



Llywodraeth Cymru
Welsh Government

Circular Ref: 003/2019

Welsh Government

Circular

Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version, 2020)'

October 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Circular 003/2019: Compulsory Purchase in Wales and ‘The Criche! Down Rules (Wales Version 2020)’

Audience	Local authorities; planning authorities; businesses; government agencies; other public bodies; professional bodies and interest groups; voluntary groups and the general public.
Overview	This circular updates the information and guidance to be used by Local authorities, the Welsh Ministers and other acquiring authorities when making compulsory purchase orders to which the Acquisition of Land Act 1981 applies.
Action required	For local authorities and other acquiring authorities to be aware, from 13 October 2020: <ol style="list-style-type: none">1. Welsh Government <i>Circular 003/2019: Compulsory Purchase in Wales and ‘The Criche! Down Rules (Wales Version 2020)’</i> provides information and guidance on the use of compulsory purchase powers and the disposal of surplus government land in Wales.2. National Assembly for Wales Circular (NAFWC) 14/2004: Revised Circular on Compulsory Purchase Orders is cancelled.
Further Information	Planning Directorate Welsh Government Cathays Park Cardiff, CF10 3NQ Tel: •0300 0604400 Email: planning.directorate@gov.wales
Additional copies	This guidance is available from the Welsh Government website at: http://gov.wales/topics/planning/policy/circulars/
Related documents	Planning Policy Wales (PPW) (Edition 10, December 2018) Development Management Manual Section 12 Annex: Award of Costs Technical Advice Note (TAN) 24: Historic Environment (which replaced Welsh Office Circular 61/96)

Contents

Glossary	11
Part 1 - Compulsory purchase overview	12
General overview	12
Related circulars and cancellations	13
The purpose and justification for compulsory purchase.....	13
The Well-being of Future Generations (Wales) Act 2015	14
Compulsory purchase and the well-being goals	15
Public Sector Equality Duty and the compulsory purchase regime	16
Human Rights.....	17
Other persons eligible to initiate compulsory acquisition	18
Other ways powers of compulsory purchase are obtained	19
Financial compensation in advance of a compulsory purchase order	19
Matters influencing the use of a CPO	21
Legislative competence and compulsory purchase	23
The compulsory purchase process	23
Stage 1: Choosing the right enabling compulsory purchase power.....	23
General considerations.....	27
Resource implications of the proposed scheme: Funding	28
Compulsory purchase where the acquiring authority will not develop the land itself	29
Back-to-back agreements with a selected development partner	30
Disposal of land	31
Surplus land following compulsory purchase.....	31
Stage 2: Justification for making a compulsory purchase order	32
Consideration by the Welsh Ministers of an acquiring authority's justification for a compulsory purchase order	32
Impact Assessments	34
Stage 3: Preparing and making a compulsory purchase order.....	34
Planning permission, other consents and impediments.....	34
Preparatory work – entering land before deciding whether to include it in a compulsory purchase order	35
Undertaking negotiations in parallel with preparing and making a compulsory purchase order	35
Use of alternative dispute resolution techniques	36
Other means of helping those affected by a compulsory purchase order	38

Making sure the compulsory purchase order is made correctly	38
Other important matters which may require consideration when making a compulsory purchase order	40
Parties to be notified of the making of a compulsory purchase order	40
Objections to a compulsory purchase order: Grounds of objection and how they should be made	41
Objections to a compulsory purchase order: An objector's Statement of Case	41
Publicising the making of a compulsory purchase order and the objection period ..	42
Documentation to be submitted with a compulsory purchase order	42
Stage 4: Consideration of a compulsory purchase order	43
Decision maker on whether or not to confirm a compulsory purchase order	43
Criteria for deciding whether or not to delegate a decision on a compulsory purchase order to an inspector	43
Delegation of a compulsory purchase order to an inspector and new issues/evidence emerge	44
Objections to a compulsory purchase order: Where none are made or they are withdrawn	44
Objections to a compulsory purchase order: Where they are made and are not withdrawn	44
Objections to a compulsory purchase order: How they are considered	44
Legal difficulties	48
Modification of compulsory purchase orders	48
Confirmation of compulsory purchase orders in stages	48
Confirmation of a compulsory purchase order by the acquiring authority	49
Notification of the date of the confirmation of a compulsory purchase order	51
Legal challenges relating to a compulsory purchase order	51
High Court powers under section 23 of the Acquisition of Land Act 1981	51
Time period for implementing a compulsory purchase order where it is the subject of a legal challenge	52
Unconfirmed compulsory purchase orders	52
Stage 5: Implementing a compulsory purchase order	52
Confirmation notice – A compulsory purchase order becoming operative	52
Confirmation notice – Registering a confirmation notice as a local land charge	53
Notice to treat: Form	53
Notice to treat: When a notice should be served	54
Notice to treat: Period of notice to be given before taking possession under the notice to treat process	54

Agreeing a date of entry	55
Notice to treat: When the acquiring authority does not take possession at the time specified in the notice of entry	56
General vesting declaration: Form.....	56
General vesting declaration: When may a declaration be used.....	57
General vesting declaration: Executing the declaration.....	58
General vesting declaration: Period of notice to be given before taking possession and service of notice of execution	58
General vesting declaration: When a declaration may not be served.....	59
General vesting declaration: Making a declaration when the owner, lessee or occupier is unknown	59
Conveying of land from Charity Trustees to a public authority.....	59
Delivery of the compulsory acquisition scheme	59
Stage 6: Compensation.....	60
Basis of compensation	60
Compensation where land is taken.....	60
Rule (2) of section 5 of the Land Compensation Act 1961	61
Loss payments: Exclusions	65
Value of land assessed in light of the ‘no scheme principle’.....	66
Special provision for relevant transport projects	67
Where the definition of the ‘scheme’ is disputed.....	69
Relevant valuation date	69
Advance payment of compensation.....	70
Advance payment for a mortgage.....	72
Where an advance payment is made but the compulsory purchase does not go ahead	73
Compensation where no land is taken.....	73
Claims for compensation	73
Disputes over claims for compensation: References to the Upper Tribunal (Lands Chamber).....	83
Part 2 – Enabling compulsory purchase powers.....	84
Section A – Compulsory purchase orders made under section 226 of the Town and Country Planning Act 1990	84
Appropriate acquiring authorities	84
Section 226 power.....	84
Purpose of the section 226 power	84

Use of the section 226 power	85
Deciding whether to confirm compulsory purchase orders made under section 226: section 245 of the 1990 Act	86
Section 226(1)(a).....	87
Limitations of the section 226(1)(a) power	87
The meaning of “well-being” in the context of the section 226(1)(a) power.....	88
Justification needed to support a compulsory purchase order to acquire land compulsorily under section 226(1)(a) and the planning position	91
Factors to be taken into account by the Welsh Ministers in deciding whether or not to confirm a compulsory purchase order under section 226(1)(a).....	93
Section B – Compulsory purchase orders made under housing powers (including listed buildings in clearance areas)	94
Introduction.....	94
Housing Act 1985: Part 2.....	94
Circumstances in which powers may be used	94
Information to be included in submissions of compulsory purchase orders	94
Acquisition of land for housing development.....	95
Acquisition of empty properties for housing use	95
Acquisition of sub-standard properties.....	95
Housing Act 1985: Part 9 Clearance areas.....	97
Building becoming listed when subject to compulsory purchase for clearance purposes	97
Building becoming listed when acquired by agreement for clearance purposes ..	98
Demolition of an unlisted building in a conservation area when subject to compulsory purchase for clearance purposes	99
Other housing powers.....	99
Local Government and Housing Act 1989: Part 7 Renewal Areas	99
Section C – Compulsory purchase orders made under Part 7 of the Local Government Act 1972 for miscellaneous purposes (including for public libraries and museums)	101
Introduction.....	101
Acquisition and enabling powers	102
Restrictions on use of the power under section 121 of the 1972 Act	103
Joint orders and mixed purposes.....	103
Public libraries and museums	103

Section D – Compulsory purchase orders made on behalf of community councils ..	104
Introduction.....	104
Refusal by a principal council to make a compulsory purchase order on behalf of a community council or does not make one within the required time period.....	104
Joint order.....	105
Costs and compensation	105
Section E – Compulsory purchase orders made under section 89 of the National Parks and Access to the Countryside Act 1949	106
Section F – Compulsory purchase orders for educational purposes	108
Local authorities’ power to make a compulsory purchase order for educational purposes.....	108
Voluntary aided schools	109
Section G – Compulsory purchase orders for highway purposes.....	110
Statement of purposes of acquisition in the compulsory purchase order.....	110
Extent of land acquisition.....	111
Distance limits.....	111
Boundary of land required cuts through building.....	113
Acquisition of full title to existing highways	114
Acquisition of rights over land	114
Works affecting watercourses.....	117
Acquisition of land in advance of requirements	118
Procedural points affecting the treatment of objections and the consideration of orders	119
Power to disregard certain objections.....	119
Submission of “alternative route” objections	119
Active travel	120
Section H – Compulsory purchase powers for listed buildings in need of repair	122
Introduction.....	122
Deliberate owner neglect.....	122
Applications to a magistrates’ court under the Planning (Listed Buildings and Conservation Areas) Act 1990.....	123
Repairs notice.....	123
Form of compulsory purchase orders for listed buildings in need of repair and associated notices	124
Section I – The Welsh Ministers’ power to acquire land compulsorily	126
Welsh Development Agency Act 1975	126

Highways Act 1980.....	127
Section 228 of the Town and Country Planning Act 1990	128
Section J – Special kinds of land.....	130
Introduction.....	130
Statutory undertakers’ land and local authority owned land	130
Bodies defined as statutory undertakers under the Acquisition of Land Act 1981	130
Protection for statutory undertakers’ land	131
Section 16 of the Acquisition of Land Act 1981 and the role of the appropriate Minister	131
Where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn: Joint confirmation.....	132
Section 17 of the Acquisition of Land Act 1981.....	133
Protection for National Trust Land	133
Section 18 of the Acquisition of Land Act 1981.....	133
Special Senedd procedure and special Parliamentary procedure	133
Protection for land forming part of a common, open space, or fuel or field garden allotment.....	134
Section 19 of the Acquisition of Land Act 1981.....	134
Application for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981	134
Exchange land	137
Meaning of “the public” in regard to exchange land	137
Section 19(1)(aa) of the Acquisition of Land Act 1981	138
Section 19(1)(b) of the Acquisition of Land Act 1981	138
Section K – Compulsory purchase of new rights and other interests	139
Introduction.....	139
Special kinds of land - Land forming part of a common, open space, or fuel or field garden allotment (see also Sections J and R in Part 4 of this Circular)	140
Section L – Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown).....	142
General position	142
Exceptions to general position.....	142
Issues for consideration.....	142
Section M – Overriding easements and other rights	144

Introduction.....	144
Restrictions on the use of the power to override easements and other rights	145
Compensation and owners of overridden easements and other rights.....	146
Section N – Minerals	147
Introduction.....	147
Part 2 of Schedule 2 to the Acquisition of Land Act 1981	147
Part 3 of Schedule 2 to the Acquisition of Land Act 1981	147
Severed mines.....	148
Powers of entry.....	149
Remedial works	149
Part 3 - Procedures ancillary to compensation claims	150
Section O – Certificates of Appropriate Alternative Development	150
Introduction.....	150
Planning assumptions	150
The date on which planning assumptions are assessed	151
A Certificate of Appropriate Alternative Development.....	151
Certificate system	152
Right to apply for a Certificate of Appropriate Alternative Development	152
Making an application for a Certificate of Appropriate Alternative Development ..	154
Information to be contained in an application for a Certificate of Appropriate Alternative Development	154
The issuing of a Certificate of Appropriate Alternative Development.....	156
Additional informal advice on open market value	158
Appeals against Certificates of Appropriate Alternative Development.....	159
An overview of timescales	160
Section P – Objection to division of land – the serving of counter-notices (material detriment).....	161
Introduction.....	161
Procedure for serving a counter-notice.....	161
The effect of a counter-notice on a notice of entry which has already been served on the owner.....	161
General vesting declaration procedure: The effect of a counter-notice on the vesting date of the owner’s land specified in the declaration	161
Entry by an acquiring authority on to land proposed to be acquired from an owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)	162

Material detriment provisions in Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981	163
Material detriment provisions and blight notices	163
Part 4 - Procedural and drafting issues	164
Section Q – Checklist of documents to be submitted to the Welsh Ministers with a compulsory purchase order	164
Section R – Guidance on drafting and serving a compulsory purchase order and associated applications	166
Prescribed form	166
Title of compulsory purchase order	166
Places for the deposit of the compulsory purchase order map	166
Incorporation of the Mining Code	167
Extent, description and situation of land scheduled	167
Compulsory acquisition of new rights	168
Compulsory purchase orders solely for new rights	168
Compulsory purchase orders for new rights and other interests	168
Schedule and map	169
Compulsory acquisition where an acquiring authority already owns interests	170
Compulsory acquisition involving an interest in Crown land	170
Interests required to be served notice of the making of a compulsory purchase order	171
Special category land (see also Sections J and K in Part 2 of this Circular)	175
Commons, open spaces etc	176
Sealing, signing and dating	178
Address for submission of compulsory purchase orders, applications and objections	178
Section S – Compulsory purchase order map(s)	179
Section T – Certificates to accompany the submission of a compulsory purchase order	181
General certificate in support of a compulsory purchase order submission	181
Format of general certificate	181
Protected assets certificate	183
Section U – Preparing the Statement of Reasons	186
Section V – The acquisition of land for public libraries and museums under section 121 of the Local Government Act 1972: Form CP/AL1	189

Part 5 – Overview in diagrammatic form of the compulsory purchase process for non-ministerial compulsory purchase orders	192
Part 6 – ‘The Crichel Down Rules’ (Wales version, 2020)	196
Introduction	196
The Crichel Down Rules	196
The land to which ‘The Crichel Down Rules’ apply.....	198
Interests qualifying for offer back.....	199
Time horizon for obligation to offer back.....	200
Exceptions from the obligation to offer back.....	200
Dwelling tenancies.....	202
Procedures for disposal.....	203
Where former owner's address is known.....	203
Where address is unknown	203
Responses to invitation to purchase where address is unknown.....	204
Special procedure where boundaries of agricultural land have been obliterated..	205
Terms of resale.....	205
Recording of disposals	205
The 1992 Rules	206
Appendix A – Sitting tenants	207
Appendix B – Special procedures where boundaries of agricultural land have been obliterated	208

Glossary

Term	Definition
1845 Act	Lands Clauses Consolidation Act 1845
1908 Act	Smallholdings and Allotments Act 1908
1949 Act	National Parks and Access to the Countryside Act 1949
1961 Act	Land Compensation Act 1961
1965 Act	Compulsory Purchase Act 1965
1972 Act	Local Government Act 1972
1973 Act	Land Compensation Act 1973
1975 Act	Welsh Development Agency Act 1975
1980 Act	Highways Act 1980
1981 Act	Acquisition of Land Act 1981
1985 Act	Housing Act 1985
1989 Act	Local Government and Housing Act 1989
1990 Act	Town and Country Planning Act 1990
1995 Order	The Town and Country Planning (General Permitted Development) Order 1995
1996 Act	Education Act 1996
2004 Regulations	Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004
2010 Rules	Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010
2012 Order	Land Compensation Development (Wales) Order 2012
2013 Act	School Standards and Organisation (Wales) Act 2013
2016 Act	Housing and Planning Act 2016
2017 Regulations	Compulsory Purchase of Land (Vesting Declarations) (Wales) Regulations 2017
ADR	Alternative Dispute Resolution
CAAD	Certificate of Appropriate Alternative Development
CPO	Compulsory Purchase Order
ECHR	European Convention on Human Rights
GVD	General Vesting Declaration
LDP	Local Development Plan
LGPL Act 1980	Local Government, Planning and Land Act 1980
LHA	Local Housing Association
LPA	Local Planning Authority
NAFWC	National Assembly for Wales Circular
NSIP	Nationally Significant Infrastructure Project
NTT	Notice To Treat
P(LBCA)	Planning (Listed Buildings and Conservation Areas) Act 1990
PPPs	Public Private Partnerships
PPW	Planning Policy Wales (Edition 10, December 2018)
SSSIs	Sites of Special Scientific Interest
TAN	Technical Advice Note
WBFNG Act	Well-being of Future Generations (Wales) Act 2015

Part 1 - Compulsory purchase overview

General overview

1. The Welsh Government believes compulsory purchase powers are an important placemaking in action tool for local authorities and other bodies to use as a means of assembling the land needed to help deliver environmental, social and economic change. Used properly, they can contribute towards effective and efficient regeneration, placemaking¹, the revitalisation of communities, and the promotion of business – leading to improvements in the quality of life. Local authorities and other bodies possessing compulsory purchase powers – at whatever level – are encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.
2. The purpose of this Circular is to provide guidance to local authorities and other bodies with powers to make compulsory purchase orders (“CPOs”) under the [Acquisition of Land Act 1981](#) (“the 1981 Act”) and which are submitted to the Welsh Ministers for confirmation. Its aim is to assist the use of compulsory purchase powers to best effect and, by advising on the application of the correct procedures and statutory and/or administrative requirements to ensure CPOs progress quickly and are without defects. It is not, however, intended to be comprehensive. It concentrates mainly on those policy issues, procedures and administrative requirements to which local authorities and other bodies need to have regard to in order to assist the efficient handling of their CPOs by the Welsh Ministers. The Circular also contains guidance on certain key elements of the implementation and compensation arrangements. It should be read in conjunction with Planning Policy Wales (PPW) which sets out the land use planning policies of the Welsh Government, including for the use of compulsory purchase powers by local planning authorities (“LPAs”).
3. The term “acquiring authority” is used throughout the Circular and refers to those bodies authorised by statute to acquire land by compulsion for a specific purpose i.e. local authority or other bodies such as statutory undertakers with compulsory purchase powers. Where a specific acquiring authority is stated in the guidance, i.e. local authorities, it is reflecting the statutory wording in legislation.
4. Parts 2–3 of this Circular provide detailed explanatory notes and relate to powers, procedural issues and allied matters including Certificates of Appropriate Alternative Development. They should be observed as closely as possible in the interest of avoiding delay incurred by the need to clarify details after submission of a CPO for confirmation. Part 5 of this Circular provides a process chart which illustrates steps and timescales for the processing and determination of a non-ministerial CPO.

¹ See page 16 of Planning Policy Wales (PPW) (Edition 10, December 2018) for a definition of ‘placemaking’.

Part 6 of this Circular contains 'The Cricheil Down Rules' (Wales version 2020) which provides guidance on the arrangements for offering back to former owners, their successors, or to sitting tenants surplus government land, which was acquired by, or under a threat of, compulsion.

5. The advice in Part 1 applies to CPOs which are to be confirmed by the Welsh Ministers and also the relevant UK Government Secretary of State in respect of a CPO made for flood defence/land drainage purposes covering land in Wales and England, acting jointly with the Welsh Ministers.
6. In addition to the guidance in Part 1, including any relevant other Parts, authorities should have regard to any particular requirements of the legislation granting the specific acquisition powers being exercised.

Related circulars and cancellations²

7. National Assembly for Wales Circular (NAFWC) 14/04: Revised Compulsory Purchase Orders is cancelled.
8. Welsh Office Circular 1/90: The Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 is redundant following the coming into force of the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 ("the 2010 Rules") which replaced the:
 - Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990; and
 - Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994.
9. This Circular should be read with the following:
 - Paragraph 3.53 of PPW.
 - Development Management Manual Section 12 Annex: Award of Costs (which replaced Welsh Office Circular 23/93: Awards of Costs incurred in Planning and Other (including CPO) Proceedings).
 - Technical Advice Note (TAN) 24: Historic Environment (which replaced WO Circular 61/96) - CPOs affecting historic buildings and conservation areas.

The purpose and justification for compulsory purchase

10. CPOs allow acquiring authorities who need to obtain land or property to do so without the consent of the owner. CPOs are granted to facilitate development which is in the public interest, for example when building motorways on land which the owner does not wish to sell. National planning policy on the use of compulsory purchase powers³ confirms the purchase of land to facilitate development, redevelopment or improvement should be done with the agreement of the landowner.

² This Circular applies only to Wales; separate arrangements have been made in respect of the applicability of Circulars in England.

³ Paragraph 3.53 of Planning Policy Wales (PPW) (Edition 10, December 2018).

However, where such agreements cannot be reached, LPAs should consider use of their compulsory purchase powers to bring land and/or buildings forward for meeting development needs in their area and/or to secure better development outcomes where a compelling case in the public interest can be demonstrated which outweighs the loss of private interests.

11. Acquiring authorities do not have the powers to compulsorily acquire land until the 'confirming authority' approves the CPO. In Wales, the confirming authority for CPOs relating to a devolved matter is the Welsh Ministers.

Public bodies with statutory powers

12. Many public bodies with statutory powers have compulsory purchase powers in support of their functions and activities, including:
 - local authorities (which include for some purposes National Park Authorities);
 - statutory undertakers, for example, Network Rail and Natural Resources Wales;
 - some executive agencies i.e. Coal Authority;
 - health service bodies.

The Welsh Ministers also have powers to compulsorily acquire land to facilitate the discharge of their functions under [section 21A of the Welsh Development Agency Act 1975](#).

The Well-being of Future Generations (Wales) Act 2015

13. The [Well-being of Future Generations \(Wales\) Act 2015](#) ("WBFG Act") establishes a sustainable development principle which requires public bodies in Wales to act in a manner which seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs. The [WBFG Act](#) places a duty on public bodies in Wales to improve the economic, social, environmental and cultural well-being of Wales when exercising their functions in accordance with "the sustainable development principle" (established under [section 5\(1\) of the WBFG Act](#)) which is aimed at achieving seven overarching well-being goals. [Section 4 of the WBFG Act](#) sets out the seven overarching well-being goals for Wales:
 - (i) 'A prosperous Wales' - An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
 - (ii) 'A resilient Wales' - A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).

- (iii) 'A healthier Wales' - A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
 - (iv) 'A more equal Wales' - A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
 - (v) 'A Wales of cohesive communities' - Attractive, viable, safe and well-connected communities.
 - (vi) 'A Wales of vibrant culture and thriving Welsh language' - A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
 - (vii) 'A globally responsible Wales' - A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.
14. Not all acquiring authorities in Wales are public bodies for the purposes of the [WBFG Act](#) i.e. utility companies, electricity licence holders etc. As such, the duty under the [WBFG Act](#) does not apply to these types of acquiring authorities. The Welsh Ministers do however recommend as best practice that non-public bodies who are seeking to use and justify their compulsory purchase powers in Wales do so in accordance with the requirements of the [WBFG Act](#).

The Well-being 'Five Ways of Working'

15. To demonstrate consideration has been given to the [seven WBFG Act well-being goals](#) and the sustainable development principle, public bodies must have regard to the 'Five Ways of Working' contained in [section 5 of the WBFG Act](#). These require:
- involving a diversity of the population in the decisions that affect them;
 - working with others in a collaborative way to find shared sustainable solutions;
 - taking an integrated approach so that all public bodies look at all the well-being goals in deciding on their priorities;
 - understanding the root causes of issues to prevent them from occurring and examining whether resources are currently deployed should change; and
 - looking to the long term so not to compromise the ability of future generations to meet their own needs.

Compulsory purchase and the well-being goals

16. The use of compulsory purchase powers can help facilitate achieving sustainable development in Wales. It can also provide a mechanism to manage effectively the use and development of land in the public interest so that it contributes positively to achieving the [seven WBFG Act well-being goals](#). Public body acquiring authorities in Wales exercising their compulsory purchase powers must exercise those functions in accordance with the meaning of sustainable development as defined in [section 3 of the WBFG Act](#).

They must, therefore, when making and justifying the compelling case for a CPO, give consideration to how the CPO achieves the [seven WBFG Act well-being goals](#). For example, a use of compulsory purchase powers is to regenerate an area through bringing empty properties or vacant land back into use for the purpose of improving the attractiveness and viability of the area. Likewise, to improve safety. Such action would contribute to meeting the [WBFG Act goal](#) of building “a Wales of cohesive communities”. Another example is the use of compulsory purchase powers to increase housing in a local area to provide opportunities for communities to access new housing accommodation. Such action can help people’s physical and mental well-being and contribute to meeting the [WBFG Act goal](#) of building “a healthier Wales.” An assessment should be given of the CPO’s overall effect in relation to achieving the seven [WBFG Act well-being goals](#).

17. As part of the decision making process on whether or not a CPO should be confirmed, the Welsh Ministers will give consideration to how their decision will contribute to achieving the [seven WBFG Act well-being goals](#) and its potential impact on the sustainable development principle. The Welsh Ministers will follow the [WBFG Act’s ‘Five Ways of Working’](#) as part of this process. Where a public inquiry or written representations procedure is to be used to consider a CPO, the relevant procedure [rules/regulations](#) set out in secondary legislation are required be followed.

Public Sector Equality Duty and the compulsory purchase regime

18. All public body acquiring authorities are bound by the Public Sector Equality Duty as set out in [section 149 of the Equality Act 2010](#). Throughout the compulsory purchase process public body acquiring authorities must have due regard to the need to:
 - (a) eliminate unlawful discrimination, harassment, and victimisation;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the [Equality Act 2010](#).

An important use of compulsory purchase powers, for example, is to help regenerate areas. Although low income is not a protected characteristic, it is not uncommon for people from ethnic minorities, the elderly or people with a disability to be over-represented in low income groups. As part of the [Public Sector Equality Duty](#), public body acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This might mean the acquiring authority devises a process which promotes equality of opportunity by addressing particular problems people with certain protected characteristics might have.

For example, making sure documents are accessible for people with sight problems or learning difficulties and that people have access to advocates or advice.

19. As not all acquiring authorities in Wales are public bodies for the purposes of the [Equality Act 2010](#), i.e. utility companies, electricity licence holders etc, the [Public Sector Equality Duty](#) does not apply to these types of acquiring authorities. The Welsh Ministers do however recommend as best practice that non-public bodies who are seeking to use and justify their compulsory purchase powers in Wales do so in accordance with the Public Sector Equality Duty as set out in [section 149 of the Equality Act 2010](#).

Human Rights

20. When making a CPO, acquiring authorities should be sure the purposes for which the CPO is made sufficiently justifies interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of The First Protocol to the European Convention on Human Rights (“ECHR”) and, in the case of a dwelling, Article 8 of the ECHR which provides the right to respect to a person’s home. Article 1 of the ECHR provides for the right to the peaceful enjoyment of a person’s possessions and protection of property. Depriving an individual or business of their rights is a serious step which an acquiring authority should consider carefully. However, it has been established compulsory purchase will not breach these Human Rights where it:
 - is authorised by law;
 - is proportionate;
 - can be demonstrated to be in the public interest; and
 - landowners and others with an interest in the land are appropriately compensated.
21. An acquiring authority’s report seeking authorisation for the CPO should address human rights issues. In particular, it should explain why the acquiring authority considers that:
 - (a) The purposes for which land is to be acquired are sufficiently important to justify the deprivation of property or interference with possession which the compulsory purchase of land entails.
 - (b) The land in question is needed for the proper delivery of those purposes.
 - (c) A less intrusive measure could not have been used for those purposes.
 - (d) A fair balance has been struck between the rights of the individuals affected and the interests of the community.

Further guidance on human rights issues can be found on the Equality and Human Rights Commission’s website⁴.

⁴ <https://www.equalityhumanrights.com/en>

22. To comply with the ECHR, acquiring authorities must adequately compensate landowners affected by compulsory purchase. However, it is worth reiterating that, whilst an acquiring authority must, generally speaking, have a fair estimate of the compensation which is likely to be payable at the time the CPO is made, the consideration of compensation is an entirely separate matter from the determination of whether the CPO is justified. Compensation disputes are subject to separate procedures. Consequently, an acquiring authority may have a CPO confirmed, and take possession of the land in question, before a resolution to the amount of compensation due has been reached.

Other persons eligible to initiate compulsory acquisition

23. In certain circumstances, a landowner may also initiate a compulsory purchase process. An owner may initiate the process by serving:
- A purchase notice under [section 137 of the Town and Country Planning Act 1990](#) (“the 1990 Act”) and [section 32 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) (“the P(LBCA)”) served by landowners following an adverse planning or listed building consent decision where, in specified circumstances, they consider that the land has become incapable of reasonable beneficial use in its existing state; or
 - A blight notice under [section 150 of the 1990 Act](#) - served by landowners where they have made reasonable endeavours to sell their land but, because of blight caused by planning proposals affecting the land, they have not been able to do so, except at a substantially lower price than might reasonably have been expected. Blight notices can be served when:
 - (i) Land is identified in a local development plan (LDP), strategic development plan, or the Future Wales – the National Plan 2040 for the purpose of a public function i.e. a function of the Welsh Ministers, a government department, local authority, National Park Authority or statutory undertakers.
 - (ii) Land is indicated in a plan (other than a development plan) approved by a resolution passed by a LPA for the purpose of the exercise of their powers under [Part 3 of the 1990 Act](#) as land which may be required for the purposes of a public function (listed in (i) above).
 - (iii) Land in respect of which a LPA —
 - (a) has resolved to take action to safeguard it for development for the purposes of a public functions (listed in (i) above); or
 - (b) has been directed by the Welsh Ministers to restrict the grant of planning permission in order to safeguard it for such development.
 - (iv) Land within an area is declared to be a clearance area under [section 289 of the Housing Act 1985](#) (“the 1985 Act”).
 - (v) Land on or adjacent to a highway is proposed to be constructed, improved or altered in relation to a power of compulsory acquisition conferred by [Part 9 of the Highways Act 1980](#) (“the 1980 Act”).
 - (vi) Land is authorised to be compulsory acquired or falling within the limits of deviation within which the powers of compulsory acquisition are exercisable.

- (vii) Land in respect of which—
- (a) a CPO is in force; or
 - (b) there is in force a CPO providing for the acquisition of a right or rights over that land;
- and the acquiring authority has power to serve, but have not served, notice to treat (“NTT”).

The complete circumstances in which blight notices may be served are listed in [Schedule 13 to the 1990 Act](#).

The right to serve blight notices is limited to the following categories of landowners:

- (a) Residential owner-occupiers of a private dwelling.
- (b) Owner-occupiers of agricultural units.
- (c) Owner-occupiers of any rateable property (also known as hereditament) i.e. a unit of property/land that is, or may become, liable to non-domestic rating and appears in a rating list, of which the annual value does not exceed a limit prescribed in secondary legislation⁵.

Other ways powers of compulsory purchase are obtained

24. Other powers of compulsory purchase include:

- a Transport and Works Act order under the [Transport and Works Act 1992](#);
- a development consent order under the [Planning Act 2008](#) for a Nationally Significant Infrastructure Project (NSIP);
- a hybrid act of Parliament, such as the [Cardiff Bay Barrage Act 1993](#), which is one promoted by the government and extends to England and Wales but applying specifically in terms of its compulsory purchase provisions to affected landowners;
- a harbour revision order and a harbour empowerment order under the [Harbours Act 1964](#).

This Circular relates to the use of compulsory purchase powers to make a CPO that is provided by a specific act of Parliament, i.e. the [1990 Act](#), and requires the approval of the Welsh Ministers. The other methods of compulsory purchase referred to above have their own applicable guidance and practice.

Financial compensation in advance of a compulsory purchase order

25. Acquiring authorities can acquire land by agreement at any time and should attempt to do so before acquiring land via CPO where necessary to do so.

⁵ The current annual value limit of £36,000 is prescribed in the [Town and Country Planning \(Blight Provisions\) \(Wales\) Order 2019](#).

When offering financial compensation for land in advance of a CPO, acquiring authorities should, as is the norm, consider value for money as a whole in order to avoid any repercussive cost impacts or pressures on both the scheme in question and other publicly-funded schemes.

26. Acquiring authorities can consider all of the costs involved in the compulsory purchase process when assessing the appropriate payments for purchase of land by agreement in advance of compulsory purchase. For instance, early acquisition by agreement may avoid some of the following costs being incurred:
- legal fees for the CPO making process as a whole including where a public inquiry is held when objections are not withdrawn;
 - dealing with individual objectors to a CPO including potential compensation claims for:
 - (a) where land is taken:
 - (i) open market value of land
 - (ii) disturbance payment
 - (iii) loss payment
 - (iv) severance/injurious affection' payment, and
 - (b) where no land is taken:
 - (i) injurious affection
 - (ii) [Part 1 Land Compensation Act 1973](#) claims;
 - wider CPO process costs (for example, staff resources);
 - the overall cost of project delay (for example, where a public inquiry is held or there is a 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).

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

27. The Welsh Ministers will expect acquiring authorities to demonstrate they have taken steps to acquire all of the land and rights included in the CPO by agreement wherever possible. Complex site assemblies involving multiple plots and titles (particularly infrastructure schemes) benefit from the certainty of timing and consistency of approach that a CPO will bring. However, it remains good practice to offer parties the opportunity to enter into an agreement to voluntarily sell where they are prepared to do so. Where acquiring authorities decide/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

28. Compulsory purchase is intended to secure the assembly of land needed for the implementation of a scheme where it cannot be acquired by agreement. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process and the number of plots of land required to be assembled, for the acquiring authority to:

- plan a compulsory purchase timetable as a contingency measure; and
- initiate formal procedures.

This is particularly relevant for large scale infrastructure schemes. These schemes often involve multiple plots and parties which can make it impracticable in terms of both time and resources required for acquiring authorities to reach agreement with individual landowners on the sale of their land in advance of a CPO. Initiating compulsory purchase procedures in these circumstances can help to make the seriousness of the acquiring authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. Ensuring the timely delivery of infrastructure schemes is often in the public interest and the use of compulsory purchase powers can help achieve this when negotiations on acquiring land by agreement become protracted.

29. Compulsory purchase powers should be used in instances where it is either impossible or impractical to buy the land or buildings by agreement and where the public interest in doing so out-weighs the rights of those individuals affected. It should be recognised, in some circumstances, there may be no realistic alternative to the use of compulsory purchase powers and it is for an acquiring authority to ultimately satisfy itself that it has the necessary powers to promote a CPO. However, acquiring authorities will need to satisfy the Welsh Ministers that there is a clear public interest case, supported by:

- (a) strong evidence; and
- (b) the necessary funds to:
 - (i) compensate owners for the purchase of the land; and
 - (ii) finance any subsequent development in order for them to confirm any CPO.

Matters influencing the use of a CPO

30. The following matters will influence whether or not it is appropriate to proceed with a CPO:

- Attempts has been made to acquire the land by agreement wherever possible.
- Taking the land is necessary to progress a development scheme.
- A compelling case in the public interest can be demonstrated.
- There is clear evidence the public benefit in the development scheme will outweigh the private loss.

31. Acquiring authorities considering the use of their compulsory purchase powers should take into account the following questions:
- Why do we need to compulsorily purchase the land and what are the benefits? What evidence exists to support our case for the purchase?
 - What other options have been considered, and why are these not suitable?
 - What would happen (likely impact) if we did not compulsorily purchase the land?
 - What are the benefits of avoiding compulsory purchase, and how do these weigh up against the need for compulsory purchase? Are costs likely to increase if we delay compulsory purchase?
 - Is the necessary finance available to fully compensate landowners (including not just the land acquisition cost, but compensation for severance, injurious affection, disturbance and reasonable professional fees where applicable)?
 - Do we have sufficient powers to compulsorily purchase all of the land or interests in the land needed to enable the scheme to proceed?
 - Is our proposed scheme included in a relevant plan or strategy, such as a LDP or housing plan? If not why not?
 - Has there been engagement with landowners to find alternative resolution? If not, why not?
 - Do any impediments exist which would prevent the proposed scheme proceeding if we acquired the land?
 - Is planning permission needed and, if so, has it been secured? If not, why not?

If any of these points cannot be answered to the acquiring authority's satisfaction then it is likely the authority is not yet in a position to commence the CPO process. Once ready to proceed with a CPO, acquiring authorities should take into account the following factors to make the process run as efficiently as possible:

- Ensure good communication amongst the project team and with potential claimants (including their representatives) and contractors.
- Establish a good understanding of the true cost of professional advice required for meaningful early engagement which the authority may later be liable to finance.
- Maintain good working relationships with, and adopt close management of, contractors.
- Emphasise to claimants from an early stage they should provide adequate evidence to support claims for compensation in order for them to be settled in a timely manner, especially where requests for the advance payment for compensation are to be made.

- Ensure adequate payment systems are in place to allow prompt settlement of agreed claims for compensation to be made.
- Promote and demonstrate a willingness to use alternative dispute resolution techniques to resolve disputes with claimants.

Legislative competence and compulsory purchase

32. Following the coming into force of the [Wales Act 2017](#), the Welsh Ministers were given legislative competence in respect of compulsory purchase powers and procedures relating to devolved matters i.e. land-use planning, transport, listed buildings, housing, health, education etc. Matters relating to land compensation are reserved to the UK Government and, as such, the Welsh Ministers have no powers to amend legislation underpinning the compensation regime in Wales.

The compulsory purchase process

33. There are six stages in the compulsory purchase process:

- [Stage 1: Choosing the right enabling compulsory purchase power](#)
- [Stage 2: Justifying a CPO](#)
- [Stage 3: Preparing and making a CPO](#)
- [Stage 4: Consideration of a CPO](#)
- [Stage 5: Implementing a CPO](#)
- [Stage 6: Compensation](#)

An overview of the six stages relating to the processing and determination of a non-ministerial CPO is outlined in a process chart in [Part 5 of this Circular](#).

Stage 1: Choosing the right enabling compulsory purchase power

34. An acquiring authority can only make use of the [1981 Act](#) statutory procedures for the compulsory acquisition of land where an enabling power is provided in legislation. There are a large number of such enabling powers, each of which specifies the purposes for which land can be acquired under the particular legislation and the types of acquiring authority to which it applies (see Sections A to H in Part 2 of this Circular for detailed guidance on enabling powers). The table below provides a list of enabling powers commonly used by acquiring authorities⁶:

⁶ List is not exhaustive.

Purpose	Compulsory Purchase Legislation	Acquiring Authority	Confirming Authority
Allotments	Sections 25 and 42 of the Small Holdings and Allotments Act 1908	Local Authority	Welsh Ministers
Animal and slaughterhouse services	Section 55 of the Animal Health Act 1981	Local Authority	Welsh Ministers
	Sections 15, 18 and 30 of the Slaughterhouses Act 1974	Local Authority	Welsh Ministers
Aviation	Section 30 of the Civil Aviation Act 1982	Local Authority	Secretary of State
	Section 42 of the Civil Aviation Act 1982	Civil Aviation Authority	Secretary of State
	Section 59 of the Airports Act 1986	Airport Operator	Secretary of State
Caravan sites	Section 56 of the Mobile Homes (Wales) Act 2013	Local Authority	Welsh Ministers
Coal mine water discharge	Section 4C of the Coal Industry Act 1994	Coal Authority	Secretary of State
Coast protection	Section 14 of the Coast Protection Act 1949	Natural Resources Wales	Welsh Ministers
Country parks and nature conservation	Sections 7 and 9 of the Countryside Act 1968	Local Authority	Welsh Ministers
	Section 15A of the Countryside Act 1968	Natural Resources Wales	Welsh Ministers
Education	Section 530 of the Education Act 1996	Local Authority	Welsh Ministers
Energy	Section 10 of, and Schedule 3 to, the Electricity Act 1989	Licensed Electricity Undertaker	Secretary of State
Flood defences and land drainage	Section 62 of the Land Drainage Act 1991	Internal Drainage Board and Local Authority	Welsh Ministers
Food markets	Section 110 of the Food Act 1984	Local Authority	Secretary of State
Gas	Section 9 of, and Schedule 3 to, the Gas Act 1986	Licensed Gas Transporter	Secretary of State

Health	Paragraph 20 of Schedule 2 to the National Health Service (Wales) Act 2006	Local Health Board	Welsh Ministers
Highway	Part 12 of the Highways Act 1980	Local Highway Authority	Welsh Ministers
Housing	Section 17 of the Housing Act 1985	Local Housing Authority	Welsh Ministers
	Section 93(2) of the Local Government and Housing Act 1989	Local Housing Authority	Welsh Ministers
Listed Buildings	Section 47 of the Planning (Listed Buildings and Conservation Areas) 1990	Local Authority	Welsh Ministers
Making land available for development in Wales to facilitate the discharge of the Welsh Ministers' functions	Section 21A of the Welsh Development Agency Act 1975	Welsh Ministers	Welsh Ministers
Miscellaneous (including public libraries/ museums/ cemeteries)	Part 7 of the Local Government Act 1972	Local Authority	Welsh Ministers
National Parks, Nature Reserves, Access to the Countryside, Tree Planting and Neglected land	Sections 12, 13, 76 and 89 of the National Parks and Access to the Countryside Act 1949	Local Authority	Welsh Ministers
	Sections 17 and 18 of the National Parks and Access to the Countryside Act 1949	Natural Resources Wales	Welsh Ministers
	Section 53 of the National Parks and Access to the Countryside Act 1949	Local Highway Authority	Welsh Ministers

Navigable canals, rivers and associated infrastructure	Section 15(2A) of the Transport Act 1962	Canal & River Trust	Secretary of State
Pipe-lines	Sections 11, 12, 14 of, and Schedules 2 and 3 to, the Pipe-Lines Act 1962	Pipe-line Promoter	Secretary of State
Planning and regeneration	Section 226(1)(a), (1)(b), (3), (4) of the Town and Country Planning Act 1990	Local Authority	Welsh Ministers
Telecommunication services	Section 118 of, and Schedule 4 to, the Communications Act 2003	Provider of an Electronic Communications Network	Secretary of State
Universal postal service providers' purposes	Section 95 of, and Schedule 5 to, the Postal Services Act 2000	Universal Service Provider [i.e. postal operator]	Secretary of State
Water and Sewerage	Section 155 of the Water Industry Act 1991	Water and Sewerage Undertaker	Welsh Ministers ⁷
	Section 154 of the Water Resources Act 1991	Natural Resources Wales	Welsh Ministers ⁸

35. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. This in turn will influence the factors which the Welsh Ministers will want to take into account when deciding whether or not to confirm a CPO.
36. Most Acts containing enabling powers specify that the procedures in the [1981 Act](#) apply to CPOs made under those powers. Where this is the case, an acquiring authority must follow those procedures.
37. Acquiring authorities should look to use the most specific power available for the purpose in mind and which encapsulates the whole scheme.

⁷ In relation to parts of Wales which are outside the catchment areas of the rivers Dee, Wye and Severn.

⁸ In relation to land in Wales.

A general/wider power, for example, [section 226 of the 1990 Act](#), should only be used when a specific power is not available or the content of the scheme goes beyond a power granted for a specific purpose i.e. the [1980 Act](#), [1985 Act](#), or [P\(LBCA\)](#)⁹. In addition to the guidance in this Circular, the authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use. The factors relevant to specific individual powers are considered in Sections A to H in Part 2 of this Circular. These are intended to supplement, rather than replace, the general guidelines set out in Part 1 of this Circular.

38. The advice in this Circular applies to CPOs which relate to devolved matters and are to be confirmed by the Welsh Ministers.
39. A relatively straight forward CPO, which requires a public inquiry or is to be considered via written representations, will likely take between 12 and 18 months to be determined from the date the CPO is made and submitted to the Welsh Ministers, the consideration of objections and the holding of a public inquiry or exchange of written representation, and the issuing of a decision by the Welsh Ministers or inspector. More complex cases, with a higher number of objectors, can take longer. Where cases face no objections, or the confirmation decision on a non-ministerial CPO is delegated to an inspector, these may be processed in a short timescale. The process chart in [Part 5 of this Circular](#) illustrates in more detail the timescales for the processing and determination of a non-ministerial CPO.

General considerations

40. There are a wide range of purposes for which it may be possible for an acquiring authority to put forward a sufficiently strong case to justify use of its compulsory purchase powers. Acquisition schemes may range in size from a major scheme to regenerate a large area which may involve the compulsory purchase of commercial properties, or to a small scheme to bring a single derelict property or empty house back into use. In some cases the scheme might benefit the immediate locality, whereas in others the scheme may benefit the wider area. Furthermore, 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 may be environmental or social improvements, 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.

⁹ For instance, although the courts have held the compulsory purchase power at [section 226\(1\)\(b\) of the Town and Country Planning Act 1990 Act](#) may be used to acquire a house that has become dilapidated, the Welsh Ministers would normally expect such acquisitions to be made under Housing Act powers (see [Section B in Part 2 of this Circular](#)).

Resource implications of the proposed scheme: Funding

41. There must be reasonable prospect the acquisition scheme will proceed. In preparing its justification, the acquiring authority should address:

(a) Sources of funding – the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land (see [paragraph 42 below](#)) and implementing the scheme for which the land is required (including infrastructure costs). If the scheme is not intended to be independently financially viable, or the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme (see [paragraph 42 below](#)) and
- on what basis such contributions or underwriting is to be made.

In the absence of public sector funding, Public Private Partnerships (PPPs) agreements may be necessary. PPPs are long-term contracts where the private sector designs, builds, finances and operates a project. PPPs transfer delivery, cost and performance risk to the private sector. Acquiring authorities have the right to choose their partners if it is in line with best value and the provisions of [section 233 of the 1990 Act](#).

(b) The timing of that funding – funding should generally be available now or early in the process and linked to a credible timeline for the implementation of a CPO. Failing that, the Welsh Ministers would expect funding to be available to complete the compulsory acquisition within the statutory period (see [section 4 of the Compulsory Purchase Act 1965](#) (“the 1965 Act”)) following the operative date (i.e. the date on which the notice of confirmation (‘confirmation notice’) is published), and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years. The acquiring authority must be able to demonstrate either public funds are forthcoming or, in the case of a joint venture, all or part of the funding will come from a private source. Funding must be identifiable for the whole scheme.

Evidence should also be provided to show sufficient resources could be made available immediately to cope with any acquisitions resulting from a blight notice.

42. In some instances acquiring authorities may not intend the acquisition scheme to be independently financially viable, or may be unable to finalise details until it has assembled the land. In such cases it will need to demonstrate satisfactorily there is a reasonable prospect it can meet any potential shortfalls (for example, through third party contributions or any underwriting of the scheme).

Acquiring authorities considering the use of compulsory purchase powers will need to ensure they have taken into account the potential costs associated with any proposed CPO, including:

- (a) the market value of the property,
- (b) funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition,
- (c) reasonable professional fees for those affected,
- (d) legal fees,
- (e) consultant fees,
- (f) administration costs,
- (g) potential fees relating to the holding of a public inquiry and costs of a referral to the Upper Tribunal (Lands Chamber), and
- (h) any relevant claims for compensation¹⁰.

With these costs in mind, the overall cost of a CPO may be higher than the total value of the land generated through a private sale. Acquiring authorities should be mindful of the overall costs of a CPO and are encouraged to enter into, and continue, negotiations with landowners to purchase the land by agreement in parallel with initiating the formal compulsory purchase procedures. This will often provide a clear signal of the acquiring authority's intentions and its commitment to the acquisition of the land. This in turn may encourage those whose land is affected to enter more readily into meaningful negotiations and negate the need for the holding of a public inquiry.

43. Acquiring authorities should not threaten landowners with use of their compulsory purchase powers nor should they use them speculatively as there is a need to demonstrate there is a reasonable prospect of being able to meet any potential shortfalls in funding. Where funding is not fully committed prior to the CPO being made, the minimum the acquiring authority should be able to show is it will be able to make funding available to meet any likely compensation claims. Where an acquiring authority is relying on funding in whole or in part for an acquisition scheme from the Welsh Government, the acquiring authority should evidence this through the award of grant or contract letter issued by the Welsh Government.

Compulsory purchase where the acquiring authority will not develop the land itself

44. Acquiring authorities can, in some circumstances, undertake compulsory purchase to assemble land needed for a scheme and then bring the land to the market for a third party (including the private sector) to develop in accordance with the underlying scheme. Where this is the case, the responsibility for obtaining confirmation of and implementing the CPO, and ensuring the scheme is delivered appropriately, remains with the acquiring authority.

¹⁰ This may include compensation for blight and the impact on the remaining land, and home or farm loss payments (see paragraphs [23](#) and [181](#) in Part 1 of this Circular).

Back-to-back agreements with a selected development partner

45. A local authority may use its powers of compulsory purchase to assemble a site for development by a selected development partner on the basis they agree to develop the site and to reimburse the authority its costs of acquiring the land through the compulsory purchase procedure. In this instance, the selected development partner's scheme would be the basis for the making of the CPO. The price and other conditions for such a sale will be decided by negotiation and set out in a formal agreement, known as a back-to-back agreement, prior to the exercise of compulsory purchase powers by the local authority. Provided local authorities can obtain the best terms which could reasonably be obtained in the circumstances with a selected development partner, such agreements are lawful¹¹. Where there is a back-to-back agreement in place, the acquiring authority and the selected development partner should be prepared to disclose the terms of the agreement or a full summary, subject to the redaction of commercially confidential information.
46. Back-to-back agreements can be initiated by either the selected development partner or local authority. Local authorities should seek such agreements where there is a clear public interest in doing so and it will enable schemes to proceed that otherwise would not. It is common for town centre and other similar regeneration schemes to be initiated and developed through back-to-back agreements. Where a local authority wishes to enter into a back-to-back agreement but the public interest is not clear, any associated CPO would be difficult to justify.
47. Certain enabling compulsory purchase powers, i.e. [section 226\(4\) of the 1990 Act](#), permit local authorities to dispose of land to selected development partners after acquisition through back-to-back agreements. Local authorities should check whether this is permitted under the relevant enabling power they have chosen to use. If an enabling power is silent on back-to-back agreements then local authorities should rely on wider local authority powers to enter into various types of agreements. Where permitted, back-to-back agreements may involve:
- a third party approaching an acquiring authority to assist them in assembling land for a scheme they consider to be in the public interest; or
 - the acquiring authority disposing of the land to a community group or other third party to carry out the acquiring authority's purpose.

In the event land is transferred to a selected development partner, the acquiring authority will fully remain responsible for implementation of the CPO, taking ownership of the land and ensuring the scheme is delivered appropriately.

¹¹ See *Standard Commercial Property Securities Ltd v Glasgow City Council* [2006].

Disposal of land

48. When considering the disposal of land to:
- (a) a scheme promoter who has approached an acquiring authority to deploy its compulsory purchase powers to realise a scheme; or
 - (b) a selected development partner,
- the acquiring authority should at a minimum satisfy itself with the following:
- no better solution exists;
 - the developer has been unable to acquire the land through any other means;
 - the developer can demonstrate through evidence it has actively engaged with the affected community in an attempt to achieve broad agreement, this should include landowners and all those directly or indirectly likely to be impacted by any proposed development;
 - the developer can demonstrate a clear link to and/or compliance with a relevant plan or strategy;
 - the developer can demonstrate the clear public interest in the development proceeding; and
 - no procurement or State Aid issues arise, and if they do, they can be complied with.
49. [Section 233 of the 1990 Act](#) provides local authorities may dispose of land in order to secure the:
- (a) best use of it or other land and any buildings or works which have been, or are to be, erected, constructed or undertaken on it (whether by themselves or by any other person), or
 - (b) erection, construction or undertaking on it of any buildings or works appearing to them to be needed for the proper planning of the area of the local authority.

The consent of the Welsh Ministers is required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not the:

- (i) grant of a term of seven years or less; or
- (ii) assignment of a term of years of which seven years or less are unexpired at the date of the assignment.

[Section 233 \(5\) – \(7\) of the 1990 Act](#) also provides an obligation on local authorities to provide relevant occupiers with an opportunity for accommodation when development on land held for planning purposes is subject of a disposal.

Surplus land following compulsory purchase

50. Where land has been purchased compulsorily and the public work completed, but some or all of the land is considered surplus to requirements and is available for disposal, acquiring authorities are expected, in the first instance, to offer the land for sale back to the original owner(s) from whom it was acquired, or their successors in title. For example, land which is left undeveloped because the scheme as completed did not require the land.

This should be done in accordance with 'The Criche Down Rules' (Wales version 2020) contained in [Part 6 of this Circular](#). [Part 6](#) sets out the non-statutory arrangements under which surplus Government land acquired by, or under a threat of, compulsion should be offered back to former owners. It also provides guidance on the application of the Rules to local authorities and other bodies such as statutory undertakers.

51. There are exceptions to the general obligation to offer surplus land back to original owner(s) or their successors in title. For example, where land which was compulsory acquired for redevelopment purposes has not materially changed since acquisition and which comprised two or more previous land holdings (see [rule 17 of 'The Criche Down Rules' \(Wales version, 2020\)](#)).

Stage 2: Justification for making a compulsory purchase order

52. It is for the acquiring authority to decide how best to justify its proposals to compulsorily acquire land or an interest in or right over land under a particular power. The acquiring authority will need to defend such proposals at any public inquiry or through written representations and, if necessary, in the courts. The following guidance indicates the factors to which the Welsh Ministers may have regard to in deciding whether or not to confirm a CPO and which acquiring authorities should take into account.
53. Acquiring authorities should use compulsory purchase powers where it is expedient to do so and CPOs should only be made where there is a compelling case in the public interest (see [paragraph 10](#) and [16 above](#)).

Consideration by the Welsh Ministers of an acquiring authority's justification for a compulsory purchase order

54. The Welsh Ministers have to take a balanced view between the intentions of the acquiring authority and the concerns of those whose interest in land is proposed to be compulsorily acquired and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. Each case, however, will be considered on its own merits and this Circular is not intended to imply the Welsh Ministers will require any particular degree of justification for any specific CPO. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired. The Welsh Ministers will, however, need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons in the public interest for the powers to be sought. Acquiring authorities should not exercise their compulsory purchase powers speculatively.

55. If an acquiring authority does not:
- (a) have a clear idea of how it intends to use the land which it is proposing to acquire, and
 - (b) cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale,

it will be difficult to show conclusively that the compulsory acquisition of the land included in the CPO is justified in the public interest. The Welsh Ministers take the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

56. The consideration of the 'compelling case' will vary from CPO to CPO. For some compulsory acquisition schemes the impact will be small and it will be the local 'public' community affected. On the other hand, where it is a city centre scheme or the redevelopment of an airbase with runway extensions there will be a larger impact and a much wider public (regional or national) interest will be considered. [Section 1 in Part 2 of this Circular](#) provides an overview of the procedure where the Welsh Ministers seek to use their compulsory acquisition powers to facilitate the discharge of their functions including making land available for development. Where there is likely to be a wide public interest in a CPO, there may be the need for a cost/benefit study to demonstrate the economic benefits outweigh environmental and/or community impact. Acquiring authorities are advised to ensure compulsory acquisition schemes are appropriately described so the public are in no doubt as to the benefits of the scheme in question and that it is in their interest. Moreover, acquiring authorities should explain the making of a CPO is necessary to progress a scheme in the public interest and will only be used where acquisition by agreement cannot be reached. Acquiring authorities are encouraged to engage early and communicate regularly with land/property owners, in particular on relocation issues. The greater the transparency and community engagement early in the process can increase the likelihood of a justifiable CPO succeeding. Acquiring authorities should consider engaging with affected communities by calling public meetings to explain proposals, answer questions and confirm whether alterations can be made to their schemes. It is essential for acquiring authorities to remove potential barriers and minimise risks to particular acquisition schemes by assessing potential objections up-front and building the arguments into the case for the CPO. Many landowners who are often involuntary participants in the compulsory process argue they do not receive adequate compensation and compensation is not paid out early enough, if at all. Understanding those concerns, communicating and working with affected parties at an early stage and sustaining engagement throughout the CPO making process, including through mediation, can deliver positive results for all involved. This can also prevent compensation claims from becoming escalated embittered disputes over legal costs. Agreeing to fund landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition can build relations and help the scheme proceed more smoothly.

57. Acquiring authorities should recognise the additional time building trust and community relations with the public, from the pre-making stage of the CPO all the way through the process, contributes to more meaningful exchanges in consultations. Consultation should be carried out in full and in a timely manner with all interested parties as part of scheme detailing, planning, funding and final acquisition. Best practice in consultation should always be followed and consideration of the following practical issues undertaken:
- varied scheduling of events to enable access for different audiences from the community;
 - accessible location of events;
 - avoidance of last minute changes to venues and timing;
 - a variety of communication options;
 - avoidance of jargon, careful explanation of technical points.

Acquiring authorities should also appoint a named individual for the public to communicate with and publicise this opportunity widely. Furthermore, acquiring authorities would benefit from helping the public to understand the significance of all stages of the decision making process, especially the ways in which the consultation on the pre-making of a CPO can set the scope of the issues which are open for discussion during its potential examination via written representations or at a public inquiry. Acquiring authorities' performance of engaging and consulting communities on the pre-making stage of the CPO will be evaluated through the Welsh Government's technical examination service for draft CPOs (see [paragraph 71 below](#)).

Impact Assessments

58. Acquiring authorities should consider the need during the compulsory acquisition process to keep up-to-date any information which has been obtained as part of any Environmental Impact Assessment, Habitats Directive or Water Framework Directive exercises. A comprehensive impact assessment should be undertaken early in the process, alongside engagement with affected property owners and the wider local community. Any challenges identified early in the process may be addressed by expanding the scope of the purchase. It is good practice to explore compensatory or supplementary acquisition to mitigate potential environmental or public service losses.

Stage 3: Preparing and making a compulsory purchase order

Planning permission, other consents and impediments

59. In demonstrating there is a reasonable prospect of the scheme going ahead, the acquiring authority will need to show it is unlikely to be blocked by any impediments to implementation. These include:
- the programming, construction and maintenance of any infrastructure accommodation works or remedial work which may be required, and
 - any need for planning permission or other consent or licence.

60. Where planning permission will be required for the scheme, and permission has yet to be granted, the acquiring authority should demonstrate to the Welsh Ministers there are no obvious reasons why it might be withheld. Likewise, listed building consent or conservation area consent. Irrespective of the legislative powers under which the actual acquisition is being proposed, if planning permission is required for the scheme, then, under [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#), the planning application will be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. Such material considerations may include, for example, a local authority's supplementary planning guidance, or national planning policy contained in PPW.

Preparatory work – entering land before deciding whether to include it in a compulsory purchase order

61. In most cases, acquiring authorities have the right to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land under powers in [sections 172-179 of](#), and [Schedule 14 to](#), the [Housing and Planning Act 2016](#) (“the 2016 Act”). A minimum of 14 days’ notice of entry must be given to owners and occupiers of the land concerned and compensation is payable by acquiring authorities for any damage arising as a result of the exercise of the power. Acquiring authorities may apply to a justice of the peace for a warrant to exercise the power if necessary. A justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

Undertaking negotiations in parallel with preparing and making a compulsory purchase order

62. Undertaking informal negotiations in parallel with preparing and making a CPO can help build good working relationships with those whose interests are affected. This action can demonstrate the acquiring authority is willing to be open and treat concerns with respect. This applies equally to statutory undertakers as well as private individuals and businesses who may be affected by a compulsory acquisition scheme. Such negotiations can help save time at the formal objection stage by minimising fears which may arise from misunderstandings. The strength of the statutory protection afforded to statutory undertakers must be taken into consideration by acquiring authorities during the planning of a CPO. Not addressing issues of serious detriment to an undertaking could lead to a failure to secure a section 16 certificate from the appropriate Minister (see [Section J in Part 2 of this Circular](#)). This is likely to result in a delay to the scheme (except for those CPOs where joint confirmation is available). The failure to fully engage with a statutory undertaker from the outset of a CPO may lead to the costs of dealing with the impacts on statutory undertakings and apparatus being underestimated by the acquiring authority.

63. Talking to landowners and statutory undertakers who's undertakings will be affected will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme. Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

Use of alternative dispute resolution techniques

64. In the interests of speed and fostering good will, acquiring authorities are urged to consider offering those with concerns about a CPO full access to alternative dispute resolution (ADR) techniques. ADR techniques are used to resolve disputes without recourse to, or outside of, having to go to court or, in the land compensation context, the Upper Tribunal (Lands Chamber). These should involve a suitably qualified independent third party, including (in appropriate circumstances) those recommended by the Royal Institute of Chartered Surveyors (RICS) who must act in accordance with the 2017 RICS Professional Statement: "*Surveyors advising in respect of compulsory purchase and statutory compensation*". ADR should be available wherever appropriate¹² throughout the whole of the compulsory purchase process. This includes from the planning and preparation stage (i.e. pre-making) through to agreeing the compensation payable for the acquired properties/land. Where a compensation dispute is taken to the Upper Tribunal (Lands Chamber), the [Tribunal Procedure \(Upper Tribunal\) \(Lands Chamber\) Rules 2010](#) also allow the Tribunal to suggest and facilitate the use of ADR techniques in cases before it. When making an award of costs, the Welsh Ministers can consider whether a party has behaved unreasonably. This includes whether a party has unreasonably refused to consider the use of ADR techniques even when the refusing party is either: (a) a remaining objector whose objection to a CPO is successful; or (b) the acquiring authority whose CPO is confirmed without modification.
65. The use of ADR techniques can save time and money for both parties, while its relative speed and informality may also help to reduce the pressure which the process inevitably places on those whose properties/land are affected. Acquiring authorities have a duty of care to consider and mitigate the impact on potential claimants from the outset of preparing to make a CPO. For example, mediation might help to clarify concerns relating to the principle of compulsorily acquiring the land.

¹² Bearing in mind remaining objectors have a statutory right to be heard in person at a public inquiry and claimants have a statutory right of recourse to the Upper Tribunal (Lands Chamber) to determine compensation disputes.

Other techniques such as early neutral evaluation might help to relieve concerns at an early stage about the potential level of compensation eventually payable if the CPO were to be confirmed. The parties to a dispute can choose whether they want to use a binding ADR technique, meaning the outcome can be enforced, or a non-binding process to facilitate settlement. A non-binding ADR technique enables parties to commence or continue with litigation to resolve the dispute if settlement is not achieved through the process.

66. The range of ADR techniques available is non-exhaustive. However, the following are a number of recognised and well-established forms of ADR techniques widely adopted:
- Mediation - a neutral third party is appointed as a 'mediator' to help the parties reach a settlement on the dispute which is legally binding and enforceable in the courts. There are two main types of mediation – evaluative and facilitative. In evaluative mediation the mediator will tell the parties what they think of the merits of the case and how they think a court will decide it. Facilitative mediation is where the mediator does not make any evaluation and merely 'facilitates' the parties' discussions.
 - Early neutral evaluation - aims to clarify and define legal and factual issues in the dispute, identifying risks and likely outcomes. It is intended to be used before any formal litigation and involves a neutral third party who is unconnected to the dispute or either party who produces an evaluation (or recommendation) as to the likely outcomes if the dispute were to go to court or to an arbitrator for a decision. The evaluation is non-binding and can be used alongside other ADR techniques.
 - Expert determination - an independent expert is appointed by the parties to resolve a dispute and the expert's decision is, by prior agreement of the parties, legally binding on the parties and enforceable in the courts.
 - Arbitration - a dispute is resolved outside the courts by one or more persons (the "arbitrators") who make the "arbitration award" which is legally binding on the parties and enforceable in the courts.
 - Mediation combined with arbitration ('Med-Arb') - involves conferring the mediator with the jurisdiction to alter their role to that of an arbitrator if it appears the parties will not be able to reach a mediated settlement on the dispute. Once the switch has taken place and the mediator has become an arbitrator, they can make an award which is legally binding on the parties and enforceable in the courts.
 - Conciliation - the parties to a dispute use a conciliator who meets with the parties both separately and together in an attempt to resolve the dispute. They do this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions and assisting parties in finding a mutually acceptable outcome.

Other means of helping those affected by a compulsory purchase order

67. Compulsory purchase proposals will inevitably lead to a period of uncertainty for the owners and occupiers of affected land. Acquiring authorities may wish to consider, if they think appropriate in the circumstances, undertaking the following during the preparatory stage:
- providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events (information should be in a format accessible to all those affected);
 - appointing a specified case manager to whom those with concerns about the proposed acquisition can have easy and direct access;
 - keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure the CPO is advertised and made correctly, and under the terms of the most appropriate enabling power;
 - providing a 'not before' date, confirming that acquisition will not take place before a certain time;
 - where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition;
 - offering advice and assistance to affected occupiers in respect of their relocation; and;
 - offering to alleviate concerns about future compensation entitlements by entering into agreements with those whose interests are directly affected on the minimum level of compensation which would be payable if an acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber)). This could include the basis on which disturbance costs would be assessed.

Making sure the compulsory purchase order is made correctly

68. The Welsh Ministers have to be satisfied the statutory procedures have been followed correctly, whether the CPO is opposed or not. This means they have to confirm no one has been, or will be, substantially prejudiced as a result of:
- a defect in the CPO, or
 - by a failure to follow the correct procedures with regard to such matters as the service of additional or amended personal notices.

Where the procedures set out in the [1981 Act](#) apply, acquiring authorities must prepare CPOs in conformity with the [Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#).

Acquiring authorities are urged to take every possible care in preparing CPOs, including in recording the names and addresses of those with an interest in the land to be acquired.

69. It can be difficult to describe correctly all the interests in the land proposed for acquisition when preparing the schedule to a CPO. Errors or omissions may occasionally emerge after a CPO has been made and submitted to the Welsh Ministers. Acquiring authorities therefore need to bear in mind the Welsh Ministers' power of modification in such instances (as in all other cases, - see [paragraphs 118 - 120 below](#)) is limited by [section 14 of the 1981 Act](#).
70. Acquiring authorities are expected to seek their own legal and professional advice when making CPOs. Where an authority has taken advice but still retains doubts about particular technical points concerning the form of a proposed CPO, it may seek informal written comments from the Welsh Government by submitting a draft CPO for technical examination.
71. Experience suggests that such technical examination by the Welsh Government can assist significantly in avoiding delays caused by drafting defects in CPOs submitted for confirmation. The role of the Welsh Government at this stage will be confined to undertaking a technical examination of the draft CPO to check it complies with the requirements on form and content in the statutes and the [Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#); without prejudice to the consideration of its merits or demerits.
72. The Land Division of the Welsh Government has responsibility for providing the capacity and resources to accelerate the development of public sector land for public benefit. One of its functions is to share expertise and best practice to address skill gaps in the public sector which includes compulsory purchase, land assembly and project delivery skills.

Other important matters which may require consideration when making a compulsory purchase order

73. Where relevant, acquiring authorities should also have regard to advice on:
- the need to justify the extent of the scheme to be disregarded at the outset,
 - the protection afforded to special kinds of land (see [Section J in Part 2 of this Circular](#)),
 - compulsory purchase of new rights and other interests - for example, in the compulsory creation of a right of access (see [Section K in Part 2 of this Circular](#)), and
 - restrictions on the compulsory purchase of Crown land (see [Section L in Part 2 of this Circular](#)).

Parties to be notified of the making of a compulsory purchase order

74. The parties who must be served notice of the making of a CPO are referred to as “qualifying persons”. A qualifying person includes:
- an owner;
 - an occupier;
 - a tenant (whatever the period of the tenancy);
 - a person to whom the acquiring authority would be required to give NTT if it was proceeding under [section 5\(1\) of the 1965 Act](#);
 - a person the acquiring authority thinks is likely to be entitled to make a claim for compensation under [section 10 of the 1965 Act](#) (compensation for injurious affection), for example someone with rights over land, if the CPO is confirmed and the compulsory purchase takes place, so far as they are known to the acquiring authority after making diligent inquiry. This relates mainly, but not exclusively, to easements and restrictive covenants.

Statement of Reasons

75. When serving notice of the making and effect of a CPO on qualifying persons, the acquiring authority is expected to send each qualifying person a copy of the authority’s Statement of Reasons for making the CPO. A copy of the Statement of Reasons should also be sent, where appropriate, to any applicant for planning permission in respect of the land. Statements of Reasons, although non-statutory, should be as comprehensive as possible to allow acquiring authorities to use them as the basis for their Statements of Case which are required to be served under [rules 8](#) and [9 of the 2010 Rules](#) where a public inquiry is to be held. The general public will also be notified of the making of a CPO through newspaper notices and site notices. It is good practice to publish notice of the making of a CPO in any village/community magazine or newsletter circulating in the area.
76. Detailed guidance on preparing a Statement of Reasons is contained in [Section U in Part 4 of this Circular](#).

Objections to a compulsory purchase order: Grounds of objection and how they should be made

77. For CPOs which are about to be submitted to the Welsh Ministers for confirmation there are statutory publicity requirements which need to be followed. These include placing an advertisement in local newspapers and posting site notices to invite the submission of objections to the Welsh Ministers. Objections can be made by owners, other qualifying persons and third parties, including members of the public. Objections must arrive with the Welsh Ministers within the period specified in the notice which must be a minimum of 21 days. Objectors to a CPO should in the first instance outline their objection in writing. If a bare letter of objection is submitted the Welsh Ministers have the power under [section 13\(3\) of the 1981 Act](#) to require grounds of objection be submitted in writing. Where objections relate exclusively to compensation the Welsh Ministers have the power under [section 13\(4\) of the 1981 Act](#) to disregard such objections.

Objections to a compulsory purchase order: Different types of objection

78. A 'relevant objection' is one made by a person who is an owner, lessee, tenant or occupier of the land or a person to whom the acquiring authority would be required to give a NTT.
79. It may also be an objection made by a person who might be able to make a claim for injurious affection under [section 10 of the 1965 Act](#). This only applies if the acquiring authority thinks the objector is likely to be entitled to make such a claim if the CPO is confirmed and the compulsory purchase takes place, so far as that person is known to the acquiring authority after making diligent inquiry.
80. A 'remaining objection' is a relevant objection that has not been withdrawn or disregarded (for example, because it relates solely to compensation).
81. Other objections can be made by third parties who are not relevant objectors, for example, a community group or special interest organisation. Although third parties can submit objections, they have no right to be heard at a public inquiry into a CPO. Under [rule 16 of the 2010 Rules](#), however, the inspector may permit them to appear at their discretion (although permission is not to be unreasonably withheld).

Objections to a compulsory purchase order: An objector's Statement of Case

82. The Welsh Ministers can also require remaining objectors, and others who intend to appear at a public inquiry, to provide a Statement of Case. This is a useful device for minimising the need to adjourn inquiries as a result of new information. This is most likely where commercial concerns are objecting to large or complex schemes. Under [rules 8\(7\) and 9\(7\) of the 2010 Rules](#), a person may be required to provide further information about matters contained in any such Statement of Case.
83. Objectors may wish to prepare a Statement of Case even when not asked to do so because it may be helpful for themselves and the public inquiry.

Publicising the making of a compulsory purchase order and the objection period

84. Site notices should be erected in a prescribed form (see [Form 7 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)) to a conspicuous object or objects on or near the land comprised in the CPO at the start of the objection period, checked weekly and removed once the minimum 21 days objection period has closed. Site notices must:
- (a) be addressed to persons occupying or having an interest in the land, and
 - (b) set out the following:
 - state that the CPO has been made and is about to be submitted for confirmation,
 - describe the land and state the purpose for which the land is required,
 - name a place within the locality where a copy of the CPO and of the map referred to therein may be inspected, and
 - specify the time (not being less than 21 days from the day when the notice is first affixed) within which, and the manner in which, objections to the CPO can be made.

Where land comprised in the CPO extends for more than 5 kilometres, it is best practice to fix site notices:

- at intervals of not more than 5 kilometres apart, and
 - on or near land in different ownership.
85. To address concerns about information not being available through either the damage or removal of site notices, acquiring authorities should keep a record of weekly visits to check whether individual site notices are:
- (a) correct;
 - (b) damaged;
 - (c) missing; or
 - (d) replaced.

By keeping this record it will demonstrate the efforts made by the acquiring authority to publicise the CPO should a challenge be made by an objector on the ground of lack of publicity. Acquiring authorities should also keep a photographic record of inspections to show dates and times.

Documentation to be submitted with a compulsory purchase order

86. [Section Q in Part 4 of this Circular](#) provides a checklist of the documents to be submitted to the Welsh Ministers with a CPO. The explanatory notes in Sections R - U in Part 4 of this Circular should be consulted when the CPO, the map and the supporting documents are being compiled.

Stage 4: Consideration of a compulsory purchase order

Decision maker on whether or not to confirm a compulsory purchase order

87. The 'confirming authority' under the [1981 Act](#) is the Welsh Ministers who have the power to authorise acquiring authorities' compulsory purchase of land via CPOs which relate to devolved matters.
88. Under [section 14D of the 1981 Act](#)¹³, however, the Welsh Ministers can appoint an inspector to act instead of them in relation to the confirmation of a CPO to which [section 13A of the 1981 Act](#) applies (i.e. a non-ministerial CPO where there is a remaining objection).
89. Where the Welsh Ministers are the confirming authority for a certain type of CPO, they will carefully consider the suitability of delegating the confirmation decision to an inspector in line with the criteria set out in this Circular. The Welsh Ministers will assess the suitability of delegation for each CPO on its individual merits.

Criteria for deciding whether or not to delegate a decision on a compulsory purchase order to an inspector

90. The Welsh Ministers will consider the suitability of delegating to an inspector the confirmation decision on the following types of non-ministerial CPOs, made under different enabling powers:
- CPOs made under the [1980 Act](#);
 - CPOs made under the [1985 Act](#);
 - CPOs made under the [P\(LBCA\)](#);
 - CPOs made under the [1990 Act](#).
91. These powers are used selectively and each case is considered on an individual basis. The delegation of a confirmation decision to an inspector will generally only be considered appropriate where a CPO does not raise issues of more than local importance. It could be considered appropriate to delegate a decision to an inspector where, for example, the Welsh Ministers are of the opinion making the CPO appears unlikely to:
- conflict with national policies;
 - raise novel issues;
 - give rise to substantial controversy beyond the immediate locality;
 - have wide effects beyond the immediate locality; or
 - raise significant legal difficulties.

¹³ The power to delegate a decision on a compulsory purchase order to an inspector was inserted by [section 181 of the Housing and Planning Act 2016](#) and applies to compulsory purchase orders submitted to the Welsh Ministers for confirmation in Wales on or after 6 April 2019.

Delegation of a compulsory purchase order to an inspector and new issues/evidence emerge

92. [Section 14D of the 1981 Act](#) enables the Welsh Ministers to cancel the appointment of an inspector acting instead of them in relation to the confirmation of a CPO. The appointment may be cancelled at any time before the inspector has made the confirmation decision.
93. While each CPO will be considered on its individual merits, if, at any time until a decision is made by the appointed inspector, the Welsh Ministers consider, in their opinion, the CPO raises issues which should be considered by them, they may decide that the appointment of the inspector should be cancelled. In this instance, the inspector will be asked to submit a report and recommendation to the Welsh Ministers who will make the confirmation decision.
94. If the Welsh Ministers decide to cancel the appointment of an inspector (and do not appoint another inspector to take the decision instead), they must give their reasons for doing so to the inspector, acquiring authority and every person who has made a remaining objection.

Objections to a compulsory purchase order: Where none are made or they are withdrawn

95. If no objections are made to a CPO, or they are withdrawn, and the Welsh Ministers are satisfied that the proper procedure for serving and publishing notices has been observed, they can confirm, modify or reject the CPO without the need for any form of hearing or a public inquiry. If the CPO can be confirmed without modification and does not include statutory undertakers' land or special kinds of land, the Welsh Ministers may under [section 14A of the 1981 Act](#) return it back to the acquiring authority for confirmation.

Objections to a compulsory purchase order: Where they are made and are not withdrawn

96. If objections are received and not withdrawn, the Welsh Ministers will either arrange for a public inquiry to be held or – where all the remaining objectors and the acquiring authority agree – arrange for the objections to be considered through the written representations procedure.

Objections to a compulsory purchase order: How they are considered

97. Although all remaining objectors have a right to be heard in person at a public inquiry, acquiring authorities are encouraged to continue to negotiate with both remaining and other objectors after submitting a CPO for confirmation, with a view to securing the withdrawal of objections. This should include employing such ADR techniques as may be agreed between the parties.
98. A CPO may also be considered via the written representations procedure if all the remaining objectors agree and the Welsh Ministers deem it appropriate, as an alternative to holding a public inquiry.

(a) Written representations procedure

99. The [Compulsory Purchase of Land \(Written Representations Procedure\) \(National Assembly for Wales\) Regulations 2004](#) (“2004 Regulations”), prescribe the procedure by which objections can be considered in writing. Once the Welsh Ministers have indicated the written representations procedure will be followed, the acquiring authority has 15 working days to make additional representations in support of the CPO. Once these representations have been copied to the remaining objectors, the remaining objectors will also have 15 working days to make representations to the Welsh Ministers. These in turn are copied to the acquiring authority who then has a final opportunity to comment on the objectors’ representations but cannot raise new issues.
100. The written representations procedure will be used to consider CPOs unless a remaining objector notifies the Welsh Ministers they wish for a public inquiry to be held. In such cases a public inquiry will be called in the normal way.
101. Where a CPO is subject to the written representation procedure, and a site visit is deemed necessary by the inspector, a site visit should be conducted within 15 weeks of the starting date letter. In cases where there has not been a site visit, the timescales for decision will be taken from the final exchange of representations under [regulation 5 of the 2004 Regulations](#).

(b) Public inquiry procedure

(i) Inquiries procedure rules

102. Where a CPO is submitted to the Welsh Ministers for confirmation and objections have been received which are not withdrawn then, unless the matter can be dealt with by way of the written representation procedure, the Welsh Ministers must hold a public inquiry. The [2010 Rules](#) prescribe the procedure by which objections to a CPO, or a compulsory rights orders (see [rule 2 of the 2010 Rules](#) and [section 29 of](#), and [paragraph 11 of Schedule 4 to, the 1981 Act](#)), can be considered via a public inquiry.
103. The [2010 Rules](#) can be summarised as follows:
- Rule 3 provides for written notice from the Welsh Ministers of their intention to cause a public inquiry to be held which commences the procedure.
 - Rules 4 – 7 cover matters associated with the holding of pre-inquiry meetings including: serving of outline statements.
 - Rules 8 – 9 deal with the timescales for the serving of statements of case.
 - Rules 10 – 16 comprise matters associated with the public inquiry timetable, appointment of assessor, the date and public notification of the public inquiry and appearances at the public inquiry including the representation of the Welsh Ministers.

- Rule 17 provides for the handling of evidence at the public inquiry including submission/reading of proofs of evidence.
- Rules 18 – 21 deal with procedure at the public inquiry, site inspections and post-inquiry procedures (including notice of decisions).
- Rule 22 provides the power to extend time.
- Rule 23 allows the sending of notices or documents by post.

(ii) Timing of the public inquiry

104. Practice may vary but once the need for a public inquiry has been established, it will normally be arranged by the Planning Inspectorate Wales in consultation with the acquiring authority for the earliest date on which an appropriate inspector is available. Having regard to the minimum time requirements to comply with the [2010 Rules](#).
105. It is important to ensure adequate notification is given to objectors of the public inquiry dates to ensure they have sufficient time to prepare evidence for the public inquiry. This will also assist in the efficient conduct of the public inquiry.
106. Once the date of the public inquiry has been fixed it will be changed only for exceptional reasons. The Welsh Ministers will not normally agree to cancel a public inquiry unless all remaining objectors withdraw their objections or the acquiring authority indicates formally that it no longer wishes to pursue the CPO in sufficient time for notice of cancellation of the public inquiry to be published. As a general rule, the public inquiry date will not be changed where the acquiring authority or an objector needs more time to prepare its evidence. Nor would the public inquiry date normally be changed because a particular advocate is unavailable on the specified date.

(iii) Scope for joint or concurrent inquiries

107. It is important to identify at the earliest possible stage any application or appeal associated with, or related to, the CPO which may require approval or decision by the Welsh Ministers. This is to allow the appropriateness of arranging a joint public inquiry or concurrent public inquiries can be considered. Such actions might include, for example, an application for an order stopping up a highway (when it is to be determined by the Welsh Ministers) or an appeal against the refusal of planning permission.
108. Any such arrangements cannot be settled until the full range of proposals and the objections or grounds of appeal are known. The acquiring authority should ensure that any relevant statutory procedures for which it is responsible (including actually making the relevant CPO) are carried out at the right time to enable any related applications or appeals to be processed in step.

(iv) Statements of Case

109. Where a public inquiry is to be held into a CPO, it is possible for the acquiring authority to use the non-statutory Statement of Reasons as the basis for the Statement of Case required to be served under rule 8 or 9 of the [2010 Rules](#). The acquiring authority's Statement of Case should set out a detailed response to the objections made to the CPO.

(v) Supplementary information

110. When considering the acquiring authority's CPO submission, the Welsh Ministers may, if necessary, request clarification of particular points.
111. Such clarification will often relate to statutory procedural matters, such as confirmation that the acquiring authority has complied with the requirements relating to the service of notices (see also [Section R in Part 4 of this Circular](#)). This information may be needed before the public inquiry can be arranged. But it may also relate to matters raised by objectors, such as the ability of the acquiring authority or a developer to meet development costs.
112. Where further information is needed, the Welsh Ministers will write to the authority setting out the points of difficulty and the further information or statutory action required. The Welsh Ministers will copy its side of any such correspondence to remaining objectors, and request the acquiring authority should do the same.

(vi) Public inquiry costs

113. Advice on the award of costs is given in [Section 12 Annex: Awards of Costs to the Welsh Government's Development Management Manual](#). The principles of this advice also apply to written representations procedure costs.
114. When notifying successful objectors of the decision whether or not to confirm a CPO under the [2010 Rules](#) or the [2004 Regulations](#), the Welsh Ministers will remind them they may be entitled to claim public inquiry or written representations costs and invite them to submit an application for an award of costs. The Welsh Ministers may also award costs on the basis of unreasonable behaviour by any of the parties to a CPO.
115. Acquiring authorities will be required to meet the administrative costs of a public inquiry into a CPO and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority under [section 13B of the 1981 Act](#). The daily amount of costs which may be recovered where a public inquiry is held to which [section 250\(4\) of the Local Government Act 1972](#) applies, or where the written representations procedure is used, is prescribed in secondary legislation¹⁴.

¹⁴ Current daily rates are prescribed in the [Local Inquiries and Qualifying Procedures \(Standard Daily Amount\) \(Wales\) Regulations 2017](#).

(vii) Programme officers

116. Acquiring authorities may wish to consider appointing programme officers to assist inspectors in organising administrative arrangements for larger CPO inquiries. A programme officer might undertake tasks such as assisting with preparing and running of any pre-inquiry meetings, preparing a draft programme for the public inquiry, managing the public inquiry document library and, if requested by the inspector, arranging accompanied site visits. A programme officer would also be able to respond to enquiries about the running of the public inquiry during its course.

Legal difficulties

117. Whilst only the Courts can rule on the validity of a CPO, the Welsh Ministers will not confirm a CPO if it appears to be invalid, even if there are no objections to it. Where this is the case, the Welsh Ministers will issue a formal, reasoned decision refusing to confirm the CPO. The decision letter will be copied to all those who were entitled to be served with notice of the making and effect of the CPO and to any other person who made a representation.

Modification of compulsory purchase orders

118. The Welsh Ministers may confirm a CPO with or without modifications, or refuse to confirm the CPO. [Section 14 of the 1981 Act](#) imposes limitations on the Welsh Ministers' power to modify the CPO. This provides that a CPO can only be modified to include any additional land if all the people who are affected by the potential acquisition give their consent.
119. There is no scope for the Welsh Ministers to add to, or substitute, the statutory purpose (or purposes) for which it was made. The power of modification is used sparingly and not to re-write CPOs extensively. While some minor slips can be corrected, there is no need to modify a CPO solely to show a change of ownership where the acquiring authority has acquired a relevant interest or interests after submitting the CPO.
120. If it becomes apparent to an acquiring authority that it may wish the Welsh Ministers to substantially amend the CPO by modification at the time of any confirmation, the acquiring authority should inform the Welsh Ministers in writing as soon as possible, setting out the proposed modification. This communication should be copied to each remaining objector, any other person who may be entitled to appear at the public inquiry (such as any person required by the Welsh Ministers to provide a Statement of Case), and to any other interested persons who seem to be directly affected by the matters that might be subject to modification. Where such potential modifications have been identified before the public inquiry is held, the inspector will normally wish to provide an opportunity for them to be debated.

Confirmation of compulsory purchase orders in stages

121. In cases where the [1981 Act](#) applies to a CPO, [section 13C](#) of that Act provides a general power for the CPO to be confirmed in stages.

This power is intended to make it possible for part of a scheme to be able to proceed earlier than might otherwise be the case, although its practical application is likely to be limited. It is not a device to enable the land required for more than one scheme to be included in a single CPO.

122. The decision to confirm in part must be accompanied by a direction postponing consideration of the remaining part until a specified date. The notices of confirmation of the confirmed part of the CPO must include a statement indicating the effect of that direction and be published, displayed and served in accordance with [section 15 of the 1981 Act](#).
123. The power to confirm a CPO in stages may be used where the Welsh Ministers are satisfied a CPO should be confirmed for part of the land covered by the CPO but they cannot yet decide whether the CPO should be confirmed in relation to other parts of the CPO land. This could be, for example, because further investigations are required to establish the extent, if any, of alleged contaminated land. Where a CPO is confirmed in part under [section 13C of the 1981 Act](#), the remaining undecided part is to be treated as if it were a separate CPO, and the Welsh Ministers will set a deadline for consideration of that remaining part.
124. To confirm in part, the Welsh Ministers will need to be satisfied that:
 - the proposed scheme or schemes underlying the need for the CPO can be independently implemented over that part of the CPO land to be confirmed, regardless of whether the remainder of the CPO is ever confirmed;
 - the statutory requirements for the service and publication of notices have been followed; and
 - there are no remaining objections relating to the part to be confirmed (if the minister wishes to confirm part of a CPO prior to holding a public inquiry or following the written representations procedure).

If the Welsh Ministers were to be satisfied on the basis of the evidence already available to them that a part of the CPO land should be excluded, they may exercise their discretion to refuse to confirm the CPO or, in confirming the CPO, they may modify it to exclude the areas of uncertainty.

Confirmation of a compulsory purchase order by the acquiring authority

125. [Section 14A of the 1981 Act](#) provides a discretionary power for the Welsh Ministers to notify the acquiring authority that it may assume responsibility for confirming a CPO which was submitted to the Welsh Ministers for confirmation if certain specified conditions are met. The Welsh Ministers must be satisfied that:
 - there are no outstanding objections to the CPO;
 - all the statutory requirements as to the service and publication of notices have been complied with; and
 - the CPO is capable of being confirmed without modification.

126. The power of the Welsh Ministers to issue such a notice to an acquiring authority is excluded in cases where:
- the land to be acquired includes land acquired by a statutory undertaker for the purposes of its undertaking, that statutory undertaker has made representations to the minister responsible for sponsoring its business and they are satisfied that the land to be taken is used for the purposes of the undertaking; or
 - the land to be acquired forms part of a common, open space, or fuel or field garden allotment,
- as confirmation of a CPO in these circumstances is contingent on other ministerial decisions.
127. To exercise their discretionary power under [section 14A of the 1981 Act](#), the Welsh Ministers will serve a notice on the acquiring authority giving it the power to confirm the CPO. The sealed order and one sealed map (or sets of sealed maps) will be returned with the notice. The notice should:
- indicate that if the acquiring authority decides to confirm the CPO, it should be endorsed as confirmed with the endorsement authenticated by a person having authority to do so;
 - suggest a form of words for the endorsement;
 - refer to the statutory requirement to serve notice of confirmation under [section 15 of the 1981 Act](#); and
 - require that the relevant Welsh Minister should be informed of the decision on the CPO as soon as possible with (where applicable) a copy of the endorsed CPO.
128. If the acquiring authority decides to confirm its own CPO, it should return the notice of confirmation to the Welsh Ministers. The form of the notice of confirmation is set out in Forms 9A and 11 in the [Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#).
129. An acquiring authority exercising the power to confirm its CPO must notify the Welsh Ministers as soon as reasonably practicable of its decision. Until such notification is received, the Welsh Ministers can revoke the acquiring authority's power to confirm. This could be necessary, for example, if the Welsh Ministers receive a late objection, which raises important issues, is accepted, or if the acquiring authority failed to decide whether to confirm the CPO within a reasonable timescale.
130. An acquiring authority's power to confirm a CPO does not extend to being able to modify the CPO or to confirm the CPO in stages. If an acquiring authority considers there is a need for a modification, for example, to rectify drafting errors, it will have to ask the Welsh Ministers to revoke the notice which allowed them to assume responsibility for confirming their CPO.

Notification of the date of the confirmation of a compulsory purchase order

131. Acquiring authorities are asked to ensure in all cases, this includes where they confirm their own CPOs, that the Welsh Ministers are notified without delay of the date when notice of the confirmation of a CPO is first published in the press in accordance with [section 15 of the 1981 Act](#). This is important as the six weeks' period allowed by virtue of [section 23 of the 1981 Act](#) for an application to the High Court to be made begins on this date. Similarly, and for the same reason, where the Welsh Ministers have given a certificate under [section 19 of](#), or [paragraph 6 of Schedule 3 to](#), the [1981 Act](#), they should be notified straight away of the date when notice of the confirmation of the associated CPO is first published.

Legal challenges relating to a compulsory purchase order

132. Any person aggrieved who wishes to dispute the validity of a CPO, or any of its provisions, can challenge the CPO through an application to the High Court under [section 23 of the 1981 Act](#) on the grounds that:

- the authorisation of the CPO is not empowered to be granted under the [1981 Act](#) or an enactment mentioned in [section 1\(1\)](#) of that Act; or
- a 'relevant requirement' has not been complied with.

A 'relevant requirement' is any requirement under the [1981 Act](#), of any regulations made under it, or the [Tribunals and Inquiries Act 1992](#) or of regulations made under that act.

133. Any application to the High Court must be made within 6 weeks of the date when the acquiring authority first publishes notice of the confirmation of the CPO or making of the CPO in accordance with the [1981 Act](#).

134. In relation to a decision not to confirm a CPO, the decision can be challenged through the courts by means of an application for judicial review under [Part 54 of the Civil Procedure Rules 1998](#).

High Court powers under section 23 of the Acquisition of Land Act 1981

135. [Section 24 of the 1981 Act](#) sets out the powers of the High Court on an application under [section 23 of the 1981 Act](#). First, the High Court has the discretionary power to grant interim relief suspending the operation of the CPO or certificate pending the final determination of the court proceedings ([section 24\(1\)](#)). Second, where a challenge under [section 23](#) is successful, the High Court has the discretionary power to quash:

- the decision to confirm the CPO ([section 24\(3\)](#)) (NB: this does not apply in relation to an application under [section 23](#) which was made before 13 July 2016); or
- the whole or any part of a CPO ([section 24\(2\)](#)).

Time period for implementing a compulsory purchase order where it is the subject of a legal challenge

136. Under [section 4A of the 1965 Act](#) (for NTT process) and [section 5B of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) (for general vesting declaration (“GVD”) process) the normal three year period for implementing a CPO is extended for:

- a period equivalent to the period from the date an application challenging the CPO is made until it is withdrawn or finally determined; or
- one year

whichever is the shorter. NB: The extended time period does not apply to an application made in respect of a CPO which became operative before 13 July 2016. An application to challenge a CPO is finally determined after the normal time for submitting an appeal has elapsed or, where an appeal has been submitted, it is either withdrawn or finally determined.

Unconfirmed compulsory purchase orders

137. Unconfirmed CPOs will result in the compulsory purchase of the land not being authorised. Acquiring authorities should consider the reasons for non-confirmation and decide whether or not they wish to pursue a new CPO or seek alternative resolutions to acquire the land within the framework and principles of published guidance on the acquisition of assets¹⁵.

Stage 5: Implementing a compulsory purchase order

Confirmation notice – A compulsory purchase order becoming operative

138. Unless it is subject to special Senedd procedure/special parliamentary procedure (for example, in the case of certain special kinds of land (see [Section J in Part 2 of this Circular](#)), a CPO which has been confirmed becomes operative on the date on which the notice of its confirmation (‘confirmation notice’) is first published. [Section 3 of the 1965 Act](#) provides following confirmation of a CPO, the acquiring authority can continue in their negotiations to acquire the CPO land (or any part of it) by agreement, avoiding the need to implement the CPO negotiations prove successful.

139. The method of publication and the information which must be included in a confirmation notice is set out in [section 15 of the 1981 Act](#). Confirmation notices must also contain the following where a GVD is to be executed (see [paragraphs 154 - 155](#) below):

- a prescribed statement about the effect of Parts 2 and 3 of the [Compulsory Purchase \(Vesting Declarations\) Act 1981](#); and

¹⁵ For example, the Welsh Government’s *Managing Welsh Public Money (January 2016)*.

- invite any person who would be entitled to claim compensation if a declaration were executed under [section 4](#) of that Act to give the acquiring authority information about the person's name, address and interest in land, using a prescribed form.
140. Acquiring authorities must issue confirmation notices within 6 weeks of the date of the CPO being confirmed or such longer period as may be agreed between the acquiring authority and the Welsh Ministers. Where an acquiring authority fails to do so, the Welsh Ministers may take the necessary steps itself and recover their reasonable costs of doing so from the acquiring authority.
141. The acquiring authority may then exercise the compulsory purchase power (unless the operation of the CPO is suspended by the High Court). The actual acquisition process will proceed by the acquiring authority serving a NTT or by executing a GVD.

Confirmation notice – Registering a confirmation notice as a local land charge

142. [Section 15\(6\) of the 1981 Act](#) provides a confirmation notice should be sent by the acquiring authority to the Chief Land Register and that it shall be a local land charge. Where land in the CPO is situated in an area for which the local authority remains the registering authority for local land charges (i.e. where the changes made by [Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015](#) have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by [section 5 of the Local Land Charges Act 1975](#) (prior to it being amended by the [Infrastructure Act 2015](#)).

Notice to treat: Form

143. There is no prescribed form for a NTT but the document must:
- describe the land to which it relates
 - demand particulars of the interest in the land
 - demand particulars of the compensation claim of the recipient, and
 - state that the acquiring authority is willing to treat for the purchase of the land and for compensation for any damage caused by the execution of the works.
- A NTT should be served by acquiring authorities on all the persons interested in, or having power to sell and convey or release, the land, so far as known to the acquiring authority after making diligent inquiry.
144. Possession cannot normally be taken until the acquiring authority has served a 'notice of entry' and the minimum period specified in that notice has expired.
145. Where a NTT has been served, the title to the land is subsequently transferred by a normal conveyance.

Notice to treat: When a notice should be served

146. A NTT may not be served after the end of the period of three years beginning with the date on which the CPO becomes operative (i.e. the date on which the confirmation notice is first published) under [section 4 of the 1965 Act](#). Where an acquiring authority does not implement a CPO within the three year period, the CPO will fall and will no longer authorise the compulsory acquisition of land. If an acquiring authority still wishes to proceed with the underlying scheme it will need to start the compulsory purchase process again. Where a NTT has been served before the end of the period of three years, it then remains effective for a further three years under [section 5\(2A\) of the 1965 Act](#).
147. The prospect of a period of up to six years before the acquiring authority takes possession of land/property can cause uncertainty for those directly affected by the CPO. Acquiring authorities are therefore urged to minimise the period of uncertainty and keep affected people fully informed about the various processes involved and of their likely timing. Furthermore, keeping open the possibility of earlier acquisition where requested by an owner. In some cases, however, it may be in the best interests of the people affected for the acquiring authority to wait until it is ready to proceed with the next stage of its scheme. For example, if the acquiring authority intends to provide alternative accommodation for the people affected it may be in everyone's interests for the acquiring authority not to take the title to the land until the alternative accommodation is ready or available. Engaging quickly, clearly and effectively with the people affected will help acquiring authorities identify and address people's concerns or any particular circumstances affecting businesses or landowners that need to be taken into account in determining when the CPO should be implemented.

Notice to treat: Period of notice to be given before taking possession under the notice to treat process

148. Once the stage of taking possession of land is reached, the acquiring authority is required by [section 11 of the 1965 Act](#) to serve notice of its intention to gain entry and take possession of the land ('notice of entry'). In respect of a CPO which is confirmed on or after 3 February 2017, the notice period will be not less than 3 months beginning with the date of service of the notice of entry, except in either of the following circumstances:
- where it is a notice to which [section 11A\(4\) of the 1965 Act](#) applies i.e. where a further notice of entry is served on a 'newly identified person' under [section 11A\(1\)\(b\)](#) and that person is not an occupier, or the acquiring authority was unaware of the person because they received misleading information in response to their inquiries under [section 5\(1\) of the 1965 Act](#). In these circumstances, [section 11A\(4\)](#) provides for a shorter minimum notice period; or

- where it is a notice to which [paragraph 13 of Schedule 2A to the 1965 Act](#) applies i.e. where under the material detriment provisions in that Schedule, an acquiring authority is permitted to serve a further notice of entry, after the initial notice of entry ceased to have effect under [paragraph 6 of Schedule 2A to the 1965 Act](#), in respect of the land proposed to be acquired.
149. Although it is necessary for a NTT to have been served, this can be done at the same time as serving the notice of entry. A notice of entry, however, cannot be served after a NTT has ceased to be effective. A NTT can only be withdrawn in the following limited circumstances under the provisions of [section 31\(1\) or \(2\) of the Land Compensation Act 1961 \(“the 1961 Act”\)](#):
- (a) Where a claimant has delivered a notice in writing of the amount claimed by them, stating the exact nature of the interest in respect of which compensation is claimed, and giving details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, the acquiring authority may, at any time within six weeks after the delivery of the notice, withdraw any NTT which it has served in respect of the land the subject of the CPO.
 - (b) Where a claimant has failed to deliver such a notice as outlined in paragraph (a) above, the acquiring authority may, at any time after the decision of the Upper Tribunal (Lands Chamber) on their claim but not later than six weeks after the claim has been finally determined, withdraw any NTT which has been served in respect of the land the subject of the CPO unless the authority have entered into possession of the land by virtue of the NTT.

Agreeing a date of entry

150. Whichever procedure for taking title to and possession of the land is used the acquiring 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 to move out, relocate and/or cease their business operations. Even when this is not possible, acquiring authorities should give people as much notice as possible of proposed stages in the process. Acquiring authorities are encouraged to negotiate a mutually convenient date of entry with a claimant and it is good practice to:
- give owners an indication of the approximate date when possession will be taken when serving a NTT, and
 - consider the steps which those being dispossessed will need to take to vacate their properties before deciding on the timing of actually taking possession.

151. Acquiring authorities should also be aware that:
- agricultural landowners or tenants may need to know the date for the notice of entry earlier than others because of crop cycles and the need to find alternative premises;
 - short notice often results in higher compensation claims; and
 - until there is an actual or deemed NTT an occupier is at risk of any costs they incur in anticipation of receiving such a notice not being claimable. Acquiring authorities would be advised to analyse how long it will take most occupiers to relocate and if the notice of entry is inadequate then they should consider giving an earlier commitment to pay certain costs such as their reasonable costs in identifying suitable alternative accommodation.
152. It is usually important to make an accurate record of the physical condition of the land at the valuation date.

Notice to treat: When the acquiring authority does not take possession at the time specified in the notice of entry

153. Where a compulsory purchase of land has been authorised on or after 3 February 2017 (i.e. where the CPO was confirmed on or after that date), [section 11B of the 1965 Act](#) allows occupiers with an interest in the land to serve a counter-notice on the acquiring authority to require it to take possession of the land by no later than a date specified in the counter-notice. The date specified in the counter-notice:
- (a) must not be earlier than the date specified in the notice of entry; and
 - (b) must be at least 28 days after the day on which the counter-notice is served.

General vesting declaration: Form

154. A GVD can be used as an alternative to the NTT procedure. It replaces the NTT, notice of entry and the conveyance with one procedure which automatically vests title in the land with the acquiring authority on a certain date.
155. GVDs are made under the [Compulsory Purchase \(Vesting Declarations\) Act 1981](#) in accordance with the [Compulsory Purchase of Land \(Vesting Declarations\) \(Wales\) Regulations 2017](#) (“2017 Regulations”) which prescribe the form a GVD should take i.e. [Form 1 in Schedule 1 to the 2017 Regulations](#).

General vesting declaration: When may a declaration be used

156. An acquiring authority may prefer to proceed by GVD as this enables the authority to obtain title to the land without having first to investigate interests in the land, agree on a conveyance of the land with the landowner, or settle the amount of compensation owed to any person with a qualifying interest in the land (subject to any special procedures such as the purchase of commoners' rights: see [section 21 of](#), and [Schedule 4 to](#), the [1965 Act](#)). It can be particularly useful where:
- some of the owners are unknown or hard to trace; or
 - an acquiring authority wishes to obtain title with minimum delay (for example, the disposal of land to developers).

Using a GVD can therefore reduce the administration burden for the acquiring authority, particularly if multiple interests are being acquired (such as in major schemes and significant infrastructure developments). At the end of the period specified in the GVD, the title to the land, together with the right of entry, vest in the acquiring authority.

157. A GVD may be made for any part or all of the land included in a CPO except where an acquiring authority has already served (and not withdrawn) a NTT in respect of that land. [Section 4\(1B\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) makes clear that this exception does not apply to deemed notices to treat that may, for example, arise from a blight notice or purchase notice.
158. For minor tenancies and long tenancies which are about to expire, a GVD will not be effective as the right of entry, and thus the obligation to pay compensation, does not apply. A minor tenancy is a tenancy for a year or from year to year or any lesser interest, for example, weekly or monthly tenancies. A long tenancy which is about to expire is a tenancy granted for a period greater than a year but that has, at the date of the GVD, a period still to run (which is longer than a year) but is less than the period specified at Clause 2 of the GVD for the land in question (see [Form 1 in Schedule 1 to the 2017 Regulations](#)).
159. The reason for excluding minor tenancies and long tenancies which are about to expire from the vesting of interests on the vesting date is to permit the acquiring authority to wait until such tenancies end in accordance with their terms rather than having to acquire them and pay compensation (the vesting date would be the valuation date). In this scenario, tenants are able to remain in occupation until their tenancies expire. All interests in the land, except the tenancies, would vest in the acquiring authority and the vesting would be subject to the tenancy until they expire or are determined by notice to quit. If a landlord's interest vests in the acquiring authority pursuant to the GVD and the authority waits until a tenancy ends, the interest vested in the authority is freed from the burden of the tenancy and the authority may then enter the land.

There is a special procedure set out in [section 9 of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) for dealing with minor tenancies and long tenancies which are about to expire.

160. Where unregistered land is acquired by GVD, acquiring authorities are recommended to voluntarily apply for first registration under [section 3 of the Land Registration Act 2002](#).

General vesting declaration: Executing the declaration

161. For a compulsory purchase of land authorised on or after 3 February 2017, [section 5\(2\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) provides a GVD must not be executed before a CPO has become operative i.e. the date on which the confirmation notice is first published. This is particularly relevant for CPOs which are subject to special Senedd procedure/special Parliamentary procedure (for example, in the case of certain special kinds of land (see [Section J in Part 2 of this Circular](#)) and therefore do not come into operation in accordance with [section 26\(1\) of the 1981 Act](#). [Section 26\(1\) of the 1981 Act](#) provides a CPO, other than one to which the [Statutory Orders \(Special Procedure\) Act 1945](#) applies, shall become operative on the date on which notice of the confirmation or in the case of a ministerial CPO the making of the CPO is first published in accordance with the [1981 Act](#).
162. For a compulsory purchase of land authorised on or after 3 February 2017, acquiring authorities must execute a GVD in a prescribed form (i.e. [Form 1 in Schedule 1 to the 2017 Regulations](#)) to take possession of land which they are authorised to compulsorily acquire through a CPO. The GVD must specify the date on which the acquiring authority will take possession of the land. This date must be no less than three months after the date when the service of a notice specifying the land and stating the effect of the GVD is completed¹⁶ (see [paragraph 163 below](#)). Acquiring authorities are required to confirm with affected parties the date on which the service of the notice was completed via the giving of a certificate¹⁷. This will assist determine the valuation date.

General vesting declaration: Period of notice to be given before taking possession and service of notice of execution

163. For a compulsory purchase of land authorised on or after 3 February 2017, the acquiring authority must, as soon as reasonably possible after executing the GVD and before taking possession of the land, serve a notice specifying the land and stating the effect of the GVD in a prescribed form¹⁸ (i.e. [Form 2 in Schedule 1 to the 2017 Regulations](#)) on:
- (a) every occupier of any part of the land specified in the declaration (other than land in which there subsists a minor tenancy or a long tenancy which is about to expire), and

¹⁶ The minimum vesting period to be given in a GVD under [section 4\(1\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#).

¹⁷ [Section 4\(2\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#).

¹⁸ [Section 6\(1\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#).

- (b) every other person who has given information to the acquiring authority with respect to any part of the land in pursuance of the invitation published and served under [section 15 of](#), or [paragraph 6 of Schedule 1 to](#), the [1981 Act](#).

The prescribed notice should:

- specify the CPO land;
 - state the effect of the GVD and the date it was executed; and
 - specify a date, which must be at least three months away, when title to the land will pass to the acquiring authority (the vesting date).
164. Acquiring authorities should consider how long it will take occupiers to reasonably relocate. If three months is deemed to be insufficient, consideration should be given to increasing the vesting period (and therefore the notice period).

General vesting declaration: When a declaration may not be served

165. For CPOs which become operative on or after 13 July 2016, [section 5A of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) makes clear that a GVD may not be executed after the end of the period of three years beginning with the day on which the CPO becomes operative (i.e. the date on which the notice of confirmation ('confirmation notice') is published. Where an acquiring authority does not implement a CPO within the three year period, the CPO will fall and will no longer authorise the compulsory acquisition of land. If an acquiring authority still wishes to proceed with the underlying scheme it will need to start the compulsory purchase process again.

General vesting declaration: Making a declaration when the owner, lessee or occupier is unknown

166. If it is not possible, after reasonable enquiry, to ascertain the name or address of an owner, lessee or occupier of land, the acquiring authority should comply with [section 329\(2\) of the 1990 Act](#) to serve notice after execution of the declaration (required under [section 6 of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#)).

Conveying of land from Charity Trustees to a public authority

167. If an acquiring authority is acquiring land from a charity, consideration should be given to the provisions in [Part 7 of the Charities Act 2011](#) (i.e. restrictions on dispositions of land held by or in trust for a charity in Wales) and the Charity Commission may need to be consulted.

Delivery of the compulsory acquisition scheme

168. Acquiring authorities remain responsible for the implementation of a CPO and delivery of the underlying scheme, whether they are using a third party contractor or not. Acquiring authorities should ensure contractors and other parties acting on their behalf follow good practice when dealing with affected landowners.

Also, that responsibilities are clearly defined in contracts and contractors undertake work in line with agreed work schedules and conditions attached to associated planning permissions. They should also repair any damage caused before the work is signed-off and acquiring authorities should take necessary steps to resolve any disputes which may arise.

169. Acquiring authorities should:

- ensure they have in place a clear complaints procedure for any contract work, and
- provide a clear point of contact or liaison officer for landowners affected by the scheme to (where necessary) raise issues with the contractor.

Where complaints are made against a local authority acting in their role as an acquiring authority contact details of the authority's monitoring officer should be made readily available to any complainant.

Stage 6: Compensation

Basis of compensation

170. Compensation payable for the compulsory acquisition of an interest in land is based on the principle that the owner should be paid neither less nor more than their loss. This is known as the 'equivalence principle'. The Welsh Ministers expect acquiring authorities to adopt a facilitative approach to the process of negotiating compensation, to ensure that claims are dealt with efficiently and that advance payments (where requested) are paid promptly.

Compensation where land is taken

171. While the compensation payable is a single figure, in practice, the assessment of compensation will involve various elements. Broadly, the elements of compensation where land is taken are:

- (a) payment on what the land might be expected to realise if sold on the open market by a willing seller (known as the 'open market value');
- (b) 'disturbance' payments for losses caused by reason of losing possession of the land and other losses not directly based on the value of land;
- (c) loss payments for the distress and inconvenience of being required to sell and/or relocate from your property at a time not of your choosing;
- (d) 'severance/injurious affection' payments for the loss of value caused to retained land by reason of it being severed from the land taken, or caused as a result of the use to which the land is put.

(a) Market value of interest in land taken

172. The market value of land taken via compulsory acquisition is the amount which it might be expected to realise if sold on the open market by a willing seller ([rule 2, section 5 of the 1961 Act](#)), disregarding any effect of the value of the compulsory acquisition scheme (known as the 'no scheme' principle). If a claimant opts for the market value of land route they cannot also claim compensation for disturbance, for example, for relocating a business operation.

The logic being that to have achieved the market value of land the business would have relocated in any event. Disturbance can only be claimed where a claimant is arguing they would not have been a willing seller in the open market i.e. abandon their business, and, but for the compulsory acquisition, would have continued to operate their business on the land.

173. Certificates of Appropriate Alternative Development may also be used to indicate the planning permissions that could have been obtained for the land the subject of the compulsory acquisition, which would affect any development value of the land ([section 17 of the 1961 Act](#)).
174. Alternatively, where the property is used for a purpose for which there is no general demand or market (for example, a church) and the owner intends to reinstate elsewhere, they may be awarded compensation on the basis of the reasonable cost of equivalent reinstatement (see [rule 5, section 5 of the 1961 Act](#)).

Rule (2) of section 5 of the Land Compensation Act 1961

175. [Rule \(2\) of section 5 of the 1961 Act](#) provides that compensation is paid on what the land would have sold for on the open market. This value may derive from the existing use and condition of the land, referred to as existing use value, or from the potential for its development, referred to as hope value. Hope value is affected by taking account of actual or prospective planning permission (see [section 14 of the 1961 Act](#)). [Section 14 of the 1961 Act](#) provides that when assessing open market value account may be taken of-
 - (i) a planning permission in force at the relevant valuation date;
 - (ii) the prospect of the grant of planning permission on or after the relevant valuation date, subject to certain scheme cancellation assumptions; and/or
 - (iii) in the case of appropriate alternative development, an assumption may be made—
 - (a) of the grant of planning permission for that development on the relevant valuation date, or
 - (b) of a certainty on the relevant valuation date that planning permission for that development will be granted at a later time, subject to certain scheme cancellation assumptions.
176. A certificate may be granted identifying appropriate alternative development which could be expected to be granted planning permission, with a general indication of any conditions or planning obligation which the planning permission could be expected to be subject to (see [Section O in Part 3 of this Circular](#)).
177. The scheme cancellation assumptions referred to in paragraph 175(i) and (iii)(b) above are that—
 - (i) the scheme of development underlying the acquisition had been cancelled on the launch date,
 - (ii) no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme,

- (iii) there is no prospect of the same scheme, or any other scheme to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers, and
- (iv) if the scheme was for use of the relevant land for or in connection with the construction of a highway including its alteration or improvement, that no highway will be constructed to meet the same or substantially the same need as the scheme highway would have been constructed to meet.

“The launch date” means whichever of the following dates applies—

- (a) if the acquisition is authorised by a CPO, the date of first publication of the notice required under [section 11 of the 1981 Act](#) or (as the case may be) [paragraph 2 of Schedule 1](#) to that Act,
- (b) if the acquisition is authorised by any other order—
 - (i) the date of first publication, or
 - (ii) the date of service,
 of the first notice that, in connection with the acquisition, is published or served in accordance with any provision of or made under any Act, or
- (c) if the acquisition is authorised by a special enactment other than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills.

178. Where there is a prospect of the grant of planning permission on or after the relevant valuation date, or in the case of appropriate alternative development planning permission is assumed to be granted on the relevant valuation date or it is considered certain that planning permission will be granted at a later time, the value given to that has to be determined. Planning permission might be approved for a very high specification for houses in a low price area, but the compensation would reflect what the local market would pay for such properties and what the land would be worth with the ability to construct them. Broadly, valuation is carried out by looking for the sale price of development land with that potential or by a residual valuation, calculating the land value by deducting the developer profit and build costs, risks and uncertainties from the value of the associated likely development. In both approaches the valuation would reflect what development would be approved having regard to adopted planning policies to make the development acceptable in planning terms, including: expectations as to affordable housing; good design; open space provision; provision for community facilities such as a doctor’s surgery and a school; remediation of contamination; infrastructure and other obligations. Compensation for compulsory purchase therefore reflects the value of land with its current use or any prospect of a planning permission being granted which meets policy requirements. The compensation would also disregard any increase or decrease in land value caused by the compulsory purchase scheme i.e. the ‘no scheme principle’.

(b) Compensation for disturbance

179. One element of compensation payable to a claimant is in respect of losses caused as a result of being disturbed from possession of the land taken and other losses caused by the compulsory purchase. This is known as 'disturbance' compensation. The right to compensation for disturbance is set out in [rule 6, section 5 of the 1961 Act](#). Disturbance payments made as part of compensation claims may include, for example, the costs and expenses of vacating the property and relocating to a replacement property, temporary/permanent loss of profits, reconnection of services, loss of fittings and certain reasonable professional fees, such as conveyancing, legal fees and the costs of employing a suitably qualified chartered surveyor to assess and negotiate compensation claims.
180. In relation to professional fees, it is for parties concerned to agree a reasonable basis for payment of these fees. This will normally need to be done on a case-by-case basis, but there may be circumstances where it is appropriate for acquiring authorities to make voluntary agreements with the relevant professional bodies setting out indicative levels of payment for specific types of routine claims. This may make sense, for example, in the case of negotiations for rights of access (wayleaves and easements) for utilities.
181. There are also specific provisions for disturbance payments relating to different interests in land as follows:
- [Section 20 of the 1965 Act](#) - disturbance for persons who have no greater interest in the land than as tenant for a year or from year to year.
 - [Section 46 of the Land Compensation Act 1973](#) ("the 1973 Act") - disturbance where a business is carried on by a person over the age of 60. Disturbance payments can be claimed on the basis of total extinguishment of a business as a consequence of compulsory acquisition providing the annual value of the property does not exceed a prescribed limit¹⁹.
 - [Section 47 of the 1973 Act](#) - disturbance where land is the subject of a business tenancy.
 - [Section 37 of the 1973 Act](#) - disturbance for persons without compensatable interests in the land acquired.

¹⁹ Currently prescribed in the [Town and Country Planning \(Blight Provisions\) \(Wales\) Order 2019](#).

182. Prior to measures in [section 47 of the 1973 Act](#) (as amended by the [Neighbourhood Planning Act 2017](#)), case law (*Bishopsgate Space Management v London Underground* [2004] 2 EGLR 175) held that for disturbance compensation purposes where the interest in the land to be acquired was a minor tenancy (a tenancy with less than a year left to run, or a tenancy from year to year) or an unprotected tenancy (a tenancy without the protection of [Part 2 of the Landlord and Tenant Act 1954](#)), the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following NTT, whether that would happen in reality or not.
183. This was to be contrasted with the position for compensation for disturbance for occupiers of business premises with no interest in the land (payable under [section 37 of the 1973 Act](#)) which was not subject to the artificial assumption established in the *Bishopsgate* case.
184. [Section 47 of the 1973 Act](#) brings the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licensees and protected tenancies (a tenancy with the protection of [Part 2 of the Landlord and Tenant Act 1954](#)). Regard should be had to the likelihood of either continuation or renewal of the tenancy, the total period for which the tenancy might reasonably have been expected to continue, and the likely terms and conditions on which any continuation or renewal would be granted. For protected tenancies, the right of a tenant to apply for a new tenancy is also to be taken into account.

(c) Loss payments

185. Loss payments are intended to compensate for the claimant's distress and inconvenience of being required to sell and/or relocate from their property at a time not of their choosing (see [sections 29-36 of the 1973 Act](#)). There are three main types of loss payment:
- Home loss payment – payable to owner-occupiers and tenants displaced from a dwelling on any land by a CPO or other circumstances specified in [section 29 of the 1973 Act](#) (see [sections 29-33 of the 1973 Act](#)). In Wales, the maximum, minimum and flat rate amounts for home loss payments are prescribed in secondary legislation²⁰.
 - Basic loss payment - a person with a qualifying interest in the land which is to be compulsorily acquired i.e. a freehold interest or an interest as tenant and (in either case) it subsists for a period of not less than one year expiring before a specified date, and who is not entitled to a home-loss payment, is entitled to a basic loss payment (see [section 33A of the 1973 Act](#)). The payment is the lower of 7.5% of the value of the interest or £75,000.

²⁰ Currently prescribed in the [Home Loss Payments \(Prescribed Amounts\) \(Wales\) Regulations 2020](#).

- Occupier's loss payment – for agricultural land and other land ([sections 33B and 33C of the 1973 Act](#)). It is payable if the person has a qualifying interest for the purpose of a basic loss payment, and has been in occupation of the land for a period of not less than one year ending on the earliest of the following specified dates:
 - (a) Date on which the acquiring authority takes possession of the land following a notice of entry under [section 11 of the 1965 Act](#).
 - (b) Vesting date where a GVD is made under the [Compulsory Purchase \(Vesting Declarations\) Act 1981](#).
 - (c) Date on which compensation for the compulsory acquisition is agreed.
 - (d) Date on which the Upper Tribunal (Lands Chamber) determines the amount of compensation.

Where the land is either agricultural land or other land, the payment is the greatest of the following amounts:

- (i) 2.5% of the value of the interest;
- (ii) the land amount;
- (iii) the building amount.

The maximum amount which may be paid under [section 33B](#) and [33C of the 1973 Act](#) is £25,000.

(d) Severance and injurious affection

186. Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. For example, if a new road is built across a field it may no longer be possible to have access by vehicle to part of the field, rendering it less valuable.
187. Injurious affection is the depreciation in value of the retained land as a result of the proposed construction on, and use of, the land acquired by the acquiring authority for the scheme. For example, even though only a small part of a farm holding may be acquired for a new road, the impact of the use of the road may reduce the value of the farm.
188. The principle of compensation for severance is set out in [section 7 of the 1965 Act](#).

Loss payments: Exclusions

189. A person is not entitled to either a basic or occupier's loss payment where the following notices or orders have been served on that person and any such notice has not been complied with or such order has not been quashed on appeal (see [section 33D\(1\)-\(3\) of the 1973 Act](#)):
 - (a) notice under [section 215 of the 1990 Act](#) requiring proper maintenance of land;
 - (b) notice under [section 11 or 12 of the Housing Act 2004](#) i.e. an improvement notice relating to either a category 1 or 2 hazard requiring remedial action to be taken;

- (c) notice under [section 48 of the P\(LBCA\)](#) i.e. a repairs notice prior to compulsory notice of acquisition of a listed building which is in an unsatisfactory state;
- (d) orders under [section 20 or 21 of the Housing Act 2004](#) i.e. prohibition orders relating to category 1 or 2 hazards;
- (e) orders under [section 43 of the Housing Act 2004](#) i.e. an emergency prohibition order; and
- (f) orders under [section 265 of the 1985 Act](#) i.e. demolition order relating to category 1 or 2 hazards.

In the case of such notices outlined above, the right to payment is lost if the notice or order served has effect or is operative on the date on which the CPO is confirmed or, in the case of a ministerial CPO, made in draft.

Value of land assessed in light of the 'no scheme principle'

190. [Sections 6A to 6E of the 1961 Act](#) set out how the value of land should be assessed applying the 'no scheme principle'.
191. [Section 6A](#) sets out the 'no scheme principle' i.e. that any increases or decreases in value caused by the compulsory acquisition scheme or the prospect of the compulsory acquisition scheme must be disregarded. [Section 6A](#) lists the 5 'no scheme rules' to be followed when applying the 'no-scheme principle' which are:
 - Rule 1: it is to be assumed that the compulsory acquisition scheme was cancelled on the relevant valuation date.
 - Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the compulsory acquisition scheme.
 - Rule 3: it is to be assumed that there is no prospect of the same compulsory acquisition scheme, or any other scheme to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.
 - Rule 4: it is to be assumed that no other schemes would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the compulsory acquisition scheme had been cancelled on the relevant valuation date.
 - Rule 5: if there was a reduction in the value of land as a result of—
 - (a) the prospect of the compulsory acquisition scheme (including before the compulsory acquisition scheme or the compulsory acquisition in question was authorised), or
 - (b) the fact that the land was blighted land as a result of the compulsory acquisition scheme, that reduction is to be disregarded.

192. [Section 6B](#) provides any increases in the value of the claimant's other land, which is contiguous or adjacent to the land being compulsory acquired, is deductible from the compensation payable. This is known as 'betterment'.
193. [Section 6C](#) provides that where a claimant is compensated for injurious affection for other land when land is taken for a compulsory acquisition scheme, and then that other land is subsequently subject to compulsory purchase for the purposes of the original compulsory acquisition scheme, the compensation for the acquisition of the other land is to be reduced by the amount received for injurious affection.
194. [Section 6D](#) defines the compulsory acquisition scheme ('scheme') for the purposes of establishing the no-scheme world. The default case, set out in [section 6D\(1\)](#), is that the 'scheme' to be disregarded is the scheme of development underlying the compulsory acquisition. [Section 6D\(2\)](#) makes special provision for new towns, urban development corporations and mayoral development corporations. Where land is acquired in connection with these areas, the 'scheme' is the development of any land for the purposes for which the area is or was designated.
195. [Section 6D\(3\) and \(4\)](#) also make special provision. It provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a 'relevant transport project' (defined in [section 6D\(4\)\(a\)](#)) 'the scheme' includes the relevant transport project.

Special provision for relevant transport projects

196. New transport projects often raise land values in the vicinity of stations or hubs, which can facilitate regeneration and redevelopment schemes. Where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the effect of [section 6D\(3\) of the 1961 Act](#) is that the scheme to be disregarded includes the relevant transport project - subject to the qualifying conditions and safeguards in [section 6E of the 1961 Act](#).
197. The intention of this special provision is to ensure an acquiring authority should not pay for land it is acquiring at values that are inflated by its own or others' public investment in the relevant transport project. Where it applies, the land in question will be valued as if the transport project as well as the regeneration scheme had been cancelled on the relevant valuation date (defined in [section 5A of the 1961 Act](#)).
198. The qualifying conditions and safeguards in [section 6E\(2\)\(a\) – \(e\)](#) are, in summary, that:
 - regeneration or redevelopment was part of the published justification for the relevant transport project;
 - the instrument authorising the compulsory purchase of the land acquired for regeneration or redevelopment was made or prepared in draft on or after 22 September 2017;

- the regeneration or redevelopment land must be in the vicinity of land comprised in the relevant transport project;
 - the works comprised in the relevant transport project are first opened for use no earlier than 22 September 2022;
 - the compulsory purchase of the land acquired for regeneration or redevelopment must be authorised within 5 years of the works comprised in the relevant transport project first opening for use; and
 - if the owner acquired the land after plans for the relevant transport project were announced but before 8 September 2016 ‘the scheme’ will not be treated as if it included the relevant transport project.
199. [Section 6E\(3\)](#) provides a specific safeguard for persons who acquired land in the vicinity of a relevant transport project after plans for the relevant transport project were announced, but before 8 September 2016 - the day after the Neighbourhood Planning Bill (which became the [Neighbourhood Planning Act 2017](#)) was printed. The specific safeguard is intended to provide protection in circumstances where land was purchased:
- on the basis of a public announcement whose effect was to provide a reasonable degree of certainty about the delivery of a relevant transport project at a particular location;
 - before legislation (i.e. the [Neighbourhood Planning Act 2017](#)) was introduced that made special provision for relevant transport projects.
200. Where the specific safeguard applies, the ‘scheme’ will not be treated as if it included the relevant transport project in assessing the compensation payable in respect of the compulsory acquisition of that land. In such circumstances, any increase or decrease in the value of the owner’s land caused by the relevant transport project does not have to be disregarded.
201. Whether and/or when such a relevant transport project is ‘announced’ is a question of fact in each case to be determined by the Upper Tribunal (Lands Chamber) in the event of disagreement. The evidence put before the Upper Tribunal (Lands Chamber) could include, among other things, the following matters:
- the inclusion of the relevant transport project, at or near a particular location, in an approved or adopted development plan document;
 - the inclusion of the relevant transport project in an application for a development consent order or in a CPO;
 - the inclusion of the relevant transport project in a proposal contained in an application for, or in a draft, Transport and Works Act Order for the purposes of the [Transport and Works Act 1992](#);
 - the inclusion of the relevant transport project in any Bill put before Parliament;

- a decision announced by a Minister of, or of approval for, a relevant transport project at a particular location.

Where the definition of the 'scheme' is disputed

202. [Section 6D\(5\) of the 1961 Act](#) provides if there is disagreement between parties as to the definition of the 'scheme' to be disregarded that this can be determined by the Upper Tribunal (Lands Chamber) as a question of fact subject as follows:
- Firstly, the 'scheme' is to be taken by the Upper Tribunal (Lands Chamber) to be the underlying scheme provided for by the Act, or other authorising instrument unless it is shown that the 'scheme' is a scheme larger than, but including, the scheme provided for by that authorising instrument.
 - Secondly, except by agreement or in special circumstances, the Upper Tribunal (Lands Chamber) may only permit the acquiring authority to advance evidence of a larger scheme if that larger scheme was identified in the authorising instrument and any documents made available with it read together.

Relevant valuation date

203. [Section 5A of the 1961 Act](#) establishes the date at which land compulsorily acquired is to be valued for compensation purposes (the 'relevant valuation date'). It also establishes that such a valuation is to be based on the market value prevailing at the valuation date and on the condition of the relevant land and any structures on it on that date.
204. The relevant valuation date is:
- the date of entry and taking possession if the acquiring authority have served a NTT and notice of entry; or
 - the vesting date if the acquiring authority has executed a GVD; or
 - the date on which the Upper Tribunal (Lands Chamber) has determined compensation if earlier.

A claimant can agree compensation with the acquiring authority at any time in accordance with the provisions of [section 3 of the 1965 Act](#).

205. The relevant valuation date for the whole of the land included in any single notice of entry is the date on which the acquiring authority first takes possession of any part of that area of land (under [section 5A\(5\) of the 1961 Act](#)). This means compensation becomes payable to the claimant for the whole site covered by a notice of entry from that date. The claimant also has the right to receive interest on the compensation due to them in respect of the value of the whole site covered by a notice of entry from that date until full payment is actually made (under [section 5A\(6\) of the 1961 Act](#)).

206. Under the terms of [section 11 of the 1965 Act](#), interest is payable at the prescribed rate from the date on which the acquiring authority enters and takes possession of the land until the outstanding compensation is paid. The current rate of interest is prescribed in the [Acquisition of Land \(Rate of Interest after Entry\) Regulations 1995](#). Interest is not compounded as, neither [section 32 of the 1961 Act](#) nor regulations made under that section, confer any power to pay interest on interest, and neither refers to frequency of calculation nor provides for periodic rests, which would be essential to any calculation of interest on a compound basis. It is therefore important that the date of entry is properly recorded by the acquiring authority.

Advance payment of compensation

207. Under [section 52\(1\) of the 1973 Act](#) acquiring authorities may make an advance payment of compensation for the acquisition of an interest in land following a request being made by the person entitled to it i.e. the claimant. A request for an advance payment of compensation may be made at any time after the compulsory acquisition has been authorised.

208. A request for advance payment of compensation must be made in writing by the claimant and include details of the claimant's interest in the land. Information must also be included to enable the acquiring authority to estimate the amount of compensation owed. It is in the interests of claimants to provide early and full information to the acquiring authority to ensure estimates are as robust as possible. Acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. They should also provide claimants with information as to the kinds of evidence they may be expected to provide in support of their compensation claim including, for example:

- detailed records of losses sustained and costs incurred in connection with the acquisition of their property;
- all relevant supporting documentary evidence such as receipts, invoices and fee quotes;
- business accounts for at least 3 years prior to the acquisition and continuing to the date of the claim;
- a record of the amount of time they have spent on matters relating to the compulsory purchase of their property;
- if not already supplied, evidence of the claimant's interest in the land.

Acquiring authorities must determine within 28 days of receiving a request for advance payment of compensation whether or not they have enough information to estimate the amount of compensation owed. If required, the acquiring authority may seek further information from the claimant. A model claim form for claimants to use when making a claim for compensation and/or an advance payment can be found at the end of this section.

209. In all other cases, an acquiring authority must make an advance payment of compensation under [section 52\(1B\) and \(4ZA\) of the 1973 Act](#) if, before or after a request is made by the claimant, the authority:

- (a) gives notice of entry under [section 11\(1\) of the 1965 Act](#); or
- (b) executes a GVD under [section 4 of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) in respect of the land.

In these circumstances, the advance payment of compensation must be made on the day on which the notice of entry is given or the GVD is executed, or, if later, before the end of the period of two months beginning with the day on which the authority:

- (i) received the request for the advance payment, or
- (ii) received any further information required under [section 52\(2A\)\(b\)](#) or [section 52ZC\(2\)\(b\) of the 1973 Act](#).

210. There is special provision under [section 52\(1A\) and \(4\) of the 1973 Act](#) relating to where the [Lands Clauses Consolidation Act 1845](#) (“the 1845 Act”) applies to the compulsory acquisition of land. The [1845 Act](#) incorporates certain provisions into legislation conferring enabling compulsory purchase powers on local authorities, statutory undertakers and government departments to acquire land and requiring the payment of compensation. Although [the 1845 Act](#) has largely been superseded by [the 1965 Act](#), provisions of the Act continue to apply in some extant legislation. For example, [section 6 of the Railways Clauses Consolidation Act 1845](#) provides that in exercising a power given to a company by an Act which authorises the construction of a railway and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in the [1845 Act](#). Likewise, [section 2 of the Military Lands Act 1892](#) incorporates certain provisions of [the 1845 Act](#) which apply to the compulsory purchase of land for military purposes.

211. In the circumstances where provisions of the [1845 Act](#) apply, the acquiring authority may not make an advance payment if they have not taken possession of the land but must do if they have. The payment must be made before either:

- (a) the end of the day on which possession is taken, or
- (b) if later, before the end of the period of two months beginning with the day on which the acquiring authority received the request for the advance payment or any further information required under [section 52\(2A\)\(b\)](#) or [52ZC\(2\)\(b\)](#) of the 1973 Act.

212. The amount of compensation payable in advance is:

- 90% of the sum of compensation agreed between the acquiring authority and claimant; or
- 90% of the acquiring authority’s estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed.

213. Acquiring authorities should make prompt and adequate advance payments as this can:

- reduce the amount of the interest ultimately payable by the authority on any outstanding compensation; and
- help claimants to have sufficient liquidity to be able to make satisfactory arrangements for their relocation.

Acquiring authorities are urged to adopt a sympathetic approach and take advantage of the flexibility offered by [section 52\(1\) of the 1973 Act](#) where possible.

214. At any time after an advance payment of compensation has been made on the basis of an acquiring authority's estimate it appears to the acquiring authority their estimate was too low, they shall, if a request is made, pay the claimant the balance of the amount of advance payment calculated due at that time.

215. Before an acquiring authority makes an advance payment of compensation they must deposit with the local authority in which the land is situated details of the:

- (a) advance payment to be made,
- (b) sum of compensation, and
- (c) the related interest in the land.

Any particulars deposited with a local authority shall be a local land charge to ensure advance payments are not duplicated.

Advance payment for a mortgage

216. In certain circumstances, a claimant can require the acquiring authority to make advance payments of compensation direct to their mortgage lender. Advance payments relating to the amount owing to the mortgage lender can be made:

- direct to the mortgage lender only with their consent,
- to more than one mortgage lender, if the interest of any other mortgage lender whose interest has priority has been released.

217. [Section 52ZA of the 1973 Act](#) enables an acquiring authority to make an advance payment to a claimant's mortgage lender where the total amount outstanding under the mortgage does not exceed 90% of the estimated total compensation due to the claimant.

218. Alternatively, [section 52ZB of the 1973 Act](#) applies where the total amount outstanding under the mortgage exceeds 90% of the total estimated compensation due to the claimant.

219. The conditions relating to both types of payments under [sections 52ZA and 52ZB of the 1973 Act](#) are complex and, in order to protect the interests of all parties, it will be advisable for an acquiring authority to work closely with both the claimant and their mortgage lender(s) in determining the amount of the advance payment payable.

Where an advance payment is made but the compulsory purchase does not go ahead

220. [Section 52AZA of the 1973 Act](#) requires a claimant to repay any advance payment if the NTT is withdrawn or ceases to have effect after the advance payment is made. If another person has since acquired the whole of the claimant's interest in the land, the successor will be required to repay the advance payment (provided it was registered as a local land charge in accordance with [section 52\(8A\) of the 1973 Act](#)).
221. [Section 52ZE of the 1973 Act](#) provides for the recovery of an advance payment to a mortgage lender if the NTT has been withdrawn or ceases to have effect. In these circumstances, the claimant must repay the advance payment unless someone else has acquired the claimant's interest in the land. In this case, the successor to the claimant must make the repayment.

Compensation where no land is taken

222. Broadly, the elements of compensation where no land is taken are:
- (a) injurious affection
 - (b) [Part 1 of the 1973 Act](#) claims.
- (a) *Injurious affection*
223. Injurious affection where no land is taken refers to the right to compensation in certain circumstances where the value of an interest in land has been reduced as a result of the execution of works authorised by statute. The principle of compensation for injurious affection where no land is taken is set out in [section 10 of the 1965 Act](#).
- (b) *Part 1 Land Compensation Act 1973 claims*
224. In certain circumstances compensation is payable to landowners in respect of depreciation of the value of their land by certain physical factors (noise, vibration, smell, fumes, smoke, artificial lighting, discharge on the land of a liquid or solid substance) caused by the use of a new or altered highway, aerodrome or other public works (see [Part 1 of the 1973 Act](#)). Compensation under [Part I of the 1973 Act](#) is payable providing the annual value of the land does not exceed a limit prescribed in secondary legislation²¹.

Claims for compensation

225. When making compensation claims, claimants should ensure their claim form or claim letter, together with any supplementary valuations, calculations or other information, provide sufficient information to enable acquiring authorities to understand the claim and how it is supported.

²¹ The current annual value limit is prescribed in the [Town and Country Planning \(Blight Provisions\) \(Wales\) Order 2019](#).

An acquiring authority may request further information from a claimant if it believes it has insufficient information about the claim. Claimants are required by [section 4\(2\) of the 1961 Act](#) to state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads of claim and showing how the amount claimed under each head is calculated. The effect of [section 4\(2\)](#) is to disregard works or the creation of interests done for the purpose of increasing the amount of compensation payable.

- 226. Parties to a compensation claim should ensure any costs which they incur in relation to the claim are appropriate, reasonable and proportionate to the nature and complexity of the claim. Sufficient records should be kept of how costs have been incurred to enable items to be explained and justified. Parties should be aware the Upper Tribunal (Lands Chamber) has the power to order a party to pay all or part of another party's costs of a reference.
- 227. Although there is no prescribed form for a compensation claim related to a CPO, a model claim form, which is set out below, is available to download from the Welsh Government's website²² and can be used for certain types of compensation claim involving compulsory purchase of land or interests and/or the taking of temporary possession.

"Claim for compensation for the compulsory acquisition or the occupation of land

This model claim form can be used to provide the information required:

- for a claim for compensation for the compulsory acquisition of land or interests and / or taking of temporary possession; and/or, when applying for an advance payment of compensation, whether in advance of, or after, possession is taken, in accordance with section 52 of the Land Compensation Act 1973 (as amended).

Please read the Explanatory Notes before completing this form.

***In respect of the**
(Insert the title of the legislation which provides the enabling compulsory purchase powers)

***For compulsory purchase / temporary possession**
(Delete which is not applicable)

***Name of acquiring authority.....**

***Address of land/property to be acquired:.....**
.....
.....

²² <https://gov.wales/building-planning>

*(*To be completed by the acquiring authority)*

Once completed, this form together with all accompanying plans and documents should be returned as soon as possible and within 21 days of the service of a notice to treat in respect of your land to:

(Acquiring authority to insert address)

Or emailed to:

(Acquiring authority to insert email address)

Explanatory Notes

If this form has been sent to you by an authority possessing compulsory purchase powers (“acquiring authority”), the plan attached to the notice identifying the relevant authorisation for the compulsory purchase of land shows the extent of the land to be acquired (or in respect of which temporary possession is to be taken) and in respect of which it is believed you have an interest.

If you wish to make a claim for compensation in respect of the land identified in the notice/on the plan, you should answer the questions in this form and provide the requested documentation to support your claim for compensation.

If you do not have an interest in the whole of the land identified, please:

- mark on the attached plan (or on a copy) the extent of the land in which you hold an interest.

Ensure you enclose:

- a copy of your title plan(s) if you own the freehold, or,
- a copy of the plan of your demise if you occupy under a lease, or,
- a copy of a plan indicating the area of land you occupy if you occupy under some other arrangement.

Answer the questions in relation to the land you own and/or occupy.

Where a request is being made for an advance payment of compensation for the compulsory purchase of land, section 52 of the Land Compensation Act 1973 (as amended) requires that the request be accompanied by the information the acquiring authority requires to estimate the amount of compensation due.

You should answer all questions relevant to your claim as fully and accurately as possible and provide copies of all documentation asked for in this form.

Where information is incomplete or unclear, the acquiring authority may not be able to make a proper assessment of any advance payment of compensation to be paid to you. In this case, the acquiring authority will notify you of what extra information it needs.

Where any claimed amount has been estimated, this must be clearly indicated alongside the relevant amount.

SECTION A – GENERAL INFORMATION		
1	Full name of claimant as stated on the registered title or lease (where one exists)	
2	Trading name (if different to 1 above)	
3	Have you instructed, or do you intend, to instruct a solicitor, surveyor or other professional person to advise you, or do you intend to deal with this matter yourself?	<input type="checkbox"/> Solicitor / <input type="checkbox"/> Surveyor / <input type="checkbox"/> Other / <input type="checkbox"/> Myself <i>(Select which applies)</i> If solicitor/surveyor/other go to question 3a. If yourself, go to question 3b
3a	Name of solicitor/surveyor/other for correspondence relating to this matter	Name of practice: Contact name: Postal address: Email address: Telephone:
3b	Your address details for future correspondence relating to this matter	Postal address: Email address: Telephone:
4	Do you have a mortgage or other loan arrangement for the purchase of your interest in the property which has an outstanding balance	<input type="checkbox"/> Yes / <input type="checkbox"/> No <i>(Select which applies)</i> If 'yes', go to question 4a. If no, go to question 5 NB: If you have reason to believe the market value of the property will be insufficient to enable the present mortgage to be paid off in full, you must advise both your mortgage lender and the acquiring authority as soon as possible.

4a	Name of lender Contact address of lender Lender's reference or Roll number Approximate balance outstanding	£
5	If you have an interest in other land either contiguous or adjacent to the land on the attached plan, please provide a plan identifying the additional land owned. Please confirm the interest you have in this adjacent land: Freehold/Leasehold (<i>Circle which applies</i>)	
6	Do you own the freehold or a leasehold interest in the land to be acquired ?	<input type="checkbox"/> Yes / <input type="checkbox"/> Neither (<i>Select which applies</i>) If you own the freehold interest, go to SECTION B of this form and answer the questions there.. If you own a leasehold interest, go to SECTION C of this form and answer the questions there.. If the answer is "Neither", go to SECTION D of this form and answer the questions there. If you have any rights over land or restrictive covenants that will be interfered with by the acquisition or temporary possession, go to SECTION F of this form . If your land is subject to temporary possession, go to SECTION G of this form .

SECTION B – FREEHOLD INTEREST	
7	<p>Where you own the freehold interest, please provide your registered title number (if known).....</p> <p>If you do not know your registered title number, please provide a copy of your title and plan (available from your solicitor whose reasonable costs will be reimbursed in the event you are entitled to claim compensation) or by download from HM Land Registry if your title is Registered.</p>
8	<p>Where you own the freehold interest <u>and</u> have granted a right of occupation (such as a lease, tenancy or other arrangement) to anyone else, please provide a copy of any lease or other written agreement, whereby you have granted someone else occupation together with any related schedule of condition, memorandum relating to rent reviews, alterations etc.</p> <p>Please confirm the amount of any rent deposit you hold £.....</p> <p>Please confirm the amount of rent currently paid to you £.....</p> <p>Please provide a copy of any notice relating to the lease that you have served on your tenant, the effect of which notice is still outstanding (for example, a break notice, notice under section 25 of the Landlord and Tenant Act 1954 etc) and a copy of any notice served by your tenant on you (for example, a break notice, notice under section 26 of the Landlord and Tenant Act 1954 etc).</p> <p>If there is no lease or agreement in writing, please provide a plan showing the area occupied by any third party and state:</p> <ul style="list-style-type: none"> (a) The name of the occupier and contact address (if different to above) (b) Whether or not the land is shared with any other party; if so please provide contact details (c) The date the arrangement started (d) The current rent payable (e) The date the above rent became payable (f) The date the arrangement finishes <p>If there is a connection or relationship between you as freeholder and any occupier, other than through whatever arrangement that you have made, please provide details of the relationship etc:</p>

9	<p>Where the following is not stated on the copy of your freehold title that you have provided, please provide details of any of these, on a separate sheet of paper:</p> <ul style="list-style-type: none"> (i) Existing exceptions of mines and minerals and any other exceptions (ii) Rights of the Lord of the Manor to minerals and sporting rights and other rights and names and addresses of the Lord and Steward (if the property was formerly Copyhold). (iii) Any public or private rights of way or any other public or private rights or privileges affecting the property (iv) Existing covenants and restrictions affecting the property (v) Corn Rent payable (vi) Liability to repair the Chancel of any Church (vii) Land drainage rates payable (viii) Yearly rent charges and outgoings
10	<p>Please provide particulars of:</p> <ul style="list-style-type: none"> • Any Notices by a public or local authority affecting the property. • Any statutory charges affecting the property, for example, under the Town and Country Planning Acts, the Private Street Works Acts or the <u>Highways Act 1980</u>.
11	<p>Please provide particulars of any outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission (section 12 of the Land Compensation Act 1961).</p>
12	<p>Please provide particulars of any un-implemented and/or partially implemented planning permission relating to the property.</p>
13	<p>Now go to Section E</p>

	<p>SECTION C – LEASEHOLD INTEREST</p>
14	<p>Where you own a leasehold interest, please provide a copy of your lease and a colour copy of any lease plan.</p>
15	<p>Where you have granted a right of occupation to anyone else by a sub-lease, licence or other arrangement, please provide a copy of any lease, or other written agreement, whereby you have granted someone else occupation.</p> <p>If there is no agreement in writing, please provide a plan showing the area let and state:</p> <ul style="list-style-type: none"> (a) The name of the occupier and contact address (if different to above) (b) The date the arrangement started (c) The current rent payable (d) The date the above rent became payable (e) The date the arrangement finishes

	If there is a connection or relationship between you as leaseholder and any occupier, other than through whatever arrangement that you have made, please provide details of the relationship etc:
16	Please provide particulars of: <ul style="list-style-type: none"> • Any Notices by a public or local authority affecting the property • Any statutory charges affecting the property for example under the Town and Country Planning Acts, the Private Street Works Acts or the Highways Act 1980
17	Please provide particulars of any outstanding right to compensation for refusal, conditional grant, revocation or modification of planning permission (section 12 of the Land Compensation Act 1961)
18	Please provide particulars of any un-implemented and/or partially implemented planning permission relating to the property
19	Now go to Section E.

	SECTION D – OTHER INTEREST
20	Where you neither own the freehold interest nor occupy under a lease or other written agreement, on a separate sheet of paper, please state in as much detail as possible the exact circumstances of your occupation and by what right you consider you are entitled to be in occupation of the land and property at this address: If there is a connection or relationship between you as occupier and your landlord, other than through whatever arrangement that you have made, please provide details of the relationship etc:
21	Now go to Section E

	SECTION E – ACQUISITION
22	Is the claimant able to fully recover VAT: <input type="checkbox"/> Yes / <input type="checkbox"/> No (<i>Select which applies</i>) If 'No', can the claimant partially recover VAT: <input type="checkbox"/> Yes / <input type="checkbox"/> No (<i>Select which applies</i>) If 'Yes', please provide evidence (for example, an accountant's certification) to show what percentage of VAT can be usually be recovered.
22	Will the sale of the interest in land be liable to VAT? <input type="checkbox"/> Yes / <input type="checkbox"/> No (<i>Select which applies</i>)

	If 'Yes', please provide a copy of HMRC acknowledgment of the option to tax.																		
23	<p>Particulars of claim: NB The law requires you to provide a fully detailed valuation. You should include full details of any comparable evidence relied upon in support of the valuation to support your compensation claim. Please attach this as a separate document but summarise the individual figures below</p> <table> <tr> <td>For the value of the claimant's interest</td> <td>£</td> </tr> <tr> <td>For severance/injurious affection of other land of the claimant</td> <td>£</td> </tr> <tr> <td>For disturbance</td> <td>£</td> </tr> <tr> <td>For easements etc</td> <td>£</td> </tr> <tr> <td>Home loss payment</td> <td>£</td> </tr> <tr> <td>Basic loss payment</td> <td>£</td> </tr> <tr> <td>Occupier loss payment</td> <td>£</td> </tr> <tr> <td> Total gross claim</td> <td> £</td> </tr> <tr> <td> What sum, if any, is to be deducted for betterment</td> <td> £</td> </tr> </table>	For the value of the claimant's interest	£	For severance/injurious affection of other land of the claimant	£	For disturbance	£	For easements etc	£	Home loss payment	£	Basic loss payment	£	Occupier loss payment	£	 Total gross claim	 £	 What sum, if any, is to be deducted for betterment	 £
For the value of the claimant's interest	£																		
For severance/injurious affection of other land of the claimant	£																		
For disturbance	£																		
For easements etc	£																		
Home loss payment	£																		
Basic loss payment	£																		
Occupier loss payment	£																		
 Total gross claim	 £																		
 What sum, if any, is to be deducted for betterment	 £																		
24	<p>If an amount for disturbance has been or is to be claimed, please provide:</p> <ul style="list-style-type: none"> • Copies of any available estimates/quotations/costs already incurred for removal or other costs associated with moving to alternative premises. • In the case of a business where it is likely that the business will close down, copies of any available estimates/quotations for costs etc associated with closing the business down. • In the case of a business where it is possible that a claim for loss of profit (of either a temporary or permanent nature) might be made at any time in the future, copies of the full accounts (including the detailed Profit and Loss pages) for the last 3 accounting years that have been filed for taxation purposes with HMRC. 																		
25	<p>If you are making a claim for compensation in respect of the compulsory purchase of land and have not yet made an application for an advance payment of compensation, do you wish this claim to be accepted also as a formal request for an advance payment of compensation: <input type="checkbox"/> Yes / <input type="checkbox"/> No (Select which applies)</p>																		

	SECTION F – INTERFERENCE WITH RIGHTS OVER LAND ETC
26	<p>If an amount for loss or injury/damage caused by interference with any right over land or any restrictive covenant has been or is to be claimed, please provide:</p> <ul style="list-style-type: none"> • Copies of any available estimates/quotations/costs already incurred or to be incurred.

	SECTION G – TEMPORARY POSSESSION
27	<p>If an amount for loss or injury/damage caused by temporary possession has been or is to be claimed, please provide:</p> <ul style="list-style-type: none"> • Copies of any available estimates/quotations/costs already incurred or to be incurred.

Date:.....

Signed by or on behalf of the Claimant:.....

If not signed by the Claimant, please state the capacity in which signed:.....

Name and address of Signatory (*if different to the answer at Q3a*):.....

Please note:

For the purpose of receiving an advance payment compensation as much information as possible should be provided so to ensure the acquiring authority has every opportunity to make a proper assessment of the amount of any advance payment of compensation due.

If any required information is not available at the time this form is returned, please ensure it is provided to the acquiring authority as soon as it becomes available as a further advance payment of compensation due may then be payable.

Disputes over claims for compensation: References to the Upper Tribunal (Lands Chamber)

228. In the absence of an agreement between an acquiring authority and a claimant over a claim for compensation, a reference may be made to the Upper Tribunal (Lands Chamber)²³. Before a reference is made, the claimant and acquiring authority should have:

- exchanged sufficient information to understand each other's positions;
- discussed each other's positions thoroughly and constructively;
- sought to narrow the issues that the Upper Tribunal (Lands Chamber) would have to determine if a reference were made;
- considered the use of ADR techniques to avoid a reference being made or to determine at least some of the issues which the Upper Tribunal (Lands Chamber) would otherwise have to determine.

Acquiring authorities are expected to, so far as possible, provide claimants with adequate information about:

- the relevant procedure for making a compensation claim (including whether there are any statutory requirements or time limits and whether there is any prescribed, model or suggested form for making a claim);
- the availability of professional advice to assist them in making and evidencing a compensation claim;
- whether, how and when any professional fees that may be incurred by them in relation to a compensation claim will be reimbursed; and
- the importance of maintaining appropriate records in order to substantiate a compensation claim.

229. Prior to making a reference, the party intending to make the reference should contact the other party in writing in order to:

- notify the other party of its intention to make a reference;
- summarise the matters agreed between the parties;
- summarise the outstanding issues in dispute between the parties;
- provide the other party with an opportunity to respond to the outstanding issues.

230. A reference should not be made prematurely when the resolution of outstanding issues is still actively being explored unless there is a requirement to comply with a statutory time limit in respect of a compensation claim.

²³ [The Upper Tribunal \(Lands Chamber\) Procedure Rules 2010 \(as amended\)](#) govern the practice and procedure to be followed in the Upper Tribunal (Lands Chamber).

Part 2 – Enabling compulsory purchase powers

Section A – Compulsory purchase orders made under section 226 of the Town and Country Planning Act 1990

Appropriate acquiring authorities

1. Under [section 226 of the Town and Country Planning Act 1990](#) (“the 1990 Act”) the following authorities (which are classed as “local authorities” for the purposes of that section) can acquire land compulsorily for development and other planning purposes as defined in [section 246\(1\) of the 1990 Act](#):
 - county or county borough councils²⁴;
 - joint planning boards²⁵; or
 - national park authorities²⁶.

These are referred to collectively in this section as “acquiring authorities with planning powers”.

Section 226 power

Purpose of the section 226 power

2. The compulsory acquisition power in [section 226](#) is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where necessary to achieve the implementation of proposals in development plans or where strong planning justification for the use of the power exists. The [section 226](#) power is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of activities or purposes proposed mean no other single specific compulsory purchase power would be appropriate. A CPO should only be made where there is a compelling case in the public interest. Factors which acquiring authorities should address when deciding whether or not to compulsorily acquire a site allocated for development in an adopted development plan are:
 - Is the development plan up-to-date?
 - Why hasn't the landowner brought the site forward?
 - Could the local authority do anything to bring forward the development of the site short of a CPO?
 - What are the consequences of the site not being developed?
 - Are there appropriate developers who would purchase the land from the council following its compulsory acquisition, and then develop it in a timely manner? If there are, acquiring authorities should receive, by way of sale proceeds for the land, a sum equivalent to the market value. As such, the most significant cost associated with a CPO, the market value element of the statutory compensation, can largely be recovered.

²⁴ [Section 226\(8\) of the 1990 Act.](#)

²⁵ [Section 244\(1\) of the 1990 Act.](#)

²⁶ [Section 244A of the 1990 Act.](#)

As such, acquiring authorities would need to budget for the actual legal and administrative costs of making the CPO and for those items of compensation in addition to market value i.e. payments for disturbance, home loss or severance/injurious affection. It would be in the interests of acquiring authorities to seek agreements with developers for them to cover these costs of the CPO process prior to commencing the compulsory purchase process.

3. The [section 226](#) power should not be used in place of other enabling powers²⁷. The Statement of Reasons accompanying a CPO should make clear the justification for the use of the [section 226](#) power. In particular, the Welsh Ministers may refuse to confirm a CPO if they consider this general power is or is to be used in a way intended to frustrate or overturn the intention of Parliament by attempting to acquire land for a purpose which had been explicitly excluded from a specific power.
4. In preparing and submitting a CPO under [section 226](#), acquiring authorities with planning powers should have regard to the general advice in [Part 1](#) of this Circular including the guidance about planning requirements and the justification for making the CPO.

Use of the section 226 power

5. The compulsory acquisition power in [section 226](#) can be used in the following ways:
 - (a) [Section 226\(1\)\(a\)](#) enables acquiring authorities with planning powers to acquire land in its area if they think it will facilitate the carrying out of development²⁸, redevelopment or improvement²⁹ on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. There are limitations to the [section 226\(1\)\(a\)](#) power and further guidance is given in [paragraphs 10 - 11](#) below.
 - (b) [Section 226\(1\)\(b\)](#) allows acquiring authorities with planning powers, if authorised, to acquire land in their area which is 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. The potential scope of this power is broad.

²⁷ For example, [section 164 of the Public Health Act 1875](#), [section 89 of the National Parks and Access to the Countryside Act 1949](#), [section 19 of the Local Government \(Miscellaneous Provisions\) Act 1976](#), [section 239 of the Highways Act 1980](#), or [section 17 of the Housing Act 1985](#). In relation to the last, see also [paragraph 7 of Section B in Part 2 of this Circular](#), which explains when land for housing development is being assembled under planning powers, the Welsh Ministers will have regard to the policies set out in [Section B in Part 2 of this Circular](#).

²⁸ Under [section 336\(1\) of the 1990 Act](#), "development" has the meaning given in [section 55 of the 1990 Act](#) (including any special controls given by direction in relation to demolition and redevelopment (see Welsh Office Circular 31/95: "Planning Controls over Demolition").

²⁹ "Improvement" in this context might include a minor adjustment in the street pattern or the provision of space for vehicular access and parking.

It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme. It might be appropriate where, for example an acquiring authority wishes to:

- (i) safeguard land for future development;
- (ii) provide provision of access or amenity land which may not require planning permission and which forms part of an already approved scheme;
- (iii) ensure it meets their contractual obligation to have vacant possession of properties in line with an agreed programme; or
- (iv) secure the improvement of land by development once infrastructure is in place.

- (c) [Section 226\(3\)](#) provides that a CPO made under either [section 226\(1\)\(a\) or \(b\)](#) may also provide for the compulsory purchase of-
- (i) any adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land; or
 - (ii) land to give in exchange for any of the primary land which forms part of a common or open space or fuel or field garden allotment.

An acquiring authority with planning powers intending to acquire land for either of the purposes (outlined in paragraph 5(c)) in connection with the acquisition of land under [section 226\(1\)\(a\) or \(b\)](#) must therefore specify in the same CPO the appropriate [section 226\(3\)](#) acquisition power and purpose.

- (d) [Section 226\(4\)](#) provides an acquiring authority with planning powers can exercise its compulsory purchase powers under [section 226\(1\)\(a\) or \(b\) or \(3\)](#) irrespective of whether it intends to undertake an activity or purpose mentioned in those subsections.

6. The compulsory acquisition power in [section 226](#) is expressed as alternatives in the legislation, i.e. [226\(1\)\(a\)](#) or [226\(1\)\(b\)](#). The Welsh Ministers take the view that a CPO made under [section 226\(1\)](#) should be expressed in terms of either [226\(1\)\(a\)](#) or [226\(1\)\(b\)](#). The CPO should clearly indicate which power is being exercised, quoting the wording of [226\(1\)\(a\)](#) or [226\(1\)\(b\)](#) as appropriate as part of the description of what is proposed.

Deciding whether to confirm compulsory purchase orders made under section 226: section 245 of the 1990 Act

7. [Section 245\(1\) of the 1990 Act](#) provides the Welsh Ministers with the right to disregard objections to CPOs made under [section 226 of the 1990 Act](#) which, in their opinion, amount to an objection to the provisions of a development plan.

Section 226 and compulsory acquisition of interests in Crown land

8. [Sections 226\(2A\)](#) and [293 of the 1990 Act](#) apply where an acquiring authority with planning powers proposes to acquire land compulsorily under [section 226](#) in which the Crown has an interest.

The Crown's interest cannot be acquired compulsorily under [section 226](#) but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a government department which holds the freehold interest in certain land may agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that interest may, therefore, be included in the CPO. Further advice about the purchase of interests in Crown land is given in [Section L in Part 2 of this Circular](#).

Section 226(1)(a)

9. [Section 226\(1\)\(a\)](#) enables acquiring authorities with planning powers to acquire land in its area if they think it will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement. This wide power may be used to acquire land for a variety of planning purposes such as:
- town centre redevelopment or other comprehensive regeneration schemes for which the authority wishes to assemble a number of individual properties including residential or commercial, or areas of land;
 - housing led regeneration schemes including where the acquiring authority wishes to assemble a number of areas of land (see [Section B in Part 2 of this Circular](#) for advice on CPOs for the development for, and acquisition of, housing which must achieve a quantitative or qualitative housing gain);
 - community assets following a request made by the community, for example, community and town councils requesting improvements or extensions to assets such as recreational open space;
 - listed buildings in regeneration i.e. to restore rather than preserve (see [Section H in Part 2 of this Circular](#) for advice on CPOs for listed buildings in need of repair which aim to preserve listed buildings); or
 - highways as part of wider mixed-use regeneration schemes (see [Section G in Part 2 of this Circular](#) for advice on CPOs specifically for highway purposes).

The scheme of development, redevelopment or improvement, for which the land needs to be acquired, does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. This could be relevant, for example, in an area of low housing demand where property might be being removed to facilitate replacement housing elsewhere within the same community. Also, in areas vulnerable to flooding which might threaten the long term sustainability of a community, the acquisition of land could help bring forward a flood alleviation scheme. Likewise, the acquisition of land could help the remediation of land contamination.

Limitations of the section 226(1)(a) power

10. The wide power in [section 226\(1\)\(a\)](#) is subject to the restriction under [section 226\(1A\) of the 1990 Act](#).

This provides that acquiring authorities with planning powers must not exercise the power under [section 226\(1\)\(a\)](#) unless it thinks the development, redevelopment or improvement of the land being acquired is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority with planning powers has administrative responsibility. The acquiring authority with planning powers therefore needs to be able to demonstrate how the purpose for which the land is being acquired will contribute to the well-being of their area. This allows acquiring authorities with planning powers to develop a broader and more innovative role in better responding to the needs of their community identified through engagement and consultation.

11. The benefit to be derived from exercising the [section 226\(1\)\(a\)](#) power is not restricted to the area subject to the CPO, as the concept is applied to the well-being of the whole (or any part) of the acquiring authority with planning powers' area. This enables acquiring authorities with planning powers to do anything which they consider is likely to bring economic, social or environmental well-being benefits to a wider area. In practice, the purpose of [section 226\(1A\)](#) is to broaden the issues which must be taken into account by an acquiring authority when deciding whether to make a CPO under [section 226\(1\)\(a\)](#). Accordingly, an acquiring authority is entitled to take into account all the consequences that are likely to flow from the redevelopment of land the subject of CPO. The purpose of the [section 226\(1\)\(a\)](#) power is to encourage innovation and closer joint working between local authorities and their partners to improve the quality of life of those living, working or otherwise involved in the community life of their area.

The meaning of "well-being" in the context of the section 226(1)(a) power

12. Acquiring authorities with planning powers may determine the types of activities that will promote or improve the well-being of their areas. The term "well-being" is not directly defined in the [1990 Act](#) nor in this guidance as different acquiring authorities with planning powers may have different views about the types of activities that will promote or improve the well-being of their areas. Each local authority in Wales is required to publish well-being objectives in a Local Well-Being Plan to demonstrate how they will achieve the 7 well-being goals outlined in the [WBFG Act](#). As such, when considering whether or not to use the [section 226\(1\)\(a\)](#) "well-being" power, acquiring authorities with planning powers should give consideration to their adopted Local Well-Being Plan to ascertain the types of activities which may promote or improve the well-being of their areas in accordance with the [WBFG Act](#). Actions taken under the [section 226\(1\)\(a\)](#) well-being power should be informed by, and be responsive to, the views of the communities in the area.
13. The well-being of an area will depend on many factors. Often these factors will not be under the direct control or influence of the acquiring authority with planning powers, for example, some national or global issues.

Acquiring authorities with planning powers are best placed to make an assessment of what is required to promote well-being, taking into account the needs of its communities, and can provide a solid foundation for the overall well-being of their area that responds directly to local, regional and national issues.

14. Key factors which contribute to the promotion or improvement of well-being may include:
 - (a) Economic factors such as the availability of suitable and high quality jobs, measures to encourage local small businesses, efficient and effective transport links, lifelong learning, training and skills development, the provision of infrastructure and new information and communication technologies.
 - (b) Social factors such as the promotion of good quality and affordable housing; safe communities; the encouragement of the voluntary sector; looking after the needs of children and young people, particularly the most vulnerable; access to the arts or leisure opportunities; access to education.
 - (c) Health related factors such as the promotion of good physical, social and mental health and developing and promoting policies which have a positive impact on health outcomes, especially on health inequalities.
 - (d) Environmental factors such as the availability of clean air, clean water, clean streets, the quality of the built environment, the removal of objects considered hazardous to health, protecting communities against the threat of climate change, freedom from a high risk of flooding, improving and promoting biodiversity and accessibility to nature.
 - (e) Promoting sustainable development in ways which:
 - promote social justice and equality of opportunity; and
 - enhance the natural and cultural environment and respect its limits - using only a fair share of the earth's resources and sustaining cultural legacy.
15. In determining whether the purpose for which they propose to acquire land compulsorily under [section 226\(1\)\(a\)](#) can be expected to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, acquiring authorities with planning powers may find it helpful to have regard to the guidance issued by the Welsh Ministers concerning the interpretation of that power in the [Local Government Act 2000](#)³⁰.
16. PPW suggests inclusion of policies in development plans relating to issues such as the supply of land which delivers identified housing need, promoting regeneration initiatives, and improving local environmental quality. All such issues can have a significant impact on land use, for example by influencing the demands on or needs for development.

³⁰ Entitled "Statutory Guidance to Welsh Local Authorities on the Power to promote or improve Economic, Social or Environmental Well-Being under the Local Government Act 2000":

<https://gov.wales/sites/default/files/publications/2019-06/power-to-promote-well-being-guidance-for-local-authorities.pdf>

They are not, however, necessarily capable of being delivered solely or mainly through the granting or refusal of planning permission. They may require a more proactive approach by the relevant LPA including facilitating the assembly of suitable sites, for which the compulsory purchase powers in [section 226\(1\)\(a\)](#) may provide helpful support where such acquisitions can be justified in the public interest.

17. The re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the [section 226\(1\)\(a\)](#) power might be appropriate. For example, it is likely to be more appropriate than a Housing Act power if the need to acquire and demolish dwellings were to arise as a result of an oversupply of a particular house type and/or housing tenure in a particular locality. A greater diversity of housing provision may be needed to ensure that neighbourhoods are sustainable in the long term, and improved housing quality and choice may be necessary to meet demand. This may involve acquiring land to secure a change in land use, for example, from residential to commercial/industrial or to ensure that new housing is located in a more suitable environment than that which it would replace.

18. A challenge faced by many local authorities relates to the adaptation of town centres to take account of the changing nature of retailing and leisure activities, the need to move to sustainable modes of transport, and the reintroduction of residential uses within the high street. These pressures will change the nature of land assembly needed to stimulate the redevelopment and re-use of sites scattered through a town centre or the regeneration and improvement of the well-being of the area. It might therefore be an appropriate use of the [section 226\(1\)\(a\)](#) power for such a purpose. A strategy based on:
 - (a) the survey of under-used or derelict properties;
 - (b) a “master-planning and placemaking approach³¹” to design and identify development constraints and well-being benefits for a wider area of a co-ordinated programme of acquisitions, accompanied by public and stakeholder engagement and consultation; and
 - (c) a structured approach to negotiations with landowners to identify those willing to sell and those unwilling to do so or with unrealistic expectations as to value of future acceptable uses, and it being known that a CPO was in preparation in the background,

should establish a case for acquisition which could tilt the balance in favour of the public interest in regeneration when weighed against the rights of an individual property owner. Such a strategy could form the basis on which to build a compelling case in the public interest.

³¹ See page 16 of Planning Policy Wales (PPW) (Edition 10, December 2018) for a definition of ‘placemaking’.

Justification needed to support a compulsory purchase order to acquire land compulsorily under section 226(1)(a) and the planning position

19. [Paragraphs 54 - 57 in Part 1](#) of this Circular consider in general terms the need for acquiring authorities to be able to satisfy the Welsh Ministers that there is a compelling case in the public interest for the proposed compulsory acquisition. However, the wording of [section 226\(1\)\(a\) of the 1990 Act](#) requires an authority exercising those compulsory purchase powers to take into account further specific considerations i.e. the carrying out of development, redevelopment or improvement on or in relation to the land is likely to contribute to the achievement of the promotion or improvement of the economic, social, environmental well-being of the area. Comparing and contrasting these specific considerations with those applying to compulsory purchase powers under different statutes may have a bearing on deciding the most appropriate powers under which to acquire land.
20. The planning framework providing the justification for a CPO should be as detailed as possible in order to demonstrate there are no planning or other impediments to the implementation of the scheme. Where the justification for a scheme is linked to proposals identified in an adopted LDP, Strategic Development Plan or Future Wales: the National Plan 2040 covering the area, this will be given due weight by the Welsh Ministers when giving consideration to whether a CPO should be confirmed or not.
21. An acquiring authority with planning powers is not bound by the provisions of the development plan as the basis for justifying the compulsory purchase of land under the provisions of [section 226\(1\)\(a\)](#). These might relate to, for example, national policies concerning such issues as: the appropriate use of compulsory purchase powers; regeneration; or housing provision brought forward since the last revision of the development plan. Any deviation from an adopted LDP would, however, have to be justified and evidence based. In such situations, where there has not yet been an opportunity to incorporate such policies into the LDP for the area, the Welsh Ministers would normally expect to see the proposals underlying the compulsory purchase having been worked up in supplementary planning guidance which had been subjected to public consultation. The weight to be attached to an emerging LDP³² by the Welsh Ministers when giving consideration to whether a CPO should be confirmed or not will depend on the stage the LDP has reached and the weight to be attached will not increase as the plan progresses to adoption. In considering the weight to be given to policies in an emerging LDP which apply to a particular scheme, acquiring authorities will need to consider carefully the underlying evidence and background to the policies. National policy can also be a material consideration in these circumstances. Further guidance on emerging or outdated LDPs can be found in the Welsh Government's [Development Plans Manual \(Edition 3, March 2020\)](#).

³² Defined in [regulation 2 of the Town and Country Planning \(Local Development Plan\) \(Wales\) Regulations 2005 \(as amended\)](#).

22. Any programme of land assembly needs to be set within a clear strategic framework and this is particularly important when demonstrating the justification for acquiring land compulsorily under [section 226\(1\)\(a\)](#) powers as a means of furthering the well-being of the wider area. Such a framework will need to be founded on an appropriate evidence base and have been subjected to a consultation exercise including with those whose property is directly affected. This can help reduce the number of objections to the CPO.
23. Where a development plan is out of date, it may well be appropriate to take account of more detailed proposals being prepared on a non-statutory basis with the intention that they will be incorporated into the development plan at the appropriate time. Such proposals may relate, for instance, to accommodating the need for further growth in an area and may take the form of masterplans or other detailed delivery mechanisms prepared by the relevant local authority. Where such proposals are being used to provide additional justification and support for a CPO, there should be clear evidence that all those who might have objections to the underlying proposals in the supporting non-statutory plan have had an opportunity to make them known to the body promoting that plan, whether or not that is the acquiring authority making the CPO. In addition, PPW is a material consideration in all planning decisions and should be taken into account.
24. It is recognised it may not always be feasible or sensible to wait until the full details of the acquisition scheme have been worked up, and planning permission obtained, before an acquiring authority proceeds with a CPO and builds the compelling case. In cases where the proposed acquisitions form part of a longer-term strategy which needs to adapt to changing circumstances, it may not always be possible to demonstrate with absolute clarity or certainty the precise nature of the end-use proposed. In all such cases, the responsibility will lie with the acquiring authority to:
- put forward a compelling case for compulsory acquisition in advance of resolving all the uncertainties; and
 - subsequently securing the necessary planning permission for the acquisition scheme.
25. If planning permission on land associated with a CPO has changed from the time the CPO is submitted to the Welsh Ministers for confirmation to the time of a public inquiry, it is important all planning changes are well tracked and documented. If a planning permission is subsequently amended after a CPO is confirmed, acquiring authorities should ensure the development the subject of the amended permission complements the description of the scheme in the CPO as this will set the purpose of the acquisition.

Factors to be taken into account by the Welsh Ministers in deciding whether or not to confirm a compulsory purchase order under section 226(1)(a)

26. Any decision about whether or not to confirm a CPO made under [section 226\(1\)\(a\)](#) to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land will be made on its own merits, but the factors which the Welsh Ministers may consider include:
- (a) Whether the purpose for which the land is being acquired aligns with PPW, the adopted LDP, Strategic Development Plan, or Future Wales: the National Plan 2040 covering the area or, where no such up to date development plan exists, with the draft development plan.
 - (b) The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the acquiring authority with planning powers' area i.e. local authority area.
 - (c) Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired. The guidance in [paragraphs 26 - 28 in Section G in Part 2 of this Circular](#) in relation to CPOs which are made to acquire land for the purposes of facilitating an active travel route and the assessment of alternative proposals applies equally to CPOs made under the [section 226 of the 1990 Act](#).
 - (d) The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Welsh Ministers that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the CPO before finalising the details of the replacement scheme and/or the statutory planning position.

Section B – Compulsory purchase orders made under housing powers (including listed buildings in clearance areas)

Introduction

1. This Section provides guidance to local authorities considering whether to make CPOs under the: [Housing Act 1985](#) (“the 1985 Act”); and [Local Government and Housing Act 1989](#) (“the 1989 Act”). It also provides guidance on the information which should be submitted in support of housing CPOs in addition to the general requirements described in the Circular.
2. Housing CPOs submitted for confirmation by the Welsh Ministers will be considered on their merits in light of any objections received and the general requirement that CPOs should not be made unless there is a compelling case in the public interest.

Housing Act 1985: Part 2

Circumstances in which powers may be used

3. [Section 17 of the 1985 Act](#) empowers local housing authorities (LHAs) to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
4. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties. Current practice is for LHAs who compulsorily acquire land or property to dispose of it to the private sector, registered social landlords or owner-occupiers.

Information to be included in submissions of compulsory purchase orders

5. When submitting a CPO made under [Part II of the 1985 Act](#) for confirmation the acquiring authority should include in its Statement of Reasons for making the CPO information regarding needs for the provision of further housing accommodation in its area. This information should normally include:
 - the total number of dwellings in the district;
 - the total number of substandard dwellings (i.e. the quantity of housing with Category 1 hazards as defined in [section 2 of the Housing Act 2004](#));
 - the total number of households and the number for which, in the authority's view, provision needs to be made;
 - details of the authority's housing stock, by type, particularly where the case for compulsory purchase turns on a need to provide housing of a particular type;
 - where a CPO is made with a view to meeting special housing needs, for example, the elderly, disabled or homeless, specific information about these needs should be included;

- where the authority proposes to dispose of the land or property concerned, details of the prospective purchaser, their proposals for the provision of housing accommodation and when this will materialise, and details of any other statutory consents required;
- where it is not possible to identify a prospective purchaser at the time a CPO is made, details of the authority's proposals to dispose of the land or property, its grounds for considering that this will achieve the provision of housing accommodation and when the provision will materialise;
- where the authority has alternative proposals, it will need to demonstrate that each alternative is preferable to any proposals advanced by the existing owner.

Acquisition of land for housing development

6. The acquisition of land for any type of housing development is an acceptable and justifiable use of compulsory purchase powers, including where it will make land available for private development or development by registered social landlords which is in accordance with the adopted LDP for an area and national planning policy. [Section 17\(4\) of the 1985 Act](#) provides the Welsh Ministers may not confirm a CPO unless they are satisfied the land is likely to be required within 10 years.
7. Where a LHA has a choice between the use of housing or planning compulsory purchase powers (referred to in [Section A in Part 2 of this Circular](#)) the Welsh Ministers will not refuse to confirm a CPO solely on the grounds that it could have been made under another power. Where land is being assembled under planning powers for housing development, the Welsh Ministers will have regard to the policies set out in this Section.

Acquisition of empty properties for housing use

8. Compulsory purchase of empty properties may be justified in situations where there appears to be no prospect of a suitable property being brought into residential use through acquisition by agreement. LHAs will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the owner cannot be traced and therefore use of compulsory purchase powers may be the only way forward. When considering whether or not to confirm a housing CPO the Welsh Ministers will normally wish to know:
 - how long the property has been vacant;
 - what steps the LHA has taken to encourage the owner to bring it into acceptable use and the outcome; and
 - what works have been carried out by the owner towards its re-use for housing purposes.

Acquisition of sub-standard properties

(a) General use of Power

9. Compulsory purchase of sub-standard properties may also be justified in cases where acquisition by agreement cannot be reached and:
 - a clear housing gain will be obtained;

- the owner of the property has failed to maintain it or bring it to an acceptable standard; and
- other statutory measures, such as the service of statutory notices, have not achieved the LHA's objective of securing the provision of acceptable housing accommodation.

The Welsh Ministers would not, however, expect an owner-occupied house, other than a house in multiple occupation, to be included in a CPO unless the defects in the property adversely affected other housing accommodation. In considering whether or not to confirm a housing CPO relating to a sub-standard property the Welsh Ministers will wish to know:

- what the alleged defects in the CPO property are;
- what other measures the authority has taken to remedy matters and the outcome (for example, service of a notice on the owner under [section 215 of the 1990 Act](#) requiring them to remedy the loss of amenity which such a property could cause);
- the extent and nature of any works carried out by the owner to secure the improvement and repair of the property; and
- the LHA's proposals regarding any tenants of the property.

(b) *Limitations on use of the power under Part 2 of the Housing Act 1985 to acquire property for the purpose of providing housing accommodation*

10. The powers under [Part II of the 1985 Act](#) to acquire property for the purpose of providing housing accommodation do not extend to acquisition for the purpose of improving the management of housing accommodation. A qualitative or quantitative housing gain must be achieved. Following the judgement in the case of *R v Secretary of State for the Environment ex parte Royal Borough of Kensington and Chelsea* (1987) it may, however, be possible for authorities to resort to compulsory purchase under [Part II](#) where harassment or other grave conduct of a landlord has been such that proper housing accommodation could not be said to exist at the time when the authority resolved to make the CPO. Such a CPO could be justified as achieving a housing gain.

11. Consent may be required for the onward disposal of tenanted properties which have been compulsorily purchased. Before a LHA can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with [section 106A of the 1985 Act](#). The Welsh Ministers cannot give consent for the disposal if it appears to them that a majority of the tenants are opposed. A LHA contemplating onward sale should, therefore, ensure in advance that it has the tenants' support.

Housing Act 1985: Part 9 Clearance areas

12. Where a local authority has declared an area as a “clearance area”³³, it may proceed to secure the clearance of the area by purchasing the land comprised in the area and themselves undertaking, or otherwise securing, the demolition of the buildings on the land. Where a local authority has determined to purchase land under [section 290 of the 1985 Act](#), it may purchase the land either by agreement or a CPO. In addition to the general requirements, an authority submitting a clearance area CPO will be expected to deal with the following matters in their Statement of Reasons:
- the declaration of the clearance area and its justification including a statement that all other possible options to maintain the clearance area have been considered;
 - the standard of buildings in the clearance area i.e. incorporating a statement of the authority’s principal grounds for being satisfied that the buildings are substandard;
 - the justification for acquiring any added lands included in the CPO;
 - proposals for re-housing and for re-locating commercial and industrial premises affected by clearance;
 - the proposed after-use of the cleared site;
 - where it is not practicable to provide evidence of planning permission, the authority should demonstrate their proposals are acceptable in planning terms and why, in their opinion, there appears to be no grounds that planning permission will not materialise; and
 - how they have fully considered the economic aspect of clearance and that they have responded to any submissions made by objectors on this subject.
13. General guidance on clearance areas can be found in *National Assembly for Wales Circular 20/02 - Housing Renewal*.

Building becoming listed when subject to compulsory purchase for clearance purposes

14. Where a building is included in a clearance area CPO under [section 290 of the 1985 Act](#), and it is subsequently listed, the local authority will need to decide urgently whether the building should be retained because of its special interest, or whether it should proceed with the clearance proposals. As part of the listing process, the local authority will be invited to submit its views to Cadw. When a building is listed by Cadw, the local authority may apply to the Planning Inspectorate Wales for a review of the listing decision within 12 weeks of the listing decision date³⁴. If the local authority decides clearance is the preferred action to take, it must apply to the Welsh Ministers for listed building consent to demolish the listed building within three months of the date of listing ([section 305 of the 1985 Act](#)).

³³ Defined in [section 289 of the Housing Act 1985](#).

³⁴ See Part 5 of *Understanding Listing in Wales (Cadw, September 2018)*:

<https://cadw.gov.wales/sites/default/files/2019-05/Understanding%20Listing%20in%20Wales.pdf>

15. If a building in a clearance area CPO is subsequently listed after the CPO has been submitted to the Welsh Ministers for confirmation, but before they have reached a decision on it, the local authority should inform the Welsh Ministers urgently of how it wishes to proceed in light of the listing. If the local authority decides to retain the listed building, it should request the building be withdrawn from the CPO. If the local authority applies for listed building consent to demolish the listed building, the Welsh Ministers will normally hold a joint public inquiry at which the CPO and the application for listed building consent will be considered together.
16. If listed building consent is applied for and granted, acquisition, if not completed, can proceed and demolition can follow. If listed building consent is refused, or if no application is made within the three month period, subsequent action depends on whether or not NTT has been served and, if it has, whether the building is vested in the acquiring authority:
 - If NTT has not been served, [section 305\(2\) of the 1985 Act](#) prohibits the local authority from serving it unless, and until, the Welsh Ministers give listed building consent. Refusal of listed building consent or failure to apply for it within the specified three month period will effectively release the building from the CPO and, where applicable, from the clearance area. In the latter event, the local authority must then consider other appropriate action for dealing with unfitness under the Housing Acts.
 - If NTT has been served before the building is listed, but acquisition has not been completed before listed building consent is refused or the expiry of the three month period, compulsory acquisition may continue. However, this will proceed under the powers contained in [Part 2 of the 1985 Act](#) for residential buildings or Part 9 of the 1990 Act for other buildings.
 - If the listed building is already vested in the local authority, it will be appropriated to [Part 2 of the 1985 Act](#) (provision of housing accommodation) or [Part 9 of the 1990 Act](#) (planning purposes) as the case may be.

Building becoming listed when acquired by agreement for clearance purposes

17. Where a building is purchased by agreement for clearance purposes³⁵ and is to be demolished, but subsequently becomes listed, the local authority may, under the provisions of [section 306 of the 1985 Act](#), apply to the Welsh Ministers for consent to demolish the listed building³⁶. If consent is refused or not applied for within the specified period of three months from the date of listing, the acquiring authority is no longer subject to the duty to demolish the building imposed by [Part 9 of the 1985 Act](#) and must appropriate it to [Part 2 of the 1985 Act](#) (provision of housing accommodation) or [Part 9 of the 1990 Act](#) (planning purposes) as the case may be.

³⁵ Under: (a) [Part 9 of the Housing Act 1985](#); or (b) [section 122](#) or [123 of the Local Government Act 1972](#).

³⁶ Under [section 8 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#).

Demolition of an unlisted building in a conservation area when subject to compulsory purchase for clearance purposes

18. Conservation area consent is not required for the demolition of an unlisted building in a conservation area which has been included in a clearance CPO under [Part 9 of the 1985 Act](#)³⁷. Where a clearance CPO is submitted and includes buildings within a conservation area, the Welsh Ministers have regard to the conservation area aspect in reaching their decision on the CPO.

Other housing powers

19. CPOs made by local authorities under:
- (a) [section 29 of the 1985 Act](#) to provide houses for persons employed or paid by, or by a statutory committee of, the council; or
 - (b) [section 300 of the 1985](#) for the purchase of houses either liable to be demolished or subject to a prohibition order and are judged capable of being made habitable,

fall to be considered on their merits in the light of the requirement that there should be a compelling case for compulsory purchase in the public interest. The Welsh Ministers will also have regard to the policies set out in this Section where applicable.

Local Government and Housing Act 1989: Part 7 Renewal Areas

20. [Part 7 of the 1989 Act](#) is a code relating to the declaration and administration of Renewal Areas. [Section 93\(1\) of the Act](#) provides where a LHA has declared an area to be a Renewal Area, the authority may exercise the powers of compulsory purchase under [section 93](#). [Section 93\(2\) of the 1989 Act](#) provides LHAs may acquire, by agreement or compulsorily, any land in their area on which there are premises consisting of, or including, housing accommodation or which forms part of the curtilage of any such premises for the purposes of:
- the improvement or repair of the premises (either by the authority or by a person to whom they propose to dispose of the premises);
 - the proper and effective management and use of the housing accommodation (either by the authority or by a person to whom they propose to dispose of the premises comprising the accommodation); and
 - the well-being of residents in the area.

LHAs may provide housing accommodation on land which is acquired.

21. LHAs acquiring properties compulsorily should consider subsequently disposing of them to owner-occupiers, housing associations or other private sector interests in line with their strategy for a Renewal Area. Where property in need of renovation is acquired, work should be completed as quickly as possible in order not to blight the area and undermine public confidence in the overall Renewal Area strategy.

³⁷ Conservation Areas (Disapplication of Requirement for Conservation Area Consent for Demolition) (Wales) Direction (2017 No. 27).

In exercising their powers of compulsory acquisition, local authorities will need to bear in mind the financial and other resources available to them and to other bodies concerned.

22. [Section 93\(4\) of the 1989 Act](#) can be used by LHAs to acquire by agreement or compulsorily land and buildings for the purpose of improving the amenities in a Renewal Area. This power also extends to acquisition where other persons will carry out the scheme. Examples might include the provision of public open space or community centres either by the LHA or by a registered social landlord or other development partner. Demolition of properties should be considered only after all other possible options have been considered. In these cases regard should be had to any adverse effects on industrial or commercial concerns.
23. The powers in [sections 93\(2\) and 93\(4\) of the 1989 Act](#) are additional powers and are without prejudice to other powers available to LHAs to acquire land which might also be used in Renewal Areas.
24. The extent to which acquisitions will form part of a LHA's programme will depend on the particular area. In some cases strategic acquisitions of land for amenity purposes will form an important element of the programme. However, as a general principle, the Welsh Ministers would not expect to see LHAs acquiring compulsorily in order to secure improvement except where this cannot be achieved in any other way. Where acquisition is considered to be essential by a LHA, they should first attempt to do so by agreement.
25. Where a LHA submits a CPO under [section 93\(2\) or 93\(4\) of the 1989 Act](#), their Statement of Reasons for making the CPO should demonstrate compulsory purchase is considered necessary in order to secure the objectives of the Renewal Area. It should also set out:
 - the relationship of the proposals for which the CPO is required to their overall strategy for the Renewal Area;
 - their intentions regarding disposal of the property; and
 - their financial ability, or that of the purchaser, to carry out the proposals for which the CPO has been made.

Section C – Compulsory purchase orders made under Part 7 of the Local Government Act 1972 for miscellaneous purposes (including for public libraries and museums)

Introduction

1. The general power of compulsory purchase at [section 121 of the Local Government Act 1972](#) (“the 1972 Act”) can (subject to certain constraints) be used by local authorities in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. It may also be used where land is required for more than one function and no precise boundaries between uses are defined.
2. [Section 121](#) can also be used to achieve compulsory purchase in conjunction with [section 120 of the 1972 Act](#). [Section 120](#) provides a general power for principal local authorities i.e. county or county borough council to acquire land by agreement for a statutory function in respect of which there is no specific land acquisition power or where land is intended to be used for more than one function.
3. Some of the enabling powers which do not include a specific land acquisition power and can be used by local authorities in conjunction with [sections 120 and 121 of the 1972 Act](#) to achieve compulsory purchase include:
 - public walks and pleasure grounds – [section 164 of the Public Health Act 1875](#);
 - public conveniences - [section 116 of the Public Health \(Wales\) Act 2017](#);
 - cemeteries and crematoria - [section 214 of the 1972 Act](#) (see also [paragraph 6](#) below and [paragraph 6 in Section D](#));
 - recreational facilities - [section 19 of the Local Government \(Miscellaneous Provisions\) Act 1976](#) (used in the example in [paragraph 7](#) below);
 - refuse disposal sites - [section 51 of the Environmental Protection Act 1990](#);
 - and
 - land drainage - [section 62\(2\) of the Land Drainage Act 1991](#).
4. [Section 125 of the 1972 Act](#) contains a general power for a principal council³⁸ to acquire land compulsorily (subject to certain restrictions) on behalf of a community council which is unable to purchase by agreement land needed for the purpose of a statutory function – see [Section D in this Part of the Circular](#).
5. The normal considerations in relation to the making and submission of a CPO, as described in [Part 1 of this Circular](#), would apply to CPOs relying upon [section 121 of the 1972 Act](#). These include the requirement that compulsory purchase powers should only be used where there is a compelling case in the public interest. The confirming authority for CPOs under [Part 7 of the 1972 Act](#) is the Welsh Ministers.

³⁸ See [section 270 of the Local Government Act 1972](#) for the definition of “principal council”.

Acquisition and enabling powers

6. When a CPO is made by a principal council under [section 121 of the 1972 Act](#), or on behalf of a community council under [section 125](#) of that Act, paragraph 1 of the CPO should cite the relevant acquisition power and state the purpose of the CPO, by reference to the Act (“enabling Act”) under which the purpose may be achieved. For example:

In relation to the compulsory purchase of land to provide a cemetery, the CPO could state:

“1. Subject to the provisions of this Order, the acquiring authority is, under Section 121 of the Local Government Act 1972 (“the “Act”), hereby authorised to purchase compulsorily for the purpose of providing a cemetery under section 214(2) of the Act the land which is described in paragraph 2.”

In relation to the compulsory purchase of land to provide a treatment plant associated with a landfill site, the CPO could state:

“1. Subject to the provisions of this Order, the acquiring authority is, under Section 121 of the Local Government Act 1972 (“the “Act”), hereby authorised to purchase compulsorily the land and new rights over land described in paragraph 2 for the purposes of the construction of pipes and other structures associated with a leachate treatment plant to be built on adjoining land owned by [Council X] for the purpose of treating contaminated water emanating from [Name of Landfill Site] owned and controlled by [Council X] pursuant to section 51 of the Environmental Protection Act 1990.”

7. Where practicable, the words of the relevant section(s) of the enabling Act(s) should be inserted in the CPO (see [paragraph \(f\) of the Notes to Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)). For example: -

“.....the acquiring authority is under section 121 [125] of the Local Government Act 1972 hereby authorised to purchase compulsorily [on behalf of the council of]) [the land] [and] [the new rights over land] described in paragraph 2 for the purpose of providing premises for use as a recreation/community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.....”.

Restrictions on use of the power under section 121 of the 1972 Act

8. Acquiring authorities should note that [section 121 of the 1972 Act](#) is subject to some constraints. [Section 121\(2\)](#) sets out certain purposes for which principal councils may not purchase land compulsorily under [section 121](#). These are as follows:
- (a). For the purposes specified in [section 120\(1\)\(b\)](#), i.e. the benefit, improvement or development of their area. Councils may consider using their acquisition powers under [section 226 of the 1990 Act](#) for these purposes.
 - (b). For the purposes of their functions under the [Local Authorities \(Land\) Act 1963](#).
 - (c). For any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, for example, [section 9\(a\) of the Open Spaces Act 1906](#).

Joint orders and mixed purposes

9. A single CPO may be made under [section 121 of the 1972 Act](#) by more than one council and for more than one purpose. Where this would involve more than one Welsh Minister, the CPO may be submitted to one Welsh Minister but it has to be processed through all the relevant government departments.
10. Where a public inquiry is required or is considered to be appropriate, the inspector's report will be submitted to each of the departments simultaneously and the decision will be given by the relevant ministers acting together.

Public libraries and museums

11. A principal council can compulsorily acquire land for public libraries and museums under [section 121 of the 1972 Act](#) using an appropriate enabling power (such as [section 7](#) or [12 of the Public Libraries and Museums Act 1964](#)). CPOs for these purposes should be submitted to the Welsh Ministers at the address given in [Section R in Part 4 of this Circular](#). Such CPOs should be accompanied by the following additional documents:
- a completed copy of form CP/AL1 (obtainable from [Section V in Part 4 of this Circular](#) or the Welsh Government's website); and
 - a qualified valuer's report.

Section D – Compulsory purchase orders made on behalf of community councils

Introduction

1. If a community council has been unable to acquire by agreement and on reasonable terms, they may make representations to the principal council to make a CPO under [section 125 of the 1972 Act](#). The principal council should have regard to the representations and to all the other matters set out in [section 125](#) some of which are mentioned in [paragraph 5](#) below. Guidance on the drafting of a CPO made on behalf of a community council can be found in [paragraphs 6 and 7 in Section C in Part 2 of this Circular](#).

Restrictions on a principal council's power to make a compulsory purchase order on behalf of a community council

2. A principal council may not acquire land compulsorily on behalf of a community council for a purpose for which a community council is not, or may not be, authorised to acquire land, for example, see [section 226\(1\) and \(8\) of the 1990 Act](#).
3. [Section 125 of the 1972 Act](#) does not apply where the purpose of the CPO is to provide allotments under the [Small Holdings and Allotments Act 1908](#) (“the 1908 Act”). In such a case, by virtue of [section 39\(7\) of the 1908 Act](#), the principal council should purchase the land compulsorily, on behalf of the community council, under [section 25 of that Act](#).
4. Acquiring authorities should note that [section 125\(1\) of the 1972 Act](#) sets out certain purposes for which principal councils may not purchase land compulsorily under [section 125](#). These are as follows:
 - (a). For the purposes specified in [section 124\(1\)\(b\)](#), i.e. the benefit, improvement or development of their area. Councils may consider using their acquisition powers under [section 226 of the 1990 Act](#) for these purposes.
 - (b). For any purpose for which their power of acquisition is expressly limited to acquisition by agreement only, for example, [section 9\(a\) of the Open Spaces Act 1906](#).

Refusal by a principal council to make a compulsory purchase order on behalf of a community council or does not make one within the required time period

5. If a principal council refuses to make a CPO under [section 125 of the 1972 Act](#), or does not make one within 8 weeks of the community council's representations or within such an extended period as may be agreed between the two councils, the community council may petition the Welsh Ministers, who may make the CPO. Where a CPO is made by the Welsh Ministers in such circumstances, [section 125](#) and the [1981 Act](#) apply as if the CPO had been made by the principal council and confirmed by the Welsh Ministers.

Joint order

6. A principal council may also make a CPO on behalf of more than one community council. Such a CPO might, for example, be made under [section 125 of the 1972 Act](#), for the purposes of [section 214 of the 1972 Act](#), on behalf of several community councils which form a joint burial committee in the area of the principal council.

Costs and compensation

7. A community council should consider very carefully whether it has the necessary resources, including the finance, to carry out a compulsory purchase of land. A principal council which makes a CPO on behalf of a community council may (and, in the case of a CPO made under the [1908 Act](#), shall) recover from the community council the expenses which it has incurred. This includes:
 - the administrative expenses and costs of the public inquiry;
 - the public inquiry costs awarded to successful remaining objectors, should the CPO not be confirmed, or confirmed in part (see also [paragraphs 113 - 115 in Part 1 of this Circular](#));
 - statutory compensation including, where appropriate, any additional disturbance, home loss, or other loss payments, to which the dispossessed owners may be entitled;
 - any compensation for injurious affection payable to adjoining owners who may be entitled to claim.
8. When considering whether or not to confirm or make a CPO, the Welsh Ministers will have regard to questions concerning the ability of the community council to meet the costs of purchasing the land at market value and to carry forward the scheme for which the CPO has been or would be made.

Section E – Compulsory purchase orders made under section 89 of the National Parks and Access to the Countryside Act 1949

1. In some circumstances, local authorities can compulsorily acquire land to improve its appearance or condition. For instance, a local authority can use their compulsory purchase powers under [section 89\(5\) of the National Parks and Access to the Countryside Act 1949](#) (“the 1949 Act”) for this purpose. The Welsh Ministers are the confirming authority for CPOs made under [section 89\(5\) of the 1949 Act](#).
2. A local authority can use their powers under [section 89\(5\) of the 1949 Act](#) to compulsorily purchase land to plant trees in order to preserve or enhance the natural beauty of that land. The local authority can also use this power to carry out works to reclaim, improve or bring back into use land in their area that the authority believes to be:
 - derelict, neglected or unsightly; or
 - is likely to become derelict, neglected or unsightly because the authority anticipates that the surface may collapse as the result of underground mining operations (other than coal mining).
3. If a local authority is unsure whether to use these specific powers, or if various uses are proposed for the land, the authority may consider using the powers granted by [section 226 of the 1990 Act](#) instead.
4. There are also various other compulsory purchase powers which local authorities may use to acquire and develop land that is derelict, neglected or unsightly for particular purposes such as housing or public open space.
5. There are no statutory definitions of the phrases “derelict, neglected or unsightly” used in connection with the compulsory purchase powers provided under [section 89\(2\) of the 1949 Act](#). As such, the natural, common-sense meaning of the words should be taken. If possible, it is also preferable to consider the three words taken together, as there is a considerable overlap between each one. The word “unsightly” is clearly directed to the appearance of the land, but an untidy or uncared for appearance may also be relevant in considering whether the land is derelict or neglected. Land may be “neglected” without having been the subject of any operations (such as building works, dumping or excavating), but it may be inappropriate to describe such land as “derelict”.
6. It may be that land is being put to some slight use but is still properly described as “derelict” or “neglected” when its condition is considered in the light of the potential use of the land. It is not the purpose of [section 89 of the 1949 Act](#) to enable a local authority to carry out works or to acquire land compulsorily solely because they consider they have a better use for the land than the present one.

7. When considering whether to make a CPO under [section 89\(5\) of the 1949 Act](#), or when preparing their case in support of such a CPO, authorities may find it helpful to have the Welsh Ministers' view about the meaning of the words "derelict, neglected or unsightly" for these purposes.

Section F – Compulsory purchase orders for educational purposes

Local authorities' power to make a compulsory purchase order for educational purposes

1. A local authority can make a CPO for educational purposes using its powers under [section 530 of the Education Act 1996](#) (as amended) (“the 1996 Act”). These powers can be used to acquire land which is required for the local authority’s educational functions, including the purposes of any local authority maintained or assisted school or institution.
2. CPOs made under [section 530 of the 1996 Act](#) should be submitted for confirmation by the Welsh Ministers at the address given in [Section R in Part 4 of this Circular](#). When making a CPO under [section 530 of the 1996 Act](#), local authorities may seek guidance, if necessary, from the Welsh Ministers on the form of draft CPOs where there is doubt about a particular point.
3. Before making a CPO under [section 530 of the 1996 Act](#), local authorities should have regard to the suitability of the site and also whether the site area is essential to locate the school buildings and playing field.
4. A local authority may make a CPO under [section 530 of the 1996 Act](#) in conjunction with certain proposals for changes in school provision. A proposal could involve:
 - the establishment of a new school for children of compulsory school age (under [Part 3 of the School Standards and Organisation \(Wales\) Act 2013](#) (“the 2013 Act”)); or
 - a prescribed alteration to an existing maintained school (under [Part 3 of the 2013 Act](#)).

In such circumstances, the local authority should publish the proposals made under [Part 3 of the 2013 Act](#) before making and submitting a CPO under [section 530 of the 1996 Act](#). The Welsh Ministers will consider a CPO made under [section 530 of the 1996 Act](#) independently to any accompanying statutory proposals for changes in school provision made under [Part 3 of the 2013 Act](#). These are considered separately.

5. If the Welsh Ministers decide to confirm a CPO under [section 530 of the 1996 Act](#), the CPO will be sealed and returned to the local authority. When the local authority has purchased the site, and the condition of the approval met, the approval of the proposals becomes final with no further action required.
6. If a decision is made to reject the [2013 Act](#) proposals for change in school provision, the local authority is advised not to make the CPO under [section 530 of the 1996 Act](#). Since, in these circumstances, it would be inappropriate for the Welsh Ministers to confirm it.

Voluntary aided schools

7. Where CPOs are made for voluntary aided schools, the following documents, additional to those specified in [Section Q in Part 4 of this Circular](#), should accompany the CPO or be submitted as soon as possible after:
- a completed copy of form SB1 (obtainable from the Welsh Ministers at the address in [Section R in Part 4 of this Circular](#)); and
 - a qualified valuer's report.

Section G – Compulsory purchase orders for highway purposes

1. This Section refers to the compulsory acquisition of land under the [Highways Act 1980](#) (“the 1980 Act”).

Statement of purposes of acquisition in the compulsory purchase order

2. To enable the purposes of the acquisition to be properly stated in the CPO itself, it is important to determine whether the scheme involves the construction of a new highway or the improvement of an existing highway. In many cases the distinction is obvious but cases do arise (particularly where the scheme involves realignment of an existing highway) in which there can be some difficulty in ascertaining whether the scheme does or does not involve the construction of a new length or lengths of highway. It is considered the correct criterion to be applied in most cases to determine whether or not a scheme involves the construction of a new length of highway or the improvement of an existing highway is indicated in the wording of [Part 13 of Schedule 2 to the Town and Country Planning \(General Permitted Development\) Order 1995](#) (“the 1995 Order”). [Part 13 of Schedule 2 to the 1995 Order](#) provides where all the works are to be carried out on land outside but adjoining the boundary of an existing highway the scheme is involving the improvement or maintenance of an existing highway only. Where works are to be carried out on other land, so that when the scheme is complete there will be non-highway land between the projected works and the existing highway, then on that length of highway the works should be regarded as works for the construction of a new highway.
3. To assist in attaining clarity and accuracy in the statement of purposes in the CPO, regard should be had to the following points:-
 - (a) *Construction as well as improvement*
If construction of a new length of highway, and improvement of an existing highway, are involved, both purposes should be clearly stated.
 - (b) *Ancillary roads, etc.*
Where construction of a new highway involves construction of ancillary roads to connect the new road with the existing highway system, or related improvements to existing roads, this should be made clear.
 - (c) *Highway to be improved*
These should be named or briefly described.
 - (d) *New lengths of highway*
These should be briefly described (for example, “a new highway to bypass (name of town or village)”, “a new highway from Llewelyn Street to Heol-y-Mynydd in the said Council’s area, etc), while noting any new bridges or tunnels to be constructed.

- (e) *Land outside the highway*
Where the scheme is one for the improvement or construction of a highway, the land to be included in the CPO will normally be limited to that falling within the highway as improved or newly constructed. If land outside these limits is required for use in connection with the improvement or construction of a highway (for example, as working space), this will need to be made clear and the power in [section 240\(2\)\(a\) of the 1980 Act](#) cited. If areas of land outside the proposed boundaries of the highway are to be acquired in reliance on [section 239\(6\) of the 1980 Act](#), the description of purposes should include a reference to land adjoining or adjacent to the highway, as well as to the frontages to the highway.
- (f) *Associated schemes/orders*
Where there is an associated side roads order the purposes need not be elaborate; they can be described in broad terms and as being in pursuance of the made side roads order.
- (g) *Acquisition of rights*
Where it is proposed to acquire rights over land for various purposes (including drainage), these should be described.

Extent of land acquisition

Distance limits

4. [Section 249 of](#), and [Schedule 18 to, the 1980 Act](#) specify distance limits applicable to the compulsory acquisition of land. These limits do not apply to land required for the drainage of a highway or proposed highway, or of a maintenance compound, service area, trunk road picnic area or lorry area, or required for the purpose of:
- (a) the diversion of a navigable watercourse, or
 - (b) the provision of protection for a highway against snow, flood, landslide or other hazards of nature, or
 - (c) the carrying out of works on any watercourse under [section 110 of the 1980 Act](#).

Private means of access

5. [Section 240\(1\) of the 1980 Act](#) gives highway authorities power to acquire land compulsorily for the purpose of providing new private means of access as authorised by [section 129 of the 1980 Act](#) or by an order under [section 14 of the 1980 Act](#). Land needed for use in connection with the carrying out of such works may also be acquired under this power and included in the CPO.

Side roads

6. [Section 240\(1\) of the 1980 Act](#) empowers the compulsory acquisition of land required in connection with an order made under [section 14 of the 1980 Act](#).

This includes alteration of side roads which cross or enter the route of a classified road or will otherwise be affected by the construction or improvement of a classified road. Land needed for use in connection with the carrying out of such works may also be acquired under this power and included in the CPO.

Working space

7. [Section 240\(2\) of the 1980 Act](#) authorises highway authorities to acquire compulsorily land adjoining or in the vicinity of an existing highway or the route of a proposed highway in order to enable them to carry out reasonably and effectively works in connection with the construction or improvement of the highway (i.e. land for working space, means of access to construction sites or the provision of spoil dumps, plant and machinery storage space, etc), (see [paragraphs 5 and 6 above](#) in relation to working space, etc, required in connection with works carried out under [sections 14](#) and [129 of the 1980 Act](#)).

Land burdened by restrictive covenants and third party rights

8. [Section 260\(1\) and \(2\) of the 1980 Act](#) empowers highway authorities to include in orders, land in which they have already acquired an interest by agreement. When such a CPO becomes effective, the provisions of the [1965 Act](#) will apply, thus giving persons entitled to the benefit of covenants or other third party rights, a right to compensation in appropriate circumstances. It is not envisaged that [section 260\(1\) of the 1980 Act](#) can be used so as to sanction a CPO which does not cover land other than the land in which the highway authority have acquired the interest by agreement. [Section 260\(3\) and \(4\) of the 1980 Act](#) enables lessees of, or contractors operating, a service area or a lorry area to use the land for those purposes, in the same way that the highway authority themselves could use the land, notwithstanding the existence of a restrictive covenant or other third party rights.

Power to acquire land outside the highway boundary

9. [Section 246 of the 1980 Act](#) provides the power to acquire land compulsorily (or by agreement) outside the proposed boundary of a highway in order to reduce the adverse effect of the existence or use of the highway on its surroundings, as follows:-
 - (i) [Section 246\(1\) of the 1980 Act](#) provides that highway authorities may acquire land compulsorily for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them (or proposed to be constructed or improved by them) has or will have on its surroundings. This power enables the acquisition of land needed to maintain or improve the environment of areas adjacent to the road. Having acquired such land, highway authorities may make suitable use of it under the provisions of [section 282 of the 1980 Act](#) or they may dispose of it under existing powers should it be surplus to requirements. It is considered desirable, wherever possible, land acquired pursuant to [section 246\(1\)](#) should be included in the same CPO as the highway land.

The acquiring authority should, of course, be in a position to show what they intend to do with the land. Compulsory acquisition of land under the provisions of [section 246\(1\) of the 1980 Act](#) must begin before the opening of the new or improved highway, and [section 246\(4\) of the 1980 Act](#) defines the time when acquisition is begun.

- (ii) [Section 246\(7\) of the 1980 Act](#) makes it clear that the reference to construction or improvement of highways in [section 246 of the 1980 Act](#) includes construction or improvement pursuant to a side roads order.
- (iii) [Section 250\(1\) of the 1980 Act](#) makes it clear that the expression “highway land acquisition powers” includes the power to acquire land under [section 246 of the 1980 Act](#). This means the powers to acquire rights compulsorily under [section 250 of the 1980 Act](#), the power to make a CPO for the clearance of title to land acquired for statutory purposes under [section 260 of the 1980 Act](#), and the provisions relating to concurrent procedure in [section 257 of the 1980 Act](#) will apply to the acquisition of land under [section 246 of the 1980 Act](#).
- (iv) [Section 282 of the 1980 Act](#) enables highway authorities to carry out works for mitigating the adverse effects which the construction, improvement, existence or use of a highway has or will have on the surroundings of the highway. This means there are specific powers to erect physical barriers (such as walls, screens or mounds of earth) alongside roads in order to reduce the effects of traffic noise on people living nearby. [Section 282\(2\) of the 1980 Act](#) enables the appearance of any earth mounds or other landscaped works to be improved by planting. The provision under [section 282\(3\) of the 1980 Act](#) that a highway authority may develop or redevelop any land acquired by them under [section 246 of the 1980 Act](#) enables the construction of buildings alongside new or improved roads. Such buildings may be constructed so as to act as a barrier against traffic noise or otherwise for the mitigation of adverse effects of the highway on its surroundings.

Boundary of land required cuts through building

10. Where the boundary of the widening or new construction cuts through a building, notwithstanding the powers of an owner to exercise his right under [section 8 of the 1965 Act](#) to require the highway authority to buy the entire building or in a case where the provision of that section may be inapplicable, it is usually appropriate to acquire the site of the entire building in reliance on [section 240\(2\)\(a\) of the 1980 Act](#). [Section 240\(2\)\(a\) of the 1980 Act](#) provides the highway authority with power to acquire land which is required for use by them in connection with the construction or improvement of a highway or with the carrying out of works authorised by an order under [section 14](#), [section 18](#) or [section 108\(1\) of the 1980 Act](#). This certainly should be done in cases where the demolition of part of a building would cause the rest of the building to collapse or leave a precariously poised or dangerous structure.

Where, however, the highway scheme involves the acquisition of significant areas of land which lies outside the highway boundary, in a case where [section 240\(2\)\(a\) of the 1980 Act](#) is inapplicable, use should be made of the following powers given by the [1980 Act](#):

- [section 239\(6\)](#) – highway authorities may acquire land required for the improvement or development of frontages to a highway for which they are the highway authority or of the land adjoining or adjacent to that highway;
- [section 239\(1\)](#) – highway authorities may acquire land required for the construction of a highway which is to be a highway maintainable at the public expense, other than a trunk road;
- [section 239\(3\)](#) – highway authorities may acquire land required for the improvement of a highway, being an improvement which they are authorised by the [1980 Act](#) to carry out in relation to the highway, and
- [section 246\(1\)](#) – highway authorities may acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them, or proposed to be constructed or improved by them, has or will have on the surroundings of the highway.

Acquisition of full title to existing highways

11. Where existing highways of any age are affected by highway works then it is unlikely the highways authority will have full paper title to the land. Unless title to the land forming the existing highway is acquired by the CPO, the resulting title position could result in a mixture of registered titles acquired by transfer following a NTT or acquired by GVD, and areas of unregistered land showing where the land formed part of the former highway alignment. Where the highway authority wishes to acquire title to land forming part of a highway for which it is the highway authority, the authority will be expected to justify why its existing statutory highway ownership rights are insufficient.

Licences

12. Land which is required for one off purposes (for example, the construction of the highway or related structures where no future maintenance requirements are needed) should normally be included in the CPO as title with the land being described in the same way as a title plot. It is best practice to either issue a covering letter with any such order or include in the Statement of Reasons a list of the licencing plots to allow landowners to distinguish on the order map the plots for which titles are being permanently acquired and plots where one-off licences are sought. However, the intention should be to negotiate at acquisition stage for the necessary one-off licences and only to exercise acquisition of title if negotiations fail.

Acquisition of rights over land

13. There are frequent cases where highway schemes necessitate work on land not required to form part of the highway and where, so long as the highway authority have power to carry out such work, the landowner can by such an arrangement retain their land to mutual advantage, since the highway authority would not wish to incur the expense of acquiring and maintaining land unnecessarily.

[Sections 250 to 252 of the 1980 Act](#) (which should be read with [Schedule 19 to the 1980 Act](#)) provide for the compulsory acquisition of rights over land by the creation of new rights.

14. The types of rights for which these provisions are designed are in the nature of easements ancillary or belonging to the highway, proposed highway or other facility. Examples of those likely to be required in connection with highway schemes are as follows:
- (i) the right to enter and re-enter upon x square metres of certain land to construct and maintain a bridge, viaduct, tunnel or other structure to carry a highway over or under land;
 - (ii) the right to enter and re-enter upon x square metres of certain land to lay and maintain drains and associated works (for example, inspection chambers); but see also paragraph 18 below;
 - (iii) the right to enter and re-enter upon x square metres of certain land to carry out works on watercourses (for example, diversions, widening or deepening channels, filling in old watercourse beds, etc);
 - (iv) the right to enter and re-enter upon x square metres of certain land to place and maintain footings or ground anchors in land;
 - (v) the right to enter and re-enter upon x square metres of certain land to place and maintain snow fences, etc, on land;
 - (v) the right to enter and re-enter upon x square metres of certain land for the construction and maintenance of a retaining wall (i.e. on other land to which title will be acquired and shown in a separate plot);
 - (vi) the right to enter and re-enter upon x square metres of certain land to gain access to environmental mitigation works;
 - (vii) the right to enter and re-enter upon x square metres of certain land to carry out environmental works to maintain the conservation status of an ancient woodland;
 - (viii) The right to enter and re-entre upon x square metres of certain land to construct and maintain works and use them in connection with the discharge of highway drains into a watercourse.
15. However, it is emphasised the Welsh Ministers do not envisage that these powers can be used by highway authorities in cases where the land will form part of the highway or where the works will, to all intents and purposes, deprive the landowner permanently of any real benefit from the land. In such cases, full title to the land would be appropriate.

Similarly, in cases where highway land acquisition powers are exercised to provide for a footpath, bridleway or other highway across land or for a new means of access to premises for a third party, full title should be included in the CPO.

NOTE

It is considered, because of the absence of express provision to this effect, [sections 250 to 252 of the 1980 Act](#) do not provide for the compulsory creation of rights for limited periods, though they do not preclude the creation of such rights by agreement. Also, [sections 242\(3\), 254 and 255 of the 1980 Act](#) which are rarely used powers (dealing with the creation of rights) are not affected by the provisions in [sections 250 to 252 of the 1980 Act](#).

16. Where a CPO provides for the acquisition of rights over land forming part of a common, open space or fuel or field garden allotment, it will be subject to Standing Order 28 (i.e. special Senedd procedure) of the Senedd Cymru prior to confirmation. Specific power to acquire land to be given in exchange for rights which will burden common or other special category land is contained in [section 250\(2\) of the 1980 Act](#). Rights acquired under the [1980 Act](#) are, under [section 251 of the 1980 Act](#), binding upon successors in title to the land concerned, and where a highway is transferred from one highway authority to another they are exercisable by the transferee authority. [Section 252 of the 1980 Act](#) provides that a landowner can require an acquiring authority to take full title to the land instead of the right authorised in a CPO.
17. Where a number of rights are included in a CPO, the following form of wording is suggested for inclusion in Article 1 of the CPO:

“1. Subject to the provisions of this Order, the acquiring authority is, under sectionsand 260 of the Highways Act 1980(1) and under section of, and paragraph of Part .. of Schedule ... to, the Acquisition of Land Act 1981(2), hereby authorised to purchase compulsorily the land and the new rights over land described in paragraph 2 for the purpose of:

(a)

2. The new rights to be purchased compulsorily under this Order are described in the Schedule and the land is shown coloured blue edged red on the said map.”

The following notes should appear under the date the order was signed:

“(1) 1980 c.66
(2) 1981 c.67”

Drainage of highways

18. Reference has already been made to the power in the [1980 Act](#) to acquire rights over land for drainage purposes. The following provisions should also be noted:
- (i) Where it is proposed to lay drains for an existing highway, this work can be done under [section 100\(1\) to \(3\) of the 1980 Act](#) if the drains are to be laid on land adjoining or near to the highway. In addition, a highway authority can, under [section 100\(5\) and \(6\) of the 1980 Act](#), use any powers exercisable by a sewerage undertaker under [sections 158, 159, 163, 165 and 168 of the Water Industry Act 1991](#) to drain their highways and proposed highways. In all these cases the acquisition of specific rights by a CPO is unnecessary. The cases where rights acquisitions may be necessary or desirable are, generally, cases involving new highways, as [section 100\(1\) to \(3\) of the 1980 Act](#) only applies to highways – it does not apply to proposed highways.
 - (ii) Where rights to lay and maintain drains are involved and they are to be used for discharging water into any watercourse, drainage or other works vested in, or under, the control of a navigation authority, a water authority, or other drainage authority within the meaning of the [Land Drainage Act 1991](#) (see [section 72 of the Land Drainage Act 1991](#)), [section 339 of the 1980 Act](#) will apply and the consent of the relevant authority required. Before confirming a CPO providing for the acquisition of land or rights in such cases, the Welsh Ministers will need to be satisfied that the necessary consents have been given or that the consent of these authorities is not needed.

Works affecting watercourses

19. Many highway schemes involve the diversion of, or execution of works to, watercourses. [Sections 106 and 107 of the 1980 Act](#) make provision for the construction of bridges over or tunnels under navigable waters and [sections 108 and 109 of the 1980 Act](#) give specific powers to divert a navigable watercourse. [Sections 106 and 108 of the 1980 Act](#) also contain provisions which allow the matters provided for therein to be dealt with by a side roads order, although it should be noted that in the case of [section 106 of the 1980 Act](#) this can be done only if the bridge or tunnel is part of a highway which is to be altered or constructed in pursuance of the side roads order. [Section 110 of the 1980 Act](#) provides powers to divert non-navigable watercourses and to carry out other general works in respect of both navigable and non-navigable watercourses. The power to acquire land for works under [section 108 and 110 of the 1980 Act](#) is contained in [section 240\(2\)\(b\) of the 1980 Act](#) and distance limits in relation to compulsory acquisition under [section 249\(3\) the 1980 Act](#) do not apply to land or rights acquired for this purpose.

20. It will be noted that [section 110 of the 1980 Act](#) provides for watercourse works to be carried out without the acquisition of land and, in such cases, [section 110\(5\) and \(7\) of the 1980 Act](#) contain a distinct procedure as to the serving of notices and hearing of objections. It is suggested, however, that where local highway authorities are proposing to carry out such works in connection with a highway scheme for which they are also making a CPO for other land they will find it advantageous to undertake early consultation with Natural Resources Wales and include in the CPO rights to carry out the watercourse works. This will ensure that all objections are dealt with under the compulsory purchase regime.

Acquisition of land in advance of requirements

21. The provisions of [section 248\(2\)-\(4\) of the 1980 Act](#) (together with [Schedule 17 to the 1980 Act](#)) enable highway authorities to use their land acquisition powers to acquire land compulsorily in advance of requirements, subject to one or more of the following conditions set out in [section 248\(3\) of the 1980 Act](#) being satisfied:
- (a) the highway authority has an immediate intention to incorporate the acquired land (“subsequent stage area”) within the boundaries of the initial stage area i.e. highway (for example, as a very wide verge), proposed highway, or, as the case may be, into the service area, maintenance compound or lorry area, for the purpose of which the initial stage areas is to be or has been acquired; or
 - (b) the highway authority’s proposed use of the initial stage area involves the carrying out of works wholly or partly on, or under or over, the subsequent stage area; or
 - (c) the highway authority’s plans for the use of the subsequent stage area (for the purpose for which the authority has power to acquire it by virtue of [section 248 of the 1980 Act](#)) have been made or approved by the Welsh Ministers.

This power is useful, for example, where land is required for the construction of a new road which is designed to be a dual carriageway road but where it is intended to build only one of the carriageways immediately, or where it is intended to carry out a major highway improvement but only a limited improvement is to be made in the first instance. These powers are also exercisable in relation to the provision of service areas, maintenance compounds and lorry areas. Where a subsequent stage area is not to be incorporated into the highway immediately (but the highway authority still exercises its power to acquire it), it may be possible for a landowner to retain an area of subsequent stage land under cultivation or for grazing until such time as the highway authority requires it for highway works. The power to acquire in advance of requirements facilitates the forward planning of highway authorities’ major road projects, and also makes it possible to acquire the necessary land in one operation instead of two or more as well as avoiding the expense of making several orders and conducting associated public inquiries. The provisions may also be of benefit to landowners whose land might otherwise be subject to piecemeal acquisition.

Procedural points affecting the treatment of objections and the consideration of orders
Power to disregard certain objections

22. Where a CPO depends on any of the schemes or orders set out in [Schedule 20 to the 1980 Act](#), and on which a decision has been given, the Welsh Ministers under [section 258\(1\) of the 1980 Act](#) have the power to disregard an objection to the order if, in their opinion, it amounts in substance to an objection to the related scheme or order. The power to disregard repetitious objections is discretionary and the Welsh Ministers are therefore not obliged to disregard them. The Welsh Ministers would however wish to hear and consider any such objection which appeared to raise new points or where, owing to the lapse of time since the earlier decision, changed circumstances might make it desirable to consider alterations to the road scheme as originally proposed. This power to disregard repetitious objections does not extend to persons appointed to conduct public inquiries. While they may draw the attention to objectors, in appropriate cases, to the existence of these provisions they will listen to and report on any points made by the objector so that they can be considered by the Welsh Ministers.

Submission of “alternative route” objections

23. Under [section 258\(2\) and \(3\) of the 1980 Act](#) an objector to a CPO who wishes to propose an alternative route at a public inquiry can be directed by the Welsh Ministers to provide them with sufficient information of the alternative route to enable it to be identified. The Welsh Ministers may wish to include any such direction in the notice of the public inquiry. Objectors must be given at least fourteen days in which to prepare their information of the alternative route and they are required to submit it to the Welsh Ministers a minimum of fourteen days before the date of the public inquiry. The Welsh Ministers would urge objectors to submit their information in advance of the minimum fourteen day deadline to prevent the public inquiry from being postponed due to the need for further information. As copies of such submissions received by the Welsh Ministers will need to be sent to the highway authority as they are received, but in sufficient time to enable the authority to consider them before the public inquiry, the Welsh Ministers will specify a submission date in its direction. The submission date will be no less than the period of 3 weeks before the start date of the public inquiry. If an objector fails to comply with a direction of the Welsh Ministers to submit details of alternative route proposals, both the Welsh Ministers and the inspector conducting the public inquiry may disregard the objection insofar as it consists of a submission about an alternative route.

24. If an alternative proposal is made by an objector to a CPO, the Welsh Ministers must consider the alternative put forward and evaluate it when judging whether there is a compelling case in the public interest for the CPO. However, the Welsh Ministers are not bound to accept an alternative on the basis that it is less intrusive than the scheme proposed.

Alternative proposals may not be preferable if they are, for example:

- (a) uncertain in their delivery of the objectives which underpin the public interest basis for confirming the CPO, for example, because they do not secure the delivery of the scheme objectives, lack the relevant permissions or consents, or generally lack certainty in the delivery of relevant proposals in the public interest;
- (b) will delay the implementation of the CPO scheme where a timely delivery of the proposals is in the public interest; or
- (c) will not deliver the public interest benefits of the CPO scheme as well or as effectively as that scheme, or in the timely manner of the scheme where that difference in delivery of benefits and timing are material ones having regard to the public interest.

25. The potential delay and uncertainty in considering alternative proposals put forward in support of an objection to a CPO can be a material consideration when the Welsh Ministers decide whether or not to confirm, or make, the CPO. Case law dictates that if the delivery of an alternative route could cause delay and uncertainty in the delivery of a CPO scheme and the associated public benefits, this may be considered to be unacceptable and lead to the rejection of the objection³⁹.

Active travel

26. CPOs which are made to acquire land for the purposes of facilitating an active travel route⁴⁰ will carry a strong public interest case for the promotion or improvement of the environmental and social well-being of an area. The proposals are usually the result of prior public consultation, demonstrating demand and support. As outlined in [paragraph 31 in Part 1 of this Circular](#), when planning and timetabling active travel route projects promoters should factor in the use of compulsory purchase powers to overcome potential delays caused by land ownership issues.
27. The [Active Travel \(Wales\) Act 2013](#) requires local authorities to produce:
- maps of existing active travel routes and related facilities in their areas (“the existing routes map”) which show the routes within designated areas that are considered suitable and appropriate for making active travel journeys; and
 - maps of new and improved existing active travel routes and related facilities needed to develop or enhance integrated networks of active travel in their areas (“the integrated network map”).

To support the justification for a CPO to acquire land for the facilitation of an active travel route, acquiring authorities should take into account:

- (a) the Statutory Guidance accompanying the [Active Travel \(Wales\) Act 2013](#); and

³⁹ *Bexley LBC v. Secretary of State* [2001] EWHC Admin 323 at paras. [44], [47] & [48].

⁴⁰ Defined by [section 2\(1\) of the Active Travel \(Wales\) Act 2013](#).

- (b) the approved existing and planned active travel for the area in which the land to be acquired is located.
- 28. The nature of active travel, however, is that any given walking path or cycle route may have an alternative which can circumvent the need to acquire land/individual properties via a CPO. Acquiring authorities should always consider and undertake an assessment of suitable alternatives as part of the planning process for a CPO. This will help address any potential alternative proposals which could be put forward by objectors. In some locations perhaps there will be no other suitable alternative routes, i.e. due to physical or geographical reasons, and acquiring authorities should make reference as to why this is the case.

Section H – Compulsory purchase powers for listed buildings in need of repair

Introduction

1. [Section 47\(1\)\(a\) of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) (“the P(LBCA)”) provides an appropriate authority, i.e. the relevant LPA in which the listed building is situated, with compulsory purchase powers to acquire a listed building in need of repair with the authorisation of the Welsh Ministers. The Welsh Ministers will only exercise this power where there is a compelling case in the public interest. [Section 47\(1\)\(b\) of the P\(LBCA\)](#) also provides the Welsh Ministers with compulsory purchase powers to acquire listed buildings in need of repair, providing there is a compelling case in the public interest.
2. To make a CPO for a listed building in need of repair under [section 47 of the P\(LBCA\)](#), the appropriate authority, or the Welsh Ministers where they are the acquiring authority, are required to:
 - serve a repairs notice under [section 48 of the P\(LBCA\)](#) on the owner of the listed building (see [section 91\(2\) of P\(LBCA\)](#) / [section 336 of the 1990 Act](#) for the definition of “owner”) at least two months before making the CPO;
 - prepare and serve the CPO and its associated notices (see general formatting requirements outlined in [Section Q in Part 4 of this Circular](#) and [paragraphs 12 - 13 below](#)), if the repairs notice has not been complied with within two months of service and is not withdrawn;
 - in the case of an appropriate authority CPO for a listed building in need of repair, submit the CPO, a copy of the repairs notice and all supporting documents (see checklist outlined in [Section Q in Part 4 of this Circular](#)) to the Welsh Ministers.

Deliberate owner neglect

3. If there is clear evidence that the owner of a listed building has deliberately allowed the building to fall into disrepair to justify its demolition and the development of the site (or an adjoining site), the appropriate authority can include a direction for minimum compensation within the CPO.
4. A direction for minimum compensation, in relation to a listed building compulsorily acquired, is a direction that for the purpose of assessing compensation it is to be assumed:
 - (a) planning permission would not be granted for any development or redevelopment of the site of the listed building; and
 - (b) listed building consent would not be granted for any works for the demolition, alteration or extension of the listed building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair.

5. Provisions for minimum compensation are given in [section 50 of the P\(LBCA\)](#). The terms for a minimum compensation direction are set out in [paragraph 4 of Form 1 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#). Advice on how to include a direction for minimum compensation in a CPO for listed buildings in need of repair can be found in [paragraph 13 below](#).

Applications to a magistrates' court under the Planning (Listed Buildings and Conservation Areas) Act 1990

6. As soon as an appropriate authority becomes aware of an application to a magistrates' court made by a person with an interest in a building the subject of a CPO under [section 47 of the P\(LBCA\)](#) requesting:
 - (a) an order staying further proceedings on the CPO, which must be made within 28 days after the service of the notice required by [section 12 of the 1981 Act](#) or [paragraph 3\(1\) of Schedule 1 to that Act](#)); or
 - (b) an order that no direction for minimum compensation be included in the CPO, under [section 50\(6\) of the P\(LBCA\)](#), which must be made within 28 days after the service of the notice required by [section 12 of the 1981 Act](#) or [paragraph 3\(1\) of Schedule 1 to that Act](#) and which includes a statement that a direction for minimum compensation has been included in the CPO,

they should notify the Welsh Ministers immediately in all instances. Depending on the circumstances, it may be necessary to hold the relevant CPO in abeyance (i.e. suspend the CPO) until the court has considered the application.

Repairs notice

7. An appropriate authority may consider issuing a repairs notice (under [section 48 of the P\(LBCA\)](#)) if a listed building is at risk because its owner has failed to keep the building in reasonable repair for an extended period of time. A repairs notice is not the same as a notice for urgent works and can be served whether the listed building is occupied or not.
8. A repairs notice must:
 - specify the works which the appropriate authority considers reasonably necessary for the proper preservation of the building; and
 - explain the effect of [sections 47- 50 of the P\(LBCA\)](#).

When a CPO made under [section 47 of the P\(LBCA\)](#) is submitted to the Welsh Ministers for confirmation, a copy of the repairs notice served in accordance with [section 48](#) must be included with all the supporting documentation.

9. The works specified in the repairs notice will always relate to the circumstances of the individual case and will involve judgments about what is considered reasonable to preserve (rather than restore) the listed building.

10. Other considerations may be used as a basis for determining the scope of works required. For example, the condition of the building when it was listed may be taken into account if the building has suffered damage or disrepair since being listed. In this case, the repairs notice may include works to secure the building's preservation as at the date of listing, but should not be used to restore other features. Alternatively, the notice may specify works that are necessary to preserve the rest of the building, such as repairs to a defective roof, whether or not the particular defect was present at the time of listing.
11. Further advice about listed buildings in need of repair and repairs notices can be found in [Annex B of TAN 24: Historic Environment \(2017\)](#).

Form of compulsory purchase orders for listed buildings in need of repair and associated notices

12. General guidance on the format of CPOs is available at [Section Q in Part 4 of this Circular](#).
13. CPOs for listed buildings in need of repair, in addition to being accompanied by copies of repairs notice and the general formatting requirements outlined in [Section Q in Part 4 of this Circular](#), must include the following requirements set out in [regulation 4 of the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#):
 - (a) When preparing personal notices (i.e. a notice to owners, lessees, tenants, occupiers or other qualifying persons⁴¹ in respect of land (or land to be subject to New Rights) included in a CPO (see [section 12\(1\) of the 1981 Act](#)), insert:–
 - additional [paragraphs 3 and 5 of Form 8 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) (provided under the [‘Notes to the use of Form 8’ section](#));
 - where the appropriate authority has included a direction for minimum compensation under [section 50 of the P\(LBCA\)](#):
 - (i) additional [paragraph 4 of Form 8 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) (provided under [the ‘Notes to the use of Form 8’ section](#)); and
 - (ii) reference to where in the notice the explanation of the meaning of the direction, as required by [section 50\(3\) of the P\(LBCA\)](#), is provided.

⁴¹ As defined in [section 12\(2A\) of the Acquisition of Land Act 1981](#) i.e. a person: (a) to whom the acquiring authority would, if proceeding under [section 5\(1\) of the Compulsory Purchase Act 1965](#), be required to give a notice to treat, or (b) the acquiring authority thinks is likely to be entitled to make a relevant claim if the compulsory purchase order is confirmed and the compulsory purchase takes place, so far as they are known to the acquiring authority after making diligent inquiry.

For example,

“The [insert name of appropriate authority] have included in the Order a direction for minimum compensation (the meaning of which is explained [below]/[in the note attached to this Notice]/[below in paragraph 4A]).”

The explanation should normally include the text of [section 50\(4\) and \(5\) of the P\(LBCA\)](#) and may be expressed in the following terms:

“Under section 50 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”), the [insert name of acquiring authority] make the following direction:

For the purpose of assessing compensation and notwithstanding anything to the contrary in the Land Compensation Act 1961, the Town and Country Planning Act 1990 or the Listed Buildings Act, it is hereby directed that it shall be assumed that planning permission would not be granted for any development or redevelopment of the site of the building described in the Schedule to this order and that listed building consent would not be granted for any works for the demolition, alteration or extension of that building, other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair.”

- (b) When preparing the CPO for listed buildings in need of repair using [Form 1 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) and a direction for minimum compensation is included within the CPO, insert:-
- [paragraph 4 of Form 1 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#).

Section I – The Welsh Ministers’ power to acquire land compulsorily

Welsh Development Agency Act 1975

1. The [Welsh Development Agency Act 1975](#) (“1975 Act”) provides the Welsh Ministers with powers under [section 21A](#) to acquire land compulsorily to facilitate the discharge of their functions. These are to:
 - (a) promote Wales as a location for businesses, or assist its promotion as such a location;
 - (b) provide finance for persons carrying on or intending to carry on businesses;
 - (c) carry on industrial undertakings and to establish and carry on new businesses;
 - (d) promote or assist the establishment, growth, modernisation or development of businesses, or a particular business or particular businesses;
 - (e) make land available for development;
 - (f) provide sites, premises, services and facilities for businesses;
 - (g) manage sites and premises for businesses;
 - (h) bring derelict land into use or improve its appearance;
 - (i) undertake the development and redevelopment of the environment;
 - (j) promote the private ownership of interests in businesses by the disposal of securities and other property held by the Welsh Ministers or any of their subsidiaries.

The procedure contained in the [1981 Act](#) applies in relation to the compulsory acquisition of land under [section 21A of the 1975 Act](#) subject to the modifications made by [Schedule 4 to the 1975 Act](#).

2. The purpose for which the Welsh Ministers may exercise their function to make land available for development includes to:
 - (i) further the economic and social development of Wales or any part of Wales, and in that connection to provide, maintain or safeguard employment;
 - (ii) promote efficiency in business and international competitiveness in Wales; and
 - (iii) further the improvement of the environment in Wales (having regard to existing amenity).
3. Before the Welsh Ministers acquire land under [section 21A of the 1975 Act](#) for the purpose of making land available for development, they are required to consider:
 - (a) whether the land would or would not in their opinion be made available for development if they did not act,
 - (b) the fact that planning permission has or has not been granted in respect of the land or is likely or unlikely to be granted,
 - (c) (in a case where no planning permission has been granted in respect of the land) whether to consult every relevant local authority, and
 - (d) the needs of those engaged in building, agriculture and forestry and of the community in general.

4. Where the Welsh Ministers wish to use their powers under [section 21A of the 1975 Act](#) to compulsorily acquire land they must first prepare a CPO in draft. The relevant Minister with responsibility for promoting the CPO can then make the CPO with or without modifications only if they are satisfied the following have been met:
 - (i) the requirements in relation to affixing and serving notices in connection with the CPO have been complied with; and
 - (ii) one of the following conditions is satisfied:
 - (a) no objection has been made by a person who is a qualifying person⁴² or a relevant local authority⁴³; or
 - (b) every objection which has been made by a person who is a qualifying person or a relevant local authority is either withdrawn or disregarded (for example, if it relates exclusively to matters which can be dealt with by the Upper Tribunal (Lands Chambers) i.e. the assessment of compensation).
5. If an objection is made by a qualifying person or a relevant local authority and is not withdrawn or disregarded, an independent inspector will be appointed to consider objections and the CPO will proceed on the basis of either the:
 - (a) written representations procedure; or
 - (b) holding of a public inquiry.

The relevant Minister with responsibility for promoting the CPO may then proceed to make the CPO with or without modifications if:

- (i) they have considered the objections, and
 - (ii) one of the following conditions is satisfied:
 - the written representations procedure has been followed; or
 - if a public inquiry was held, the Welsh Ministers have considered the report of the inspector who was appointed to hold the public inquiry.
6. The procedures to be followed for where the Welsh Ministers acquire land compulsorily under [section 21A of the 1975 Act](#) are laid down in [Schedule 1 to the 1981 Act](#).

Highways Act 1980

7. The [1980 Act](#) places a duty on the Welsh Ministers to maintain highways at the public expense for which they are the highway authority. The Welsh Ministers are the highway authority in Wales for:
 - trunk roads such as the A470 and the A55;
 - special roads provided by them such as the M4 motorway;
 - highways for which they are responsible under any enactment;
 - highways transferred to them; and
 - highways constructed by them that have not been transferred to any local highway authority (see [section 1\(1\) of the 1980 Act](#)).

⁴² “Qualifying person” as defined in [section 12 of the Acquisition of Land Act 1981](#).

⁴³ “Relevant local authority” as defined in [section 21A\(5\) of the Welsh Development Agency Act 1975](#).

8. In respect of other highways, the highway authority will nearly always be the local authority, other than in exceptional cases where for example the Welsh Ministers construct a highway other than a trunk road using their powers under [section 24\(1\) of the 1980 Act](#).
9. CPOs can be used by the Welsh Ministers in their role as a highway authority to acquire land and/or rights over land in connection with highway improvements where it is not possible to acquire the land/rights by agreement. The power for the Welsh Ministers to acquire land by compulsory purchase for highway improvements is contained in the [1980 Act](#). The procedures to be followed for such compulsory acquisitions are laid down in [Schedule 1 to the 1981 Act](#).
10. CPOs made for highway improvements by the Welsh Ministers tend not be in isolation and form a package of Orders (i.e. with line and side roads orders (SRO)) in connection with trunk road schemes/improvements. These allow changes and improvements to be made to the local non-vehicular highway network through a SRO ([section 14 of the 1980 Act](#)).
11. General guidance on the power to compulsory acquire land for highway purposes under the [1980 Act](#) is contained in [Section G in Part 2 of this Circular](#).

Section 228 of the Town and Country Planning Act 1990

12. Under [section 228\(1\) of the 1990 Act](#) the Welsh Ministers are entitled to acquire compulsorily:
 - (a) any land necessary for the public service which includes service in the United Kingdom—
 - (i) of any international organisation or institution whether or not the United Kingdom or Her Majesty's Government in the United Kingdom is or is to become a member;
 - (ii) of any office or agency established by such an organisation or institution or for its purposes, or established in pursuance of a treaty (whether or not the United Kingdom is or is to become a party to the treaty) – “treaty” includes any international agreement, and any protocol or annex to a treaty of international agreement;
 - (iii) of a foreign sovereign Power or the Government of such a Power; and
 - (b) any land which it is proposed to use not only for the public service but also “otherwise than for the public service” either —
 - (i) to meet the interests of proper planning of the area, or
 - (ii) to secure the best or most economic development or use of the land.
13. Where the Welsh Ministers have acquired or propose to acquire any land under [section 228\(1\) of the 1990 Act](#) (i.e. “the primary land”), and in their opinion other land ought to be acquired together with the primary land —
 - (a) in the interests of the proper planning of the area concerned; or

- (b) for the purpose of ensuring that the primary land can be used, or developed and used, (together with that other land) in what appears to them to be the best or most economic way; or
 - (c) where the primary land or any land acquired, or which they propose to acquire, by virtue of [section 228\(2\)\(a\) or \(b\) of the 1990 Act](#) or [of section 122\(1\)\(a\) or \(b\) of the Local Government, Planning and Land Act 1980](#), forms part of a common, open space or fuel or field garden allotment, for the purpose of being given in exchange for that land they may compulsorily acquire that other land.
14. The power for the Welsh Ministers to acquire land compulsorily under [section 228 of the 1990 Act](#) includes the power to acquire an easement or other right over land by the grant of a new right ([section 228\(3\) of the 1990 Act](#)) but this excludes an easement or other right over any land which would, for the purposes of the [1981 Act](#), form part of a common, open space or fuel or field garden allotment ([section 228\(4\) of the 1990 Act](#)).
15. As with acquisitions under [section 226 of the 1990 Act](#), the Welsh Ministers are not permitted to acquire any interest in Crown Land unless it is an interest which is for the time being held otherwise than by or on behalf of the Crown and the appropriate authority consents to the acquisition ([section 228\(1A\) of the 1990 Act](#)). General guidance on the compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown) is contained in [Section L in Part 2 of this Circular](#).
16. The procedures to be followed for the compulsory acquisition of land by the Welsh Ministers under [section 228 of the 1990 Act](#) are laid down in [Schedule 1 to the 1981 Act](#).

Section J – Special kinds of land

Introduction

1. Particular categories of land are afforded additional protection against compulsory acquisition (including compulsory acquisition of new rights across them) by providing that the confirmation of a CPO including such land may be subject to special Senedd procedure⁴⁴ (and in the case of National Trust land, special Parliamentary procedure and special Senedd procedure). These are known as “special kinds of land” and are defined in [Part 3 of](#), and [Schedule 3 to](#), the [1981 Act](#) as:
 - land acquired by a statutory undertaker for the purposes of their undertaking ([section 16](#) and [paragraph 3 of Schedule 3](#));
 - local authority owned land or land acquired by any authority, body or undertaker, except a local authority, who are, or are deemed to be, statutory undertakers for the purposes of their undertaking, for example, electricity licence holders ([section 17](#) and [paragraph 4 of Schedule 3](#));
 - land held by the National Trust inalienably ([section 18](#) and [paragraph 5 of Schedule 3](#)); and
 - land forming part of a common, open space, or fuel or field garden allotment ([section 19](#) and [paragraph 6 of Schedule 3](#)).

Statutory undertakers’ land and local authority owned land

Bodies defined as statutory undertakers under the Acquisition of Land Act 1981

2. [Section 8\(1\) of the 1981 Act](#) defines “statutory undertakers” for the general purposes of the Act. These include:
 - transport undertakings (air, rail, road, water transport),
 - docks, harbours, piers, lighthouses,
 - Civil Aviation Authority and or a person who holds a licence under [Chapter I of Part I of the Transport Act 2000](#) (i.e. National Air Traffic Services), and
 - universal postal service providers.

In addition, other bodies may be defined as, or deemed to be, statutory undertakers for the purposes of [sections 16](#) or [17](#) or for the general purposes of the [1981 Act](#). These include:

- various health bodies (for the purposes of [sections 16](#) and [17](#))
- public gas transporters ([paragraph 2\(1\) of Schedule 4 to the Gas Act 1995](#))
- certain electricity licence holders ([paragraph 2\(2\)\(g\) of Schedule 16 to the Electricity Act 1989](#))
- Natural Resources Wales ([paragraph 1 of Schedule 25 to the Water Act 1989](#))
- water and sewerage undertakers ([paragraph 1 of Schedule 25 to the Water Act 1989](#)).

⁴⁴ Standing Order 28 of the Senedd Cymru.

3. British Telecom is not a statutory undertaker for the purposes of the [1981 Act](#). Private bus operators, other road transport operators, taxi and car hire firms which are authorised by licence are not statutory undertakers for the purposes of the [1981 Act](#). Where their operations are carried out under the specific authority of an Act, however, such operators will fall within the definition in [section 8\(1\) of the 1981 Act](#).

Protection for statutory undertakers' land

4. [Sections 16](#) and [17 of the 1981 Act](#) provide protection for statutory undertakers' land. In both cases, the land must have been acquired by the relevant statutory undertaker for the purposes of their undertaking. The provisions do not apply if the land was acquired by the relevant statutory undertaker for other purposes which are not directly connected to the undertakers' statutory functions.
5. Before making a representation to "the appropriate Minister" under [section 16](#) (see paragraph 6 below), or an objection to the CPO submitted to the confirming Welsh Minister in respect of land to which they think [section 17](#) applies, statutory undertakers should take particular care over the status of the land which the acquiring authority propose to acquire. Statutory undertakers should also have regard to the provisions of the relevant Act, and seek their own legal advice as may be necessary. For example, whilst a gas transporter qualifies as a statutory undertaker, the additional protection afforded to land held by a statutory undertaker under [sections 16](#) and [17 of the 1981 Act](#) does not apply to non-operational land. As such, a gas transporter's administrative offices or a redundant, manufactured gas works on their land would not be afforded additional protection. In these circumstances, the land is not held for the purpose of statutory provision i.e. the conveyance of gas through pipes to any premises or to a pipeline system operated by a licensed gas transporter who qualifies as a statutory undertaker for the purposes of the [1981 Act](#).

Section 16 of the Acquisition of Land Act 1981 and the role of the appropriate Minister

6. Under [section 16 of the 1981 Act](#), statutory undertakers who wish to object to the inclusion in a CPO of land which they have acquired for the purposes of their undertaking, may make representations to "the appropriate Minister". Such representations must be made within the period outlined in the public and personal notices which state the effect of the CPO and that it is about to be submitted for confirmation (i.e not less than twenty-one days, as specified in the [1981 Act](#)⁴⁵).
7. The appropriate Minister is the Minister with supervisory/operational responsibility for activities carried on by a particular statutory undertaker. The functions of the appropriate Minister under the [1981 Act](#), in so far as they have been transferred to the Welsh Ministers, are undertaken by the Welsh Ministers.

⁴⁵ See [sections 11\(2\)\(d\)](#) and [12\(1\)\(c\) in the 1981 Act](#).

The appropriate Minister functions in respect of:

- cross-border harbours; and
- reserve trust ports

remain with the relevant Secretary of State⁴⁶.

8. A representation made by a statutory undertaker under [section 16](#) to the appropriate Minister is separate from an objection to the CPO made to the confirming Welsh Minister. Where the appropriate Minister is also the confirming Minister the intention of the statutory undertakers should be clearly stated, particularly where it is intended that a single letter should constitute both a [section 16](#) representation and an objection to the CPO. For example, the appropriate Minister would also be the confirming Minister where an airport operator under [Part 5 of the Airports Act 1986](#) makes a [section 16](#) representation to the Minister with responsibility for Transport about an order made under [section 239 of the 1980 Act](#).

Where a representation under section 16 of the Acquisition of Land Act 1981 is not withdrawn: Joint confirmation

9. Where a statutory undertaker's representation under [section 16](#) is not withdrawn, the CPO to which it relates may not be confirmed (or made, where the acquiring authority is one of the Welsh Ministers) so as to include the interest owned by the statutory undertaker unless the appropriate Minister gives a certificate in the terms stated in [section 16\(2\) of the 1981 Act](#). These are either that:
- the land can be taken without serious detriment to the carrying on of the undertaking ([section 16\(2\)\(a\)](#)); or
 - if taken it can be replaced by other land without serious detriment to the undertaking ([section 16\(2\)\(b\)](#)).

However, by virtue of [section 31\(2\) of the 1981 Act](#), a CPO may still be confirmed or made where:

- a representation has been made under [section 16\(1\)](#) of, or [paragraph 3\(2\) of Schedule 3 to, the 1981 Act](#) without an application for either a [section 16\(2\)](#) or [Schedule 3 \(paragraph 3\(2\)\) 1981 Act](#) certificate, or where such an application for a certificate is refused or is made after the expiration of the time within which objections to the CPO can be made, and
- the confirmation or making is undertaken jointly by the appropriate Minister and the confirming Minister providing it was made under the following provisions⁴⁷:
 - (a) the [1990 Act](#) (acquisition by LPAs relating to development and regeneration purposes),
 - (b) the [P\(LBCA\)](#) (acquisition by local authorities relating to listed buildings in need of repair),

⁴⁶ [Article 18 of the Welsh Ministers \(Transfer of Functions\) Order 2018](#).

⁴⁷ [Section 31\(1\) of the 1981 Act](#).

- (c) [section 142](#) or [143 of the Local Government, Planning and Land Act 1980](#) (acquisition by an urban development corporation relating to development and regeneration purposes), or
- (d) [section 21A](#) of, and [Schedule 4 to, the 1975 Act](#) (acquisition by the Welsh Ministers relating to development and regeneration purposes).

Section 17 of the Acquisition of Land Act 1981

- 10. [Section 17\(2\)](#) provides for a CPO which acquires land owned by a local authority or statutory undertaker, in the event that such an authority or undertaker objects, any confirmation would be subject to special Senedd procedure. [Section 17\(3\)](#), however, excludes the application of [section 17\(2\)](#) if the acquiring authority is one of the bodies referred to in [section 17\(3\)](#) which includes: a local authority, National Park authority, and statutory undertaker as defined in [section 17\(4\)](#). The application of [section 17\(2\)](#) is therefore very limited.
- 11. The Welsh Ministers may by order under [section 17\(4\)\(b\)](#) extend the definition of statutory undertaker for the purposes of [section 17\(3\)](#) to include any other authority, body or undertaker. Also, some authorities have been defined as statutory undertakers for the purposes of [section 17\(3\)](#) by primary legislation. An example of such a provision is a housing action trust ([section 78](#) of, and [paragraph 3 of Schedule 10 to, the Housing Act 1988](#)).

Protection for National Trust Land

Section 18 of the Acquisition of Land Act 1981

- 12. Where a CPO seeks to authorise the compulsory purchase of land belonging to, and held inalienably by, the National Trust (as defined in [section 18\(3\) of the 1981 Act](#)), it will be subject to special Senedd procedure and special parliamentary procedure if the Trust has made, and not withdrawn, an objection in respect of the land.

Special Senedd procedure and special Parliamentary procedure

- 13. Where a CPO is being confirmed or made so as to include National Trust land, the acquiring authority will not be able to publish and serve notice of confirmation in the usual way. The CPO will, instead, be subject to the following procedures:
 - special Senedd procedure set out in Standing Order 28 of the Senedd Cymru; and
 - special Parliamentary procedure set out in the [Statutory Orders \(Special Procedure\) Acts 1945](#) and [1965](#).

The Welsh Ministers will give full instructions at the appropriate time.

Protection for land forming part of a common, open space, or fuel or field garden allotment

Section 19 of the Acquisition of Land Act 1981

14. CPOs may sometimes include land or rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment. Under the [1981 Act](#):
- “common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882, and any town or village green⁴⁸, the definition therefore includes, but may go wider than, land registered under the [Commons Registration Act 1965](#);
 - “open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground; and
 - “fuel or field garden allotment” means any allotment set out as a fuel allotment, or field garden allotment, under an Inclosure Act.
15. A CPO which authorises purchase of any such land will be subject to special Senedd procedure unless the Welsh Ministers give a certificate under [section 19 of the 1981 Act](#) indicating their satisfaction that either:
- exchange land is being given which is no less in area and equally advantageous as the land taken ([section 19\(1\)\(a\)](#)); or
 - that the land is being purchased to ensure its preservation or improve its management ([section 19\(1\)\(aa\)](#)); or
 - that the land is 250 sq. yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary ([section 19\(1\)\(b\)](#)).
16. Likewise, a CPO which authorises the purchase of new rights over such land will be subject to special Senedd procedure unless the Welsh Ministers give a certificate under [paragraph 6 of Schedule 3 to the 1981 Act](#) (see [paragraphs 3 - 5 of Section K in Part 2 of this Circular](#)).
17. As to the form of the CPO, see [paragraphs 25 – 32 of Section R in Part 4 of this Circular](#) and [paragraphs 4 - 7 of Section K in Part 2 of this Circular](#).

Application for a certificate under section 19 of and/or Schedule 3 to the Acquisition of Land Act 1981

18. An acquiring authority requiring a certificate from the Welsh Ministers under [section 19](#) of and/or [paragraph 6 of Schedule 3 to the 1981 Act](#) should apply to the address given at [Section R in Part 4 of this Circular](#). Applications for certificates should be made when the CPO is submitted for confirmation (or, in the case of a CPO prepared in draft by the Welsh Ministers, when notice is published and served in accordance with [paragraphs 2 and 3 of Schedule 1 to the 1981 Act](#)).

⁴⁸ Where rights of a common are extinguished by a CPO, acquiring authorities should also consider the need to seek consent under [section 22 of the Commons Act 1899](#). Further information can be obtained from the address given in [Section R in Part 4 of this Circular](#).

19. The land, including any new rights, should be described in detail, by reference to the CPO, and all the land clearly identified on an accompanying map. This should show the common/open space/fuel or field garden allotment plots to be acquired in the context of the common/open space/fuel or field garden allotment space as a whole, and in relation to any proposed exchange land.
20. The acquiring authority should also provide copies of the CPO, including the Schedules, and order map. For a particularly large CPO, they may provide:
- (a) copies of the CPO and relevant parts or sheets of the map; and
 - (b) a copy, or copies, of the relevant extract or extracts from the CPO Schedule or Schedules, which include the following:
 - (i) the plot(s) of common, open space etc which they propose to acquire or over which they propose to acquire a new right (“the CPO land”); and
 - (ii) any land which they propose to give in exchange (“the exchange land”).
- (Where [paragraph 6\(1\)\(b\) of Schedule 3 to the 1981 Act](#) applies and additional land is being given in exchange for a new right, substitute “the rights land” and “the additional land” for the definitions given in (i) and (ii) above, respectively).
21. When drafting a CPO, careful attention should be given to the discharging and vesting provisions of [section 19\(3\)](#) of, or [paragraph 6\(4\) of Schedule 3 to, the 1981 Act](#).
22. It must be specified under which sub-section(s) an application for a certificate is made - for example, [section 19\(1\)\(a\), \(aa\) or \(b\)](#), and/or [paragraph 6\(1\)\(a\), \(aa\), \(b\) or \(c\) of Schedule 3 to the 1981 Act](#). Where an application is under more than one sub-section, this should be stated, specifying those plots that each part of the application is intended to cover. Where an application is under [section 19\(1\)\(b\)](#), it should be stated whether it is made on the basis that the land does not exceed 209 square metres (250 square yards) or under the highway widening or drainage criterion.
23. Careful attention should be given to the following criteria, provided in [section 19](#) of, and/or [paragraph 6 of Schedule 3 to, the 1981 Act](#), which the Welsh Ministers will consider when deciding whether or not to issue a certificate under [section 19](#) of, and/or [paragraph 6 of Schedule 3 to, the 1981 Act](#):
- (a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or
 - (b) that the land is being purchased in order to secure its preservation or improve its management;

- (c) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.

Acquiring authorities should provide the following information:

- the name of the common or green involved (including CL/VG number);
 - the plots numbers and their areas, in square metres;
 - details of any rights of common registered, or rights of public access, and the extent to which they are exercised;
 - the purpose of the acquisition;
 - details of any special provisions or restrictions affecting any of the land in the application; and
 - any further information which supports the case for a certificate.
24. In most cases, arrangements will be made for the CPO/rights land to be inspected and, if applicable, for a preliminary appraisal of the merits of any proposed exchange/additional land. If, at this stage, the Welsh Ministers are satisfied a certificate could, in principle, be given, they will direct the acquiring authority to publish notice of the Welsh Ministers' intention to give a certificate, with details of the address to which any representations and objections may be submitted by all persons interested. In most cases where there are objections, the matter will be considered by the inspector at the public inquiry into the CPO.
25. Where a public inquiry has been held into the application for a certificate (including, where applicable, the merits of any proposed exchange/additional land), the inspector will summarise the evidence in their report and make a recommendation. The Welsh Ministers' consideration of, and response to, the inspector's recommendation are subject to the statutory public inquiry procedure rules which apply to the CPO. Where there is no public inquiry, the Welsh Ministers' decision on the certificate will be made having regard to an appraisal by an inspector or a professionally qualified planner, and after taking into account the written representations from any objectors and from the acquiring authority.
26. The Welsh Ministers must decline to give a certificate if they are not satisfied that the requirements of [section 19](#) of, and/or [paragraph 6 of Schedule 3 to, the 1981 Act](#) have been complied with. Where exchange land is to be provided for land used by the public for recreation, the Welsh Ministers will have regard (in particular) to the case of *LB Greenwich and others v Secretary of State for the Environment, and Secretary of State for Transport (East London River Crossing: Oxleas Wood)*.

Exchange land

27. Where a certificate would be in terms of [section 19\(1\)\(a\) of the 1981 Act](#), the exchange land must be:
- no less in area than the CPO land; and
 - equally advantageous to any persons entitled to rights of common or to other rights, and to the public.
28. Depending on the particular facts and circumstances, the Welsh Ministers may have regard to such matters as relative size and proximity of the exchange land when compared with the CPO land. The date upon which equality of advantage is to be assessed is the date of exchange (see [paragraphs 4 and 5 of Form 2 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)). The Welsh Ministers may, however, have regard to any prospects of improvement to the exchange land which exist at that date.
29. Other issues may arise involving questions of the respective merits of the CPO and exchange land. The latter may not possess the same character and features as the CPO land, and it may not offer the same advantages, yet the advantages offered may be sufficient to provide an overall equality of advantage. But land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned. There may be some cases where a current use of proposed exchange land is temporary, for example, pending development. In such circumstances it may be reasonable to give the land in exchange, since its current use can thereby be safeguarded for the future. The Welsh Ministers will examine any such case with particular care.

Meaning of “the public” in regard to exchange land

30. With regard to exchange land for open space included in a CPO, the Welsh Ministers take the view that “the public” means principally the section of the public which has hitherto benefited from the CPO land and, more generally, the public at large. But circumstances differ. For example, in the case of open space, a relatively small recreation ground may be used predominantly by local people, perhaps from a particular housing estate. In such circumstances, the Welsh Ministers would normally expect exchange land to be equally accessible to residents of that estate. On the other hand, open space which may be used as a local recreational facility by some people living close to it but which is also used by a wider cross-section of the public may not need to be replaced by exchange land in the immediate area. One example of such a case might be land forming part of a regional or country park.

Section 19(1)(aa) of the Acquisition of Land Act 1981

31. In some cases, the acquiring authority may wish to acquire land to which [section 19](#) applies, for example, open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space. Typical examples might be where open space which is privately owned may be subject to development proposals in the future resulting in a loss to the public of the open space and the local authority wish to retain the open space in the meantime for the benefit of the public; or where the local authority wish to acquire part or all of a privately owned common in order to secure its proper management. Such a purpose might be “improvement” within the sense of [section 226\(1\)\(a\) of the 1990 Act](#), or a purpose necessary in the interests of proper planning ([section 226\(1\)\(b\) of the 1990 Act](#)). The land might be neglected or unsightly (see [Section E in Part 2 of this Circular](#)), perhaps because the owner is unknown, and the authority may wish to provide, or to enable provision of, proper facilities. Therefore, the acquisition or enabling powers and the specific purposes may vary. In such circumstances, i.e. where the reason for making the CPO is to secure preservation or improve management of land to which [section 19](#) applies, a certificate may be given in the terms of [section 19\(1\)\(aa\)](#).

NB Where the acquiring authority seek a certificate in terms of [section 19\(1\)\(aa\)](#), [section 19\(3\)\(b\)](#) cannot apply and the CPO may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject. See also [paragraph 32 of Section R in Part 4 of this Circular](#).

Section 19(1)(b) of the Acquisition of Land Act 1981

32. A certificate can only be given in terms of [section 19\(1\)\(b\)](#) where the Welsh Ministers are persuaded that the land is 250 square yards (209 square metres) or less in area or is for the widening and/or drainage of an existing highway and that the giving of exchange land is unnecessary. The Welsh Ministers will have regard to the overall extent of – common land, open space land or fuel or field garden allotment land - being acquired compulsorily. Where all or a large part of such land would be lost, the Welsh Ministers may be reluctant to certify in terms of [section 19\(1\)\(b\)](#). Should they refuse a certificate, it would remain open to the acquiring authority to consider providing suitable exchange land and seeking a certificate in terms of [section 19\(1\)\(a\)](#).

Section K – Compulsory purchase of new rights and other interests

Introduction

1. This Section gives some general advice⁴⁹ about the powers available which provide for the compulsory acquisition of rights over land by the creation of new rights where full land ownership is not required, for example, the compulsory creation of a right of access. [Section R in Part 4 of this Circular](#) provides guidance on the drafting and serving of CPOs which involve the acquisition of rights over land and other interests.

2. The compulsory acquisition of rights over land by the creation of new rights is, by virtue of [section 28 of the 1981 Act](#), subject to the provisions of [Schedule 3 to that Act](#). This can only be achieved using a specific statutory power, known as an ‘enabling power’. Powers include (with the bodies by whom they may be exercised) the following:
 - (i) [Local Government \(Miscellaneous Provisions\) Act 1976, section 13](#) (local authorities);
 - (ii) [Highways Act 1980, section 250](#) (all highway authorities) (guidance on the use of these powers is given in [Section G of Part 2 of this Circular](#));
 - (iii) [Water Industry Act 1991, section 155\(2\)](#) (water and sewerage undertakers);
 - (iv) [Water Resources Act 1991, section 154\(2\)](#) (Natural Resources Wales);
 - (v) [Electricity Act 1989, section 10](#) and [paragraph 1 of Schedule 3](#) (electricity undertakings);
 - (vi) [Gas Act 1986, section 9](#) and [paragraph 1 of Schedule 3](#) (gas transporter undertakings);
 - (vii) [Communications Act 2003, section 118](#) and [paragraph 3\(3\) of Schedule 4](#) (a provider of an electronic communications network); and
 - (viii) [National Health Service \(Wales\) Act 2006, paragraph 20 of Schedule 2](#) (Local Health Board).

The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

⁴⁹ [Section 13 of the Local Government \(Miscellaneous Provisions\) Act 1976](#) is referred to within this Section as an example. Where in practice a different power is used, for example, [section 250 of the Highways Act 1980](#), the acquiring authority should take into account any special requirements which may apply to the use of that power.

Special kinds of land - Land forming part of a common, open space, or fuel or field garden allotment (see also [Sections J and R in Part 4 of this Circular](#))

3. Where a new right over land forming part of a common, open space, or fuel or field garden allotment is being acquired compulsorily, [paragraph 6 of Schedule 3 to the 1981 Act](#) applies (in the same way that [section 19](#) applies to the compulsory purchase of any land forming part of a common, open space etc.). The CPO will be subject to special Senedd procedure⁵⁰ unless the Welsh Ministers give a certificate, in the relevant terms, under [paragraph 6\(1\) and \(2\) of Schedule 3 to the 1981 Act](#).

4. A certificate may be given by the Welsh Ministers in the following circumstances:
 - (a) [paragraph 6\(1\)\(a\)](#) - the land burdened with the right will be no less advantageous than before to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public; or
 - (b) [paragraph 6\(1\)\(aa\)](#) - the right is being acquired in order to secure the preservation or improve the management of the land. Where an acquiring authority propose to apply for a certificate in terms of [paragraph 6\(1\)\(aa\)](#), they should note that the CPO cannot, in that case, discharge the land over which the right is to be acquired from all rights, trusts and incidents to which it has previously been subject. (See also [paragraph 31 of Section J in Part 2 of this Circular](#) and [paragraph 32 of Section R in Part 4 of this Circular](#)); or
 - (c) [paragraph 6\(1\)\(b\)](#) - additional land will be given in exchange for the right which will be adequate to compensate the persons mentioned in relation to [paragraph 6\(1\)\(a\)](#) for the disadvantages resulting from the acquisition of the right and will be vested in accordance with the [1981 Act](#). Where an authority seek a certificate in terms of [paragraph 6\(1\)\(b\)](#) because they propose to give land (“the additional land”) in exchange for the right, the CPO should include [paragraph 4\(1\) and the appropriate paragraph 4\(2\) of Form 2 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) (see [paragraph “\(s\)” on the “Notes on the use of Forms 1, 2 and 3” in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)). The land over which the right is being acquired (“the rights land”) and, where it is being acquired compulsorily, the additional land, should be delineated and shown as stated in paragraph 2 of the CPO. Paragraph 2(ii) should be adapted as necessary (see also [paragraphs 19 – 20 of Section J in Part 2 of this Circular](#) and [paragraphs 28 - 29 of Section R in Part 4 of this Circular](#)); or
 - (d) [paragraph 6\(1\)\(c\)](#)
 - (i) the land affected by the right to be acquired does not exceed 250 square yards (209 square metres); or

⁵⁰ Standing Order 28 of the Senedd Cymru.

- (ii) in the case of a CPO made under the [1980 Act](#), the right is required in connection with the widening or drainage, or partly with the widening and partly with the drainage, of an existing highway, and it is unnecessary, in the interests of persons, if any, entitled to rights of common or other rights or in the interests of the public, to give other land in exchange.
5. The same CPO may authorise the purchase of land forming part of a common, open space etc. and the acquisition of a new right over a different area of such land, and a certificate may be given in respect of each. The acquiring authority must always specify the type of certificate for which they are applying.
 6. Where additional land, which is not being acquired compulsorily, is to be vested in the owners of the land over which the right is to be acquired, the additional land should be delineated and shown on the CPO map (so as to clearly distinguish it from any land being acquired compulsorily) and described in Schedule 3 to the CPO. Schedule 3 becomes Schedule 2 if no other additional or exchange land is being acquired compulsorily.
 7. A CPO which does not provide for the vesting of additional land, but provides for discharging the rights land from all rights, trusts and incidents to which it has previously been subject (so far as their continuance would be inconsistent with the exercise of the right(s) to be acquired), should comply with [Form 3 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)) and should include the reference in [paragraph 4\(3\) of that Form](#) (or, if appropriate, as adapted for [paragraph 4\(2\) of Form 6](#)) to land over which the new right is acquired (see also [paragraph 4\(b\) above](#)).

Section L – Compulsory acquisition of interests in Crown land (held otherwise than by or on behalf of the Crown)

General position

1. Crown land is defined in [section 293\(1\) of the 1990 Act](#), [section 82C of the P\(LBCA\)](#), and [section 31 of the Planning \(Hazardous Substances\) Act 1990](#) (as amended), as any land in which the Crown (including the Duchies of Lancaster and Cornwall) has a legal interest is “Crown land”.
2. As a general rule, Crown land cannot be compulsorily acquired as legislation does not bind the Crown unless it states to the contrary. Specific compulsory purchase enabling powers often make provision for their application to Crown land. If it is proposed to include such land in a CPO, careful consideration should be made of the enabling legislation.

Exceptions to general position

3. There are some limited exceptions to the general rule that compulsory purchase powers do not apply to Crown land, these include:
 - [Section 327 of the 1980 Act](#) provides for a highway authority and the appropriate Crown authority (the Welsh Ministers in relation to trunk roads in Wales) to specify in an agreement that certain provisions of the [1980 Act](#) - including the compulsory purchase powers - shall apply to the Crown.
 - [Section 32 of the Coast Protection Act 1949](#) enables the compulsory purchase powers under [Part I of that Act](#) to apply to Crown land with the consent of the “appropriate authority” (the Welsh Ministers in respect of land in Wales)⁵¹.
4. The enactments listed below⁵² also provide that interests in Crown land which are not held by or on behalf of the Crown may be acquired compulsorily if the appropriate authority agrees:
 - [section 226\(2A\) of the 1990 Act](#);
 - [section 47\(6A\) of the P\(LBCA\)](#);
 - [section 25 of the Transport and Works Act 1992](#); and
 - [section 221 of the Housing Act 1996](#) (applicable to the [1985 Act](#), the [Housing Associations Act 1985](#), [Part 3 of the Housing Act 1988](#) and [Part 7 of the 1989 Act](#)).

Issues for consideration

5. A Crown interest in land should generally not be included in a CPO unless:
 - (a) there is an agreement under [section 327 of the 1980 Act](#) which provides for the use of compulsory purchase powers; or

⁵¹ As appropriate, the Government Department having management of the land, the Crown Estate Commissioners, the Chancellor of the Duchy of Lancaster, or a person appointed by the Duke of Cornwall or by the possessor, for the time being, of the Duchy.

⁵² This is not an exhaustive list.

- (b) the CPO is made under a power to which the provisions mentioned in [paragraph 3 above](#) relate or under any other enactment which provides for compulsory acquisition of interests in Crown land.
6. Where paragraph 5(b) above applies, Crown land should only be included where the acquiring authority has obtained (or is at least seeking) agreement from the appropriate authority. The Welsh Ministers have no power to authorise compulsory acquisition of the relevant interest or interests without such agreement.
 7. [Section R](#) provides guidance on the drafting and serving of CPOs which include an interest in Crown land.

Section M – Overriding easements and other rights

Introduction

1. Regeneration and redevelopment schemes often take place on previously developed land. To ensure there are no impediments to the proposed regeneration, it may be necessary to deal with restrictive covenants and easements on land which can complicate the design of schemes and cause delay in their implementation. These third-party interests are typically rights to allow underground services of one property, for example water, gas, electricity and telecommunications, to pass beneath the land of neighbouring properties. There are also rights of light, rights of way and covenants restricting development to certain uses or density.
2. To override such easements and covenants for both the construction and use of development there are statutory powers available to LPAs under [section 203 of the Housing and Planning Act 2016](#) (“the 2016 Act”) extends and regeneration agencies, such as urban development corporations, under other legislation such as the [Local Government, Planning and Land Act 1980](#). The use of such powers are subject to the payment of compensation. An important aspect of the power is that it transfers to subsequent purchasers of the land without the LPA or agency having to undertake the development itself. It is therefore a valuable feature of redevelopment schemes where LPAs acquire land to assemble it for development by a selected development partner.
3. The 2016 Act extends the existing powers to override restrictive covenants and easements on land to all acquiring authorities (including public bodies and statutory undertakers). The power also extends to successors in title. [Section 203 of the 2016 Act](#) enables a person, i.e. an acquiring authority or a successor in title, to carry out building or maintenance works on, or use, land even if it involves:
 - (a) interfering with any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support), or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract.
4. [Section 206 of the 2016 Act](#) introduces [Schedule 19 to the Act](#). [Schedule 19](#) repeals the following powers to override easements and other rights which have been replaced by the new power in [section 203](#):
 - [Paragraph 6 in Schedule 4 to the 1975 Act](#);
 - [Paragraph 6 in Schedule 28 to the Local Government, Planning and Land Act 1980](#);
 - [Section 19 of the New Towns Act 1981](#);
 - [Paragraph 5 in Schedule 10 to the Housing Act 1988](#);
 - [Section 237 of the 1990 Act](#).
5. The power to override easements and other rights under [section 203 of the 2016 Act](#) may come to be exercised without there having been a formal CPO process.

In these circumstances the acquiring authority should give a notice of intention to use the [section 203](#) power to the person with the benefit of the right, for example where land is acquired by private treaty for planning purposes or is appropriated for planning purposes, having initially been acquired voluntarily. In such instances, consideration should be given by the acquiring authority to the human rights aspects involved in the process of overriding easements and other rights, and with paying compensation. This is will also assist the compelling case in the public interest for use of the [section 203](#) power to be established and evidenced.

Restrictions on the use of the power to override easements and other rights

6. There are several conditions on the use of the power to override easements and other rights. These are that:
- (a) there must be planning consent for the building or maintenance work or use of the land;
 - (b) the land must have become vested in or acquired by an acquiring authority, or been appropriated for planning purposes by a local authority, on or after 13 July 2016 or be 'other qualifying land' i.e.
 - (i) land acquired under [section 21A of the 1975 Act](#);
 - (ii) land vested in or acquired by an urban development corporation or a local highway authority for the purposes of [Part 16 of the Local Government, Planning and Land Act 1980](#);
 - (iii) land acquired by a development corporation or a local highway authority for the purposes of the [New Towns Act 1981](#);
 - (iv) land vested in or acquired by a housing action trust for the purposes of [Part 3 of the Housing Act 1988](#);
 - (v) land acquired or appropriated by a local authority for planning purposes as defined by [section 246\(1\) of the 1990 Act](#);
 - (c) the acquiring authority must have the necessary enabling powers in legislation to acquire the land compulsorily for the purpose of the building or maintenance work or the purpose of erecting or constructing any building, or carrying out any works, for that use;
 - (d) the development must be related to the purposes for which the land was acquired or appropriated;
 - (e) the power is not available in respect of:
 - (i) interference with a right of way on, under or over land which is a protected right⁵³,
 - (ii) interference with a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right,
 - (iii) interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or

⁵³ "Protected right" is defined in [section 205\(1\) of the 2016 Act](#) as—

- (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
- (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by [paragraph 1\(1\) of Schedule 17 to the Communications Act 2003](#)).

- (iv) a breach of a restriction as to the user of land which does not belong to the National Trust—
- arising by virtue of a contract to which the National Trust is a party, or
 - benefiting land which does belong to the National Trust.

Compensation and owners of overridden easements and other rights

7. Under [section 204 of the 2016 Act](#), owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as for injurious affection under [sections 7](#) and [10 of the 1965 Act](#). Any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination.

Section N – Minerals

Introduction

1. [Section 3 of the 1981 Act](#) brings into effect [Schedule 2 to the 1981 Act](#) which enables an acquiring authority to incorporate [Parts 2 and 3 of Schedule 2](#) (“the Mining Code”) in a CPO i.e.:
 - provision for purchasing surface land without purchasing an underlying mine or mineral i.e. lying under, or within the distance prescribed by the CPO (“the prescribed distance”), or if no distance is prescribed, 40 yards ([Part 2 of Schedule 2](#)), and
 - possible provision for the underlying mine or mineral not to be worked by the person who owns them, except if due notice has been given by the owner of their intention to work the underlying mine or mineral or an opportunity has been provided to the acquiring authority to acquire the underlying mine or mineral ([Part 3 of Schedule 2](#)).

Guidance on the drafting of provisions in a CPO which apply the Mining Code can be found in [paragraphs 5 – 8 of Section R in Part 4 of this Circular](#).

Part 2 of Schedule 2 to the Acquisition of Land Act 1981

2. Under [Part 2 of Schedule 2 to the 1981 Act](#), acquiring authorities are not entitled to any mines of coal, ironstone, slate or other minerals (“mines”) under the land comprised in the CPO unless they have been expressly purchased. Furthermore, all mines under the land comprised in the CPO shall be deemed to be exempted out of the conveyance of that land unless expressly named and conveyed. [Part 2 of Schedule 2](#) provides these restrictions do not apply to minerals which are extracted or used as part of the undertaking which the acquiring authority is authorised to carry out by the CPO.

Part 3 of Schedule 2 to the Acquisition of Land Act 1981

3. [Part 3 of Schedule 2 to the 1981 Act](#) provides if an owner, which includes a lessee or occupier, of an underlying mine or mineral wishes to work them, they shall give notice in writing of their intention to do so (“notice of intention”) to the acquiring authority 30 days before the commencement of working the underlying mine or mineral. If the acquiring authority considers the working of the underlying mine or mineral is likely to damage the scheme which the acquiring authority is authorised to carry out by the CPO, and is willing to compensate the owner in order to acquire all or any part of the mine or mineral, the acquiring authority should serve a counter-notice on the owner to stop the working of the underlying mine or mineral within 30 days of receipt of the notice of intention. In these circumstances the owner is then prevented from working the mine or obtaining the mineral which becomes a “protected mineral”. If the acquiring authority and owner cannot agree the amount of compensation to be paid the matter will be referred to and determined by the Upper Tribunal (Lands Chamber).

4. If before the expiry of 30 days from receipt of a notice of intention the acquiring authority does not state their willingness to negotiate with the owner for the payment of compensation for the acquisition of all or any part of the mine or mineral, the owner may work any of the underlying mines for which the acquiring authority has not agreed to pay compensation.
5. If any damage or obstruction to the scheme which the acquiring authority is authorised to carry out by the CPO is caused by improper working of the underlying mine or mineral then:
 - (a) the owner of the underlying mine or mineral is required to repair or remove the damage or obstruction at their own expense, and
 - (b) the acquiring authority may, without waiting for the owner to perform their duty, or in case of default, repair or remove the damage or obstruction and recover their expenses from the owner in proceedings in the High Court.

Severed mines

6. If an underlying mine in which any protected minerals are situated extends on both sides of the scheme which the acquiring authority is authorised to carry out by the CPO, the owner of the mine is allowed to cut and make any communication works, i.e. airways, headings, gateways or water levels, through the protected minerals required for the ventilation, drainage and working of the mines. Where communication works are carried out and cause loss or damage to the owner or occupier of land lying over an underlying mine wherein protected minerals are situated and which extends on either side of a scheme which the acquiring authority is authorised to carry out by the CPO, the acquiring authority shall pay full compensation to them for the loss or damage unless the person sustaining the loss or damage is the owner of the mine.
7. The communication works must not exceed the dimensions or sections prescribed by the CPO, and where dimensions are not prescribed, they must not be more than 8 feet high and 8 feet wide. Also, the communication works shall not be cut or made on any part of the undertaking which the acquiring authority is authorised to carry out by the CPO, or so as to injure or impede its use.
8. If an underlying mine extends on both sides of the scheme which the acquiring authority is authorised to carry out by the CPO, the acquiring authority is required to pay to the owner of the mines on an adhoc basis (in addition to any compensation – see [paragraph 3 above](#)) any expenses and losses:
 - (a) incurred by them in consequence of the:
 - (i) severance by the scheme of the land lying over the mines,
 - (ii) interruption of continuous working of the mines in consequence of the mineral becoming “protected” (see [paragraph 3 above](#)), and
 - (iii) mines being worked in such manner and subject to such restrictions as not to prejudice or injure the scheme; and
 - (b) for any minerals not purchased by the acquiring authority which cannot be obtained by reason of the making and maintenance of the scheme which the acquiring authority is authorised to carry out by the CPO.

The Welsh Ministers would expect the payment of expenses and losses to be undertaken on no less than a quarterly basis and any dispute as to the amount payable is to be determined by arbitration.

Powers of entry

9. To assess whether underlying mines have been worked which could damage the scheme the acquiring authority is authorised to carry out by the CPO, [paragraph 8\(1\) of Schedule 2 to the 1981 Act](#) provides the acquiring authority may, after giving 24 hours written notice to the owner of the mines:
 - (a) enter on any land in which the mines are, or are thought to be, being worked, and which is in or near to the land where the scheme the acquiring authority is authorised to carry out by the CPO is situated, and
 - (b) enter the mines and any works connected with the mines.
10. In undertaking this exercise, [paragraph 8\(2\) of Schedule 2 to the 1981 Act](#) allows the acquiring authority to make use of any apparatus or machinery belonging to the owner of the mines. Also, to use all necessary means for discovering the distance from the scheme the acquiring authority is authorised to carry out by the CPO to the parts of the mines which are, or are about to be, worked.
11. [Paragraph 8\(3\) of Schedule 2 to the 1981 Act](#) provides if the owner of the mines refuses to allow a person appointed by the acquiring authority to enter the mines or works for the purposes outlined in paragraph 9 above, they shall be liable for a fine not exceeding £50.

Remedial works

12. If it appears a mine has been worked contrary to the provisions of [Schedule 2 to the 1981 Act](#), the acquiring authority may, under [paragraph 9\(1\) of Schedule 2 to the 1981 Act](#), give notice to the owner of the mine to undertake works and adopt such means necessary or proper for making safe the scheme the acquiring authority is authorised to carry out by the CPO and preventing injury to it. [Paragraph 9\(2\) of Schedule 2 to the 1981 Act](#) provides if the owner of the mines does not comply with the notice, the acquiring authority may construct the works and recover their expenses from the owner by proceedings in the High Court.

Part 3 - Procedures ancillary to compensation claims

Section O – Certificates of Appropriate Alternative Development

Introduction

1. [Part 2 of the Land Compensation Act 1961 Act](#) (“the 1961 Act”) provides that compensation for the compulsory purchase of land is on a market value basis. When determining market value, [section 14 of the 1961 Act](#) provides account is taken of any pre-existing potential development value, including any existing planning permissions, as well as any prospective permissions which can be assumed would have been granted were it not for the compulsory acquisition of the land/property.

Planning assumptions

2. [Section 14 of the 1961 Act](#) provides provisions on assessing compensation for compulsory purchase in accordance with [rule \(2\) of section 5 of the 1961 Act](#) (open market value). The planning assumptions are as follows:
 - [Section 14\(2\)](#): account may be taken of –
 - (a) any planning permission in force for the development of the relevant land or other land at the relevant valuation date; and
 - (b) the prospect (on the assumptions in [section 14\(5\)](#)) in the circumstances known to the market on the relevant valuation date of planning permission being granted, other than for development for which planning permission is already in force or appropriate alternative development.
 - [Section 14\(3\)](#): it may also be assumed that planning permission for appropriate alternative development (as described in [section 14\(4\)](#)) is either in force at the relevant valuation date or it is certain that planning permission would have been granted at a later date.
 - [Section 14\(4\)](#): defines appropriate alternative development as development, other than that for which planning permission is in force, that would, on the assumptions in [section 14\(5\)](#) but otherwise in the circumstances known to the market at the relevant valuation date, reasonably have been expected to receive planning permission on that date or a later date. Appropriate alternative development may be on the relevant land alone or on the relevant land together with other land.
 - [Section 14\(5\)](#): contains the basic assumptions that-
 - (a) the scheme underlying the acquisition had been cancelled on the launch date;
 - (b) no action has been taken by the acquiring authority for the purposes of the scheme;
 - (c) there is no prospect of the same or similar scheme being taken forward by the exercise of a statutory power or by compulsory purchase; and
 - (d) if the scheme is for a highway, no other highway would be constructed to meet the same need as the scheme.

- [Section 14\(6\)](#): defines the 'launch date' as –
 - (a) for a CPO, the publication date of the notice required under [section 11 of, or paragraph 2 of schedule 1 to, the 1981 Act](#);
 - (b) for any other order (such as under the [Transport and Works Act 1992](#) or a development consent order under the [Planning Act 2008](#)) the date of first publication or service of the relevant notice; or
 - (c) for a special enactment than an order, the date of first publication of the first notice that, in connection with the acquisition, is published in accordance with any Standing Order of either House of Parliament relating to private bills.

The date on which planning assumptions are assessed

3. The main feature of the arrangements is that the planning assumptions are assessed on the relevant valuation date (as defined in [section 5A of the 1961 Act](#)) rather than the launch date (even though the compulsory acquisition scheme is still assumed to have been cancelled on the launch date). This will avoid the need to reconstruct the planning regime that existed on the launch date, including old development plans, national planning policy and guidance. Also, that the planning assumptions are based on 'the circumstances known to the market at the relevant valuation date', which would include the provisions of the development plan.

A Certificate of Appropriate Alternative Development

4. Where existing permissions and assumptions are not sufficient to indicate properly the development value which would have existed were it not for the scheme underlying the compulsory purchase, [Part 3 of the 1961 Act](#) provides a mechanism for indicating what development or class(es) of development (if any) for which it is certain planning permission can be assumed to have been granted on an application by means of a "Certificate of Appropriate Alternative Development" (CAAD). The planning permissions indicated in a certificate can briefly be described as those with which an owner might reasonably have expected to sell their land in the open market if it had not been publicly acquired.
5. It should be emphasised a CAAD is not an actual planning permission, or a planning permission in principle. It is a tool to help property valuers, acting on behalf of both acquiring authorities and claimants, arrive at an accurate opinion of the market value of land or property and, thus, the fair amount of compensation to be paid. It should be noted a CAAD only applies and relates to land or property acquired compulsorily.

Certificate system

6. [Section 17\(1\) of the 1961 Act](#) provides an application for a CAAD can be made to a LPA by either:
- (a) the owner of an interest identified within a CPO and which is to be acquired;
or
 - (b) the acquiring authority making a CPO.

A person who has no interest in land which is to be acquired cannot apply for a CAAD. Where an application for a CAAD is made for development of the relevant land together with other land it is important that the certificate sought relates only to the land in which the applicant is a directly interested party. The description(s) of development specified in the application (and where appropriate the certificate issued in response) should clearly identify where other land is included and the location and extent of such other land.

7. The circumstances in which CAADs may be helpful include:
- (a) where there is no adopted development plan covering the land to be acquired;
 - (b) where the adopted development plan indicates a “green belt” or leaves the site without specific allocation;
 - (c) where the site is allocated in the adopted development plan specifically for some public purpose, for example, a new school or open space;
 - (d) the amount of development which would be allowed is uncertain;
 - (e) the extent and nature of planning obligations and conditions is uncertain.

Right to apply for a Certificate of Appropriate Alternative Development

8. The right to apply for a CAAD arises at the date when the interest in land is proposed to be acquired by the acquiring authority. The relevant date will be:
- (i). acquisition by CPO – the date of a notice required to be published or served in connection with the making of a CPO (or date of publication of the draft CPO, if the acquiring authority is the Welsh Ministers) under any enactment;
 - (ii). acquisition by private or hybrid Parliamentary Bill – the date on which notice of the proposal to acquire the land was served in accordance with the requirements of the relevant Standing Order of either House of Parliament;
 - (iii). acquisition by Transport and Works Act order – the date of first publication, or date of service, of the first notice of the making of the order;
 - (iv). acquisition by blight notice or a purchase notice – the date on which ‘NTT’ is deemed to have been served;
 - (v). acquisition by agreement – the date of the written offer by the acquiring authority to negotiate for the purchase of the land.

Once a CPO comes into operation the acquiring authority should be prepared to indicate the date of entry so a CAAD can sensibly be applied for if one is required. Thereafter, application for a CAAD may be made at any time except after a NTT has been served or agreement has been reached for the sale of the interest and a case has been referred to the Upper Tribunal (Lands Chamber). In these situations an application may not be made unless both parties agree or the Upper Tribunal (Lands Chamber) gives leave. It will assist compensation negotiations if an application for a CAAD is made as soon as possible to inform those negotiations. An overview of the timescales associated with a CAAD is provided at the end of this section.

9. Acquiring authorities should ensure, when serving NTT in cases where a certificate could be applied for, that owners are made aware of their rights in the matter. In some cases, acquiring authorities may find it convenient themselves to apply for a certificate as soon as they make a CPO or make an offer to negotiate so that the position is clarified quickly. It may sometimes happen that, when proceedings begin for the acquisition of the land, the owner has already applied for planning permission for some development. If the LPA refuse planning permission or grant it subject to restrictive conditions and are aware of the proposal for acquisition, they should draw the attention of the owner to their right to apply for a certificate, as a refusal or restrictive conditions in response to an actual application (i.e. in the 'scheme world') do not prevent a positive certificate being granted (which would relate to the 'no scheme world').
10. The Welsh Ministers consider it important as far as possible the certificate system should be operated on broad and common-sense lines. It should be borne in mind a certificate is not a planning permission but a statement to be used in ascertaining the fair, open market value of land. An example of how the system could work might be where land is allocated in the development plan as part of an open space or a site for a school, and is being acquired for that or a similar purpose. If there had been no question of public acquisition, the owner might have expected to be able to sell it with planning permission for some other form or forms of development. The purpose of the certificate is to state what, if any, are those other forms of development. In determining this question, the Welsh Ministers would expect the LPA to exercise its planning judgement, on the basis of the absence of the acquisition scheme, taking into account those factors which would normally apply to consideration of planning applications. For example:
 - the character of the development in the surrounding area;
 - any general policy of the adopted development plan and national planning policy; and
 - any other relevant considerations where the site raises more complex issues which it would be unreasonable to disregard (see [paragraph 26 below](#)).

Only those forms of development which for some reason or other are inappropriate should be excluded.

11. Where there is no adopted LDP limited weight will be given to a draft or emerging plan, the decisions given on other planning applications relating to neighbouring land (including land unaffected by the proposed acquisition), and the existing character of the surrounding area and development. Where there is no adopted LDP, draft or emerging plan, weight will be given to national policy contained in PPW and the Future Wales: the National Plan 2040.

Making an application for a Certificate of Appropriate Alternative Development

12. The manner in which applications for a certificate are to be made and dealt with is prescribed in [articles 3, 4, 5 and 6 of the Land Compensation Development \(Wales\) Order 2012](#) (“the 2012 Order”) and applications must:
 - (a) be made in writing to a LPA;
 - (b) include a plan or map sufficient to identify the land to which the application relates; and
 - (c) comply with the requirements of [section 17\(3\) of the 1961 Act](#) i.e. contain whichever of the following statements is applicable:
 - (i) that in the applicant's opinion there is development that, for the purposes of [section 14 of the 1961 Act](#), is appropriate alternative development in relation to the acquisition concerned; or
 - (ii) that in the applicant's opinion there is no development that, for the purposes of [section 14 of the 1961 Act](#), is appropriate alternative development in relation to the acquisition concerned.
13. [Article 3\(3\) of the 2012 Order](#) requires if a CAAD is issued otherwise than for the class or classes of development applied for, or contrary to representations made by the party directly concerned, it must include a statement of the LPA's reasons and of the right of appeal under [section 18 of the 1961 Act](#) to the Upper Tribunal (Lands Chamber) (see [paragraphs 32 – 38 below](#)). [Article 4 of the 2012 Order](#) requires the LPA, if requested to do so by the owner of an interest in the land, to inform them whether an application for a certificate has been made, and if so by whom, and to supply a copy of any certificate that has been issued. [Article 5 of the 2012 Order](#) provides for applications for CAADs and requests for information to be made electronically.

Information to be contained in an application for a Certificate of Appropriate Alternative Development

14. In an application for a CAAD under [section 17 of the 1961 Act](#), the applicant may seek a certificate to the effect that there is either:
 - (a) any development that is appropriate alternative development for the purposes of [section 14](#) (a positive certificate); or
 - (b) that there is no such development (a nil certificate).
15. If the application is for a positive certificate, the applicant must specify:
 - (i) each description of development they consider planning permission would have been granted for, and
 - (ii) their reasons for holding that opinion.

The onus is on the applicant to substantiate the reasons why they consider in their view there is development that is appropriate alternative development.

16. The phrase 'description of development' is intended to include the type and form of development. [Section 17\(3\)\(b\)\(i\) of the 1961 Act](#) requires the descriptions of development to be 'specified', which requires a degree of precision in the description of development.
17. An application for a 'nil' certificate must set out the full reasons why the applicant considers in their opinion there is no appropriate alternative development in respect of the subject land or property. The issuing of a 'nil' certificate can be useful evidence in disputing or justifying an acquiring authorities valuations and can be material to any future ruling by the Upper Tribunal (Lands Chamber).
18. The purpose of a CAAD is to assist in the assessment of the open market value of the land to be acquired by a CPO – see [Stage 6 in Part 1 of this Circular](#). Applicants should therefore consider carefully for what descriptions of development they wish to apply for via a certificate. There is no practical benefit to be gained from making applications in respect of descriptions of development which do not maximise the value of the land. Applicants should focus on the description or descriptions of development which will most assist in determining the open market value of the land.
19. An application for a CAAD under [section 17 of the 1961 Act](#) is not a planning application and applicants do not need to provide the detailed, technical information which would normally be submitted with a planning application. However, it is in applicants' interests to give as specific a description of development as possible in the circumstances in order to ensure that any certificate granted is of practical assistance in the valuation exercise.
20. Applicants should normally set out a clear explanation of the type and scale of development sought in the CAAD and a clear justification for this. This could be set out in a form of planning statement which might usefully cover the following matters:
 - confirmation of the valuation date at which the prospects of securing planning permission need to be assessed;
 - the type or range of uses the applicant considers should be included in the certificate including uses to be included in any mixed use development which is envisaged as being included in the certificate;
 - where appropriate, an indication of the quantum and/or density of development envisaged with each category of land;
 - where appropriate an indication of the extent of built envelope of the development which would be required to accommodate the quantum of development envisaged;

- a description of the main constraints on development which could be influenced by a planning permission and affect the value of the land, including matters on site such as ecological resources or contamination, and matters off site such as the existing character of the surrounding area and development;
 - an indication of what planning conditions or planning obligations the applicant considers would have been attached to any planning permission granted for such a development had a planning application been made at the valuation date;
 - a clear justification for the applicant's view that such a permission would have been forthcoming having regard to the planning policies and guidance in place at the relevant date (see [paragraph 8 above](#)) when an interest in land is proposed to be acquired; the location, setting and character of the site or property concerned; the planning history of the site and any other matters it considers relevant.
- 21 Detailed plans are not required in connection with a [section 17](#) application but drawings or other illustrative material may be of assistance in indicating assumed access arrangements and site layout and in indicating the scale and massing of the assumed built envelope. An indication of building heights and assumed method of construction may also assist the LPA in considering whether planning permission would have been granted at the relevant date (see [paragraph 8 above](#)) when an interest in land is proposed to be acquired.

The issuing of a Certificate of Appropriate Alternative Development

22. LPAs are required to respond to an application by issuing a CAAD, outlining what planning permissions would have been granted if the land were not to be compulsorily acquired. The LPA will assume the scheme for which the land is to be acquired, together with any references to the underlying proposal that appear in any planning documents, were cancelled on the relevant date (see [paragraph 8 above](#)) when an interest in land is proposed to be acquired. [Section 17\(1\) of the 1961 Act](#) requires the certificate to state in the LPA's opinion there is either:
- (a) development that, for the purposes of [section 14 of the 1961 Act](#), is appropriate alternative development (a 'positive' certificate); or
 - (b) no development that, for the purposes of [section 14 of the 1961 Act](#), is appropriate alternative development (a 'nil' or 'negative' certificate). In such circumstances, the LPA should set out its reasons why it believes there is no development which is appropriate alternative development for the land in question.
23. Under [section 17\(4\) of the 1961 Act](#) LPAs must not issue a CAAD before the end of twenty two days from the date the applicant has, or has stated they will, serve a copy of their application on the other party directly concerned (unless otherwise agreed).

Under the [2012 Order](#) LPAs must, however, issue a CAAD within two months from the date it receives the application and all the required associated information (or such extended period as may be agreed with the applicant in writing).

24. Where a LPA is to issue a positive certificate, [section 17\(5\) of the 1961 Act](#) requires the certificate must:
- (a) specify all the development that (in the LPA's opinion) is appropriate alternative development, even if it not specified in the application; and
 - (b) give a general indication of:
 - (i) any reasonable conditions;
 - (ii) when the permission could reasonably have been granted at a time after the relevant valuation date; and
 - (iii) any reasonable pre-condition, such as a planning obligation, that could reasonably have been expected to have been met.
25. [Section 17\(6\) of the 1961 Act](#) provides that for positive certificates:
- (a) only the development identified in the certificate is appropriate alternative development for the purposes of [section 14 of the 1961 Act](#); and
 - (b) that the matters outlined in paragraph 24(b) above (conditions etc) apply to the planning permission assumed to be in force under [section 14\(3\) of the 1961 Act](#) for that development.
26. LPAs should note an application made under [section 17 of the 1961 Act](#) is not a planning application. The authority should seek to come to a view based on its assessment of:
- the information contained within the application;
 - the policy context applicable at the relevant date (see [paragraph 8 above](#));
 - the character of the site and its surroundings; and
 - whether such a development would have been acceptable to the authority.
- As the development included in the certificate is not intended to be built the LPA does not need to concern itself with whether or not the granting of a certificate would create any precedent for the determination of future planning applications.
27. If giving a positive certificate, the LPA must give a general indication of the conditions and obligations to which planning permission would have been subject. As such, the general indication of conditions and obligations to which the planning permission could reasonably be expected to be granted should focus on those matters which affect the value of the land. Conditions relating to detailed matters such approval of external materials or landscaping would not normally need to be indicated. However, clear indications should be given to matters which do affect the value of the land, wherever the authority is able to do so. Such matters would include, for example:
- the proportion and type of affordable housing required within a development;
 - limitations on height or density of development;
 - requirements for the remediation of contamination or compensation for ecological impacts; and

- significant restrictions on use, as well as financial contributions and site-related works such as the construction of accesses and the provision of community facilities and other infrastructure.

The clearer the indication of such conditions and obligations, the more helpful the certificate will be in the valuation process.

28. A CAAD, once issued, must be taken into account in assessing compensation for the compulsory acquisition of an interest in land, even though it may have been issued on the application of the owner of a different interest in the land. It cannot, however, be applied for by a person (other than the acquiring authority) who has no interest in the land. It should be noted that, whilst a CAAD is determined at the relevant date (see [paragraph 8 above](#)) when an interest in land is proposed to be acquired, compensation is valued/assessed at the relevant valuation date (see [section 5A of the 1961 Act](#)). There may be circumstances (for example, where a CPO receives objections and a public inquiry needs to be scheduled, or where a confirmed CPO is challenged) where there may be a gap between these two dates, during which market conditions may change and, hence, the amount of compensation due could also change.

Additional informal advice on open market value

29. Applicants seeking a [section 17](#) CAAD should seek their own planning advice when compiling their application.
30. In order that the valuers acting on either side may be able to assess the open market value of the land to be acquired they will often need information from the LPA. Such as:
- existing permissions,
 - the development plan and
 - proposals to alter or review the plan.
- However, sometimes LPA officers will, in addition, be asked for informal opinions by one side or the other to the negotiations. It is for LPAs to decide how far informal expressions of opinion should be permitted with a view to assisting the parties to an acquisition to reach agreement. Where they do give it, the Welsh Ministers suggest the LPA should:-
- (a) give any such advice to both parties to the negotiation; and
 - (b) make clear that the advice is informal and does not commit them if a formal certificate or planning permission is sought.
31. It is important LPAs do not do anything which prejudices their subsequent consideration of an application for a CAAD.

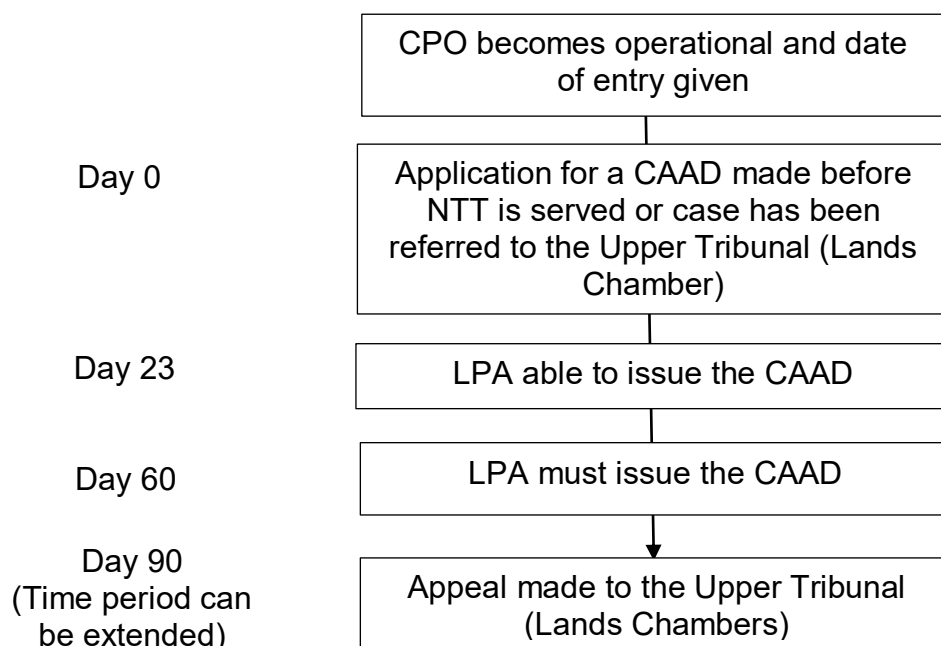
Appeals against Certificates of Appropriate Alternative Development

32. The right of appeal against a certificate under [section 18 of the 1961 Act](#), exercisable by both the acquiring authority and the person having the interest in the land who has applied for the certificate, is to the Upper Tribunal (Lands Chamber). It may confirm, vary or cancel certificate, and issue a different certificate in its place, as it considers appropriate.
33. [Rule 28\(7\) of the Tribunal Procedure \(Upper Tribunal\) \(Lands Chamber\) Rules 2010 \(as amended\)](#) requires written notice of an appeal (in the form of a reference to the Upper Tribunal (Lands Chamber)) must be given within one month of receipt of the certificate by the LPA. If the LPA fail to issue a certificate, notice of appeal must be given within one month of the date when the authority should have issued it (i.e. either two months from receipt of the application by the LPA, or two months from the expiry of any extended period agreed between the parties to the transaction and the authority) and the appeal proceeds on the assumption that a 'nil' or 'negative' certificate had been issued.
34. The Upper Tribunal (Lands Chamber) does have the power to extend the one month time period (under [Rule 5 of the Tribunal Procedure \(Upper Tribunal\) \(Lands Chamber\) Rules 2010 \(as amended\)](#)) even if it receives the request to do so after it expires. Appeals against a decision by the Upper Tribunal (Lands Chamber) on a point of law may be made to the Court of Appeal in the normal way.
35. The Upper Tribunal (Lands Chamber) when considering any appeal under [section 18 of the 1961 Act](#) must consider the matters relating to the CAAD if the application for the CAAD had been made to it in the first place, and either:
- (a) confirm the CAAD,
 - (b) vary the CAAD, or
 - (c) cancel the CAAD and issue a different CAAD in its place.
36. A reference to the Upper Tribunal (Lands Chamber) must include (in particular):
- a copy of the application to the LPA for a CAAD;
 - a copy of the certificate issued (if any); and
 - a summary of the reasons for seeking the determination of the Tribunal and whether the reference should be determined without a hearing.
37. More information on how to make an appeal can be found on the Upper Tribunal (Lands Chamber)'s website: <https://www.gov.uk/administrative-appeals-tribunal>.

38. Available on the Upper Tribunal (Lands Chamber)'s website is a form to make an appeal and information on the fees payable. If you do not have access to the internet you can request a copy of the information leaflets and a form by telephoning 020 7071 5662 or by writing to:
 Upper Tribunal (Administrative Appeals Chamber)
 5th floor, Rolls Building
 7 Rolls Buildings
 Fetter Lane
 London
 EC4A 1NL

An overview of timescales

39. The timescales associated with a CAAD are outlined below:



Section P – Objection to division of land – the serving of counter-notices (material detriment)

Introduction

1. Where an acquiring authority proposes to acquire only part of a house (or park or garden belonging to a house), building or factory, the owner can serve a counter-notice on the acquiring authority requesting that it purchases the entire property.
2. On receipt of a counter-notice, the acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.
3. The Upper Tribunal (Lands Chamber) will determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory, cause material detriment to the house, building or factory (i.e. cause it to be less useful or less valuable to some significant degree), or in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

Procedure for serving a counter-notice

4. In respect of a CPO which is confirmed on or after 3 February 2017, the procedure for serving a counter-notice is set out in [Schedule 2A to the 1965 Act](#) (where the NTT process is followed) and [Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) (where the GVD process is followed). The procedure is broadly the same in both cases.

The effect of a counter-notice on a notice of entry which has already been served on the owner

5. Under [Part 1 of Schedule 2A to 1965 Act](#), if the owner serves a counter-notice, any notice of entry under [section 11\(1\) of the 1965 Act](#) that has already been served on the owner in respect of the land proposed to be acquired ceases to have effect (see [paragraph 6 of Schedule 2A to the 1965 Act](#)). The acquiring authority may not serve a further notice of entry on the owner under [section 11\(1\) of the 1965 Act](#) in respect of that land unless they are permitted to do so by [paragraph 11 or 12 of Schedule 2A to the 1965 Act](#).

General vesting declaration procedure: The effect of a counter-notice on the vesting date of the owner's land specified in the declaration

6. If a counter-notice is served under [paragraph 2 of Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#) within the vesting period specified in the declaration in accordance with [section 4\(1\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#), the 'vesting date' for the land proposed to be acquired from the owner (i.e. the land actually specified in the declaration) will be the day determined as the vesting date for that land in accordance with [Schedule A1](#) (see [section 4\(3\)\(b\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#)).

Entry by an acquiring authority on to land proposed to be acquired from an owner where a counter-notice has been referred to the Upper Tribunal (Lands Chamber)

7. Under [Schedule 2A to the 1965 Act](#) and [Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#), an acquiring authority is permitted to enter the land it proposed to acquire from the owner (i.e. the land included in its NTT / GVD) where a counter-notice has been referred to the Upper Tribunal (Lands Chamber).
8. [Paragraph 12 of Schedule 2A to the 1965 Act](#) provides that, where a counter-notice has been referred to the Upper Tribunal (Lands Chamber), an acquiring authority may serve a notice of entry on the owner in respect of the land proposed to be acquired. If the authority had already served a notice of entry in respect of the land (i.e. a notice which ceased to have effect under [paragraph 6\(a\) of Schedule 2A to the 1965 Act](#)), the normal minimum three month notice period will not apply to the new notice in respect of that land (see [section 11\(1B\) of the 1965 Act](#)). The period specified in any new notice must be a period that ends no earlier than the end of the period in the last notice of entry (see [paragraph 13 of Schedule 2A to the 1965 Act](#)).
9. Similarly, under the GVD procedure, if an acquiring authority refers a counter-notice (served before the original vesting date) to the Upper Tribunal (Lands Chamber), the authority may serve a notice on the owner specifying a new vesting date for the land proposed to be acquired (see [paragraph 12 of Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#)). This is intended to allow for the vesting of this land before the Upper Tribunal (Lands Chamber) has determined the material detriment dispute.
10. However, if an acquiring authority enters, or vests in itself, the land it proposed to acquire in advance of the Upper Tribunal (Lands Chamber)'s determination and the Tribunal subsequently finds in favour of the owner (i.e. the Tribunal requires the authority to take additional land from the owner):
 - (a) the authority will not have the option of withdrawing its NTT under [paragraph 29 of Schedule 2A to the 1965 Act](#) or [paragraph 17 of Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#), and so will be compelled to take the additional land; and
 - (b) the Upper Tribunal (Lands Chamber) will be able to award the owner compensation for any losses caused by the temporary severance of the land proposed to be acquired from the additional land which is required to be taken (see [paragraph 28\(5\) of schedule 2A to the 1965 Act](#) and [paragraph 16\(4\) of Schedule A1 to the Compulsory Purchase \(Vesting Declarations\) Act 1981](#)).

Material detriment provisions in Schedule 2A to the Compulsory Purchase Act 1965 and Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981

11. An acquiring authority may, in a CPO, disapply the material detriment provisions for specified land which is nine metres or more below the surface (see [Schedule 2A of the 1965 Act](#)). This is intended to prevent spurious claims for material detriment from owners of land above tunnels where the works will have no discernible effect on their land.

Material detriment provisions and blight notices

12. The material detriment provisions in relation to blight notices are set out in the [1990 Act](#) (see, in particular, [sections 151\(4\)\(c\)](#), [153\(4A\) to \(7\)](#) and [154\(4\) to \(6\)](#)).

Part 4 - Procedural and drafting issues

Section Q – Checklist of documents to be submitted to the Welsh Ministers with a compulsory purchase order⁵⁴

The following documents should accompany all CPOs submitted to the Welsh Ministers for confirmation (except where stated):

DOCUMENT TYPE AND CIRCULAR REFERENCE	DOCUMENT REQUIRED	NUMBER OF COPIES (INCLUDING ORIGINALS WHERE APPROPRIATE)
Orders and maps		
Section R	Sealed order	1
	Unsealed order	1
Section S	Sealed map	2
	Unsealed map	1
Certificates		
Section T	General certificate in support of the CPO submission including (where appropriate) confirmation that the proper notices have been correctly served in relation to: - (a) a CPO made on behalf of a community council; (b) a listed building in need of repair; or (c) Church of England property.	1
Section T	Protected assets certificate giving a nil return or a positive statement for each category of asset protection i.e. listed building preservation; any land and unlisted buildings in a conservation area.	1

⁵⁴ See also [paragraph 86 in Part 1 of this Circular](#).

Statements

[Section U](#)

An acquiring authority's Statement of Reasons and, wherever practicable, any other documents referred to in the Statement of Reasons.

1

Notices

[Section H](#)

CPOs for listed buildings in need of repair only: Repairs notice.

1

Section R – Guidance on drafting and serving a compulsory purchase order and associated applications

Prescribed form

1. The CPO and Schedule should comply with the relevant form as prescribed by [regulation 3 of, and the Schedule to, the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#).
2. In accordance with the notes to the prescribed forms, the title and year of the Act authorising compulsory purchase must be inserted. Each acquisition power must be cited and the purpose(s) clearly stated in paragraph 1 of the CPO. For CPOs made under [section 17 of the 1985 Act](#), the purpose of the CPO may be described as “the provision of housing accommodation”. Where there are separate compulsory acquisition and enabling powers, each should be identified and the purpose(s) stated. In some cases, a collective title may be sufficient to identify two or more Acts. See the following sections in Part 2 of this Circular:
 - (a) [Section A - Advice on section 226 of the 1990 Act](#);
 - (b) [Section C - Advice on CPOs where the acquisition power is section 121 of the 1972 Act for mixed purposes](#)
 - (c) [Section D - Advice on CPOs where the acquisition power is section 125 of the 1972 Act for mixed purposes on behalf of community and town councils](#);
 - (d) [Section G – Advice on powers to acquire land for highway related purposes under the 1980 Act](#); and
 - (e) [Section K - Compulsory purchase of new rights and other interests](#)for examples of how orders made under certain powers may be set out.

Title of compulsory purchase order

3. The [Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) require that the title of the CPO should be at the head of the CPO, before the titles and years of the Acts, and should indicate the general area within which the CPO land is situated (see [paragraph \(a\) of “Notes to the use of Forms 1, 2 and 3” in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)) (see also [paragraph 10 below](#)). The title to a CPO should include the current year, i.e. the year in which the CPO is actually made and not the year in which the authority resolved to make it, if different.

Places for the deposit of the compulsory purchase order map

4. A certified copy of the CPO map should be deposited for inspection at an appropriate place within the locality, for example, the local authority’s offices. It should be within reasonably easy reach of persons living in the area affected. The two sealed CPO maps (see [Section Q in Part 4 of this Circular](#)) should be forwarded to the offices of the Welsh Ministers (the address of which is outlined in [paragraph 34 below](#)).

Incorporation of the Mining Code

5. [Parts 2 and 3 of Schedule 2 to the 1981 Act](#), relating to mines (“the Mining Code”), may be incorporated in a CPO made under powers to which the [1981 Act](#) applies. The incorporation of both Parts does not, of itself, prevent the working of minerals within a specified distance of the surface of the land acquired under the CPO. It does, however, enable the acquiring authority, if the CPO becomes operative, to serve a counter-notice stopping the working of minerals, subject to the payment of compensation. Detailed guidance on minerals is contained in [Section N in Part 2 of this Circular](#). Since this may result in the sterilisation of minerals, the Mining Code should not be incorporated automatically or indiscriminately in a CPO.
6. Acquiring authorities are therefore asked to consider the matter carefully before including the code, and to omit it where existing statutory rights to compensation or repair of damage might be expected to provide an adequate remedy in the event of damage to land, buildings or works occasioned by mining subsidence.
7. The advice of the Valuation Office Agency’s regional mineral valuers is available to acquiring authorities when considering the incorporation of the Mining Code.
8. In areas of coal working notified to the LPA by the Coal Authority under [paragraph \(1\)\(a\) of article 17 of the Town and Country Planning \(Development Management Procedure\) \(Wales\) Order 2012](#), authorities are asked to notify the Coal Authority and relevant licensed coal mine operators if they make a CPO which incorporates the Mining Code.

Extent, description and situation of land scheduled

9. The prescribed order formats set out in the [Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) require, subject to the flexibility to adapt them permitted by [Regulation 2](#), that the extent of the land should be stated. Therefore, the area of each plot, for example, in square metres, should normally be shown. This information will be particularly important where any potential exists for dispute about the boundary of the land included in the CPO, because [section 14 of the 1981 Act](#) prohibits the modification of a CPO on confirmation to include land which would not otherwise have been covered. It may not always be necessary for a measurement of the plot to be quoted, if the extent and boundaries can be readily ascertained without dispute. For instance, the giving of a postal address for a flat may be sufficient.
10. Each plot should be described in terms which are readily understandable and it is particularly important local people can identify the land described. [The Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) require that the details about the extent, description and situation of the land should be sufficient to tell the reader approximately where the land is situated without reference to the map (see the notes to prescribed [Forms 1 to 6 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)).

11. Simple descriptions in ordinary language are preferred. For example, where the land is agricultural it should be described as “pasture land” or “arable land”; agricultural and non-agricultural afforested areas may be described as “woodland” etc.; and, if necessary, be related to some well-known local landmark, for example, “situated to the north of School Lane about 1 km west of George’s Copse”.
12. Where the description includes a reference to Ordnance Survey field numbers the description should also state or refer to 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.
13. Property, especially in urban areas, should be described by name or number in relation to the road or locality and where part of a property has a separate postal address this should be given. Particular care is necessary where the street numbers do not follow a regular sequence, or where individual properties are known by more than one name or number. The description should be amplified as necessary in such cases to avoid any possibility of mistaken identity. If the CPO when read with the CPO map fails to clearly identify the extent of the land to be acquired the Welsh Ministers may refuse to confirm the CPO even though it is unopposed.

Compulsory acquisition of new rights

Compulsory purchase orders solely for new rights

14. For a CPO which relates solely to new rights, the order heading should mention the appropriate enabling power, for example, one of those listed in [paragraph 2\(i\) – \(viii\) of Section K in Part 2 of this Circular](#), together with the [1981 Act](#). Where a CPO relates solely to new rights, and does not include other interests in land which are to be purchased outright, paragraph 1 of the CPO should identify the purpose for which the rights are required. For example, “for the purpose of providing an access to a community centre which the Council are authorised to provide under [section 19 of the Local Government \(Miscellaneous Provisions\) Act 1976](#)”.

Compulsory purchase orders for new rights and other interests

15. For a CPO which includes new rights and land to be acquired for other purposes, the order heading should refer to the appropriate enabling power, any other Act(s), and the [1981 Act](#), as required by the [Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) (see [paragraph “\(b\)” on the “Notes on the use of Forms 1, 2 and 3” in the Schedule to the Regulations](#)). Where a CPO relates to the purchase of new rights and of other interests in land, paragraph 1 of the order should describe all the relevant powers and purposes.

It should mention, for example:

“the acquiring authority is hereby authorised to compulsory purchase

- (a) under section 121 of the Local Government Act 1972 the land described in paragraph 2(1) below for the purpose of providing a community centre under section 19 of the Local Government (Miscellaneous Provisions) Act 1976; and
- (b) under section 13 of the said Act of 1976, the new rights which are described in paragraph 2(2) below for the same purpose”

[etc, as in [Form 1 of the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)].

16. Where the purposes for which new rights are being acquired differ from the purposes for which other interests are being purchased, paragraph 1 of the CPO should describe all of the relevant powers under, and purposes for which, the CPO has been made. For example:

- (a) “.....the acquiring authority is hereby authorised to compulsory purchase under section 89 of the National Parks and Access to the Countryside Act 1949, the derelict, neglected or unsightly land which is described in paragraph 2(1) below for the purpose of carrying out such works on the land as appear to them expedient for enabling it to be brought into use; and
- (b) under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the new rights which are described in paragraph 2(2) below for the purpose of providing an access to the above mentioned land for [the authority] and persons using the land, being a purpose which it is necessary to achieve in the interests of the proper planning of an area, in accordance with section 226(1)(b) of the Town and Country Planning Act 1990.”

[etc, as in [Form 1 of the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)].

17. The acquiring authority’s Statement of Reasons and Statement of Case should explain the need for the new rights, give details of their nature and extent, and provide any further relevant information. Where a CPO includes new rights, the acquiring authority is also asked to bring that fact to the attention of the Welsh Ministers in the letter covering their submission.

Schedule and map

18. The land over which each new right is sought needs to be shown as a separate plot in the CPO Schedule. The nature and extent of each new right should be described and where new rights are being taken for the benefit of a plot or plots, that fact should be stated in the description of the rights plots. It is helpful if new rights are described immediately before or after any plot to which they relate; or, if this is not practicable, for example where there are a number of new rights, they are shown together in the Schedule with appropriate cross-referencing between the related plots.

Acquiring authorities are advised to give careful attention to the drafting of new rights and a similar degree of precision employed in drafting the terms of easements and rights in property transactions is required.

19. The CPO map should clearly distinguish between land over which new rights would subsist and land in which it is proposed to acquire other interests (see [paragraph “\(f\)” on the “Notes on the use of Forms 1, 2 and 3”](#) or [paragraph “\(d\)” on the “Notes on the use of Forms 4, 5 and 6” in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)).

Compulsory acquisition where an acquiring authority already owns interests

20. Except for CPOs made under highway land acquisition powers in [Part 12 of the 1980 Act](#), to which [section 260 of that Act](#) applies, where the acquiring authority already own an interest or interests in land but wish to acquire the remaining interest or interests in the same land, usually to ensure full legal title, they should include a description of the land in column 2 of the Schedule to the CPO in the usual way but qualify the description as follows:

“all interests in [describe the land] except those owned by the acquiring authority”.

The remaining columns of the Schedule to the CPO should be completed as described in [sub-paragraphs \(a\) to \(p\) in paragraph 24 below](#). This principle should be extended to other interests in the land which the acquiring authority does not wish to acquire, for example, the Welsh Ministers might decide they wish to exclude their own interests and local authority interests from a CPO.

21. Compulsory purchase should not be used merely to resolve conveyancing difficulties. It is accepted, however, that it may only be possible to achieve satisfactory title to certain interests by the use of compulsory powers, perhaps followed by a GVD (see [paragraphs 154 - 155 in Part 1 of this Circular](#)). This is particularly relevant where, following acquisition, an acquiring authority transfers the land to a selected development partner to develop. Accordingly, acquiring authorities will be expected to explain and justify the inclusion of such interests. The explanation may be either in their Statement of Reasons or in subsequent correspondence, which may have to be copied to the parties. If no explanation is given or if the reasons are unsatisfactory, the Welsh Ministers may modify a CPO to exclude interests which the acquiring authority already own, on the basis that compulsory powers are unnecessary.

Compulsory acquisition involving an interest in Crown land

22. Where the appropriate authority has entered into an agreement with a highway authority so as to permit the inclusion in a CPO of the Crown’s interest or interests, the land may be included and described as for any privately owned land.

Where a CPO is made under powers other than the [1980 Act](#), however, the acquiring authority should identify the relevant Crown body in the appropriate column of the CPO Schedule and describe the interest(s) to be acquired. If the acquiring authority wish to acquire all interests other than those of the Crown, column two of the CPO Schedule should specify that “all interests in [describe the land] except the interest(s) held by [*the relevant Crown body*]” are being acquired.

23. A similar form of words to that described in paragraph 20 above may be appropriate where the acquiring authority wish to include in the Schedule to the CPO an interest in Crown land which is held otherwise than by or on behalf of the Crown. In most cases, the Crown’s own interests cannot be acquired compulsorily - further guidance on this subject is given in [Section L in Part 2 of this Circular](#).

Interests required to be served notice of the making of a compulsory purchase order

24. The Schedule to the CPO should include the names and addresses of every qualifying person as defined in [section 12 of the 1981 Act](#) and upon whom the acquiring authority is required to serve notice of the making of the CPO. A qualifying person is:
- (i) every owner, lessee, tenant and occupier ([section 12\(2\)\(a\) of the 1981 Act](#));
 - (ii) every person to whom the acquiring authority would, if proceeding under [section 5\(1\) of the 1965 Act](#), be required to give a NTT ([section 12\(2A\)\(a\) of the 1981 Act](#)); and
 - (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under [section 10 of the 1965 Act](#) if the CPO is confirmed and compulsory purchase takes place, so far as such person is known to the acquiring authority after making diligent inquiry ([section 12\(2A\)\(b\) of the 1981 Act](#)).

The guidance in the following table should be noted in connection with the service of the notice of the making of a CPO and the compilation of the Schedule to the CPO:

(a)	The Schedule should include persons who may have a valid claim to be owners or lessees for the purposes of the 1981 Act , for example, persons who have entered into a contract to purchase a freehold or lease.
(b)	The names of partners in a partnership should be included in the Schedule and all partners should be personally served, unless the partnership agrees that service may be upon a person whom they nominate to accept service on their behalf. This avoids having to include the names of all partners in a partnership in the Schedule and ensuring all partners are personally served. Notice served upon the partner who habitually acts in the partnership business is likely to be valid (see section 16 of the Partnership Act 1890), especially if that partner has control and management of the partnership premises, but the position is not certain.

(c)	<p>Service should be effected on the Secretary or Clerk at the registered or principal office of a corporate body, which should be shown in the appropriate column, i.e. as owner, lessee etc. (section 6(2) and (3) of the 1981 Act).</p> <p>NB. Under Company Law requirements, notices served on a company should be addressed to the Secretary of the company at its principal or registered office. It is good practice to send copies to the actual contact who has been dealing with negotiations.</p>
(d)	<p>Individual trustees (including joint tenants and tenants in common) should be named and served separately.</p>
(e)	<p>In the case of unincorporated bodies such as clubs, chapels and charities, the names of the individual trustees should be shown and each trustee should be served as well as the Secretary.</p> <p>NB. The land may be vested in the trustees and not the Secretary but the trustees may be somewhat remote from the running of the club etc; and since communications should normally be addressed to its Secretary, it is considered to be reasonable that the Secretary should also be served. However, service solely on the Secretary of such a body is not sufficient unless it can be shown that the Secretary has been authorised by the trustees, or has power under the trust instrument, to accept order notices on behalf of the trustees.</p>
(f)	<p>In the case of land owned by a charitable trust it is advisable for notices to be served on the Charity Commissioners at their headquarters address⁵⁵ as well as on the trustees (see Part 7 of the Charities Act 2011).</p>
(g)	<p>Where land is ecclesiastical property, i.e. owned by the Church of England (it retains control over many border parishes) (see section 12(3) of the 1981 Act where this term is defined), notice of the making of the CPO must be served on the Church Commissioners⁵⁶ as well as on the owners etc. of the property.</p>
(h)	<p>Where it appears that land is or may be an ancient monument, or forms the site of an ancient monument or other object of archaeological interest, acquiring authorities should, at an early stage and with sufficient details to identify the site, contact Cadw or the County Archaeologist according to the circumstances shown below:</p> <ul style="list-style-type: none"> • in respect of a scheduled ancient monument – <ul style="list-style-type: none"> Cadw Welsh Government Plas Carew Unit 5/7 Cefn Coed Parc Nantgarw Cardiff, CF15 7QQ

⁵⁵ Charity Commission, PO Box 211, Bootle, L20 7YX.

⁵⁶ The Church Commissioners for England, 1 Millbank, Westminster, London SW1 3JZ.

	<ul style="list-style-type: none"> in respect of an unscheduled ancient monument or other object of archaeological interest – the relevant County Archaeologist. <p>This approach need not delay other action on the CPO or its submission for confirmation, but the authority should refer to it in the letter covering their submission.</p>
(i)	Where a CPO includes land in a national park, acquiring authorities are asked to notify the National Park Authority of the making of the CPO. Similarly, where land falls within a designated Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, they should notify Natural Resources Wales ⁵⁷ .
(j)	When a CPO relates to land being used for the purposes of sport or physical recreation, Sport Wales ⁵⁸ should be notified of the making of the CPO.
(k)	Where a person is served notice of the making of the CPO at an accommodation address, or where service is effected on solicitors etc., the acquiring authority should make sure the person to be served has furnished this address or has authorised service in this way; where known, the served person’s home or current address should also be served.
(l)	<p>Owners or reputed owners - where known, the name and address of the owner or reputed owner of the property should be shown in column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). If there is doubt whether someone is an owner, they should be named in column (3) and a notice served on them. Likewise, if there is doubt as to which of two (or more) persons is the owner, both (or all) persons should be named in column (3) and a notice served on each of them. Questions of title can be resolved later.</p> <p>If the owner of a property cannot be traced the word “unknown” should be entered in column (3). A CPO should include covenants or restrictions which amount to interests in land the acquiring authority wishes to acquire or extinguish. Where land owned by the acquiring authority is subject to such an encumbrance (for example, an easement, such as a private right of way), they may wish to make a CPO to discharge the land from it. In any such circumstances, the owner or occupier of the land and the person benefiting from the right should appear in the relevant table in the Schedule to the CPO (see Form 3 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004). The Statement of Reasons should explain that authority is being sought to acquire or extinguish the relevant interest.</p>

⁵⁷ Natural Resources Wales, c/o Customer Care Centre, Ty Cambria, 29 Newport Rd, Cardiff, CF24 0TP.

⁵⁸ Sport Wales, Sophia Gardens, Cardiff, CF11 9SW.

	<p>Where the encumbrance affects land in which the acquiring authority has a legal interest, the description in the Schedule to the CPO should refer to the right etc and be qualified by the words “all interests in [the land] except those already owned by the acquiring authority”. This should avoid giving the impression that the acquiring authority has no interest to acquire.</p>
(m)	<p>Lessees, tenants, or reputed lessees or tenants (column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) - where there are no lessees, tenants or reputed lessees or tenants a dash should be inserted, otherwise names and addresses should be shown.</p>
(n)	<p>Occupiers (column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) - where a named owner, lessee or tenant is the occupier, the word “owner”, “lessee” or “tenant” should be inserted or the relevant name given. Where the property is unoccupied the column should be endorsed accordingly.</p>
(o)	<p>Although most qualifying persons will be owners, lessees, tenants or occupiers (section 12(2)(a) of the 1981 Act), the possibility of there being anyone falling within one of the categories in section 12(2A)(a) and (2A)(b) of the 1981 Act should not be ignored.</p> <p>The name and address of a person who is a qualifying person under section 12(2A)(a) who is not included in column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) should be inserted in column (5) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) together with a short description of the interest to be acquired.</p> <p>An example of a person who might fall within this category is the owner of land adjoining the CPO land, which the acquiring authority has under their enabling power a right to acquire which they are seeking to exercise.</p> <p>An example of this is section 18(1) of the 1949 Act which empowers Natural Resources Wales to acquire an ‘interest in land’ compulsorily which is defined in section 114(1) of the 1949 Act to include any right over land.</p> <p>Similarly, the name and address of a person who is a qualifying person under section 12(2A)(b) who is not included in either: column (3) of Table 1 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004); or</p>

	<p>column (5) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004),</p> <p>should be included in column (6) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004), together with a description of the land in respect of which a compensation claim is likely to be made and a summary of reasons for the claim. An example of such a potential claim might be where there could be interference with a private right of access across the land included in the CPO as a result of implementing the acquiring authority's scheme.</p>
(p)	<p>In determining the extent to which the acquiring authority should make 'diligent' enquiries, an acquiring authority will wish to have regard to the fact that case law has established that, for the purposes of section 5(1) of the 1965 Act, 'after making diligent inquiry' requires some degree of diligence, but does not involve a very great inquiry (see <i>Popplewell J. in R v Secretary of State for Transport ex parte Blackett [1992] JPL 1041</i>).</p> <p>Acquiring authorities are encouraged to serve formal notices seeking information on all interests they have identified to ascertain if there are any additional interests they are not aware of if a landowner has been served a notice and fails to respond.</p> <p>Acquiring authorities do not have any statutory power under section 5A of the 1981 Act to requisition information about land other than that which it is actually proposing to acquire. However, the site notice procedure in section 11(3) and (4) of the 1981 Act provides an additional means of alerting people who may consider they have grounds for inclusion in column (6) of Table 2 in the Schedule to the CPO (see Form 1 in the Schedule to the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004) and who can identify themselves.</p>

Special category land (see also [Sections J and K in Part 2 of this Circular](#))

25. Land to which [sections 17, 18 and 19 of the 1981 Act](#) apply, (or [paragraphs 4, 5 and 6 of Schedule 3 to the 1981 Act](#) in the case of acquisition of a new right over such land) should be shown both in the Schedule to the CPO and in the list at the end of the Schedule, in accordance with [paragraph \(o\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#). In the case of [section 17 of the 1981 Act](#) (or, for new rights, [paragraph 4 of Schedule 3 to the 1981 Act](#)) it is only necessary to show land twice if the acquiring authority is not mentioned in [section 17\(3\) of](#), or [paragraph 4\(3\) of Schedule 3 to, the 1981 Act](#) (see also [Section J: Special kinds of land in Part 2 of this Circular](#)). If a CPO erroneously fails to state in accordance with the prescribed form that land to be acquired is special category, then the Welsh Ministers may consider whether confirmation should be refused as a result.

Commons, open spaces etc

26. A CPO may provide for special category land to which [section 19 of the 1981 Act](#) applies (“order land”) to be discharged from rights, trusts and incidents to which it was previously subject; and for vesting in the owners of the order land, other land which the acquiring authority propose to give in exchange (“exchange land”). Such CPOs must be made in accordance with the appropriate prescribed form ([Forms 2, 3, 5 or 6 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)) adapted, in compliance with the notes, to suit the particular circumstances.
27. The order land and, where it is being acquired compulsorily, the exchange land, should be delineated and shown as stated in paragraph 1 of the CPO. Therefore, exchange land which is being acquired compulsorily and is to be vested in the owner(s) of the order land, should be delineated and shown (for example, in green) on the CPO map and described in Schedule 2 to the CPO. If the exchange land is not being acquired compulsorily it should be described in Schedule 3 to the CPO. See paragraph 30 below.
28. When an acquiring authority makes a CPO in accordance with [Form 2 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#), if the exchange land is also acquired compulsorily, the CPO should include [paragraph 2\(ii\) of Form 2 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#), adapted as required by [paragraph \(i\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#). The relevant acquisition power should also be cited, if different from the power cited in respect of the order land. [Paragraph 2\(ii\) of Form 2 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) also provides for the acquisition of land for the purpose of giving it in part exchange, for example, where the acquiring authority already own some of the exchange land.
29. In [Form 2 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) there are different versions of paragraphs 4 and 5(2) (see [paragraph \(s\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)). [Paragraph 4 of Form 2 in the Schedule to Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) defines the order land by reference to Schedule 1 to the CPO and either:
- (a) where the order land is only part of the land being acquired, the specific, “numbered” plots; or
 - (b) where the order land is all the land being acquired, the land which is “described”.

However, if the acquiring authority seek a certificate in accordance with [paragraph 6\(1\)\(b\) of Schedule 3 to the 1981 Act](#), because they propose to provide additional land in respect of new rights being acquired (over “rights land”), the CPO should include [paragraph 5\(1\)](#) and the appropriate [paragraph 5\(2\) of Form 2 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) (see [paragraph \(s\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)). [Paragraph 5 of Form 2 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) becomes [paragraph 4](#) only if new rights are to be acquired compulsorily. (See [paragraph 4\(c\) of Section K in Part 2 of this Circular](#)).

30. Where [Form 2 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) is used, the order land, including rights land, must always be described in Schedule 1 to the CPO. Exchange and additional land should be described in Schedule 2 to the CPO where it is being acquired compulsorily; in Schedule 3 to the CPO where the acquiring authority do not need to acquire it compulsorily; or where both Schedules 2 and 3 may apply, for example, the acquiring authority may only own part of the exchange and/or additional land. Schedule 3 to the CPO becomes Schedule 2 to the CPO if no exchange or additional land is being acquired compulsorily. Exchange or additional land which is not being acquired compulsorily should be delineated and shown on the map so as to clearly distinguish it from land which is being acquired compulsorily.
31. [Paragraph 4 of Form 3 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) should identify the order land by referring to either:
- (a) [paragraph 2 of Form 3 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#), where the order land is all the land being acquired; or
 - (b) specific, numbered plots in the Schedule to the CPO, where the order land is only part of the land being acquired.
- [Form 3 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) may also be used if new rights are to be acquired but additional land is not being provided. A CPO in this Form will discharge the order land, or land over which new rights are acquired, from the rights, trusts and incidents to which it was previously subject (in the case of land over which new rights are acquired, only so far as the continuance of those rights, trusts and incidents would be inconsistent with the exercise of the new rights).

32. A CPO may not discharge land from rights etc. if the acquiring authority seek a certificate in terms of [section 19\(1\)\(aa\) of](#), or [paragraph 6\(1\)\(aa\) of Schedule 3 to, the 1981 Act](#). (See also [paragraph 31 of Section J in Part 2 of this Circular](#) and [paragraph 4\(b\) of Section K in Part 2 of this Circular](#) in relation to additional land being given in exchange for a new right). Note that the extinguishment of rights of common over land acquired compulsorily may require consent under [section 22 of the Commons Act 1899](#).

Sealing, signing and dating

33. All CPOs should be made under seal, duly authenticated and dated at the end (after the Schedule to the CPO). They should never be dated before they are sealed and signed, and should be sealed, signed and dated on the same day. The CPO map(s) should similarly be sealed, signed and dated on the same day as the CPO. Some authorities may wish to consider whether they ought to amend their Standing Orders or delegations to ensure this is achieved. Where a purpose of a CPO is to give effect to another instrument, then that instrument should be sealed first i.e. where one of the purposes of a highways or planning CPO is to give effect to a side roads order then the side roads order should be sealed first.

Address for submission of compulsory purchase orders, applications and objections

34. All compulsory purchase and associated orders requiring confirmation by the Welsh Ministers should be sent to:
The Planning Inspectorate Wales
Specialist Case Work
Government Building
Cathays Park
Cardiff,
CF10 3NQ

Section S – Compulsory purchase order map(s)

1. Maps accompanying CPOs should provide details of the land proposed to be acquired, land over which a new right would subsist, and exchange land in accordance with the requirements set out in the notes to the forms. I.e. [paragraph \(g\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#). The heading of the map (or maps) should agree in all respects with the description of the map headings stated in the body of the order. The words “map referred to in [order title]” should be included in the actual heading or title of the map(s).
2. Land may be identified on CPO maps by colouring or any other method⁵⁹ at the discretion of the acquiring authority. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and exchange land is shown green. Where black-and-white copies are used they must still provide clear identification of the order or exchange land.
3. The use of a sufficiently large scale Ordnance Survey based map is most important and it should not generally be less than 1/1250 (1/2500 in rural areas). Where the map includes land in a densely populated urban area, experience suggests the scale should be at least 1/500, and preferably larger. Where the CPO involves the acquisition of a considerable number of small plots, the use of insets on a larger scale is often helpful. If more than one map is required, the maps should be bound together and a key or master “location plan” should indicate how the various sheets are interrelated.
4. Care should be taken to ensure where it is necessary to have more than one CPO map, there are appropriate references in the text of the CPO to all of them, so there is no doubt they are all CPO maps. To enable easy identification of the CPO maps, good practice is for acquiring authorities to affix an impression of the seal on them in addition to the seal on the CPO itself. If it is necessary to include a location plan, then it should be purely for the purpose of enabling a speedy identification of the whereabouts of the area to which the CPO relates. It should be the CPO map and not the location plan which identifies the boundaries of the land to be acquired. Therefore, whilst the CPO map would be marked “Map referred to in...” in accordance with the prescribed form (see [paragraph 2 of Form 1 in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#)), a location map might be marked “Location plan for the Map referred to in...”. Such a location plan would not form part of the CPO and CPO map but be merely a supporting document.

⁵⁹ See [paragraph \(g\) of the Notes on the use of Forms 1, 2 and 3 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#) and, in relation to exchange land, [paragraph \(g\) of the Notes on the use of Forms 4, 5 and 6 contained in the Schedule to the Compulsory Purchase of Land \(Prescribed Forms\) \(National Assembly for Wales\) Regulations 2004](#).

5. It is also important the CPO map should show such details as are necessary to relate it to the description of each parcel of land in the CPO Schedule or Schedules. This may involve marking on the map the names of roads and places or local landmarks not otherwise shown.
6. The boundaries between plots should be clearly delineated and each plot separately numbered to correspond with the CPO Schedule(s). For CPOs which include new rights, see [paragraphs 18 and 19 of Section R in Part 4 of this Circular](#). Land which is delineated on the map, but which is not being acquired compulsorily, should be clearly distinguishable from land which is being acquired compulsorily.
7. There should be no discrepancy between the CPO Schedule(s) and the map or maps, and no room for doubt on anyone's part as to the precise areas of land which are included in the CPO. Where there is a minor discrepancy between the CPO and map, the Welsh Ministers may be prepared to proceed on the basis that the boundaries to the relevant plot or plots are correctly delineated on the map. Where uncertainty over the true extent of the land to be acquired causes or may cause difficulties, the Welsh Ministers may refuse to confirm all or part of the CPO.

Section T – Certificates to accompany the submission of a compulsory purchase order

General certificate in support of a compulsory purchase order submission

1. A general certificate has no statutory status, but is intended to provide reassurance to the Welsh Ministers that the acquiring authority has followed the proper statutory procedures.

Format of general certificate

2. The certificate should be submitted in the following form:

“THECOMPULSORY PURCHASE ORDER 20...

I hereby certify that:

1. A notice in the Form numbered.....in the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004 (SI 2004 No. 2732) was published in two issues⁶⁰ of the dated 20..... and 20.... (being one or more local newspapers circulating in the locality). The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is/was..... 20.....
A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on20... and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being.....20...
2. Notice in the Form numbered.....in the said Regulations were duly served on
 - (i) every owner, lessee, tenant and occupier of all land to which the order relates;
 - (ii) every person to whom the acquiring authority would, if proceeding under section 5(1) of the Compulsory Purchase Act 1965, be required to give a notice to treat; and
 - (iii) every person the acquiring authority thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory purchase takes place, so far as such a person is known to the acquiring authority after making diligent inquiry.

⁶⁰ The notice must be published in two successive weeks in one or more local newspapers circulating in the locality. Copies of the newspapers need not be sent to the Welsh Ministers – [section 11 of](#), and [paragraph 2 of Schedule 1 to, the Acquisition of Land Act 1981](#).

(NB. For a CPO made under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the notice must include additional paragraphs in accordance with regulation 4 of the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004).

The time allowed for objections in each of the notices was not less than 21 days and the last date for them is/was..... 20..... . The notices were served by one or more of the methods described in section 6(1) of the Acquisition of Land Act 1981.

3. *[Where the order includes land in unknown ownership.]* Notices in the Form numbered.....in the said Regulations were duly served by one or more of the methods described in section 6(4) of the Acquisition of Land Act 1981 . The time allowed for objections in each of the notices was not less than 21 days and the last date is/was 20.... .
4. A copy of the order and of the map were deposited at on 20... and will remain/remained available for inspection until
5. (1) A copy of the authority's Statement of Reasons for making the CPO has been sent to:
 - (a) all persons referred to in paragraph 2 (i), (ii) and (iii) above;
 - (b) as far as is practicable, other persons resident on the order lands, and any applicant for planning permission in respect of the land.(2) A copy of the Statement of Reasons is herewith forwarded to Welsh Ministers.
6. *[Where the CPO includes ecclesiastical property – (see [paragraph 24\(g\) in Section R of Part 4 of this Circular](#))].* Notice of the effect of the CPO has been served on the Church Commissioners (section 12(3) of the Acquisition of Land Act 1981)."

NB. The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950 (SI 1950 No. 792) apply where it is proposed to use for other purposes consecrated land and burial grounds of the Church of England which are acquired compulsorily under any enactment, or acquired by agreement under the Town and Country Planning Acts, or which were appropriated to planning purposes. Subject to sections 238 to 240 of the 1990 Act, permission (a "faculty") is required for material alteration to consecrated land. (See Care of Churches and Ecclesiastical Jurisdiction Measure 1991; Ecclesiastical Jurisdiction and Care of Churches Measure 2018).

Protected assets certificate

3. For the purposes of compulsory purchase, protected assets are those set out below in paragraph 6. Listing them in a certificate allows confirming authorities to consider which protected buildings and assets will be affected by a scheme. It will also inform the decision as to whether or not the CPO should be confirmed.
4. Confirming authorities will need to ensure the circumstances of any protection applying to buildings and certain other assets on order lands are included in its consideration of a CPO.
5. Every CPO submitted for confirmation (except CPOs made under [section 47 of the P\(LBCA\)](#)⁶¹ should be accompanied by a protected assets certificate. A protected assets certificate should include, for each category of protected building or asset protected, either a “positive statement” with specific additional information or a nil return for that category of protection.
6. The forms of positive statement to be included in protected assets certificates are as follows (numbers in brackets refer to the Notes at the end of this section) (* = delete as appropriate):

(a) Listed buildings(1)

The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which has/have been* listed under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 [*insert order reference, list reference, address*].

(b) Buildings with interim protection(2)

The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which has/have* interim protection under section 2B of the Planning (Listed Buildings and Conservation Areas) Act 1990 but which has/have* not yet been formally listed by the Welsh Ministers.

(c) Buildings subject to building preservation notices

The proposals in the CPO will involve the demolition/alteration/extension* of 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)*].

(d) Other buildings which may be of a quality to be listed

The proposals in the CPO will involve the demolition/alteration/extension* of the following building(s) which may qualify for inclusion in the statutory list under the criteria in the Welsh Government’s Technical Advice Note 24: The Historic Environment.

⁶¹ For such compulsory purchase orders which are submitted to the Welsh Ministers for confirmation, only a copy of the repairs notice made under [section 48 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) is required - see [Section H in Part 2 of this Circular](#).

(e) Buildings within a conservation area (3)

The proposals in the CPO will involve the demolition of the following building(s) which is/are* included in a conservation area designated under section 69 (or, as the case may be, section 70) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

(f) Scheduled monuments

The proposals in the CPO will involve the demolition/alteration/extension* of the following monument(s) which are scheduled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979. An application for scheduled monument consent has been/will be* submitted to the Welsh Ministers.

(g) Registered historic parks/gardens

The proposal in the CPO will involve the demolition/alteration/extension* of the following park(s)/garden(s) which has/have* been included on the register of historic parks and gardens compiled in accordance with section 41A of the Ancient Monuments and Archaeological Areas Act 1979.

7. A positive statement should also be accompanied by the following additional information:

- particulars of the assets;
- any action already taken, or which the acquiring authority proposes to take, in connection with the category of protection, for example, consent which has been, or will be, sought;
- a copy of any consent or application for consent, or an undertaking to forward such a copy as soon as the consent or application is available.

The Welsh Ministers should also be notified as soon as possible where a CPO, which has been submitted to them for confirmation, entails demolition of any building which is subsequently included in a conservation area.

Notes

- (1) *This refers to buildings listed by the Welsh Ministers (not other forms of listing).*
- (2) *This refers to where the Welsh Ministers consult on a proposal to either include a building in a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or exclude a building from such a list (i.e. buildings listed by the Welsh Ministers (not other forms of listing)).*
- (3) *The 'Conservation Areas (Disapplication of Requirement for Conservation Area Consent for Demolition) (Wales) Direction (2017 No. 27)' (31 May 2017) applies for the purposes of sections 74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990.*

The effect is to exempt the demolition of certain categories of unlisted buildings in conservation areas from the requirement to obtain conservation area consent. Therefore, it is unnecessary to include such categories in any certificate which is submitted in compliance with paragraph 10(e) above. If development is of a type normally permitted as a right by the Town and Country Planning (General Permitted Development) Order 1995, it need not be included unless, as a result of a direction issued under article 4 of the Town and Country Planning (General Permitted Development) Order 1995, the permitted development right has been withdrawn and a planning application required.

Section U – Preparing the Statement of Reasons

1. The Statement of Reasons (see [paragraph 75 in Part 1 of this Circular](#)) should include the following information (adapted and supplemented as necessary according to the circumstances of the particular CPO):

The land to be acquired

- (i) A brief description of the CPO land/buildings and its location, such as:
 - topographical features;
 - present use; and
 - reference to any relevant development plan.
- (ii) The historical development of the site to understand the context of the proposal.
- (iii) Any special considerations affecting the land. For example, details of any ancient monument, listed building, conservation area, special category land, consecrated land, renewal area, etc.

The acquiring authority's purpose

- (iv) An outline of the acquiring authority's purpose in seeking to acquire the land.
- (v) A description of how the acquiring authority proposes to use or develop the land or deliver the scheme after acquisition including (if applicable) details of any third party who may develop the land on its behalf.
- (vi) A description of any new rights being created, such as a right of access, and an explanation of why the new rights are needed;
- (vii) A description of the enabling power the acquiring authority intends to use to acquire the land and an explanation of the use of the particular enabling power.
- (viii) A statement that the land subject to compulsory purchase is the minimum required for the scheme.

Engagement with affected parties

- (ix) The steps the acquiring authority has taken to negotiate for the acquisition of the land by agreement.
- (x) How the acquiring authority has engaged with the people affected by the proposal and the issues or concerns raised by them. If the acquiring authority altered its plans to address people's concerns it should be explained how. Alternatively, the acquiring authority should explain why it was not able to address specific concerns. It should also explain what it has done or will do to lessen the impact on people, communities and businesses and/or to help them relocate.

For example, it should include any proposals for re-housing displaced residents or relocating affected businesses and addresses, telephone numbers, web sites and e-mail addresses where further information on these matters can be obtained.

- (xi) If the acquiring authority has listed any of the owners as 'unknown' in the schedule to the CPO, details of the steps that it took to identify the owner(s).
- (xii) A list of any documents, maps and plans explaining the proposals that the acquiring authority has made publicly available and/or details of where people can see these documents.
- (xiii) If, in the event of a public inquiry, the acquiring authority would intend to refer to or put in evidence any documents, including maps and plans, it would be helpful if the acquiring authority could provide a list of such documents, or at least a notice to explain that documents may be inspected at a stated time and place.

Justification

- (xiv) A statement of the acquiring authority's justification for the use of its compulsory purchase powers, including:
 - the public benefit of the acquiring authority's proposed scheme and how the acquiring authority weighed this against the impact on the people affected; and
 - reference to Article 1 of the First Protocol to the ECHR, and Article 8 if appropriate.
- (xv) The case for the proposals (with reference to relevant plans and strategies), and a statement about the planning position of the CPO land (see [paragraphs 59 - 60 in Part 1 of this Circular](#) and the advice on CPOs made under [section 226 of the 1990 Act](#) contained in [Section A in Part 2 of this Circular](#)).
- (xvi) Information required in the light of Welsh Government policy statements where CPOs are made in certain circumstances, for example, as stated in [Section B in Part 2 of this Circular](#) where CPOs are made under the Housing Acts (including a statement as to unfitness where unfit buildings are being acquired under [Part 9 of the 1985 Act](#)); or such information as may be required by any of the other documents mentioned in [paragraph 9 in Part 1 of this Circular](#).
- (xvii) Relevant information specific to the acquiring authority's purpose (for example, crime reports or environmental studies).
- (xviii) Details of any views which may have been expressed by a government department about the proposed development of the CPO land.

(xix) If the Mining Code has been included, reasons for doing so.

Funding and delivery plans

(xx) A statement justifying the extent of the scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'.

(xxi) Details of how the acquiring authority seeks to overcome any obstacle or potential barrier, and any prior consent needed before the CPO scheme can be implemented, for example, need for a waste management licence.

(xxii) Details of any related CPO, application or appeal which may require a co-ordinated decision by the Welsh Ministers, for example, a CPO made under other powers, a planning appeal/application, road closure, listed building or conservation area consent application.

Section V – The acquisition of land for public libraries and museums under section 121 of the Local Government Act 1972: Form CP/AL1

Form CP/AL1 (Revised 9/2019)

**Welsh Government
SITE OR PROPERTY TO BE
ACQUIRED BY COMPULSORY PURCHASE**

Please continue on a separate sheet if there is insufficient space in the boxes below

1. Name of Authority: _____

2. Name of scheme for which site is required (for example, Any town Branch Library/Museum):

3. Details of site or property:
 - i. Site area: _____ m²
 - ii. Description of site: _____
 - iii. Additional information, including reference to steep slopes or other features which might affect access: _____

 - iv. Description of any building on the site which it is proposed to retain and use:

Please enclose a map showing the site and its surroundings, including shops and other community facilities

4. Details of scheme:

i. Will this be a new building OR an adaptation OR an extension of an existing building? _____

ii. What decisions have been taken by the authority as to the probable date of the construction, adaptation or extension? Please quote any relevant council resolutions. _____

iii. What will be the approximate total floor area of the proposed building? m²

iv. What facilities will the building provide? If plans have been prepared, please enclose copies. _____

5. Statement of need for the proposed facilities:

i. What is the present approximate population which will be served by the public departments? _____

ii. What is expected to be the population in ten years' time? _____

iii. How are the needs of the area being met at present? Please give locations of and approximate distances from the site to the sites of any similar facilities.

iv. Please give any other information which will help to clarify the need for acquiring this site or property. _____

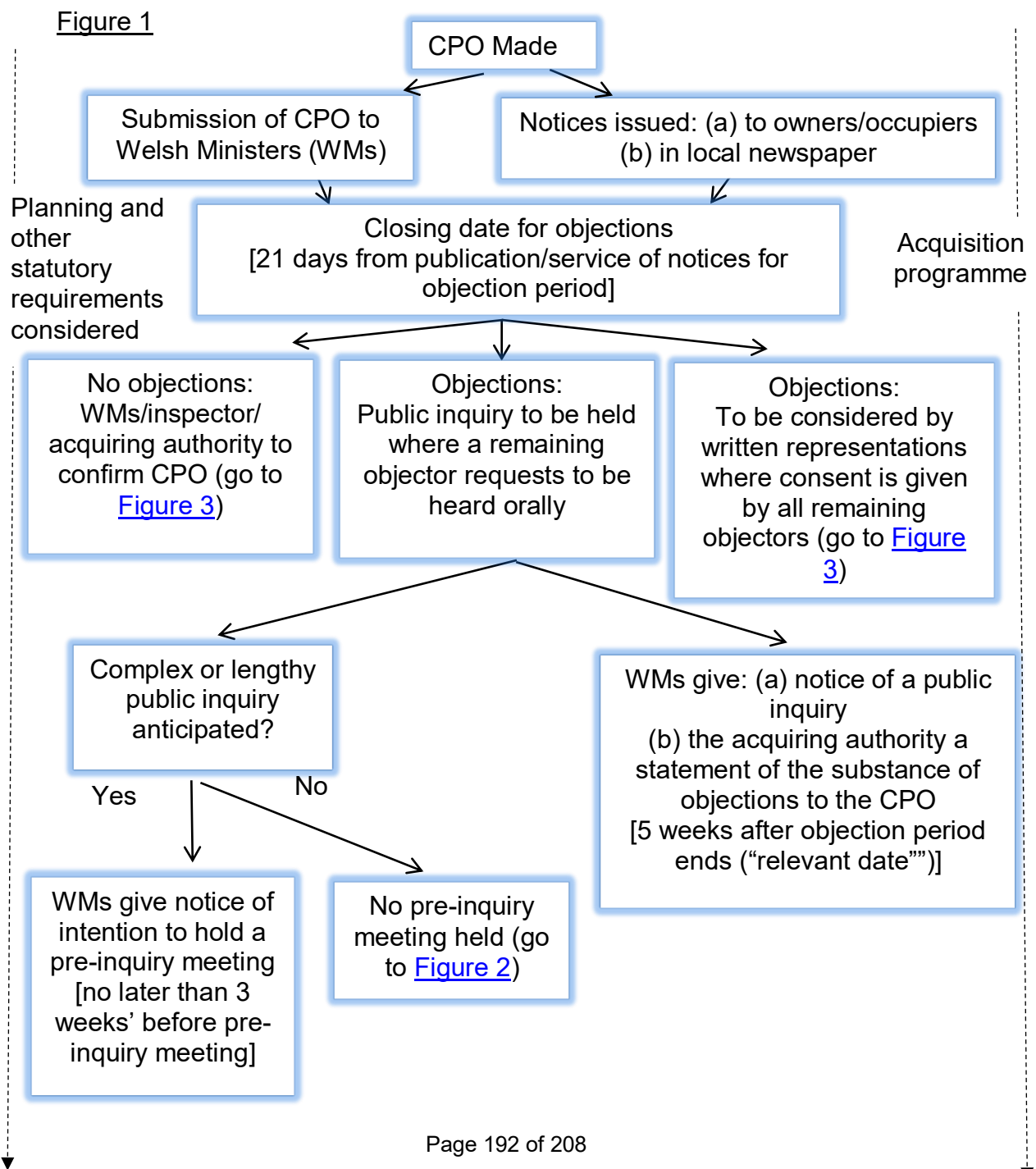
(Signed) _____

State official position of signatory: _____

Dated this _____ day of _____ 20 _____

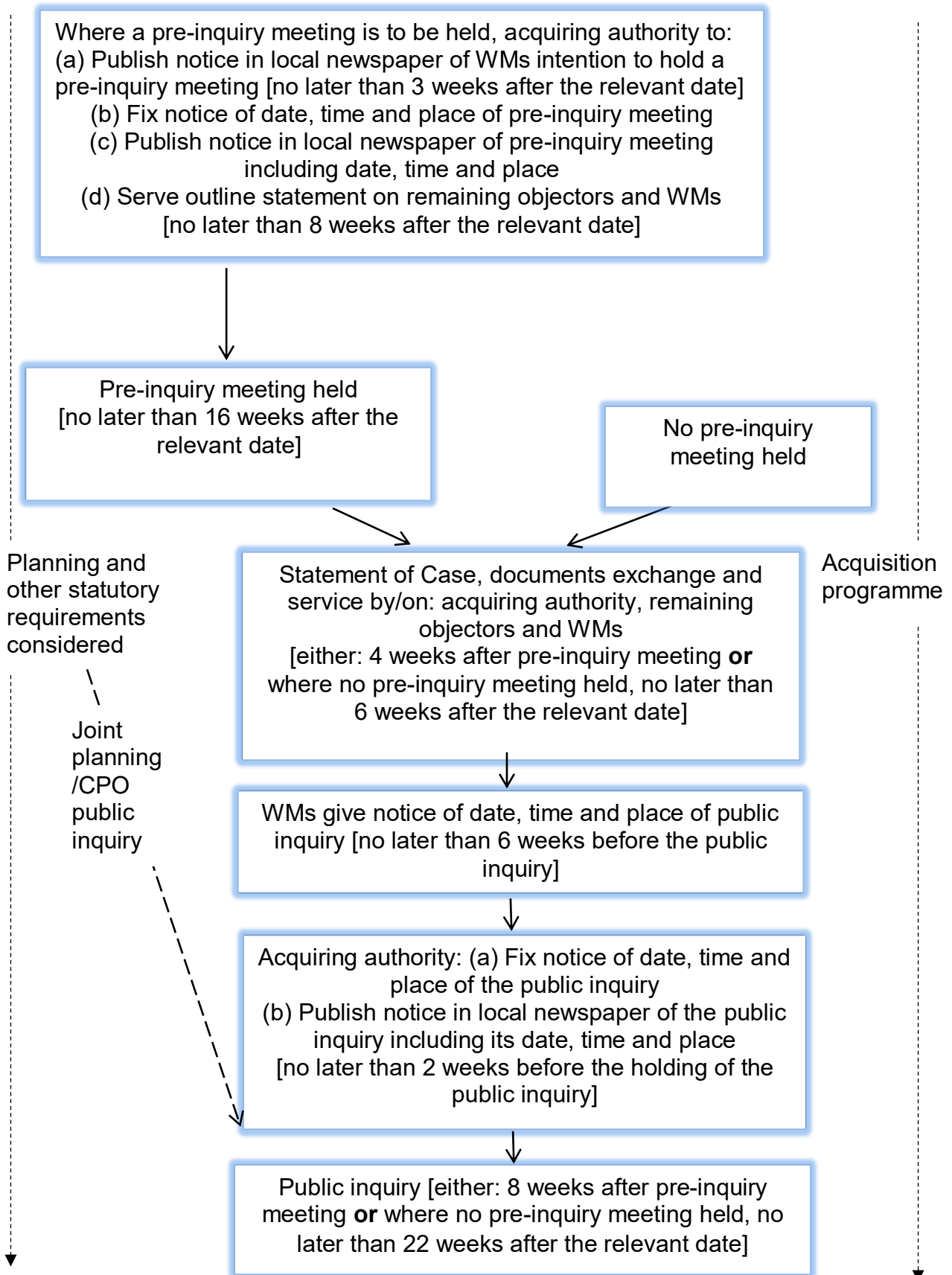
Part 5 – Overview in diagrammatic form of the compulsory purchase process for non-ministerial compulsory purchase orders

- Once a CPO is made and sealed by an acquiring authority, the statutory process begins. Figure 1 below shows the process from the point of making a CPO followed by submission through to a decision where no objections are received or a public inquiry/written representations where objections are received.



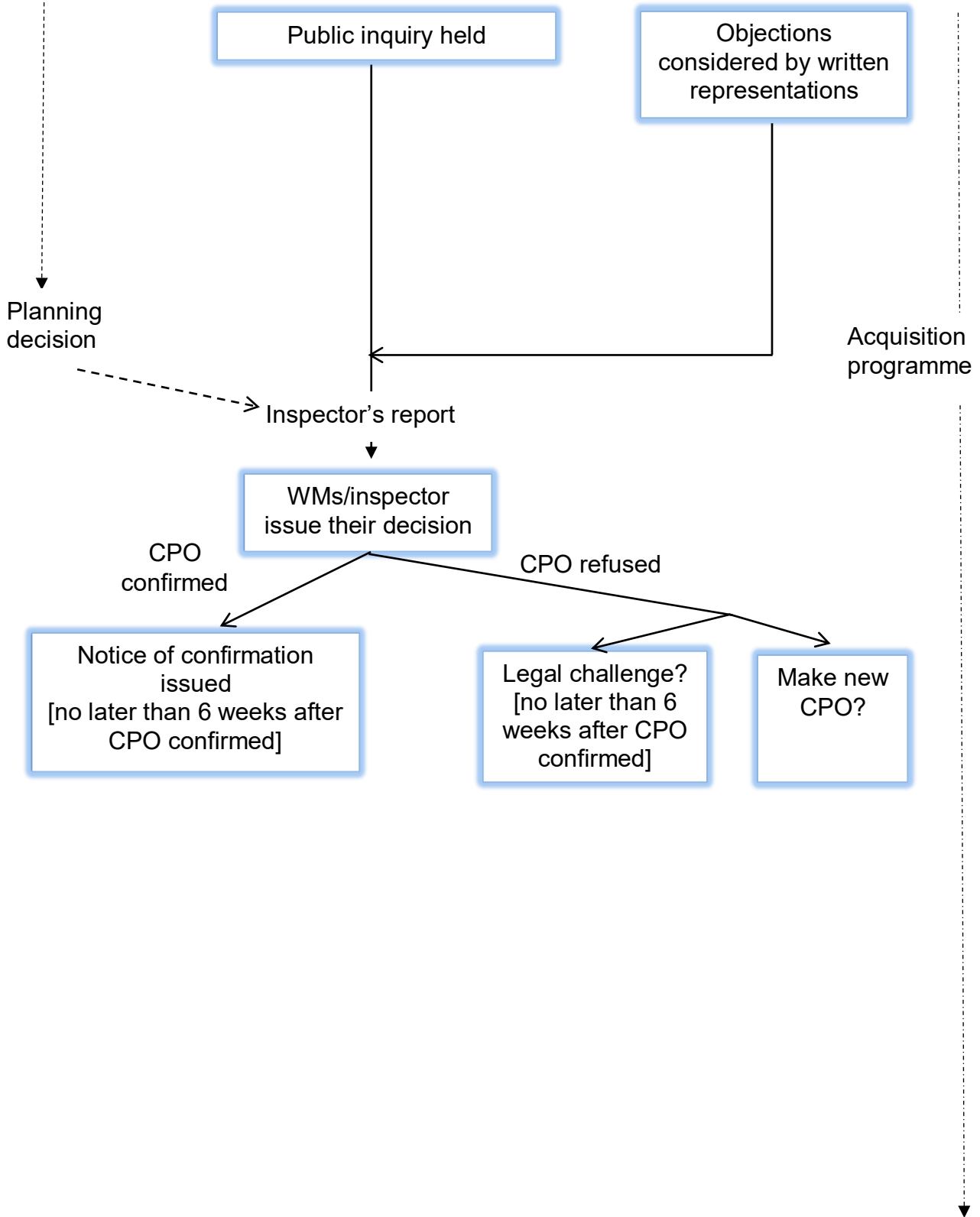
2. Figure 2 provides an overview of the public inquiry stage.

Figure 2



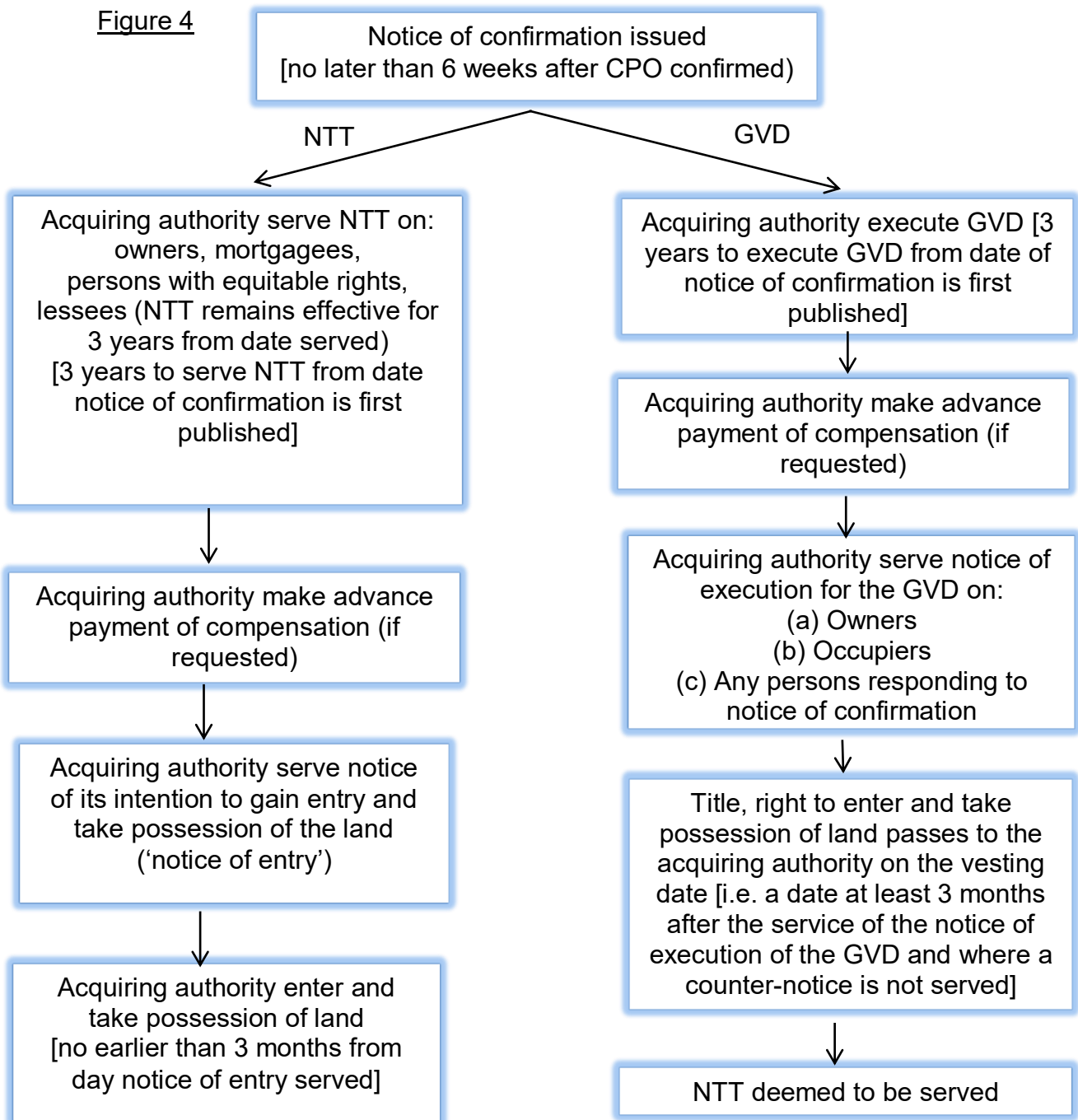
3. Figure 3 provides an overview of the decision making stage.

Figure 3



4. Figure 4 provides an overview of the vesting and possession involving the notice to treat (NTT) or general vesting declaration (GVD) procedures.

Figure 4



Part 6 – ‘The Crichel Down Rules’ (Wales version, 2020)

Rules and procedures for the disposal of surplus government land, obligation to offer land back to former owners or their successors

Introduction

1. This Part sets out the revised non-statutory arrangements (‘The Crichel Down Rules’ (Wales version, 2020)) under which surplus government land which was acquired by, or under a threat of, compulsion (see [rule 5](#) below) should be offered back to former owners, their successors, or to sitting tenants (see [rules 15, 16, 19](#) and [20](#) below). ‘The Crichel Down Rules’ (Wales version, 2020) are mandatory for the Welsh Ministers, executive agencies and other non-departmental public bodies such as Health Service Boards which are subject to a power of direction by the Welsh Ministers.
2. ‘The Crichel Down Rules’ (Wales, version 2020) (“The Crichel Down Rules”) apply in Wales in respect of land which has been acquired by the Welsh Ministers using those statutory powers transferred to them by virtue of [section 28 of](#), and [Schedule 4 to, the Government of Wales Act 1998](#). For the sake of brevity, all bodies to whom any one or more of The Crichel Down Rules are mandatory or are commended as best practice are referred to as “disposing bodies
3. Similar Rules have been issued by the Ministry of Housing and Communities & Local Government, which are contained in “Guidance on Compulsory Purchase Process and The Crichel Down Rules (July 2019)”, and apply to surplus land in Wales acquired by and still owned by a UK government department. Where statutory bodies in Wales seek to dispose of its surplus land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State, ‘The Crichel Down Rules’ published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) continue to apply.

The Crichel Down Rules

4. Rule 1: Local authorities and other statutory bodies which are not subject to a Ministerial power of direction (for example, statutory undertakers), but who have powers of compulsory purchase, or who hold land which has been compulsorily purchased, are highly recommended to follow ‘The Crichel Down Rules’ (Wales version, 2020) as best practice. Previous practice amongst such authorities has been variable and the Welsh Ministers would like there to be a high level of compliance. Former owners of surplus land will be likely to see as inequitable a system which requires the Welsh Ministers and others to offer back surplus land but not local authorities.

A typical example would be on road schemes, where those who had lost land to a trunk road scheme would have surplus land offered back, while those who had lost land to a county road scheme might not. The Criche Down Rules are also recommended to bodies in the private sector to which public sector land holdings have been transferred, for example on privatisation.

5. Rule 2: The approach of local authorities and other statutory bodies when disposing of surplus land must, however, depend on their particular functions and circumstances. For example, in the case of exceptions to The Criche Down Rules which depend upon the Welsh Ministers authority ([rules 17\(1\)](#), [17\(2\)](#), [17\(7\)](#)), local authorities will have to rely on the decision of the political head of the authority. For other statutory bodies the decision will rest with the Chairman. For disposals at the end of Private Finance Initiative/Private Public Partnership agreements, disposing bodies may wish to seek legal advice in order to take account of The Criche Down Rules.
6. Rule 3: Detailed guidance on a best practice solution for property asset coordination and the transfer, disposal or sharing of land/property between public bodies in Wales is set out in “Estate Co-ordination & Land Transfer Protocol” (National Assets Working Group – NAWG, June 2014). General guidance on asset management, which includes land and buildings is set out in Annex 4.14 of “Managing Welsh Public Money” (Welsh Government, January 2016).
7. Rule 4: It is the view of the Welsh Government that where land is to be transferred to another body which is to take over some or all of the functions or obligations of the department that currently owns the land, the land is not surplus and the transfer itself does not constitute a disposal for the purpose of The Criche Down Rules. Disposals for the purposes of Private Finance Initiative/Private Public Partnership schemes do not fall within The Criche Down Rules and the position of any land surplus once the scheme has been completed would be subject to the Private Finance Initiative/Private Public Partnership contract.
8. Rule 5: The Criche Down Rules are not relevant to land transferred to, or land acquired compulsorily by, Natural Resources Wales or water and sewerage service companies in consequence of the [Water Act 1989](#) or subsequently acquired by them compulsorily. Such land is governed by a special set of statutory restrictions on disposal under [section 157 of the Water Resources Act 1991 \(as amended\)](#) and [section 156 of the Water Industry Act 1991](#) and the consents or authorisations given by the Welsh Ministers under those provisions.

9. Rule 6: [Section 98 of the Local Government, Planning and Land Act 1980](#) (“LGPL Act 1980”) provides a power for the Welsh Ministers to direct a body to dispose of land where they consider the following conditions are met:
- (a) a freehold or leasehold interest in the land is owned by a body to which [Part 10 of the LBPL Act 1980](#) applies or a subsidiary of such a body;
 - (b) it is situated in an area in relation to which [Part 10 of the LGPL Act 1980](#) is in operation or it adjoins other land which is situated and a freehold or leasehold interest is owned by a body to which [Part 10 of the LGPL Act 1980](#) applies or a subsidiary of such a body; and
 - (c) in the opinion of the Welsh Ministers the land is not being used or not being sufficiently used for the purposes of the performance of the body’s functions or of carrying on their undertaking.
- This process is commonly referred to as ‘Community Right to Reclaim Land’ or ‘Public Right to Order Disposal’.
10. Rule 7: [Section 98 of the LGPL Act 1980](#) applies to the following bodies which are listed in [Schedule 16 to the Act](#) and are relevant to Wales:
- (a) A county council / county borough council;
 - (b) An urban development corporation;
 - (c) A housing action trust;
 - (d) The Civil Aviation Authority;
 - (e) The Coal Authority;
 - (f) The British Broadcasting Corporation;
 - (g) Statutory undertakers (other than Canal & River Trust).
11. Rule 8: A direction can only be made under [section 98 of the LGPL Act 1980](#) by the Welsh Ministers after the body concerned has had an opportunity to make representations. If representations are received then a direction cannot be given unless the Welsh Ministers consider the disposal can be made without serious detriment to the performance of the body’s functions or the carrying on of their undertaking. If representations are not made within 42 days from the date of being notified by the Welsh Ministers, or within such longer period as the Welsh Ministers may allow, the Welsh Ministers may give the direction as proposed.

The land to which ‘The Criche! Down Rules’ apply

12. Rule 9: The Criche! Down Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition. This means the acquiring authority did not need to have initiated compulsory purchase procedures or actively ‘threatened’ to use them for this Rule to apply. It is enough for the acquiring authority to have statutory powers available if it wished to invoke them.

For example, land acquired by a highway authority for the purposes of building a road is acquired under the threat of compulsion because such an authority could use its powers under the [1980 Act](#) to make a CPO.

13. Rule 10: They also apply to land acquired under the statutory blight provisions (currently set out in [Chapter 2 in Part 6 of](#), and [Schedule 13 to, the 1990 Act](#)). The Crichel Down Rules do not apply to land acquired by agreement in advance of any liability under these provisions.
14. Rule 11: Likewise, The Crichel Down Rules apply to all freehold disposals. Also, to the creation and disposal of a leasehold interest of more than seven years or which is capable of being extended to more than seven years by virtue of contract or statute or where the total period of successive leases amounts to more than seven years.
15. Rule 12: Where a disposing body wishes to dispose of land to which The Crichel Down Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have “materially changed” where, for example, dwellings or offices have been erected on open land; mainly open land has been afforested; or the undertaking of substantial works to an existing building, the demolition of a building or the installation of underground infrastructure or services to a site have effectively altered its character. In the original Commons debate on the Crichel Down case in 1954 “material change” was envisaged as relating to agricultural land and was illustrated by the example of an airfield having been built with concrete runways and buildings and where the original ownership boundaries had been lost. The erection of temporary buildings on land is not, however, necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing body should consider the likely cost of restoring the land to its original use.
16. Rule 13: Where only part of the land for disposal has been materially changed in character, the general obligation to offer back will apply only to the part that has not been changed.

Interests qualifying for offer back

17. Rule 14: Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, disposing bodies may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land. If neither the former freeholder nor former leaseholder is interested in buying the land back or identifiable then the freehold freed from any lease can be disposed of on the open market.

18. Rule 15: In these Crichel Down Rules “former owner” may, according to the circumstances, mean former freeholder or former long leaseholder, and their successor. “Successor” means the person on whom the property, had it not been acquired, would clearly have devolved under the former owner's will or intestacy, and may include any person who has succeeded, otherwise than by purchase, to adjoining land from which the land was severed by that acquisition. A successor under a will includes those who would have succeeded by means of a second or subsequent will or intestacy. The qualification ‘otherwise than by purchase’ may be relaxed if the successor to adjoining land acquired it by means of transfer within a family trust, including a transfer for monetary consideration.

Time horizon for obligation to offer back

19. Rule 16: The general obligation to offer back will not apply to the following types of land:
- (a) agricultural land acquired before 1 January 1935;
 - (b) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;
 - (c) non - agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

Problems may arise where land has been acquisitioned several (sometimes 10 or more) years before the title has transferred. Difficulties can be caused where the two dates straddle a time horizon, so that a disposal would fall within The Crichel Down Rules if the date of transfer was used, but not if the date of acquisition was. To avoid these difficulties the date of acquisition is taken to be the date of the conveyance, transfer or vesting declaration.

Exceptions from the obligation to offer back

20. Rule 17: The following are exceptions to the general obligation to offer back:
- 1. Where it is decided on specific Welsh Minister authority that the land is needed by another government department (i.e. that it is not, in a wider sense, surplus to Government requirements).
 - 2. Where it is decided on specific Welsh Minister authority that for reasons of public interest the land should be disposed of as soon as practicable to a local authority or other body with compulsory purchase powers. However, transfers of land between bodies with compulsory purchase powers will not be regarded as exceptions unless at the time of transfer the receiving body could have bought the land compulsorily if it had been in private ownership (see R-v-Secretary of State for the Environment, Transport and the Regions ex p. Wheeler, The Times 4 August 2000).

Appropriations of land within bodies such as local authorities for purposes different to that for which the land was acquired are exceptions if the body has compulsory purchase powers to acquire land for the new purpose.

3. Where, in the opinion of the disposing body, the area of land is so small that its sale would not be commercially worthwhile. This exception provides departments with discretion as to whether to offer land back when the administrative costs in seeking to offer land back are out of proportion to the value of the land. It will also cover cases where there is a disposal of a small area of land without a sale.
4. Where it would be mutually advantageous to the disposing body and an adjoining owner to effect minor adjustments in boundaries through an exchange of land.
5. Where it would be inconsistent with the purpose of the original acquisition to offer the land back, as, for example, in the case of:
 - (i) Land acquired under sections 16, 84 or 85 of the [Agriculture Act 1947](#) – these sections deal with the dispossession of owners or occupiers on grounds of bad estate management (section 16) and the acquisition and retention of land to ensure the full and efficient use of the land for agriculture (sections 84 and 85).
 - (ii) Land which was acquired under the Distribution of Industry Acts or the Local Employment Acts, or under any legislation amending or replacing those acts, and which is resold for private industrial use.
 - (iii) Where dwellings are bought for onward sale to a Registered Social landlord (RSL).
 - (iv) Sites purchased for reclamation and redevelopment by the former Welsh Development Agency and its predecessors, Land Authority for Wales and Development Board for Rural Wales.

The general rule is that land purchased with the intention of passing it on to another body for a specific purpose is not surplus and therefore not subject to The Crichel Down Rules. Typical examples would be sites of special scientific interest (SSSIs) purchased for management reasons; a listed building purchased for restorations; properties purchased by a local authority for redevelopment which are sold to a private developer partner. This exception will apply to disposals by statutory bodies with specific primary, rather than incidental, functions to develop or redevelop land, and to disposals by their successor bodies.

In such cases, land would only be subject to The Crichel Down Rules where it was without development potential and, therefore, genuinely surplus in relation to the purpose for which it was originally acquired.

6. Where a disposal is in respect of either:
 - (i) a site for development or redevelopment which has not materially changed since acquisition and which comprises two or more previous land holdings; or
 - (ii) a site which consists partly of land which has been materially changed in character and part which has not;

and there is a risk of a fragmented sale of such a site realising substantially less than the best price that can reasonably be obtained for the site as a whole (i.e. its market value).

In such cases, consideration will be given to offering a right of first refusal of the property, or part of the property, to any former owner who has remained in continuous occupation of the whole or part of their former property (by virtue of tenancy or licence). In the case of land to which (i) applies, consideration will be given to a consortium of former owners who have indicated a wish to purchase land collectively. However, if there are competing bids for a site, it will be disposed of on the open market.

7. Where the market value of land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the disposing body's professionally qualified appointed valuer and specifically agreed by the Welsh Ministers.

21. Rule 18: Where it is decided that a site does fall within any of the exceptions in rule 17 or the general exception relating to material change (see [rule 12](#)) the former owner will be notified of this decision using the same procedures for contacting former owners as indicated in [rules 22-25](#) below.

22. Rule 19: In the case of a tenanted dwelling, any pre-emptive right of the former owner is subject to the prior right of the sitting tenant. See rule 20 below.

Dwelling tenancies

23. Rule 20: Where a dwelling (including a flat), whether acquired compulsorily or under statutory blight provisions, has a sitting tenant (as defined in [Appendix A](#)) at the time of the proposed disposal, the freehold should first be offered to the tenant.

If the tenant declines to purchase the freehold, it should then be offered to the former owner, although this may be subject to the tenant's continued occupation. This rule does not apply where a dwelling with associated land is being sold as an agricultural unit; or where a dwelling was acquired with associated agricultural land but is being sold in advance of that land.

Procedures for disposal

24. Rule 21: Where it is decided that property to be disposed of is, by virtue of these Crichel Down Rules, subject to the obligation to offer back, disposing bodies should follow the appropriate procedures described in rules 22 - 28 below. To assist in the speedy disposal of sites, disposing bodies are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations.

Where former owner's address is known

25. Rule 22: Where the address of a former owner is known, a recorded delivery letter should be sent by or on behalf of the disposing body, inviting the former owner to buy the property at the valuation made by the disposing body's professionally qualified valuer. The former owner will be given two months from the date of that letter to indicate an intention to purchase. If the former owner wishes to purchase the land there will be a further period of two months to agree terms, other than value, from the date of an invitation made by or on behalf of the disposing body. After these terms are agreed, there will be six weeks to negotiate the price. If the price or other terms cannot be agreed within these periods, or within such extended periods as may reasonably allowed (for example, to negotiate appropriate clawback provisions), the property will be disposed of on the open market. Prior to the property being marketed, the former owner will be informed by a recorded delivery letter that this step is being taken.

26. Rule 23: Where there is no response or the former owner does not wish to purchase the property, it will be sold on the open market and the former owner will be informed by a recorded delivery letter that this step is being taken.

Where address is unknown

27. Rule 24: Where the former owner is not readily traceable, the disposing body will contact the solicitor or agent who acted for them in the original transaction. If a present address is then ascertained the procedure described in rule 22 above should be followed. If the address is not ascertained, however, the disposing body will attempt to contact the former owner by advertisement, as set out in rule 25 below, informing the solicitor or agent that this has been done.

28. Rule 25: Advertisements inviting the former owner to contact the disposing body will be placed as follows:
- (a) for all land (including dwellings), in the London Gazette, in the Estates Gazette, in not less than two issues of at least one local newspaper and on the disposing body's web site; and
 - (b) in addition, for agricultural land, advertisements will be placed in the Farmer's Weekly.

Site notices announcing the disposal of the land will be displayed on or near the site. It is recommended site notices are erected for a minimum of 21 days starting either on the day when the advertisement first appears in an issue of the local newspaper or on the disposing body's web site, whichever is the latest. Site notices should be checked weekly and removed once the minimum 21 days day period has ended. To address concerns about information not being available through either the damage or removal of site notices, disposing bodies should keep a record of weekly visits to check whether individual site notices are:

- (i) correct;
- (ii) damaged;
- (iii) missing; or
- (iv) replaced.

By keeping this record it will demonstrate the efforts made by the disposing body to publicise the disposal of the land should a challenge be made on the ground of lack of publicity. Owners of the adjacent land will also receive notification of the proposed disposal.

Responses to invitation to purchase where address is unknown

29. Rule 26: Where no intention to purchase is indicated by or on behalf of a former owner within two months of the date of the latest advertisement which is published as described in rule 25 above, the land will be disposed of on the open market.
30. Rule 27: Where an intention to purchase is expressed by or on behalf of a former owner within two months of the date of the latest advertisement, they will be invited to negotiate terms and agree a price within the further periods, as may reasonably be extended, which are described in [rule 22](#) above. If there is no agreement, the property will be disposed of on the open market. Prior to the property being marketed, the former owner or a person on their behalf will be informed by a recorded delivery letter that this step is being taken.

Special procedure where boundaries of agricultural land have been obliterated

31. Rule 28: The procedures described in [Appendix B](#) to these Crichel Down Rules should be followed where changes, such as the obliteration of boundaries, prevent land which is still predominantly agricultural in character from being sold back as agricultural land in its original parcels.

Terms of resale

32. Rule 29: Disposals to former owners under these arrangements will be at current market value, as determined by the disposing body's professionally qualified, appointed valuer. There can be no common practice in relation to sales to sitting tenants because of the diversity of interests for which housing is held. Disposing bodies will, nonetheless, have regard to the terms set out in the [Housing Act 1985](#), as amended, under which local authorities are obliged to sell houses to tenants with the right to buy. For the purposes of The Crichel Down Rules, 'market value' means 'the best price reasonably obtainable for the property'. This is equivalent to the definition of 'market value' in the Royal Institution of Chartered Surveyors' Appraisal and Valuation Manual (the 'Red Book'), but including any 'Special Value' (i.e. any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest like a former owner). 'Current market value' means the market value on the date of the receipt by the disposing body of the notification of the former owner's intention to purchase.
33. Rule 30: As a general rule, disposing bodies should obtain planning permission before disposing of properties which have potential for development. Where it would not be practicable or appropriate for disposing bodies to take action to establish the planning position at the time of disposal, or where it seems that the likelihood of obtaining planning permission (including a more valuable permission) is not adequately reflected in the current market value, the terms of sale should include clawback provisions in order to fulfil the Welsh Ministers' or public body's obligation to the taxpayer to obtain the best price. The precise terms of clawback will be a matter for negotiation in each case.

Recording of disposals

34. Rule 31: Disposing bodies will maintain a central record or file of all transactions covered by The Crichel Down Rules, including those cases that fall within [rules 12](#) and [17](#). To make it possible for the operation of The Crichel Down Rules to be monitored, disposing bodies should include on each disposal file a note of its consideration of The Crichel Down Rules, including whether they applied (and if not, why not), the subsequent action taken and whether it was possible to sell to the former owner.

It would also be helpful if a copy of each of these notes (cross-referenced to the disposal file) could be held by the relevant disposal body on a central file, so that the information would be readily available for any future monitoring exercise.

The 1992 Rules

35. Rule 32: The version of 'The Cricheol Down Rules' published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) are superseded by 'The Cricheol Down Rules' (Wales version, 2020) set out in this Circular in relation to land which has been acquired by the Welsh Ministers using statutory powers transferred to them by virtue of [section 28 of](#), and [Schedule 4 to, the Government of Wales Act 1998](#) only. Where statutory bodies in Wales seek to dispose of its surplus land acquired under an enabling power which remains capable of being confirmed by a UK Secretary of State, 'The Cricheol Down Rules' published in 1992 by the Department of the Environment and the Welsh Office (30 October 1992) continue to apply.

Appendix A – Sitting tenants

(see [rule 20](#)) of

1. In the context of The Crichel Down Rules, the expression “sitting tenant” was generally intended to apply to tenants with indefinite or long-term security of tenure. A tenant for the time being of residential property, which is to be sold as surplus to a disposing body's requirements is not, as a tenant of the Crown, in occupation by virtue of statutory form of tenancy under the [Rent Act 1977](#) or the [Housing Act 1988](#). However, when deciding whether a person is a sitting tenant for the purposes of [rule 20](#), the disposing body concerned will have regard to the terms of tenancy and act according to the spirit of the legislation.
2. In practice, this will generally mean that a person may be regarded as a sitting tenant for the purposes of [rule 20](#) if the tenancy is analogous to either:
 - (a) a regulated tenancy under the [Rent Act 1977](#), (i.e. a tenancy commenced before 15 January 1989, but excluding a protected shorthold tenancy); or
 - (b) an assured tenancy under the [Housing Act 1988](#), (i.e. a tenancy begun on or after that date, but excluding an assured shorthold tenancy).
3. Without prejudice to [rule 17\(6\)](#), therefore, [rule 20](#) does not apply to a licensee or to a person in occupation under a tenancy the terms of which are analogous to:
 - (a) a protected shorthold tenancy under the [Housing Act 1980](#), including any case where a person who held such a tenancy, or their successor, was granted a regulated tenancy of the same dwelling immediately after the end of the protected shorthold tenancy; or
 - (b) an assured shorthold tenancy under the [Housing Act 1988](#).
4. It is recognised, however, that some tenants who fall within rule 3, may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

Appendix B – Special procedures where boundaries of agricultural land have been obliterated

(see [rule 28](#))

- (a) Each former owner will be asked whether they wish to acquire any land.
- (b) Where former owners express interest in doing so, disposing departments will, subject to what is stated in (c) to (e) below, make every effort to offer them parcels which correspond, as nearly as is reasonably practicable, in size and situation to their former land.
- (c) In large and complex cases, or where there is little or no room for choice between different methods of dividing the land into lots, it may be necessary to show former owners a plan indicating definite lots. This might be appropriate where, for example, the character of the land has altered; where there are existing tenancies; or where departments might otherwise be left with unsaleable lots.
- (d) Where more than one former owner is interested in the same parcel of land it may be necessary to give priority to the person who owned most of the parcel or, in a case of near equality, to ask for tenders from interested former owners. Disposing bodies should, however, make every effort to offer each interested former owner at least one lot.
- (e) If attempts to come to a satisfactory solution by dealing with former owners end in complete deadlock, disposing bodies will sell the land by public auction in the most convenient parcels and will inform the former owners of the date of the auction sale.