



Department for
Communities and
Local Government



HM Treasury

Technical consultation on improvements to compulsory purchase processes



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Scope of the consultation

Topic of this consultation:	Technical consultation on improvements to compulsory purchase processes.
Scope of this consultation:	Seeks views on a range of proposals aimed at making the compulsory purchase regime clearer, fairer and faster.
Geographical scope:	England
Impact Assessment:	A brief summary of the impacts and benefits can be found in the consultation paper. A full consultation impact assessment is being published alongside this document.
To:	This consultation is open to everyone. However, we would particularly welcome views from acquiring authorities; professional advisers on compulsory purchase; those whose land has been or is currently being compulsorily acquired.
Body/bodies responsible for the consultation:	Planning Directorate, Department for Communities and Local Government and HM Treasury
Duration:	12 weeks - from 18 March 2015 until 9 June 2015
Enquiries:	For enquiries please contact: E-mail: robert.segall@communities.gsi.gov.uk or telephone Robert Segall on 0303 44 41717
How to respond:	<p>We would ideally prefer to receive responses to this consultation via the online Survey Monkey form at: https://www.surveymonkey.com/s/VZBG7NC.</p> <p>Alternatively you can email your response to the questions to CPOConsultation@communities.gsi.gov.uk. We have provided a template for you to use on our website at: https://www.gov.uk/government/consultations/improving-the-compulsory-purchase-process</p> <p>If you need to provide a written response please make it clear which questions you are responding to. Written responses should be sent to:</p> <p style="text-align: center;">CPO Consultation Team Planning Directorate Department for Communities and Local Government Third Floor NE</p>

	<p>Fry Building 2 Marsham Street SW1P 4DF</p> <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> your name your position (if applicable) the name and type of organisation (if applicable) an address (including post code) an email address, and a contact telephone number
<p>After the consultation:</p>	<p>All the responses to the consultation will be carefully considered. As the consultation period extends beyond the General Election it will be for the next government to decide how to respond to the consultation.</p>

Introduction

1. Compulsory purchase powers are an important tool for assembling land needed to help deliver social, environmental and economic change. Used properly, compulsory purchase can contribute towards effective regeneration. However, because the process interferes with the rights of those with an interest in the land affected, there must be adequate safeguards in place to protect those rights. The government has made a number of changes to improve the system in recent years, yet there is room for further reform of the process, which remains in part convoluted and complex.
2. This consultation paper presents a package of proposals for technical process improvements and guidance to make the process clearer, faster and fairer with the aim of bringing forward more brownfield land for development. Alongside this paper we have published updated guidance on the compulsory purchase process.
3. In summary, the package of proposals is aimed at achieving the following outcomes;
 - a. The system will be **clearer**
 - because all parties will be better informed by more accessible guidance
 - the procedures to settle disputes about material detriment will be harmonised
 - b. The system will be **fairer** for those whose interests are compulsorily acquired (claimants) because the measures will:
 - encourage a more positive negotiating stance by acquiring authorities towards achieving the acquisition of land by agreement;
 - ensure longer minimum periods of notice before entry and taking possession, while not lengthening the overall process;
 - allow advance payments to be claimed and made earlier;
 - improve the minimum rate for interest on unpaid compensation after entry; and
 - facilitate the transfer of a mortgage where the claimant is in negative equity.
 - c. The system will be **fairer** for acquiring authorities because:
 - the power to enter land for survey purposes before making a compulsory purchase order will be extended to all acquiring authorities;
 - a warrant provision will be added to enable acquiring authorities to obtain entry if it is refused or as a matter of urgency; and
 - existing powers to override easements and restrictive covenants will be extended to all acquiring authorities, which should enable more schemes to be better designed and avoid unnecessary expenditure on insurance and windfall compensation claims.
 - d. That the system will be **faster** for all parties because:

- streamlined processes within government will enable decisions to be made faster and to a known timetable; and
- giving the Court powers to quash a decision to confirm a compulsory purchase order where the decision is flawed will avoid the need to remake the order.

Section One: Improving guidance

Existing guidance on the compulsory purchase process

4. The current compulsory purchase guidance is in need of updating to reflect legislative changes and case law since 2004. In updating this guidance the government believes that using a web-based approach to compulsory purchase guidance, modelled on the new approach for planning guidance, would better help people to access the information they need to understand how the system works.
5. The government proposes that guidance on compulsory purchase should be updated and provided as a web-based resource. Alongside, but separate from this consultation paper, we have published a document setting out guidance in the new format. We would welcome views on this document.
6. Most of the guidance is derived from the department's Circular 06/2004 "Compulsory Purchase and the Criche! Down Rules", but it includes material from 13 other circulars and guidance documents, all of which will be cancelled once the final version of the new guidance is issued. Where these circulars are joint publications with Wales, the cancellation applies only in relation to England.
7. The guidance is drafted in a 'question and answer' format in more direct and easy to understand language. We will be adding the final version of guidance to gov.uk. With a web-based resource it is possible to organise the guidance into levels, or tiers, to make it easier to identify the information that is relevant to different parts of the compulsory purchase system, and use embedded links to allow cross references to other parts of the guidance and relevant legislation. The guidance does not have the full functionality of the web-based resource, but does set out the full text and basic structure of the proposed guidance.
8. The guidance will be divided into three main tiers. The first tier provides an overview of the compulsory purchase process and covers choosing the right power; justification, preparation; confirmation; and implementation of a compulsory purchase order, together with notes on compensation. The second tier provides guidance on the range of powers available to compulsorily purchase land. The third tier provides guidance on technical procedural issues and the preparation and the service of additional documents. The new guidance also contains guidance on the separate, but related, issues of purchase notices and the Criche! Down Rules on the disposal of surplus land acquired by, or under the threat of, compulsion.

Encouraging public authorities to offer good levels of compensation

9. Developers typically look to achieve the vast majority of their land acquisition through private agreement, given the time and legal costs that can be saved by avoiding compulsory purchase. Indeed, the guidance currently in ODPM Circular 06/2004 encourages acquiring authorities *to acquire land by negotiation wherever practicable* before seeking to acquire land by compulsion.

10. Industry and government both recognise that early settlements can be reached by being sensitive to claimants' expectations.
11. In the private sector, compensation offers which reflect savings in the accumulated costs of pursuing a compulsory purchase order are made at the negotiation stage prior to compulsory purchase proceedings. However, it is believed that this route is less often used by public sector acquiring authorities that are nervous about paying more than the minimum possible expression of market value and loss payments for individual pieces of land, given their responsibility to achieve best value for taxpayers' money. This approach can be justified because a rigid approach costs the exchequer more (in terms of compulsory purchase costs and Upper Tribunal (Lands Chamber) and court time), creates unnecessary distress for claimants and wastes time. We want to ensure that public bodies;
 - a. achieve better value for money by achieving early compensation settlements
 - b. speed up delivery by avoiding or reducing the need to use the compulsory purchase process

Proposal for change

12. To allow public sector acquiring authorities to be more flexible in the provision of compensation, suitable cover should be provided to accounting officers, enabling them to offer more reasonable initial offers, that are more likely to avoid the need for compulsory purchase (and the costs associated) and providing greater certainty.
13. Encouraging accounting officers to take a similar approach to the private sector when negotiating compensation could be done through guidance, first clarifying that they are entitled to take this approach and how this can be justified. Guidance on how to handle public funds could be included in publications such as Managing Public Money, the Green Book, Department for Communities and Local Government's Best Value Guidance for Local Authorities and/or the new compulsory purchase guidance. The following guidance is offered for consideration:

“When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole. Higher levels of compensation that lead to early settlement can be justified on the basis that it avoids the need for an order or reduces its size, benefiting all parties. The benefits to the Exchequer would include the saving of:

- *legal fees (both for the order making process as a whole and for dealing with individual objectors within a wider order, including compensation claims)*
- *wider compulsory purchase order process costs (for example, staff resources)*
- *the overall cost of project delay (for example caused by delay in gaining entry to the land)*
- *any other reasonable linked costs (for example potential for objectors to create further costs through satellite litigation on planning permissions and other orders)*

Potential costs and savings should be considered in light of the Exchequer as a whole, in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.”

Question 1:

- (a) Should public sector bodies be given more flexibility in their compensation offers at an earlier stage in the process?**
- (b) Does the draft wording provide helpful guidance to Accounting Officers that oversee public schemes and should it be included in guidance publications such as Managing Public Money, the Green Book guidance, Department for Communities and Local Government’s Best Value Guidance for Local Authorities and/or the new compulsory purchase guidance?**

Section Two: Improving the development and confirmation processes

Powers of entry for survey prior to a compulsory purchase being made

14. Any acquiring authority may need to enter land in order to survey it prior to being able to make a compulsory purchase order, for example, to identify the location of utilities or to ascertain whether there are any subterranean structures or areas of contamination that might hamper a proposed scheme. However, at present, not all acquiring authorities have the powers to do this.
15. Without these powers, acquiring authorities must negotiate with the landowner if they require entry to land they may wish to include in a compulsory purchase order. For these acquiring authorities, the compulsory purchase process can be considerably delayed if there is unwillingness on the part of a landowner to allow a proper survey, or alternatively, schemes are developed without the benefit of full information, which can then mean subsequent delays and additional costs to address constraints that may later emerge.
16. The government is consulting on proposals to address this issue and would also like to tackle two related matters:
 - i. the department has recently committed to look into introducing a warrant provision in relation to existing compulsory purchase powers of entry and it would, therefore, seem appropriate to consider this matter for any new power of entry
 - ii. the current time periods for providing notice of entry for survey purposes vary considerably between different acquiring authorities for no apparent reason and we consider it would be better to have a standard notice across all powers

Proposals for change

17. The government is proposing to make the powers of entry for survey fairer and more consistent for *all* acquiring authorities. To achieve this we propose three changes to the current arrangements as set out below.

Aligning powers of entry

18. The government believes that all acquiring authorities need to have the power to enter land at an early stage to assess whether their proposals are viable, and proposes to amend legislation to give all acquiring authorities these powers. The effect of this proposal would be to provide new powers of entry to survey for statutory undertakers, Transport for London and a small number of ministers who currently have the power to make an order, but not the power to enter for survey purposes. The government's proposals would be based on the powers currently available to local authority acquiring

authorities under section 15 of the Local Government (Miscellaneous Provisions) Act 1976.

19. The government proposes to consider the consolidation of similar powers, bringing together those that perform similar functions under a single piece of legislation. Consolidation would not only improve the transparency of such powers, but reduce complexity.

Question 2:

Do you agree that all acquiring authorities should have the same powers of entry for survey purposes prior to a compulsory purchase order being made?

Warrant provision

20. The Home Office's guidance on introducing new, or amending existing, powers of entry states that wherever possible, there should be provision for a warrant. A warrant provision would allow acquiring authorities to apply to a Justice of the Peace for the right to enter land where:
- i. admission to the land has been refused or a refusal is reasonably apprehended; or
 - ii. the case is urgent
21. In response to a recent Home Office review of Rights of Entry, the department has already committed to look at introducing a warrant provision for:
- i. s15 of the Local Government (Miscellaneous Provisions) Act 1976
 - ii. s167 of the Local Government, Planning and Land Act 1980; and
 - iii. s324 and s325A of the Town and Country Planning Act 1990
22. Given this commitment, the government is now seeking views on whether or not it would be appropriate to introduce a standard warrant provision in relation to the proposed new common power of entry for survey.

Question 3:

Do you agree that there should be a warrant provision associated with the proposed standard power of entry for survey purposes prior to a compulsory purchase order being made?

Standardising notice periods for entry

23. Notice periods differ between powers of entry. Currently the notice periods vary from 'at any reasonable time' to 28 days, with no apparent reason for the difference.
24. A new single power of entry would have only one notice period. It seems sensible to choose 14 days' notice period as it is the period required under the general power of entry for survey purposes for local authorities, and works well. Where urgent entry may be required in very rare cases the proposed warrant provision would be available to acquiring authorities to gain access more quickly. The proposed change would mean

that the notice period would be reduced for some landowners. However, harmonisation would increase certainty for owners.

Question 4:

Do you agree that the notice period for the single power of entry for survey purposes, prior to a compulsory purchase order, should be a minimum of 14 days? If you disagree, please specify what minimum time period of notice should be adopted.

Streamlining government processes

25. The process of confirming a compulsory purchase order once it has been submitted to the authorising authority can be lengthy and the timescales for a decision unclear, which is unhelpful for all parties involved in this process. In addition, some relatively straight-forward cases may be unnecessarily delayed because the current process requires orders to be referred to the Secretary of State for determination.

Proposals for change

26. The government wants to make the timescales for the confirmation stage of the compulsory purchase process more streamlined and transparent, without compromising the ability of parties to engage properly in the process and make their views known, or compromising the quality of the decisions.

Statutory targets for the confirmation stage of the compulsory purchase process

27. Subject to ensuring that the fairness and integrity of the decision making process is maintained, the government believes that there is merit in developing targets and clear timetables for the confirmation stage of the compulsory purchase order process.

28. The confirmation stage of a compulsory purchase order comprises a number of discrete steps and the timescale for a decision will be affected by a range of case-specific considerations, including whether the case is dealt with by written representations or public inquiry.

Orders subject to the written representation process

29. Once the starting date letter has been issued, the existing regulations specify a number of formal opportunities and timescales for parties to make further representations and comments. In total, the time required for these processes to be undertaken is 11 weeks (including time for circulation of material). We do not propose altering any of these requirements or shortening the timescales for representations to be made by parties.

30. There is no statutory timescale for the site visit by the Inspector to be arranged. The current position, whereby it can take up to a year to arrange a site visit, is not acceptable. The government therefore proposes to introduce a new statutory requirement for a site visit to be undertaken within 15 weeks of the date of the starting date letter. That would, in effect, allow a maximum four week period, after receipt of the final representations and comments from parties, for Inspectors to arrange and undertake a site visit.

31. Once the site visit is undertaken, it can often take a further six months before a decision on confirmation is issued. Alongside its proposals to eliminate the double handling of some cases (*see paragraphs 39-45*) the government proposes to introduce a target for cases that are decided by the Secretary of State that 80% of written representation cases are to be dealt with within a total of eight weeks after the site visit – ie four weeks for preparation of the Inspector's Report and four weeks for the decision letter stage, together with a back-stop target of all cases being dealt with in 12

weeks, reducing the typical timescales for decisions on such cases from well over a year to 23 weeks in 80% of cases.

Orders subject to a public inquiry

32. Once the relevant date letter has been issued by the authorising authority, existing inquiry procedure rules set out the process for preparing and conducting an inquiry, including the submission of statements of case. We do not propose to alter these rules.
33. However, once the inquiry is complete there are no time targets for either the completion of the Inspector's report, or the issuing of the Secretary of State's decision, other than the non-statutory target of 13 weeks for the issue of the Secretary of State's decision, which was agreed following the Penfold Review of Non-Planning Consents.
34. We propose to introduce a statutory requirement that within 10 working days of the close of the inquiry, the Inspector, in consultation with the authorising authority, should inform the acquiring authority and the other parties to the inquiry, the timescale for when a decision will be issued. This bespoke approach to timescales will allow the Inspector to factor in the case-specific issues, such as the number of remaining objectors and the complexity of issues raised by the objectors.
35. In addition to the bespoke approach, we propose to introduce back-stop targets. For cases that are decided by a Secretary of State, we propose allowing a maximum of eight weeks for the Inspector to write up their report and 12 weeks for the Secretary of State to review the report and issue a final decision letter in 80% of cases – with a further four weeks allowed for the remaining cases.
36. It is important to be clear that if a back-stop target is introduced for cases dealt with by written representations and public inquiry, these will not artificially truncate the proper consideration of the cases where the target timescale is exceeded, but it may lead to the reasons for delay being reported to Parliament, in line with new reporting requirements which are outlined in the next section.
37. We propose to consult separately on target timescales for cases that are delegated to Inspectors in the event that that these proposals are taken forward.

Question 5:

- (a) Do you agree, in principle, that we should introduce statutory targets and timescales for the confirmation stage of the compulsory purchase order process:**
 - i. for cases decided by the Secretary of State?**
 - ii. if introduced, for delegated decisions?**
- (b) For cases decided by the Secretary of State do you agree with the following timescales and targets for cases dealt with by written representations:**

- i. a new statutory requirement for a site visit to be conducted within 15 weeks of the starting date letter. If you disagree, please specify any alternative timescale
 - ii. a new target for 80% of decisions on written representation cases to be issued within eight weeks of the site visit with the remaining 20% of cases dealt with within 12 weeks of the site visit. If you disagree, please specify any alternative timescales or percentages
- (c) For cases decided by the Secretary of State do you agree with the following timescales and targets for cases that are the subject of a public inquiry:
- i. a new statutory requirement for the Inspector who conducted the inquiry to inform the acquiring authority, within 10 days of the end of the inquiry, the timescale for a decision. If you disagree, please specify any alternative timescales.
 - ii. a new back-stop target that 80% of cases are dealt with within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. If you disagree, please specify any alternative timescales or percentages.

Monitoring and reporting performance

38. The government wants to ensure that there is greater transparency and scrutiny of the performance of authorising authorities and inspectors in handling the confirmation of orders, and is seeking views on introducing a new requirement for an annual performance report to be submitted to Parliament by each Secretary of State with powers to confirm orders who has decided more than five cases in the year. This report would cover the performance of the Secretary of State and, should the necessary powers be introduced, include the performance of those authorised to confirm compulsory purchase orders on their behalf. The report would cover both the time taken to confirm every order (from the starting date/relevant date to the date of the decision) and provide details of why delays had occurred where the bespoke timescales or defined targets had not been met.

Question 6:

Do you agree that we should introduce a new statutory requirement for each Secretary of State with confirmation powers to report annually to Parliament on his/her performance in meeting the defined timescales and targets for confirmation of orders, where the number of cases decided in the year exceeded five?

Allowing the Secretary of State to delegate certain decisions on orders to an Inspector

39. All compulsory purchase orders must be submitted by the acquiring authority to the relevant Secretary of State for confirmation.

40. In cases where the Acquisition of Land Act 1981 applies and there are no outstanding objections and certain other requirements are met, the Secretary of State has discretion under section 14A of that Act, to allow an acquiring authority to confirm its own order. This is quite common in practice, for example, about 30% of orders submitted to the Secretary of State for Communities and Local Government are remitted back to the acquiring authority for confirmation.
41. Where an order submitted to the Secretary of State is contested, an Inspector is appointed to hold an inquiry or to consider the case through written representations. In cases that are straightforward and do not raise issues of more than local importance, the final decision letter often is unlikely to add anything substantive to the Inspector's findings and conclusions. Yet in all cases, the Inspector must prepare a report for consideration by the Secretary of State who will make the final decision, which adds unnecessary delay of up to 3 months into the process.
42. The government therefore proposes to allow each Secretary of State, with powers to authorise a compulsory purchase order, to delegate decisions to an Inspector in certain instances.

Which cases should be determined directly by an Inspector?

43. Delegation will not be appropriate in all cases, and a Secretary of State may decide not to delegate any decisions. Where delegation is proposed, the criteria that will apply should be made clear. Our initial view is that delegation of decisions would only be appropriate for cases that do not raise issues of more than local importance, but we are interested in views on both the principle of delegation and the types of order for which delegation of the decision may be appropriate.
44. Where delegation of cases is possible, notification of who will be deciding the order will be communicated to interested persons at the time that the 'relevant date' letter is sent out, in the case of an Inquiry, or the 'starting date' letter in the case of the Written Representations procedure.
45. As an additional safeguard, we would propose to ensure that where a Secretary of State has decided to delegate a decision, there is also a power to "recover" that case back for their own determination, at any time until the decision is issued. This would allow for consideration of exceptional cases where, for example, an important new or novel issue has emerged during the course of the confirmation process, which means the decision should be made directly by the Secretary of State.

Question 7:

- (a) Do you agree that each Secretary of State should be able to delegate to an Inspector a decision on whether to confirm or refuse to confirm a compulsory purchase order?**
- (b) Do you agree it would only be appropriate to delegate decisions that do not raise issues of more than local importance? If not, why not, and what other types of cases would be suitable for a delegated decision?**

(c) Do you agree that the Secretary of State should also be able to recover for their own decision any delegated case, at any point, before a final decision is made?

(d) What sort of cases would be suitable for a delegated decision? Would it only be appropriate to delegate decisions that do not raise issues of more than local importance?

Enabling decision letters to be communicated to interested parties electronically

46. Existing rules and regulations require the Secretary of State to send by first class post a copy of his decision and the reasons for it to the parties in all compulsory purchase cases. This can be resource-intensive and can, in some cases, delay the date on which the decision is issued.

47. The government proposes to amend the rules and regulations so that decision letters can be communicated either electronically or by post. Parties who had not provided an electronic address would continue to receive a copy by post. In addition, we would require that hard copies of the Inspector's Report and decision letter would continue to be provided on request.

Question 8:

Do you agree that the communication of decision letters and Inspector's reports on compulsory purchase orders can be undertaken electronically, subject to ensuring that parties who did not have electronic access, or who requested a hard copy, continued to receive the relevant information by post?

Reforming High Court challenges

48. Confirmed compulsory purchase orders can be challenged by any aggrieved person who wants to question the validity of an order or any of its provisions through an application to the High Court under section 23 of the Acquisition of Land Act 1981. If the challenge is successful, the Court has the power to quash the whole or any provision of the order. In such cases, if an acquiring authority still requires the land, it would have to restart the compulsory purchase process from the beginning resulting in significant time and cost implications.

49. The government is seeking views on whether the remedies currently available to the Courts are adequate. For example, where the Secretary of State's decision is found to be legally flawed but the order is sound, it might be more appropriate for the Courts to quash the decision, so that it can be retaken leaving the order unaffected.

50. We would also like to seek views on two other related issues:

- i. whether the process for challenging the decision not to confirm a compulsory purchase order (currently through judicial review) should be the same as for challenging a decision to confirm an order i.e. through a statutory High Court challenge

- ii. whether provision should be made to 'stop the clock' on a compulsory purchase order pending the outcome of a legal challenge to allow acquiring authorities sufficient time to implement the order if the challenge fails

Proposals for change

51. The government wants, where appropriate, faster reconsideration of a compulsory purchase order that has been successfully challenged and wants to ensure that the process for challenging decisions is clear and fair.

Remedies available to the Courts

52. If a compulsory purchase order is quashed, and the acquiring authority still wants the land, they must start the whole process again, which can be very time consuming. Where the order itself is sound, but for example the Secretary of State's decision is legally flawed, the acquiring authority should not have to remake the order if it is appropriate for the decision to be quashed instead. The order would be unaffected by this and extending the scope of the remedies available to the Courts in response to a successful challenge would speed up the system and allow meritorious schemes to proceed without severe delays.

53. To address this, the government proposes to widen the scope of the remedies available to the Courts by giving them the power to quash a decision allowing it to be retaken if the decision, but not the order, is found to be legally flawed.

Question 9:

Do you agree that the remedies available to the Courts should be widened to allow them to quash the decision to confirm an order as an alternative to quashing the order?

Method of challenge

54. Currently the method of challenging a decision to confirm a compulsory purchase order is through the statutory High Court challenge process. However, the process for challenging a decision **not to confirm** an order is through judicial review. Challenges to the earlier stages of the process are also by means of judicial review.

55. In its 2004 report¹ on the compulsory purchase system, the Law Commission recommended that the statutory procedure for challenging the validity of a compulsory purchase order (and the statutory immunity from challenge in other proceedings) should apply to both decisions to confirm **and** not confirm compulsory purchase orders.

56. The government is seeking views on whether there is a need to make such a change at this time.

¹ The Law Commission (LAW COM No 291) TOWARDS A COMPULSORY PURCHASE CODE: (2) PROCEDURE FINAL REPORT - http://lawcommission.justice.gov.uk/docs/lc291_Towards_a_Compulsory_Purchase_Code2.pdf

Question 10:

Do you think there is a need to change the method of challenging a decision not to confirm a compulsory purchase order from judicial review to statutory High Court challenge?

Stopping the clock

57. Once a compulsory purchase order has been confirmed, acquiring authorities have three years to implement the order and take possession of the land. However, where the decision to confirm an order is subject to a legal challenge, acquiring authorities will wait until a final decision has been reached on the challenge before proceeding with the implementation. This can reduce the time they have to implement the order.
58. The issue is whether provision should be made to allow for 'stopping the clock' on the implementation period pending the outcome of a legal challenge.
59. On one hand, it seems reasonable that acquiring authorities should not be disadvantaged as a result of an unsuccessful challenge. However, this needs to be balanced against the uncertainty which could be caused to landowners and other interested parties in having the period to implement an order extended indefinitely (i.e. until any appeals have been determined). Rather than stopping the clock until final determination, an alternative could be to stop the clock for a set period e.g. for a maximum of one year. This would give greater certainty to those affected by the compulsory purchase order as to when it might be implemented.
60. It is not clear how much of an issue this is in practical terms. We would welcome views on whether there is a need for change and the options for extending the time to implement the order in such circumstances.

Question 11:

(a) Do you think that there is a need to extend the time allowed to implement a compulsory purchase order in the event of an unsuccessful legal challenge?

(b) If the time to implement should be extended, would your preference be for:

- i. a flexible period of extension reflecting the time taken to achieve final determination of the challenge; or**
- ii. a set period only in all cases? Please specify what set period of extension should be granted**

Section Three: Improving the implementation stage

Entry to take possession of acquired land

61. Once a compulsory purchase order has been confirmed, the acquiring authority can begin the process of taking possession of the land, however there can be a lack of consistency and certainty in the timing of the acquisition process, with differing and, in some cases, inadequate notice periods being given to occupiers. A further problem is that the quality of data used to prepare the notices relies on responses from third parties and if inaccuracies are discovered before possession then it lengthens the time required to take possession as a new notice of entry must be served. There is currently no protection from delay for the acquiring authority, even where it has diligently taken all appropriate steps to obtain the necessary information to serve a notice.
62. The current system benefits neither occupier nor acquiring authority and so unnecessarily increases cost, programme time and risk.

Proposals for change

63. The government is seeking views on how to give certainty as to when entry on to land will take place. In order to achieve this we are consulting on three principal changes to the current arrangements as set out below. In addition, the government proposes two small related improvements to the process.

Extending and harmonising the notice of entry period

64. Under section 11 of the Compulsory Purchase Act 1965, occupiers may only have 14 days to relocate on service of a notice of entry following a notice to treat. With a general vesting declaration, entry can be taken a minimum of 28 days after execution of the declaration.
65. Some acquiring authorities and some Acts and statutory instruments that provide compulsory acquisition powers are able to extend these minimum notice periods. For example, the Compulsory Purchase Act 1965 and Compulsory Purchase (Vesting Declarations) Act 1981 include such provisions for the purposes of certain compulsory purchase powers (e.g. powers contained in Acts such as the Crossrail Act).
66. The government considers that there is a need for consistency and transparency in the process of taking entry of land that is the subject of an order and believes that 14 days, in particular, is too short a notice period.
67. The government therefore is seeking views on a proposal to extend and harmonise the process for taking entry following compulsory powers becoming available to provide a minimum of three months' notice before entry. If this is taken forward, there will also need to be some protection for acquiring authorities to take account of situations where there has been a material change in circumstances, for example, where company structures change, resulting in a change of ownership.

Question 12:

Do you agree that the notice period before entry to land authorised to be acquired by compulsory purchase should be three months? If not, specify what alternative period would be appropriate.

Enabling the claimant to require the acquiring authority to take possession

68. In some cases, acquiring authorities do not enter and take possession on the date for which notice was given. This delay causes uncertainty and can have a number of adverse effects for the occupier; for example, in some cases, there may be a continuing liability to pay rent or insure the land and property that is the subject of the order.
69. This lack of certainty arises because most notices of entry are couched in terms of “on or after” a certain date. Although acquiring authorities generally take possession within a few days of the “on” date, it would be unwise to allow the notice of entry to lapse without possibility to re-serve, as this would prevent them taking possession and prevent a scheme proceeding unless the acquiring authority paid a ransom amount of money to the claimant.
70. The government is keen to obtain views on two alternative options to tackle this problem:

Option 1 – enable the occupier to serve a reverse notice of entry after the “on” date has expired, giving 28 days’ notice starting from that date. This new notice provision would enable occupiers to undertake any relocation arranged for the “on” date without incurring any further liability for rent for their current premises. On the other hand, if the occupier was content to remain in possession of their current premises for a longer period than initially envisaged, they would not be compelled to precipitate possession by the acquiring authority. If the occupier had entered into an agreement to extend the date of entry beyond the “on” date, the ability to serve a reverse notice of entry would not arise until that date had passed.

Option 2 - provide for all notices of entry to specify a precise date for the acquiring authority to take possession. The authority would then be fully responsible for the land and property taken, from that date, including insurance and paying any due rent as if it had actually taken possession. The valuation date would remain as the “on” date.

71. The notice of entry would be required to include a note drawing attention to whichever provision is adopted.

Question 13:

(a) Do you agree in principle that there should be a mechanism to enable a claimant to require the acquiring authority to take possession after the specified date of entry?

(b) If a mechanism were introduced - do you prefer Option 1 - to allow the claimant to serve a “reverse notice of entry” or Option 2 that the acquiring authority should be deemed to have entered and taken possession on the “on” date, whether or not they had actually done so?

(c) If option 1 were to be taken forward, do you agree the defined period, where a reverse notice of entry can be served, should be 28 days after the earliest date for entry?

Additional protection for acquiring authorities when new interests in land are discovered after notice of entry has been given, but before entry is taken

72. If interests in land come to light (or there is a change in the terms of interested parties – such as a transfer of that interest to another person), after notice of entry has been given, but before possession is taken, then a new notice of entry must be served. If the notice period is extended to three months, as in proposal outlined above, this could add considerably to the timescale for securing possession. There is currently no protection from delay for the acquiring authority, even where it has diligently taken all appropriate steps to obtain the necessary information to serve a notice. Acquiring authorities are often reliant on the accuracy of information supplied by third parties.
73. Currently the only protection available to the acquiring authority is if they realise, after they have entered onto land, that they have mistakenly or inadvertently failed to pay for or purchase any interest in it (e.g. a leasehold interest which they have overlooked), they are given six months’ grace during which they can continue in possession of the land (section 22 of the Compulsory Purchase Act 1965).
74. We consider that if diligent enquiries were properly made before the notice of entry was served, the acquiring authority should not have to re-serve and wait another three months if there has been a subsequent change in terms of interested parties or a new interest comes to light, provided the new party identified is not in physical occupation of the land and buildings.
75. Assuming a longer period of notice of entry is taken forward, the government proposes to:
- i. introduce a new provision which will allow an expedited notice process in circumstances where:
 - (a) the acquiring authority has complied with the regulatory requirements to identify, and then notify, all interests in the land and property that is the subject of the order; and
 - (b) any new interest subsequently identified is not in physical occupation of that land or property
 - ii. provide for where the conditions set out in (i) are met, a new notice to treat / General Vesting Declaration can be served on anyone with a reduced notice period. This notice period would be a minimum of 14 days, or the date of the last notice of entry (where a notice to treat is used) or vesting date (where a

General Vesting Declaration is used) expires in relation to that property, which ever is the later date.

Question 14:

Do you agree that there should be provision for a new notice to treat / General Vesting Declaration in the circumstances outlined in this consultation paper in Paragraph 75.

76. The government is also seeking views on two small related improvements to the process as set out below.

Confirming the date of exercise of powers under a General Vesting Declaration

77. A secondary issue with General Vesting Declarations is that it is uncertain, because of conflicting case law, at what date the compulsory purchase order has been implemented. Acquiring authorities have three years from the operative date to implement an order and it is not clear whether the service of the preliminary notice, or the execution of the General Vesting Declaration, “implements” it. Best practice is to take the latter date of execution, but we believe that the law should be clarified to give certainty.

78. The government is interested in views on a proposal to amend the legislation to clarify that the date of exercising the powers is the date of execution of the General Vesting Date, as in Law Commission Recommendation 11(3): “*An acquiring authority should be treated as having exercised powers by service of notice to treat or by execution of a general vesting declaration but not otherwise.*”

Question 15:

Do you agree that when obtaining entry by means of a General Vesting Declaration, the General Vesting Declaration must be executed within three years of the date of operation of the compulsory purchase order, in order to exercise the powers of compulsory purchase?

Repealing a redundant procedure for obtaining right of entry

79. As part of reviewing the law in this area, the government believes that a useful tidying-up measure would be to repeal Schedule 3 to the Compulsory Purchase Act 1965, whereby the compensation claimed is paid into court and a bond is given by the acquiring authority to the claimant for the money paid into court and all the compensation that may be agreed or awarded and any interest that may accrue. This provision is no longer used (the most recent case law dates from 1902).

80. The government is interested in views on a proposal to repeal section 11(2) of and Schedule 3 to the Compulsory Purchase Act 1965.

Question 16:

Do you agree that the alternative method of obtaining entry in section 11(2) of and Schedule 3 to the Compulsory Purchase Act 1965 should be repealed?

Advance payments of compensation

81. The government considers that the process of obtaining advance payments of compensation is not fair or fast enough for those subject to compulsory purchase. At present, an advance payment made in accordance with statute will only be paid when, or after, possession is taken by the acquiring authority. This appears to be because the date of entry is the valuation date (unless compensation has been agreed earlier). Claimants therefore commonly have to fund their own relocation costs/mitigation costs etc. before recovering even a portion of them. The government is of the view that this can cause undue stress and economic hardship, particularly to individuals and small businesses. In extreme cases, it can make relocation impossible and effectively the activity or business is terminated.
82. A further aggravating factor is that acquiring authorities do not always make advance payments within the three month period required by statute, perhaps because claimants have not provided sufficient information to enable an assessment of compensation upon which an advance payment can be based.

Proposals for change

83. The government wants to improve the system of advance payments to allow clearer and better structured claims and earlier payments, in particular, of advance payments of compensation before entry. In order to achieve this, we propose a comprehensive overhaul of the current process, focussed on the three key changes set out below.

A new requirement for the claimant to submit a formal claim form to obtain an advance payment

84. It is not always possible for the acquiring authority to accurately assess the amount of advance payment that should appropriately be paid without the provision of information from the claimant. Current legislation requires the claimant to give particulars of their interest in the land and any other information reasonably required by the acquiring authority to enable them to estimate the amount of the compensation on which the advance payment is to be based. To help provide greater clarity for all parties about the information that is required, both for a formal claim for compensation and for an advance payment, the government proposes to introduce a prescribed claim form to enable estimates to be more easily made and more quickly, detailing items such as the open market value of the interest, and loss payment and disturbance costs.
85. It is important to acknowledge and recognise that not all costs will be known in advance of a move (or the valuation date), but this needs to be balanced with the need to ensure that the acquiring authority has sufficient information to make an estimated offer and justify the advance payment. government proposes to work with professional bodies such as the Compulsory Purchase Association and the Royal Institution of Chartered Surveyors to develop guidance to ensure parties are clear about what information is required, as a minimum, to allow for an advance payment and to remind

the parties that the Upper Tribunal Practice Directions require evidence of the fact and law of a claim. This should apply to both the claim and the acquiring authority's response.

86. The claim form that forms the basis for a request for an advance payment can be an initial claim that can be amended or replaced as negotiations proceed and various heads of claim crystallise.
87. Claimants will need to be careful that the professional costs incurred to make a claim for an advance payment before the issue of a Notice to Treat are reasonable. It may need to be specified in guidance that such costs (if reasonable) are claimable.

Question 17:

Do you agree that claimants should be required to submit a prescribed form of claim before requesting an advance payment of compensation?

Bringing forward the earliest date when advance payment can be made to before the date of entry

88. Section 52 of the Land Compensation Act 1973 provides for the making of an "advance payment" on account of compulsory purchase compensation, where an acquiring authority has taken possession of land. In response to a request for an advance payment, the acquiring authority must pay 90% of their estimate of the compensation due (or 90% of the compensation agreed to be due) within three months of the request or on the date of entry and taking possession, whichever is the later. This means that the claimant must make a claim at least three months in advance of the date of entry in order to receive payment on that date.
89. The purpose of advance payments is to put claimants in a financial position, so far as is possible and as early as is possible, such that they can re-order their affairs and go about their life with the minimum of disruption. In the majority of cases, claimants will find it necessary either to move house, if their home is acquired, or to move to other business premises, in order to avoid closure of their business.
90. Even if the advance payment is made on time, this may be after the claimant has had to vacate the premises, but will almost inevitably be after the date on which payments must be made for new premises (eg rent in advance). Such payments would have to be financed from their own resources or from a bridging loan. These and other elements of disturbance (eg fees to date) may be included in an advance payment.
91. On the assumption that there is a minimum of three months' notice before entry, we propose that a claim for advance payment may be made at any time from the date of confirmation of the order and must be paid within two months or the date of the Notice to Treat/Execution of a General Vesting Declaration, whichever is the later. With this timescale a claimant could obtain an advance payment up to three months before the date of entry, provided a claim had been made in sufficient time.
92. The government therefore proposes to allow for a claim for an advance payment to be made at any time from the date of confirmation of the order and to require that a claim must be paid within two months or the date of the Notice to Treat/Execution of a General Vesting Declaration, whichever is the later.

Question 18:

- (a) Do you agree that a claim for an advance payment should be allowed to be made at any time from the date of confirmation of the compulsory purchase order?**
- (b) Do you agree that the earliest date on which an advance payment can be made should be brought forward to two months after a claim or the date of the Notice to Treat or execution of the General Vesting Declaration, whichever is later?**

A new faster mechanism for determining the amount and enforcing the making of advance payments by acquiring authorities

93. The Land Compensation Act 1973 does not contain any dispute resolution procedure: either on the amount of the acquiring authority's estimate or for non-payment. The claimant would therefore be forced into taking independent action through the courts to resolve a dispute, which would be slow and may not cover all their costs, even if successful. As a result, many claims for advance payment are delayed well beyond the timescale where they might help the claimant deal with up-front costs of a move.
94. There are two main areas where the timeliness of the process that the government would like to consult on improving:

Introducing time limits on requests for further information by the acquiring authority

95. Section 52(2) provides for the claim for an advance payment to be accompanied by any further particulars that the acquiring authority may reasonably require. If the acquiring authority requires further information after the receipt of a claim, the government considers that a time limit for requesting such information could be imposed – and considers 21 days to be an appropriate time. In the absence of such a request within the time limit, the acquiring authority would have to make their assessment with the information already supplied.

Introducing a fast-track decision process by an independent body

96. Where an acquiring authority fails to make an advance payment in response to a request which complies with section 52(1) of the 1973 Act, or the claimant considers that the offer is insufficient, the government wants to look at ensuring that the claimant should be able to refer the claim for an advance payment and the acquiring authority's response to an independent body for a rapid decision. The costs of this would normally be paid for by the parties. One way to allow a faster process would be to restrict the papers to be considered by the body to the original claim and the acquiring authority's response.

97. The Lands Chamber of the Upper Tribunal could be the appropriate body to undertake an independent review, because the First Tier Tribunal does not currently have jurisdiction to deal with compulsory purchase disputes as it does not have the staff or expertise to do so. The current Upper Tribunal Practice Directions for referring compensation claims could be extended to or applied to claims for advance payment or claims in general. These require claims to specify the facts and law relied on to justify the claim. But the difficulty with the Upper Tribunal would be the capacity to undertake this work in the timescales. A possible alternative would be to refer the decision to an expert panel appointed by the President of the Royal Institution of Chartered Surveyors. But such a decision will not be legally binding.
98. If a more efficient system could be developed, a further consideration would be whether a reference to such a body should 'stop the clock' in terms of the acquiring authority having to postpone taking possession of the land until the matter is resolved.
95. The government is seeking views on a proposal to impose time limits on requests for additional information from acquiring authorities when processing claims for advanced payments. In particular, views on the following are sought on the introduction of a fast-track decision process to deal with disputes over claims for advance payments, in particular, on:
- i. the principle of a fast-track service
 - ii. views on how the process can be expedited
 - iii. the bodies that might provide such a service
 - iv. how such a service might be funded
96. Views are also sought on whether or not there should be a sanction for acquiring authorities who do not make payments on time, and the nature of that sanction.

Question 19:

- (a) Do you agree that there should be time limits on requests for additional information from acquiring authorities when processing claims for advanced payments?**
- (b) If so what time limits should be imposed?**
- (c) Do you support the introduction of fast-track decision process to deal with disputes over claims for advance payments?**
- (d) If so, how might this be achieved?**
- (e) Who might provide such a service?**
- (f) How might a service be funded?**
- (g) Do you have any proposals for a sanction against acquiring authorities who do not make payments on time?**

Improved interest rates on outstanding compensation

97. Compulsory purchase orders require the payment of compensation by the acquiring authorities to claimants for loss of property. Claims are often not settled by the valuation date (the date of entry) so there are often outstanding amounts to be paid: eg following an advance payment. To compensate for these delays, simple interest is payable – at a rate of 0.5% below the base rate – on any outstanding balance of compensation.

98. In recent years the amount of interest paid has been at levels widely believed to inadequately reflect the impact of a compulsory purchase. Since April 2009, the rate of interest paid has been nil, as the base rate has been set at 0.5%.

99. The longer the payment is delayed, the more the value of their compensation sum diminishes in real terms, as no interest is paid to keep up with inflation. Claimants allowed access to their compensation would likely invest it in some form, whether in new property, business costs or a savings account; all with an anticipated rate of return above 0%. Furthermore, statutory interest is paid as simple interest: but compound interest obtains in almost all commercial investments.

Proposal for change

Changing the prescribed interest rate

100. A credible comparable is the old Commercial Court Rate, which was widely used in compensation cases, including by the Court of Appeal in a case relating to land compensation. The Commercial Court Rate was normally 1% above the Bank of England base rate. Such a rate would reasonably compete with rates of interest in some deposit accounts in the current climate, while also being below local authorities' investment rates of return. This is also the rate recommended by the Law Commission in a separate report on compensation cases.

Question 20:

(a) Do you agree that the rate of interest should be pegged to the Bank of England base rate?

(b) Do you agree that the prescribed rate should be set at 1% above the Bank rate?

Applying compound interest

101. To legislate to apply compound rather than simple interest on outstanding amounts of compensation, to better reflect a claimant's opportunity cost. Currently there is no provision in the legislation to pay interest on interest. Primary legislation, which could have unintended consequences in other areas, would be required.

Question 21:

Do you agree that legislation should be introduced to require compound interest to apply?

Introducing a floor to the prescribed rate

100. The most basic protection against unreasonably low rates of interest is to set an absolute floor on the interest rate payable. But the floor should not be set higher than rates widely available on the market, which may make it commercially sound for claimants to delay receipt of payments. An absolute floor of 3%, say, would provide a

yield higher than many commercial opportunities in times of weak growth. Given that an AER as low as approximately 1% is not unheard of today for a deposit account, anything higher than 1% would arguably be too high. Anything lower than 1% risks being inadequate, although it should be noted that negative interest rates are not unheard of in times when investors are seeking safe havens.

Question 22:

Do you agree that setting a 1% interest rate floor is fair on all parties concerned?

Transferring mortgages to avoid negative equity

- 102. There are currently 150,000 households in positions of negative equity, being approximately 1.5% of all mortgages in the UK. A large number of these properties are in parts of northern England, Northern Ireland and parts of Scotland. The number of compulsory purchase order claimants affected by the issue of negative equity is small and most cases date back to the 1980s and 1990s. However, there could be a material increase in the future.
- 103. A compulsory purchase order causes any negative equity to ‘crystallise’ and leaves the claimant with a large unfunded debt to repay, causing them financial hardship and severely eroding their credit-worthiness. The distress caused by this position can also create widespread opposition to the scheme and threaten its delivery.
- 104. The principal changes the government wants to achieve are intended to put lenders and claimants in the same position as if the compulsory purchase had not occurred by:
 - i. avoiding a position of negative equity crystallising
 - ii allowing lenders to take the usual course of remedial action in cases of bad or doubtful debts

Proposal for change

- 105. The government proposes to work with lenders and the Financial Conduct Authority to secure a voluntary agreement on porting mortgages between properties in the limited number of cases where claimants in negative equity are affected by compulsory purchase.
- 106. The example below illustrates how porting the mortgage ensures that the claimant is protected from financial hardship arising from negative equity crystallising.

Calculation of equity position	Existing property £	New property £
The property value at the purchase date (A)	250,000	150,000
Loan outstanding (B)	200,000	200,000
Current value of property (C)	150,000	150,000
Effective negative equity (C – B)	-50,000	-50,000

107. The lender would be left in a neutral position, as they would have powers to ensure both the property type (i.e. properties deemed equally acceptable to a lender, such as transferring from one residential property unattached to a commercial premises to another); and also indebtedness are the same as for the existing property. Therefore, the risk of default from unsecured debt; interest rate risk and property-specific risks would remain the same.
108. In avoiding negative equity from crystallising, the lender maintains the prospect of securing repayment on the loan. However, the lender is still able to take remedial action where default is likely or highly-likely to occur. In cases where the claimant has accrued significant arrears, or the lender has commenced proceedings for possession, the lenders should retain the power to take/continue remedial action.

Question 23:

(a) Do you agree that encouraging the transfer of mortgages to avoid negative equity is a worthwhile and fair proposal to pursue with industry?

(b) If government is unable to secure agreement with industry do you agree that such protections should be implemented through legislation?

Extending powers to override easements and restrictive covenants

109. To deliver regeneration, an acquiring authority often compulsorily acquires land on behalf of a third party development partner. To ensure that there are no impediments to the proposed regeneration, it may be necessary to deal with restrictive covenants and easements affecting the land acquired.
110. These third party interests which may affect land are typically rights to allow the underground services (water, drainage, gas, electricity, telephone and TV cables, etc) of one property to pass beneath the land of one or more neighbouring properties, rights of light, rights of way and covenants restricting development to certain uses or density. The Law Commission have found that there are easements over at least 65% of registered freehold titles. Some of these interests such as private rights of way are automatically extinguished when land is compulsorily acquired, although not if they are owned by statutory undertakers.
111. Some acquiring authorities like local planning authorities and the Homes and Communities Agency have powers, stemming from Acts like the Town and Country Planning Act 1990, the regeneration Acts² and the Planning Act 2008, to override easements and restrictive covenants in their land. These powers generally pass to any

² Principally the Housing and Regeneration Act 2008 (HCA) and the Local Government, Planning and Land Act 1980 (urban development corporations).

purchasers of that land and are only exercisable where there is planning permission for the proposed development or use of the land. Where these interests are overridden, compensation is payable by the authority which does the overriding. The easement or covenant-owner receives the amount of any reduction in the value of land benefiting from the interest together with an amount in respect of any damage caused to them. However, not all acquiring authorities have these powers.

112. If the compulsory purchase order is for transport purposes only (e.g. any under the Highways Act, Transport and Works Act, Greater London Authority Act by Transport for London etc) then the extinguishment of easements is limited to the physical transport works. It is common that in order to maximise the benefit of transport developments, new buildings are constructed on top of, and around, stations. At present this is only possible for transport promoters by either taking out expensive insurance against the potential impact of easements on development or by selling the land to the local planning authority, in order to use its powers, and then buying it back. This can take much longer, cost much more and requires the agreement and resources of the local planning authority.

113. A company should be able to exercise the powers to override easements or restrictive covenants when acquiring land in its capacity as a statutory undertaker or in relation to any public functions that it carries out. Where it develops land for the purposes of its functions, then it should pay compensation for overriding third party rights as set out in paragraph 111 above. If, however, such a company undertakes commercial development on land acquired for public purposes, the basis of compensation for overriding third party rights should be market value. This is in order to avoid companies obtaining an advantage over private developers where it carries out development. Private developers who interfere with third party rights are vulnerable to injunctions to prevent them doing so and would currently have to pay market value to get the owner to remove those rights, rather than the diminution of value paid by public authorities for rights overridden for public development.

Proposal for change

114. Our proposal is to extend the existing powers to override easements and restrictive covenants under the Town and Country Planning Act 1990 and equivalent legislation to acquiring authorities, such as statutory undertakers, which do not already have these powers. But, where commercial development is undertaken on land acquired for public works, the basis of compensation for overriding third party rights should be open market value, rather than diminution of value.

Question 24:

(a) Do you agree that existing powers to override covenants and easements should be extended to other acquiring authorities, acting in their capacity as statutory undertakers or in the exercise of their public functions?

(b) Do you have any comments on the proposal that where overriding by those authorities is to facilitate commercial development on land acquired for public works, the basis of compensation should be open

market value, rather than diminution to the value of the claimants land (as is currently the case for local authorities)?

Taking part of a claimant's land – 'Material Detriment'

115. Land needed for development projects often cuts across parts of landowners' property. In such cases, developers would only seek to compulsorily purchase the relevant parts required. Where a partial purchase cannot be taken without "material detriment" to the remainder of a landowner's property, claimants can apply to the Upper Tribunal (Lands Chamber) to compel the acquiring authority to purchase the entire property.
116. There are two different procedures that allow acquiring authorities to exercise compulsory purchase powers, a 'notice to treat' or a 'general vesting declaration'. Where claimants wish to challenge the acquiring authority's proposal to take only part of their land, because of the material detriment that will be suffered to their retained land, they can serve a counter-notice on the acquiring authority. The acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.
117. There is a difference in process between the two acquisition procedures. When a general vesting declaration has been served, the procedure is set out in statute. Reference to the Upper Tribunal will prevent entry to land being taken until the issue of material detriment is resolved. Decisions on material detriment currently take around two years to conclude and this can mean that the acquiring authority has no programme certainty as to when work will commence. For some schemes, this would constitute an unacceptable programme risk and cause a project to fail.
118. Under notice to treat, there is no statutory procedure for requiring the acquiring authority to purchase the whole of land: the procedure is established in case law. Unlike the statutory procedure for general vesting declarations, the title does not vest until compensation is settled, which can create a number of delivery issues, particularly where sub-soil for tunnels is required. This was a problem for HS1, but subsequent hybrid legislation has solved this problem for the projects concerned by disapplying the material detriment provisions for acquisitions of subsoil. While this approach could also be followed for development consent orders and Transport and Works Act orders, it would not be possible for standard compulsory purchase orders unless specific legislative provision was made.
119. We propose to provide a unified statutory system that clearly allows for claimants to serve a counter-notice requiring the whole of their land to be taken if taking only part would cause material detriment to their retained land. There are two alternative ways of achieving this:
- i The first alternative would be to ensure that under both the general vesting declaration and notice to treat procedures entry can be taken and title vested before the issue of material detriment is decided by the Upper Tribunal, in the same way that entry can be taken and title vested – and works could therefore commence - before the issue of compensation is decided by the Tribunal in the event of a dispute.

ii The second alternative would be to harmonise the procedures on the lines of the existing statutory procedure to be followed when a general vesting declaration has been served. This would follow Recommendation 21 of the Law Commission in their report “Towards a Compulsory Purchase Code: (2) Procedure” (2004). This would continue to mean that acquiring authorities risk delay while the Upper Tribunal considers the case, but claimants’ land would not be severed whilst there was still a possibility that their counter-notice, forcing the acquiring authority to take all of the land, would be upheld.

Proposals for change

120. Our proposal is to harmonise the treatment of ‘material detriment’ under both the notice to treat process and the general vesting declaration process. We have identified two ways of doing this, so respondents are invited to indicate their preferred method and why they have chosen it.

121. Additionally, we propose to introduce a provision that would allow acquiring authorities to disapply material detriment when acquiring rights through sub-soil.

Question 25:

(a) Would you prefer harmonisation which:

(i) allows entry to land and vesting of title before a dispute on material detriment has been determined for both the notice to treat and general vesting procedures; or:

(ii) involves a procedure similar to requiring acquisition of the whole under the current general vesting declaration procedure that would apply also to the notice to treat procedure, which prevents entry on to the land and vesting of title before the dispute has been determined. Please explain why.

(b) Do you agree to allow the material detriment provisions to be disapplied in compulsory purchase orders for the acquisition of rights through subsoil?

(c) Are there any other options to achieve harmonisation of the treatment of material detriment?

Section Four: Impact Assessment

Impact on acquiring authorities and claimants

122. A full consultation impact assessment is being published alongside the consultation paper.
123. A number of these measures may have an impact on claimants and acquiring authorities, including businesses. The business interests in an individual compulsory purchase orders will vary. Some compulsory purchase orders are proposed by acquiring authorities who are private sector businesses, such as statutory undertakers or by local authorities who have an agreement with a private sector developer, for example, to deliver a town centre redevelopment scheme. Those who interests are being compulsorily acquired (claimants) include business interests, such as land owners and businesses.
124. Most measures will provide modest net benefits for claimants, or have a negligible impact. These measures are:
- i. Powers of entry for survey prior to a compulsory purchase order being made
 - ii. Streamlining government processes
 - iii. Reforming High Court challenges
 - iv. Transfer of mortgages
 - v. Extending powers to override easements and restrictive covenants
125. The proposals to improve the process for taking possession of land may only impact significantly on a limited number of cases, because current good practice is already to offer longer notice periods than the statutory minimum. However, having a guarantee of a longer minimum period of notice does allow the claimant to plan more effectively and in a very limited number of cases may very significantly assist a claimant to relocate successfully. Given current practice and with forward planning acquiring authorities (including those with business interests or in partnership with a private sector partnership) should not be adversely affected by these changes. Furthermore the expedited notice process, when a new interest is discovered late in the process will benefit reduce time delays if a new interest comes to light and thus potentially benefit all acquiring authorities.
126. The impact on claimants of the material detriment provisions will be negligible. This is because material detriment claims following standard compulsory purchase orders are likely to be very rare because they arise mostly in linear schemes – such as for local highways. Even where land is severed, questions of material detriment may well be clear cut. Disapplying the material detriment provisions for purchases of subsoil for tunnels would also have very little impact for the same reasons.
127. The two proposals that would be likely to have a more than negligible impact on acquiring authorities and claimants are the changes to the regulations regarding advance payments of compensation and improving interest rates on outstanding compensation. Both these changes will impose a cost to acquiring authorities in terms of requiring 90% of the estimated amount of compensation to be paid three months

earlier and a higher interest rate to be paid on the remaining amount outstanding (approximately 10%, depending on how closely the final agreed amount matches up with the estimate). However, these costs will be offset by the benefits to claimants of the payment being received three months earlier and the increase in interest received on the outstanding payment. This is because the change is simply one regarding the amount and timing of the payment between the two parties.

128. A detailed analysis of the total cost of the proposals to make earlier advance payments of compensation and increase the rate of interest on unpaid compensation is set out in the consultation stage impact assessment.
129. We consider the net costs of these proposals will be zero, as costs to acquiring authorities will be mirrored by benefits to claimants – they may even be positive, as claimants would normally experience a higher cost of borrowing.
130. We are interested in views on the likely impact of these proposals on business, both individually and as a whole.

Question 26:

- (a) **Do you agree that the measures listed in paragraphs 124, 125 and 126 will provide modest net benefits for business interests, or have a negligible impact? If you disagree, please specify which measures may not provide modest net benefits or have negligible impact?**
- (b) **Do you agree that cost savings to all claimants as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to all acquiring authorities? Please explain the basis of your response?**
- (c) **Do you agree that cost savings to business as a result of receiving advance payments earlier and an improved interest rate for outstanding compensation are likely to be largely offset by the costs of these proposals to acquiring authorities that involve business interests? Please explain the basis of your response.**
- (d) **Do you agree with our assumption that the average amount claimed by a business is typically larger in monetary terms than the average amount claimed by an individual homeowner? Please explain your response.**
- (e) **Do you agree with the assumption, set out in the consultation stage impact assessment, that there is an average of 15 household claimants per compulsory purchase order? Please explain your response.**

- (f) **Do you have any further comments on the likely impact of these proposals on business interests, including the assumptions we have adopted for proportions of compulsory purchase orders with business interests, both in respect to the acquiring authority or the claimants?**

Public Sector Equality Duty

131. When formulating policy, the department must comply with the Public Sector Equality Duty. An Equality Statement has been prepared while the options for policy development were being considered.
132. We have undertaken an initial assessment which revealed that individual compulsory purchase orders can impact on groups with protected characteristics, but we need more information on how they do so.
133. The changes we are proposing in this consultation paper will apply universally. From our initial equalities assessment we cannot envisage how these measures might generally affect people who share relevant protected characteristics in different ways from people who do not share them. Similarly we cannot envisage how, generally, the package of measures could have anything other than a broadly positive impact on the conduct of individual compulsory purchase cases. This is because many of the proposals will benefit claimants by providing a better approach to the payment of compensation and clearer more accessible guidance. In terms of the consideration of individual orders, we have included reference to the requirement for both public sector acquiring authorities and all authorising authorities to comply with the Duty in guidance.
134. The three possible areas where there might be greater impacts generally on claimants who share relevant protected characteristics are the proposals to standardise the powers of entry to survey land before a compulsory purchase order is made (with associated new warrant provisions), to extend the power to override restrictive and easements and to harmonise procedures to settle disputes about material detriment.
135. In our view the impact of extending the power of entry for survey on all claimants (including those with protected characteristics) are likely to be limited because:
- i. most acquiring authorities already have this power – the bodies who do not are principally statutory undertakers - so the number of compulsory purchase orders where this power would be newly available is limited
 - ii. compensation is payable for any damages caused by the surveying; and
 - iii. an application for a warrant to enter to survey – where permission for entry has been refused would be considered by a Justice of the Peace who would be able to have regard to any adverse equality impacts

136. In terms of the widened ability to override easements and restrictive covenants, we consider the potential impact of this change on claimants and other third parties (including those with protected characteristics) are likely to be limited because:
- i. the rights that might be overridden are often held by corporate bodies, not individuals
 - ii. most acquiring authorities already have this power
 - iii. compensation is payable for the loss of rights
137. In relation to the proposals to harmonise procedures for material detriment, one of the alternative options we are consulting on, would be to allow entry to land by acquiring authorities, before a dispute on material detriment has been determined. If implemented this would mean that some claimants, who are currently able to resist entry onto any of their land until a dispute on material detriment has been resolved, may now suffer severance on the land that has not be subject to compulsory purchase, until the dispute about material detriment has been resolved.
138. We believe that if this option is taken forward, the impact on claimants (including those with protected characteristics) is likely to be limited because:
- i. the number of cases where this is likely to occur is limited; and
 - ii. the impact is temporary in duration – ie the change in impact on the claimant will only occur during the period up to the decision by the Upper Tribunal
139. Notwithstanding our initial conclusions, we would welcome others' views on any potential equalities impacts arising for the proposed measures, in particular those to standardise the power of entry to survey, to extend the power to override restrictive covenants and easements and to harmonise procedures to settle disputes about material detriment.

Question 27:

Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed.

About this consultation

140. This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.
141. Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.
142. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 the Data Protection Act 1998 and the Environmental Information Regulations 2004).
143. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.
144. The Department for Communities and Local Government will process your personal data in accordance with Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
145. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.
146. Are you satisfied that this consultation has followed the Consultation Principles? If not, or you have any other observations about how we can improve the process, please contact us at:

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