the notice to treat procedure the date of valuation is the date of entry or assessment of compensation, whichever occurs first, or the date of reasonable reinstatement (where compensation is being

⁴² Injurious affection is, in broad terms, the effect of acquiring part of someone's land on the value of any remaining land.

⁴³ sections 27 to 30 of the Land Compensation (Scotland) Act 1973, as amended by the Planning and Compensation Act 1991

⁴⁴ sections 31 to 33 of the Land Compensation (Scotland) Act 1973

⁴⁵ See part IV of the Land Compensation (Scotland) Act 1963

assessed on the basis of equivalent reinstatement). Under GVD procedure the relevant date is the vesting date.

Acquiring part only of a person's land

84. The way compensation is assessed varies considerably depending on whether the authority is acquiring the whole or only part of a person's land. The authority should therefore pay particular attention to assessing compensation when acquiring only part of a person's land. This should include considering the possibility that the owner might serve a notice of objection to severance⁴⁶. The authority should be aware that severance and injurious affection claims can form a significant amount of the compensation due.

Advance payments of compensation

85. If the authority has acquired title using a general vesting declaration it can take legal title and possession before it has agreed with the owner the amount of compensation to be paid. In this situation, if the claimant formally requests it, the authority must in some circumstances make an advance payment of 90% of its estimate of the likely compensation due, together with professional fees and statutory interest. The authority must pay this within three months of receiving the request from the claimant, or within three months of taking possession of the land (if later).

86. The authority might later realise (particularly as a result of negotiations over compensation) that its initial estimate of the compensation due was too low. In this situation the authority should tell the claimant that its initial estimate was too low. The authority should tell the claimant that it will pay the balance of the amount of the revised advance payment valuation on formal request.

87. The authority should make advance payments as quickly as possible to relieve financial hardship and help claimants relocate. Quick and adequate payments may also reduce the amount of statutory interest payable.

Interest

88. Interest is payable at the prescribed rate⁴⁷ from the date that the authority enters and takes possession until the compensation is paid. The authority should therefore properly record the date of entry.

Abandonment of the scheme

89. The authority might decide to abandon its scheme and not proceed. In all cases where the authority abandons a scheme it should tell the people affected of its decision as soon as possible and consider claims for compensation and/or abortive costs and expenses on their merits, on a case by case basis.

⁴⁶ This seeks to force the authority to compulsory purchase the whole land because in the case of a house, building or factory taking part of the land causes material detriment, or in the case of a park or garden, seriously affects the amenity or convenience of the house.

⁴⁷ The method for determining the rate of interest is set out in the Acquisition of Land (rate of interest after entry) (Scotland) Regulations 1995. See also circular 36/1997. Current and previous interest rates are published on the Public Works Loan Board website at <http://www.dmo.gov.uk/reportView.aspx?rptCode=D7A.8&rptName=74910107&reportpage=>

Blight

90. The authority should consider the possibility of being served with a Blight Notice. 'Blight' is the reduction in the marketability and value of property because of public sector actions and decisions. The owner of a blighted property may seek to negotiate the voluntary advance acquisition of the land by the authority at its unblighted price, on compulsory purchase terms. Should the authority refuse, the owner can in certain circumstances serve a blight notice on it.⁴⁸ If accepted or confirmed, a blight notice operates in effect as inverse compulsory purchase so that the authority is treated as being authorised to compulsory purchase the land and to have served a notice to treat.

91. However, there are limits on the ability to serve such a notice. The person must have a 'qualifying interest'⁴⁹, the land in question must be 'qualifying land'⁵⁰ and in certain cases the owner must show that a reasonable attempt has been made to sell the land. The authority may accept a blight notice or serve a counter-notice objecting on prescribed grounds. All disputes go to the Lands Tribunal for Scotland for resolution.

⁴⁸ Part V of the Town and Country Planning (Scotland) Act 1997

⁴⁹ Principally residential owner-occupier or commercial owner-occupier with a Rateable value limitation

⁵⁰ (broadly cases where compulsory purchase is foreshadowed or has begun, following formal approval of the public work by the authority)

APPENDIX A: OVERVIEW OF THE COMPULSORY PURCHASE PROCESS

A1. This overview provides only a general illustration of the process. Some of the stages may overlap and may not necessarily be carried out in the order shown here. In some cases other people may carry out various steps on behalf of the authority.

Engaging with the people affected and designing the scheme

The authority considers how to achieve its aims, how to engage with the people affected, how much land it needs and whether there are alternatives to compulsory purchase. It chooses its preferred site, considers the suitability of alternative sites (if any), the resource implications of the scheme, any barriers to completing the scheme, the blighting effects of its proposals and how it could mitigate them. It might select a third party partner to work with.

See paragraph 18 (CPO powers), 9 (justification), 42 and Appendix D (Statement of Reasons), Appendix C (preparatory checklist), 4 (early engagement)

Preparatory work and investigating ownership

The authority identifies everyone with an interest in the land that it needs to acquire. It may request information from occupiers, search the property registers and visit the site. It might open early negotiations with owners about compensation.

See Appendix E (land referencing) and paragraph 4 (early engagement)

Justifying and deciding to use compulsory purchase

The authority assesses the public benefit in its scheme, weighs this against the impact on the people affected and considers any reasonable alternatives to compulsory purchase. If there is a sufficiently strong case in the public interest, the authority resolves to use compulsory purchase.

See paragraph 9

Making the compulsory purchase order

The authority prepares and signs the compulsory purchase order. It may also prepare its statement of reasons.

See Appendix F (drafting the order) and Appendix D (statement of reasons)

Advertising the order and serving notices

The authority advertises the making of the order in a local newspaper for two successive weeks and serves notice of the making of the order on the people affected.

See Appendix G (serving notice of making of the order) and paragraph 46 (serving statutory notices)

Sending the order to Scottish Ministers

The authority sends the order, the authority's statement of reasons and supporting documents to Ministers for consideration.

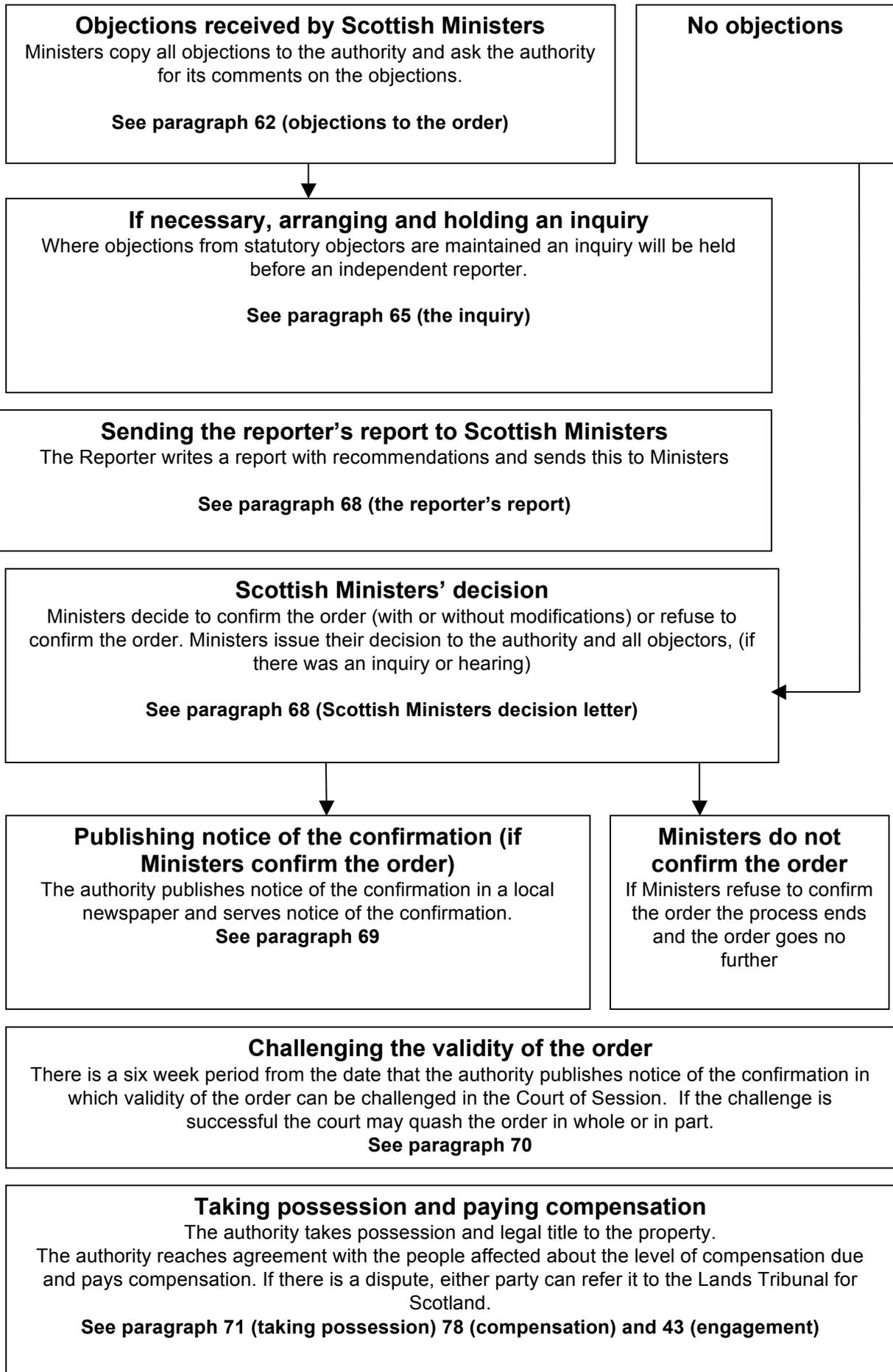
See Appendix K (checklist of documents to send to Scottish Ministers) Appendix H (General certificate) and Appendix J (protected and special category land certificate)

The objection period

Anyone who wishes to object to the order has at least 21 days, from the date the authority first advertised the order, to make representations to Scottish Ministers.

See paragraph 62 (objections to the order)

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APPENDIX B: SELECTED PUBLIC AND GENERAL ACTS WITH COMPULSORY PURCHASE POWERS

B1. Many Acts of Parliament contain compulsory purchase powers. The following list is not exhaustive and sets out only a brief summary of the power. The authority should check the precise wording of the enabling Act, rather than relying on the description of the power in this Appendix. It should also make sure that the legislation is in force and whether it has been amended.

B2. This Appendix is based on a table extracted from 'Compulsory Purchase and Compensation; the Law in Scotland' by Professor Jeremy Rowan-Robinson and Elaine Farquharson-Black, with the kind permission of W. Green.

Act	Section/ Schedule	Promoter	Power
Agriculture (Scotland) Act 1948	s.57	Scottish Ministers	To ensure full and efficient use for agriculture thereof securing the carrying out of the work, provision or maintenance of equipment or use of the land in conjunction with other land
Building (Scotland) Act 2003	s.45	Local Authority	The purchase of a building and its site on which the local authority has carried out work under s.29(2) or (3) or 30(4)(b) and the expense incurred in doing so cannot be recovered from the owner of the building because the owner cannot be found
Crofters (Scotland) Act 1993	s.23	Scottish Ministers	Power to acquire land or buildings no longer forming part of a croft
Education (Scotland) Act 1980	s.20	Education Authority	In order to enable them to execute any of their functions
Electricity Act 1989	s.10 and Sch.3	Licence holder	For any purpose connected with the carrying on of the activities which the licence holder is authorised by the licence to carry on
Enterprise and New Towns (Scotland) Act 1990	s.7	Scottish Enterprise or Highlands & Islands Enterprise	Power to acquire derelict, neglected or unsightly land and any other land whose acquisition is

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			reasonably required for the purpose of bringing the derelict land into use or improving its appearance
Environment Act 1995	s.26	SEPA	For the purpose of any of SEPA's functions
Flood Risk Management (Scotland) Act 2009	s.66	Local Authority	Land which it requires for the purpose of carrying out scheme operations
Forestry Act 1967	ss.39 and 40	Scottish Ministers	Land suitable for afforestation or purposes connected with forestry
Housing (Scotland) Act 1987	ss.9 and 10	Local Authority	For, or in connection with, provision of housing accommodation
	s.124	Local Authority	Purchase of site of a building which has been demolished by the authority under s.123 and the expenses incurred cannot be recovered because the owner cannot be found
Housing Associations Act 1985	s.88	Local Authority	For purpose of selling/leasing it to a registered housing association or unregistered self build society; or providing dwellings for letting or for sale or hostels
Housing (Scotland) Act 2006	s.40	Local Authority	Acquisition of a house and its site for the purposes of carrying out work or demolition following a failure of the owner of the house to comply with a works notice or demolition notice served under the Act
	s.95	Local Authority	To improve the amenity of a predominantly residential area
Land Reform (Scotland) Act 2003	s.16	Local Authority	For the purpose of enabling or facilitating the exercise of access rights in respect of land to which the section applies
Local Government (Scotland) Act 1973	s.71	Local Authority	For the purposes of any of its functions

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National Parks (Scotland) Act 2000	s.9 and Sch.2	National Park Authority	Any land within the National Park for the purpose of its functions
Nature Conservation (Scotland) Act 2004	s.39	Scottish Natural Heritage	Land which is a Site of Special Scientific Interest, any other land to which a Nature Conservation Order or Land Management Order applies or any other land which is contiguous to or which SNH considers to be associated with, land of the aforementioned land type for the purpose of securing the conservation, restoration or other enhancement of any protected natural feature
Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997	s.42	Local Authority or Scottish Ministers	For preservation of a listed building
Police (Scotland) Act 1967	s.10	Police Authority	For the purposes of its functions
Road Traffic Regulation Act 1984	s.40	Local Authority	For purposes of providing parking places under ss.32, 33(4)(a) and 34 of the Act
Roads (Scotland) Act 1984	ss.103, 104, 104(1)	Roads Authority	For purposes in connection with the construction, improvement or protection of a public road or for the purpose of providing or improving a road which is to be provided or improved in pursuance with an order under the Town and Country Planning (Scotland) Act 1997 or of providing a public right of way which is to be provided as an alternative to a right of way extinguished under the Act or for any other purpose for which land is required in connection with such an order
	s.104(2)	Scottish Ministers	Land which is required in connection with the carrying out of any

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			works authorised by an order relating to a trunk road under s.12 of the Act or the provision of buildings or facilities for the purposes of constructing, improving, maintaining or servicing a trunk road other than a special road
	s.104(3)	Special Road Authority	Land which is required in connection with the improvement of a road which is included in the route of a special road but has not been transferred to the authority by means of an order under s.9 of the Act, for the purpose of any order made in relation to a special road under the said s.9 or in connection with the provision of service stations or other buildings or facilities to be used in connection with the special road
	s.105	Roads Authority	Land required in connection with the carrying out of works authorised under s12, 69 or 70 or required for the provision of any buildings or facilities needed for the purpose of constructing, improving or maintaining or servicing a public road
	s.106	Roads Authority	For the purposes of mitigating any adverse effect which the existence or use of a road constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the road
	s.107	Roads Authority	For the propose of providing, altering or improving a cattle grid (or a bypass in relation to a cattle grid)

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	s.108	Scottish Ministers	In connection with the provision under s.55 of the Act of a picnic site
Town and Country Planning (Scotland) Act 1997	s.189	Planning Authority	Land which is (1) suitable for and is required in order to secure the carrying out of development, redevelopment or improvement (2) required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated
	s.190	Scottish Ministers	Any land necessary for the public service and any land which it is proposed to use not only for the public service but also to meet the interests of proper planning of the area or to secure the best, and most economic development or use of the land, otherwise than for the public service
Transport Act 1962	s.15A	British Waterways Board	For the purposes of its business
Water Industry (Scotland) Act 2002	s.47	Scottish Water	For purposes of any of its core functions or provision by some other person of a supply of water to the public or a system of drains, sewers or sewage treatment works for the public
Water (Scotland) Act 1980	ss.17, 18	Scottish Water	For the purpose of an order to take water from any stream or other source

APPENDIX C: PREPARATORY CHECKLIST

C1. The following list is not exhaustive. However, when considering making a compulsory purchase order, the authority should take into account the following:

- Has the authority properly engaged with the people affected? Has it assessed the impact of its proposals on them? Has it assessed whether it can minimise or mitigate that impact, and has it evidenced this? Has it considered whether it is practicable to attempt to purchase the land by agreement? (see paragraphs 4 to 8)
- Has it properly assessed the public benefit in its proposals against the impact on the people affected? Is it satisfied that the public benefit justifies making a compulsory purchase order? (see paragraphs 9 to 16)
- Has it considered and assessed any alternative ways of achieving its aims? Has it evidenced this? If the scheme could be located on another site, has it properly assessed the feasibility of any suitable alternative sites? Has it evidenced this? (see paragraphs 11 to 12)
- Does the exact wording of the enabling act authorise compulsory purchase for everything that the authority wants to do? Has it chosen the most appropriate compulsory purchase power for its purpose? (see paragraphs 18 to 31).
- Does what the authority proposes accord with prevailing planning policy? What is the stated position in the development plan, national planning policy and other relevant planning policies or guidance? Does the scheme align with these? Does the scheme need any planning permission or consent to be granted? If so, are there any reasons why this might not be granted? (see paragraphs 22 to 25).
- If the authority is working with a third party, has it properly weighed the public interest in the proposals against the impact on the people affected in the same way that it would for any other order? Is the authority satisfied that it can comply with procurement law and any relevant legislation about disposing of the land to a third party? (see paragraphs 35 to 39).
- Are the people affected likely to object to the order? On what grounds might they object? Is the authority satisfied that it can justify its proposals at an inquiry? (see paragraphs 62 to 67)
- Is the authority satisfied that it can justify acquiring all of the land that it seeks to acquire (is all of the land that the authority seeks to acquire necessary to do what it proposes)? Is it satisfied that it has included all of the land that it will need (including any land it may need during the construction phase)?
- Is any of the land afforded special protection against compulsory purchase⁵¹?

⁵¹ The law affords certain types of land some protection against compulsory purchase. Compulsory purchase of certain land is subject to special parliamentary procedure, eg land forming part of a common or open space or land held inalienably by the National Trust for Scotland. There are also special procedure relating to land acquired by a statutory undertaker for the purposes of its undertaking, land owned by a local authority

- Is any of the land owned by the Crown?⁵²
- Does the authority need to acquire any new rights over land, such as a temporary or permanent right of access? If so, does the enabling act authorise the compulsory acquisition of the new rights? (see also paragraph 21)
- Is the authority satisfied that there are no barriers likely to prevent it completing the scheme? (see paragraph 34) Is it satisfied that it has a reasonable prospect of funding the acquisition and completing the scheme in a reasonable timescale? (see paragraphs 32 to 33)
- Has it identified any related application or appeals that may require a decision at the same time as the compulsory purchase order? (see paragraph 61)
- Has the authority identified all interests that it needs to acquire? Does it have accurate, up to date assessments of the compensatable value of all interests and the likely level of compensation claims? (see paragraphs 78 to 91) Are there any other possible heads of claim? For example, is there potential for the owner to successfully apply for a certificate of appropriate alternative development (CAAD)?⁵³ (see paragraph 82)
- If the authority is acquiring part only of a person's land, has it considered the possibility of the owner serving a notice of objection to severance?⁵⁴ Has the authority fully considered the impact of severance on the remaining land, and whether a small change in its proposals could lessen that impact? (see paragraph 84)
- Will other properties be blighted or adversely affected as a result of the authority's scheme? If so, could this lead to compensation claims? Has the authority considered the likelihood of the owners of blighted properties serving it with blight notices? Has it considered how much this could cost, and whether it would have sufficient funds in place immediately to acquire any blighted properties? (see paragraphs 90 to 91)
- Is the authority satisfied that it has enough land agent, surveyor and/or legal expertise or capacity in house? If not, has the authority considered whether it might be best value to seek specialist advice from the Valuation Office Agency or a provider of similar services in the private sector?

⁵² Some enabling acts make particular provisions regarding crown land. Other enabling acts may not apply to the crown. The authority should take particular care when seeking to acquire abandoned land, as abandoned land may vest in the crown

⁵³ A certificate of alternative development, in broad terms, is used for valuation purposes to determine what planning permissions might have been granted, but for the compulsory acquisition. The authority may wish to carry out a dummy CAAD assessment.

⁵⁴ A notice of objection to severance seeks to oblige an authority to purchase all of a property, rather than just a part.

APPENDIX D: Preparing the statement of reasons⁵⁵

D1. The authority should set out its case for the compulsory purchase in a document called a 'statement of reasons'. In this the authority should include all the information that Scottish Ministers will need when considering whether to confirm the order. The statement of reasons should be as concise, clear and comprehensive as possible.

D2. This Appendix provides a list of the information that the authority should usually include in its statement of reasons. The list is not exhaustive. The authority should include all information that it thinks relevant and should adapt its statement of reasons according to the circumstances of the particular order. The statement of reasons need not follow any set format, but it should usually include the following:

The land

D3. A brief description of the order land and its location, topographical features and present use. The authority should refer to any relevant development plan and identify within which community council area the land is located. In some cases it may be helpful to briefly refer to the historical development of the site to understand the context of the proposal.

Purpose

D4. The authority's purpose⁵⁶ in seeking to acquire the land.

Proposals for use after acquisition

D5. How the authority proposes to use or develop the land after acquisition.

Description of any new rights being created

D6. If the authority is seeking to acquire new rights over land, such as a right of access, it should explain the need for the new rights, give details of the nature of the rights and provide any further relevant information. (see paragraph 21)

Use of enabling act

D7. Why the authority has used the particular enabling power (see paragraphs 18 to 31)

How the authority engaged with people

D8. How the authority engaged with the owners, tenants, occupiers and anyone else affected by the order. If the authority altered its plans to address people's concerns it should explain how. Alternatively, the authority should explain why it was not able to address specific concerns. It should explain what it has done or will do to lessen the impact or help people. For example, it should include any proposals for rehousing displaced residents or relocating businesses.

⁵⁵ See also paragraph 42

⁵⁶ The scope of the authority's proposed scheme and their purpose will normally appear in the authority's formal resolutions or documents.

The authority's justification for making the compulsory purchase order⁵⁷

D9. The public benefit in the authority's proposed scheme and how the authority assessed this against the impact on the people affected. How the authority assessed whether there were any feasible alternative ways of achieving the authority's purpose and/or how the authority assessed the feasibility of any suitable alternative sites⁵⁸. (see paragraph 12)

The planning position⁵⁹

D10. The planning case for the proposals, and the planning position of the order site (see paragraphs 22 to 25).

Any relevant information specific to the authority's purpose

D11. Any information specific to the purpose for which the authority seeks to acquire the land. For example, if acquiring land for housing, it should include the following:

- information about the need to provide further housing accommodation in the area (referring to local housing strategies and housing needs and demand assessments where appropriate).
- If it intends disposing of the land, it should submit information about the prospective purchaser and the purchaser's proposals to provide housing accommodation, including timescales for completion, if possible.
- If it proposes to sell the land on the open market, it should include information about its proposals to dispose of the land. It should also explain why it is satisfied that this will provide housing accommodation and in what timescale.
- When acquiring an empty home or sub standard property, it should say how long the property has been vacant, what steps it has taken to encourage the owner to bring it into acceptable use, what the outcome was and whether the owner has carried out any works to re-use the property for housing purposes.

Funding

D12. A general indication of how the authority intends funding the acquisition and completing its scheme. This should include any commitments from third parties. (see paragraphs 32 to 33)

Barriers to completing the scheme

D13. Any potential barriers to completing the scheme, and how the authority intends overcoming them. (see paragraph 34)

Related orders or applications

D14. 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. (see paragraph 61)

⁵⁷ See also paragraphs 9 to 42

⁵⁸ The authority may be asked about the site selection process, including the consideration of alternative sites, at an inquiry or hearing. The site that the authority seeks to acquire does not necessarily have to be the only suitable site, but the authority should properly weigh up the benefits of alternative sites

⁵⁹ See paragraphs 22 to 25

Unknown owners

D15. If the authority has listed any of the owners as 'unknown' in the schedule to the order, details of steps that it took to identify the owner (see Appendix E)

Special considerations

D16. Any special considerations affecting the land. For example, details of any ancient monument, listed building, conservation area, special category land, consecrated land. (see Appendix E and Appendix J)

Ministerial statements

D17. Any views expressed by Scottish Ministers about the authority's proposed development.

List of documents

D18. A list of any documents, maps and plans that the authority made publicly available and/or details of where people can see these documents.

APPENDIX E: Land Referencing

E1. The authority should carry out thorough land referencing to make sure that, as far as possible, it has identified all interests in the land that it seeks to acquire. This should include searching the Land Register of Scotland and/or the Register of Sasines, as appropriate. However, it should also visit the site and enquire locally⁶⁰. The authority may also find it helpful to consult with community councils and any local history or amenity groups.

E2. The authority should identify all of the following:

- Owners
- Lessees
- Occupiers
- those with access rights over the land
- the holder of any personal real burden that affects the land (if the real burden will be extinguished or varied on registration of a conveyance in implement of the order⁶¹)
- the owner of any land which is a benefited property⁶² in relation to any of the land (if registration of a conveyance in implement of the order would vary or extinguish the title condition in question)
- the owners' association of the development in question (if a development management scheme applies in respect of any of the land and the scheme would be disapplied on registration of a conveyance in implement of the order)

Unknown owners, lessees or occupiers

E3. In some cases the authority may not be able to ascertain the name and/or address of an owner, lessee or occupier. In this situation special procedures apply for completing the order and serving notice of the order⁶³. However, before using these procedures the authority must make reasonable inquiry. What constitutes reasonable inquiry may differ from case to case. The authority should consider each case on its merits. Some inquiries that the authority might make are listed below. Not all of these will be suitable in every case:

- advertising in a local newspaper to seek information about the last known owner
- fixing a notice to the relevant land to seek information about the last known owner
- enquiring locally (including asking adjoining owners, solicitors and estate agents)
- contacting the solicitor who presented the last recorded title to the land for registration in the Register of Sasines or Land Register
- examining the electoral roll
- consulting the District Valuer

⁶⁰ This is because some interests may not appear in the property registers.

⁶¹ See also Appendix F

⁶² As defined in section 122 of the Title Conditions (Scotland) Act 2003

⁶³ Section 19(4) of the Acquisition of Land (Authorisation Procedures) (Scotland) Act 1947. See also Appendix F and Appendix G

- checking the records of the local authority housing department
- checking Council Tax records
- examining the title deeds of adjoining ground
- consulting Royal Mail
- in the case of a company, examining the Register of Companies
- in the case of a deceased person, enquiring at the Local Sheriff Court Commissary Department, failing which, advertising in the Scots Law Times and other journals
- where the authority believes trustees have an interest in the land, advertising in the Scots Law Times and other journals
- in the case of a foreign national, checking with the nationalities branch of the appropriate Police force
- where a business has recently closed down, checking with Utilities providers

Benefited proprietors for servitude rights

E4. The authority should consider visiting the site and enquiring locally to identify the owners of benefited properties for any servitude rights over the land, such as a right of access⁶⁴.

Benefited proprietors

E5. In many cases it will be difficult, if not impossible for the authority to identify all benefited proprietors in respect of other title conditions with any certainty. In such cases it can serve notice of the making of the order on benefited proprietors by advertising and other means, rather than sending⁶⁵. If the authority chooses to serve notice in one of these other ways it need not identify the names and addresses of all benefited proprietors.

⁶⁴ Rights of access may not appear in the property registers.

⁶⁵ Paragraph 3 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. See also Appendix G

APPENDIX F: Drafting the compulsory purchase order

F1. Notes for completing the order are set out in the Compulsory Purchase of Land (Scotland) Regulations 2003⁶⁶. This appendix does not restate those notes.

The purpose

F2. The authority should precisely describe the purpose for which the land is being acquired. Where practicable, it can use the words of the enabling act, but where those words are in general terms and cover a range of purposes it should state the particular purposes for which the land is required.

The Mining Code

F3. Article 3 of the order incorporates into the enabling act legislation that is generally referred to as ‘the mining code’. If the authority does not incorporate the mining code the minerals under the land will be included in the purchase (and it may be required to pay compensation for their development value). The authority will also have to justify the need to purchase the minerals. The authority can omit Article 3 of the order or insert it with or without the reference to sections 71 to 78 (which impose constraints on how the minerals can be worked).

F4. The authority can indicate any modifications to the mining code that it requires to make, for example, by inserting the provision - ‘References in the said section (5) to the company shall be construed as references to the said xxx and references to the [railway or] works shall be construed as references to the land authorised to be purchased and any buildings or works constructed or to be constructed thereon.’

Real burdens or servitudes

F5. If the authority does not incorporate article 5 of the order then, unless the conveyance implementing the acquisition of the land provides otherwise, all real burdens and servitudes will be extinguished and any development management scheme disappplied on registration of a conveyance of the land in implement of the order. However, the authority may not want to extinguish all real burdens or servitudes, or certain rights to enforce them. Or it may not want to disapply a development management scheme. It may also wish to vary some or all of the real burdens or servitudes that affect the land. In this situation the authority should specify what it proposes in the Schedule to the order and include Article 5 in appropriate form

The first schedule to the order

F6. The Schedule to the order should bear the words ‘This is the schedule referred to in the [name of order]

F7. The authority should include all necessary land (including any new rights being created) as land can be added later only if all people with an interest in the land agree.

⁶⁶ <http://www.legislation.gov.uk/ssi/2003/446/contents/made>.

Description of the land

F8. If the extent and boundaries can be readily ascertained without dispute the authority need not include the extent of the land. For example, for a flat or house with a postal address it need not usually include the extent. However, if there is any potential for dispute it should include the extent of the land in square metres, where possible.

F9. It should include the postal address of each plot, where possible. It should take particular care where street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. It should amplify the description as necessary to avoid any possibility of mistaken identity.

F10. It should describe each plot in terms that can be readily understood by a layperson. Local people should be able to identify the land. The description should be sufficient to tell the reader roughly where the land is situated without the need to refer to the map. It should use simple descriptions in ordinary language. For example, where the land is agricultural it might describe it as 'pasture land' or 'arable land' and it might describe forested areas as 'woodland'. If necessary, it should relate the land to a well-known local landmark, for example 'situated to the north of Main Street and 1 km east of Smithy Farm'.

F11. If the land is registered in the Land Register of Scotland it should include the Title Number of the land. If the land is not yet registered it should refer to a deed recorded in the Register of Sasines that contains a full description of the land, where possible.

F12. Where the description includes a reference to Ordnance Survey field numbers it should also state the sheet numbers of the Ordnance Survey maps on which these field numbers appear. The Ordnance Survey map reference should quote the edition of the map.

New rights short of ownership⁶⁷

F13. If the authority seeks to acquire any new rights short of ownership over the land, it should show the land over which it seeks each new right as a separate plot. It should describe the nature and extent of each new right. Where it seeks to take new rights for the benefit of a plot or plots, it should say this in the description of the rights plots. It should describe new rights immediately before or after any plot to which the rights relate. If this is not practicable it should show the rights in the Schedule and cross-refer as appropriate between the related plots.

Owners, lessees and occupiers

F14. When completing columns 3 and 4 the authority should:

- if the owner, lessee or occupier is a corporate body , include its registered address
- In the case of unincorporated bodies such as clubs, chapels and charities, show the names and addresses of the office bearers

⁶⁷ See also paragraph 21

- always complete column 4. If the occupier is the same as the owner , write 'owner'
- not include tenants for a month or less in column (4).
- If the authority is unsure whether or not someone is an owner, lessee or occupier it should include the person
- if satisfied, after reasonable inquiry, that it is not practicable to ascertain the name of the owners, lessees and occupiers of any land , put 'unknown' in the appropriate columns.

The order map(s)

F15. The heading of the map(s) should be identical to the map headings used in the body of the order. The authority should include the words 'this is the map referred to in [order title]' on the map(s).

F16. The authority must clearly identify the land. Where it uses colouring, the long-standing convention is that land to be acquired is shown pink and land over which a new right would be created is shown blue.

F17. It should use a sufficiently large scale, Ordnance Survey based map⁶⁸. Where the order includes of a number of small plots, it should consider using insets on a larger scale. If it needs to use more than one map, it should bind the maps together and show on a key or master 'location plan' how the various sheets are related.

F18. It should ensure that where there is more than one order map, the text of the order appropriately refers to all of the maps. This will avoid any doubt that they are all order maps. It should use a location plan only for the purpose of enabling speedy identification of the whereabouts of the area to which the order relates. It should use the order maps, and not the location plan, to identify the boundaries of the land to be acquired. Therefore, while it should mark the order map 'this is the Map referred to in [name of order]', it should mark a location map 'This is the location plan for the Map referred to in [name of order]'. If the location plan is correctly included and referred to in the Order then it will be part of the Order but it will remain only a location map.

F19. The order map should show such details as are necessary to relate it to the description of each parcel of land in the order Schedule(s). If necessary, the authority should mark on the map the names of roads and places or local landmarks not otherwise shown. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the order Schedule(s).

F20. If the authority seeks to create new rights short of ownership over the land it should clearly distinguish between land over which new rights would subsist and land in which the authority seeks to acquire other interests.

F21. There should be no discrepancy between the order Schedule(s) and the map(s) and no room for doubt as to the precise areas of land included in the order. If the order, when read with the order map, fails to clearly identify the extent of the land to

⁶⁸ The map should not generally be less than 1/1250 scale (1/2500 or, as a last resort, 1/10000 in rural areas).

be acquired, Scottish Ministers may refuse to confirm the order, even if there are no objections to the order.

Copies for Scottish Ministers

F22. The authority should produce and authenticate (or certify as a true copy) two copies of the order and map(s) to send to Scottish Ministers.

Technical examination of a draft order by Scottish Ministers

F23. A technical defect in a compulsory purchase order will almost certainly cause delays and increase the period of uncertainty for people affected by it. In some cases the authority may have to begin the process again. To avoid this, the authority may wish to submit a draft order to Ministers for a technical examination before it makes the order. When sending a draft order the authority should also tell Ministers the purpose for which it seeks to acquire the land. The authority may also wish to submit a draft of the newspaper advert and/or the notice of the making of the order. If it has doubts about any particular technical points it may seek comments from Ministers as to the position Ministers may taken in relation to the particular issue. Scottish Ministers will not consider the merits of the order or its justification at this stage. This technical examination, and any comments that Ministers provide about technical points, is without prejudice to their role in later considering the order for confirmation. Scottish Ministers' assessment of the order as being free from technical defects in no way implies that they have made a decision about whether to confirm the order. Nor does it mean that defects may not be detected at a later stage.

F24. If an authority wishes to send drafts for examination it should send them as early as possible to the relevant Scottish Government Directorate⁶⁹ by email. Ministers will send comments to the authority as quickly as reasonably practicable.

⁶⁹ A list of Scottish Government contact points is available at www.scotland.gov.uk/cpo . To find out how quickly Ministers are likely to comment on a particular order the authority may contact the relevant Scottish Government Directorate

APPENDIX G: Serving the order and its associated notices

G1. The rules and procedure for serving notices are set out in the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. This Appendix does not repeat these rules and procedures.

Unknown owners, lessees or occupiers

G2. If the authority is unsure whether or not someone is an owner, lessee or occupier it should include the person in the schedule to the order and serve notice on the person⁷⁰. Similarly, if the authority has doubt over which of two or more persons is the owner, lessee or occupier it should include them all in the schedule and serve notice on them all. If, after reasonable inquiry⁷¹, the authority is unable to ascertain the name and/or address of an owner, lessee or occupier it can serve notice by addressing the notice to 'the owner', 'the occupier' or 'the lessee' of [description of land]. It should deliver this to some person on the premises, where possible. If there is no person to whom the authority can deliver the notice, it should affix the notice to some conspicuous part of the land. It may also wish to notify the community council.

The holders of personal real burdens and benefited proprietors

G3. The authority should serve notice of the order on the holder of any personal real burden or the owner of any benefited property by sending⁷², by advertisement, by fixing a conspicuous notice to the land to be acquired and two nearby lamp posts, or by such other means as the authority thinks fit⁷³. If sending notice of the order to the holder of a personal real burden or the owner of a benefited property, the authority should explain in a covering letter why it has sent the notice. In particular, if the order does not seek to acquire any land owned by the addressee the authority should make this clear, to avoid confusion.

⁷⁰ See also Appendix F

⁷¹ See also Appendix E

⁷² In accordance with s.124 of the Title Conditions (Scotland) Act 2003

⁷³ 1947 Act First Schedule para 3 (inserted by Title Conditions (Scotland) Act 2003 s.109

APPENDIX H: General Certificate in support of order submission

H1. Scottish Ministers encourage the authority to complete this non statutory certificate and send it to Ministers with the order. An electronic version can be downloaded at www.scotland.gov.uk/cpo .

[insert name of the order]

I hereby certify that:

1. Notice of the making of the compulsory purchase order was duly served as follows:

Name	Interest (owner, lessee, tenant, owner of benefited property, holder of personal real burden etc)	Method of serving	Comments*

*If necessary, please supply additional information in a covering letter or the statement of reasons.

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was [xxxx].

2. A copy of the order and of the map were deposited at [insert place] on [insert date] and will remain/remained available for inspection until [insert date]

[3*. A copy of the authority’s statement of reasons for making the order has been sent to all persons referred to in section 1 above.]

*delete if not applicable

Signed on behalf of the authority as follows:

Signed:
 Name:
 Position:
 Dated
 Sealed (if appropriate)

APPENDIX J: Protected assets and special category land certificate

J1. Scottish Ministers encourage the authority to complete this non statutory certificate and send it to Ministers with the order. An electronic version can be downloaded at www.scotland.gov.uk/cpo .

[insert name of the order]

I hereby certify that:

*[The proposals in this order will not involve the demolition, alteration or extension of any buildings which have been listed under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, are the subject of a building preservation notice, are included in a conservation area designated under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979].

Listed buildings*

The proposals in the order [will/will not] involve the [demolition/alteration/extension] of [any/the following] building(s) which [has/have been] listed under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 [insert order reference, list reference, address].

Buildings subject to building preservation notices*

The proposals in the order [will/will not] involve the [demolition/alteration/extension] of the [any/the following] building(s) which [is/are] the subject(s) of (a) building preservation notice(s) [made by the.....[insert name of authority]on.....[insert date(s) of notice(s)]].

Buildings in a conservation area*

The proposals in the order [will/will not] involve the demolition of the [any/the following] building(s) which [is/are] included in a conservation area designated under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Scheduled Monuments*

The proposals in the order [will/will not] involve the [demolition/alteration/extension] of [any/the following] monument(s) which [is/are] scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

Special category land*

[The proposals in this order do not involve the acquisition of any of the categories of land described in section 1(2) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947]

[The proposals in this order involve the acquisition of the following land which falls within one of the categories described in section 1(2) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 [insert order reference, list reference, address, category of land].*

*delete or amend as appropriate

Signed on behalf of the authority as follows:

Signed:

Name:

Position:

Dated

Sealed (if appropriate)

APPENDIX K: Check list of documents to send to Scottish Ministers

K1. When sending an order to Scottish Ministers for confirmation, the authority should include enough information and evidence to satisfy Ministers that it has followed the correct procedures. The authority should also send enough information to enable Ministers to weigh the public benefit in the authority's proposals against the interests of the people affected. The authority should send Ministers all documents, evidence and information that it considers relevant. In particular, the authority should include the following:

- Two signed, sealed (if necessary) and dated copies (or certified true copies) of the order and Map(s).
- The authority's statement of reasons (see paragraph 42 and Appendix D), and where appropriate any documents that it refers to
- Certified copies of both newspaper advertisements of the making of the order, and information about the publication dates.
- Certified copy of the notice of the making of the order
- General Certificate in support of order submission (see Appendix H)
- Protected assets and special category land certificate (see Appendix J)



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Government

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