



The Bar Council

Bar Council response to the Law Commission consultation on compulsory purchase

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Law Commission consultation on compulsory purchase.¹

The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

¹ [Compulsory purchase – Law Commission](#)

Introduction & Executive Summary

1. The Bar Council is very grateful for the additional time allowed for the submission of its response and trusts the below is helpful.
2. The Bar Council was also very grateful to have had the opportunity to discuss the proposals contained in the consultation directly with those involved at the Law Commission with these important proposals for Compulsory Purchase law. It is (as noted in consultation) an exceptional piece of work addressing in detail this area of law that has, due in particular to the age and variety of much of the legislation surrounding it and how it has developed through the Courts, made it a particularly complex area of the law and much in need of this very type of review.
3. We begin by setting out the broad heads and issues raised by the consultation but to the extent that the matters raised by the consultation fall specifically within the expertise of barrister members of the Bar Council and indeed barristers who form part of the Compulsory Purchase Association we would defer to these members' expertise. As such the Bar Council has limited its response to those questions which it considers raise wider questions of access to justice and the rule of law.
4. The Bar Council has considered it helpful to summarise the consultation proposals below and summarising its position. Thereafter where it is appropriate to do so provide direct answers to the questions asked but again from the perspective of matters related to the rule of law and access to justice.
5. The Bar Council trusts this is helpful.

Summary of Consultation Proposals and Questions

6. The consultation asks 106 questions covering what is described helpfully in the Summary accompanying the full Consultation Paper [1.12] as “*four discrete but connected elements*” covering²:

- (1) General Statutory powers to acquire land compulsorily – these power are spread throughout many Acts. They are conferred on public and local authorities to acquire land for their particular functions (e.g. education) - “**Powers**”
- (2) Authorisation of a compulsory purchase of specific land after its selection by the authority for a particular scheme – this means the making of a Compulsory Purchase Order (‘CPO’) by the authority and its confirmation by a Government Minister - “**Authorisation**”
- (3) Implementation of a CPO – This involves the legal mechanisms for the transfer of title and the taking of possession of land by an acquiring authority (‘AA’) - “**Implementation**”
- (4) Compensation for CPO of land or rights – This involves both the assessment and payment for compulsory purchase of property “**Compensation**”.

(1) *Powers*

7. With regard to Powers, it is noted that the Law Commission notes that AA CPO powers are spread across several Acts. Rather than simply propose consolidation in a new Bill the Law Commission focuses on addressing anomalies or inconsistencies in these powers that make them unsuitable.

8. In addition the consultation raises the acquisition of ‘new’ rights asking whether matter should be simplified and clarified through the identification or standardisation of ancillary power to acquire rights over land which would apply wherever an authority has a primary power to purchase land compulsorily (see Q104).

² See Table on page 4 of Summary

9. Lastly, the consultation seeks view on simplifying the powers for an AA to conduct surveys of land³ by repealing one and amalgamating the powers to provided a single provision allowing for surveys to conducted both before and a CPO has been confirmed.
10. In summary the Bar Council's position in respect of the above (as well as generally with regard to the Law Commission's aims within the consultation of addressing anomalies; simplifying language) is one of support. This is subject however to ensuring the maintenance of existing protections of the rights of those whose interests that are directly affected by the exercise of CPO powers i.e. landowners and tenants or occupants of land to be purchased or those with interests affected who may be affected by the underlying scheme to any CPO which should also be balanced against the public interest which is to be served by any CPO and which provides the overriding justification for a CPO.

(2) Authorisation

11. With regard to the Authorisation process for CPOs, the consultation points again to what might be called unwieldy or unnecessary differences between the terminology and approach applied to the stages of a CPO dependent upon whether the CPO is being sought by a Ministerial process ('Ministerial orders') or by other non Ministerial AA's ('Non- Ministerial Orders'). The consultation therefore [Q6] seeks views on changing this and clarifying a single set of terminologies for the early stages of a CPO and its finalisation and in respect of the steps required for public notification (see Q8).
12. Secondly, in respect of Authorisation the Consultation seeks views about the special rules which apply where an AA is seeking to purchase certain kinds of land that benefit the public interest (e.g. National Trust land or common land) which in particular aim to ensure that the competing public interest is given due weight in the

³ See s 11(3) of the Compulsory Purchase Act 1965 ('the 1965 Act'); and s172(1) of the Housing and Planning Act 2016 ('the 2016 Act').

authorisation process. The Law Commission seeks to preserve the existing protections for these special kinds of land but seeks views about whether these provisions cause any problems in practice as well as upon the proposed repeal of some apparently redundant provisions (see Q 9 to 12).

13. Thirdly, the consultation also considers whether there should be changes to the methods for challenging CPOs taking into account the different stages of CPO procedure and whether opportunities for statutory review and/or judicial review should be altered. .

14. With regard to these proposals, again the Bar Council's position is that it is supportive of the removal of any current anomalies and unnecessary or arcane aspect of the procedure for authorisation however again subject to the same caveat about preventing the loss of any current protections for those affected. In general however the Bar Council would defer to the views of specialist practitioners and bodies.

(3) Implementation

15. With regard to implementation of confirmed CPOs the consultation carries out a review of the two different processes for implementation : Notice to Treat procedure set out in the Compulsory Purchase Act 1965 and the General Vesting Declaration ('GVD) process set out in the Compulsory Purchase (Vesting Declarations) Act 1981.

16. The consultation proposes a unified procedure (see Q16 and for four possible additions (see Q17) including whether the scheme for temporary possession in the Neighbourhood Planning Act 2017 should be brought into force.

17. In the alternative the consultation proposes leaving the two procedures in place with certain issues raised in respect of each (see Chp 4).

18. Further certain problems are raised in respect of the entry onto land provisions at Q37; 38 and 39 with the latter two questions raising issues about enforcement where the landowner is uncooperative.
19. In addition , the consultation proposes changes to the approach to costs of completing the transfer such that the AA pay all reasonable costs in connection with the conveyance of the land (see **Consultation Question 23**) and that the jurisdiction to assess the costs of completion should remain with the High Court or be transferred to the Upper Tribunal (see **Consultation Question 24**).
20. Specific issues are raised in respect of the provisions addressing circumstances where the landowner lacks capacity and/or suffers from a legal disability or incapacity (see Sch 1 Compulsory Purchase Act 1965. The consultation raises questions about these provisions as being convoluted, archaic and out of date and proposes they be repealed or replaced with a simpler provision Q 28).
21. Certain other changes are proposed relating to the updating of the language of the statutory scheme be updated in light of the interpretation given by the Courts (see Q 46); details of the timing of a landowner's ability to serve a counter notice (following a Notice to Treat or GVD (see Q43) and the language or terminology applied when acquiring only part of a building or piece of land and material detriment thereto (Q48)
22. Lastly on implementation the consultation proposes an express provision for withdrawal of counter-notices, which should include provision for setting a new vesting date.
23. With regard to these proposals relating to implementation, again the Bar Council's position is that it is supportive subject to the same caveat about preventing the loss of any current protections for those affected. The Bar Council has not however sought

to address a number of these questions as they relate to areas of detail which are best addressed by specialist practitioners and bodies.

(4) Compensation

24. In Chapters 6 – 12 the consultation considers in detail the complex and wide range of rules, practice and principles that have become established surrounding compensation for CPO (which the Bar Council understands has perhaps rather euphemistically become known as the ‘Compensation Code’).

25. The Law Commission out of this analysis puts forward a number of proposals:

- (i) giving statutory expression to the basic right to compensation based upon putting the landowner “*so far as money can do it, in the same position as if his land had not been taken from him*”⁴ [Q 52]
- (ii) abandoning the principle of compensation as a single global figure based upon a now out dated doctrine treating ‘disturbance’ compensation as part of the value of the land [Q51]
- (iii) amending current rules as to costs when compensation is disputed by the Upper Tribunal of the Lands Chamber (‘the Upper Tribunal’) which in certain circumstances mean that claimant for compensation may have to pay the costs of the AA as opposed to it being a matter for the Upper Tribunal [see Q54]
- (iv) seeking views on any issues on assessment of market value in accordance with rule (2) s5 of the Land Compensation Act 1961 (the LCA 1961) [Q55} and the calculation of equivalent reinstatement under rule (5) of s5 the LCA 1961 [Q56]
- (v) making minor amendments clarifying the approach to the calculation of injury to retained land [Q58 and 59]

⁴ *Horn v Sunderland Corporation* [1941] 2 KB 26 [42] per Scott LJ

- (vi) giving formal statutory reference to the entitlement to disturbance as part of compensation - recoverable so long as it is causally concerned with the acquisition [Q60]
- (vii) codifying the law on disturbance and introducing a starting date for recoverable loss which should be the date when the CPO is made as well as making provision for earlier losses to be recovered where there is prior agreement between the AA and the claimant, or where the Upper Tribunal determines that it would be unfair to refuse compensation in such a case (see Q64).
- (viii) Removing the distinction between compensation for losses from 'disturbance' where the claimant is disturbed from occupation of the land and losses under rule (6) of the s5 of the LCA 1961 in respect of "*any other matter not directly based on the value of land*" which does not require occupation as a pre-requisite to replace with a single term "*consequential loss*" [Q61]
- (ix) Refining and identifying the appropriate valuation date for the different heads of compensation : the date on which commencement of reinstatement work became reasonably practicable for equivalent reinstatement (see Q 69); the date of possession for injury to retained land and consequential losses taking into account 'post valuation date' evidence (see Q67); and a common statutory valuation date for losses incurred between the date of possession and the date when assessment of compensation is made based upon reasonable anticipation or actual losses known at the date of assessment (see Q68);
- (x) Introducing mandatory disturbance payments for agricultural occupiers [Q83].
- (xi) Introducing a rule that interest on compensation runs from a different date for items of loss, either by agreement of the parties or at the discretion of the Upper Tribunal (see Consultation Question 84).

- (xii) Bringing the procedures for Notice to Treat and GVD into line for shorter tenancies (see Q 87) and replacing current special rules on compensation for such (see Q88)
- (xiii) Amending the process for and assessment of the compensation for the acquisition of new rights (see Q35,36 and 104 and Q90 as well as Q91)

26. In addition, questions are asked in respect of what is referred to as the “*no scheme*” rule i.e. that when assessing compensation no account should be taken of any increase or decrease in market value of land that might be attributable to the underlying scheme to the CPO and also “*planning assumptions*” when relying upon Town and Country Planning Act 1990 CPO powers (the subject of recent amendments). A further issue is raised in respect of an apparent discrepancy between the no-scheme rule and the planning assumptions as to the date on which the underlying scheme is assumed to be cancelled and whether this needs to be addressed.
27. Further, the consultation asks generally whether there are issues arising out of basic and occupier's loss payments (see Q 82) as part of compensation and views are sought on the operation of the model claim for advance payments (see Q81).
28. With regard to compensation where no land is taken but is sought as a consequence of the impacts of the underlying public works (see s 10 of Compulsory Purchase Act 1965 and Part 1 of the Land Compensation Act 1973, the consultation proposes no changes but suggests amalgamation of the provisions as well as their clarification (see Q93; 94 and 97)
29. The consultation also looks in particular (see chapter 14) at the withdrawal or abandonment of a CPO and the consequences of that.
30. The consultation (see Q 98) propose that AAs should have a clear statutory power to withdraw a CPO after it is made but before it is submitted for confirmation, and between the confirmation of the CPO and the service of a notice to treat or execution

of a GVD as well as provisions relating to deemed to be withdrawal in various situations (see Q99).

31. Further the consultation also proposes (see Q100) that an AA must give notice of a withdrawal or deemed withdrawal of a CPO to affected landowners.
32. The Bar Council once again is supportive of the consultation's aims in putting forward these proposals in respect of compensation for CPO subject to the same caveat about preventing the loss of any current protections for those affected. The Bar Council has not however sought to address a number of these questions as they relate to areas of detail which are best addressed by specialist practitioners and bodies.
33. The consultation also asks consultees whether any of the provisional proposals could result in advantages or disadvantages to certain groups, whether or not these groups are protected under the Equality Act 2010.

Response to Questions:

Question 1. We invite consultees' views as to whether they are aware of: (1) any circumstances in which the provisions of the Lands Clauses Consolidation Act 1845 are still relied on? (If so, please provide details of the circumstances and the specific provisions); or (2) any other reasons why the repeal of the 1845 Act might prove to be problematic?

34. The Bar Council defers to the views of specialist practitioners.

Question 2. We invite consultees to provide data and evidence-based views on the likely impacts (economic and social) of the provisional proposals in this consultation paper.

35. The Bar Council would make the general observation that any increase in the use of CPO powers and any changes to the way that compensation is assessed as well as the changes and improvements to the ease with which the public and affected

landowners can engage with the process as well as transparency are likely to be beneficial. The Bar Council would make it plain however this is not a data or evidence based view.

Question 3. We invite consultees to tell us if they believe or have evidence or data to suggest that any of our provisional proposals could result in advantages or disadvantages to certain groups whether or not these groups are protected under the Equality Act 2010.

36. The Bar Council would refer to its general position set out above under its response to the topic headings but does not provide any data or evidence in response to this question.

Question 4. We provisionally propose that any future consolidation of compulsory purchase legislation should state expressly that a compulsory purchase order should not be authorised unless there is a compelling case in the public interest for the compulsory acquisition. Do consultees agree?

37. The Bar Council agrees with this proposal as it is a well established and well known fundamental principle to the justification for CPOs⁵ albeit to date expressed in case law and policy. There is clear benefit in this being expressed in statutory terms.

Question 5. We provisionally propose that the separate procedures for the authorisation of compulsory purchase orders (in Part II of, and Schedule 1 to, the Acquisition of Land Act 1981) relating to orders made by Ministers and orders made by other bodies, should be amalgamated. Do consultees agree?

38. Whilst the Bar Council defers to specialist practitioners on this matter, it would agree in terms of the principle of what is proposed.

Question 6. We invite consultees' views as to the most appropriate terminology to be used in future consolidated legislation to describe the stages in the authorisation process for a compulsory purchase order. In particular, would it be best to describe an order as being: (1) first "prepared in draft" and then "made" (as ministerial orders currently are); (2) "made" and then "confirmed" (as non-

⁵ Set out in particular in policy terms in the Government's "Compulsory purchase process: guidance" (updated Jan 2025)

ministerial orders currently are); (3) “applied for” and then “made” (as development consent orders and Transport a

39. The Bar Council again defers to specialist practitioners on this matter.

Question 7. We invite consultees’ views as to whether a non-ministerial compulsory purchase order should be executed, as now, when it is “made”, or whether it should be executed at the end of the authorisation process, once the order has been modified (if applicable) and confirmed by the confirming authority.

40. The Bar Council again defers to specialist practitioners on this matter but would suggest there is clearer logic and expectation that a CPO be executed at the end of the authorisation process.

Question 8. We provisionally propose that when publicising the making of a compulsory purchase order by site notice, there should be an express obligation upon acquiring authorities (so far as reasonably practicable) to keep the notice in place for the duration of the objection period. Do consultees agree?

41. The Bar Council again defers to specialist practitioners on this matter but would note in practical terms the caveat of reasonable practicability is important for authorities.

Question 9. We invite consultees’ views as to whether the lack of an express role in section 16 of the Acquisition of Land Act 1981 for the confirming authority causes problems in practice.

42. The Bar Council again defers to specialist practitioners on this matter.

Question 10. We provisionally propose that section 31 of the Acquisition of Land Act 1981, which contains a power for the “appropriate Minister” to authorise (jointly with the confirming authority) the acquisition of a statutory undertaker’s land without a certificate under section 16, should be repealed. Do consultees agree?

43. The Bar Council again defers to specialist practitioners on this matter

Question 11. We provisionally propose that section 17 of the Acquisition of Land Act 1981, which requires an order acquiring statutory undertakers’ or local authorities’ land to be

subject to special parliamentary procedure in certain circumstances, should be repealed. Do consultees agree?

44. The Bar Council again defers to specialist practitioners on this matter .

Question 12. We invite consultees' views as to whether the provisions of section 19 of the Acquisition of Land Act 1981 for the protection of common land etc. cause any problems in practice.

45. The Bar Council again defers to specialist practitioners on this matter.

Consultation Question 13. We have identified three possible options for reform (or not) of the statutory review procedure in Part IV of the Acquisition of Land Act 1981. These are: (1) Option 1 (no change – leave the existing ambiguity): do nothing to the existing statutory framework and allow any further development in the law to be undertaken through decisions of the courts. (2) Option 2 (impose greater clarity on the existing framework as we understand it): any challenge to the validity of a compulsory purchase order should be made under the statutory review procedure, and no such challenge may be made by judicial review. The law should be changed to allow an application for statutory review to be lodged once a compulsory purchase order has been made. Judicial review could only be used to challenge decisions made prior to the making of the order. (3) Option 3 (our 2004 recommendation): any challenge to the validity of a decision to confirm a compulsory purchase order should be made pursuant to the statutory review procedure, and no such challenge may be made by way of judicial review. Any challenge to earlier stages in the process, up to submitting the order for confirmation, should be made by judicial review. We invite consultees' views on their preferred option and the reasons for their preference.

46. The Bar Council again defers to specialist practitioners on this matter however the Bar Council is not convinced that the ambiguity referred to arises in practice. In addition, the Bar Council is not clear of the benefit presented by options 2 and 3 which, in effect, provide additional opportunities for legal challenges to be brought throughout the CPO process. It appears to the Bar Council that this could prolong

the process unnecessarily and potentially provide not only landowner objectors but also third party objectors who may seek to undermine the underlying scheme to a CPO through challenge to have a number of chances to do so. The Bar Council understands that issues such as whether the correct powers have been relied upon and whether the correct procedures have been followed as well as consideration of compliance with the Human Rights Act 1998 and the Equality Act 2010 are matters considered at conformation stage in any event (whether or not there is an objection raised). To that end, the Bar Council does not see merit options 2 and 3.

Question 14. We invite consultees' views as to whether the statutory review procedure in Part IV of Acquisition of Land Act 1981 should be amended so that "persons aggrieved" by a decision to refuse to confirm a compulsory purchase order must use that procedure, instead of judicial review.

47. The Bar Council agrees.

Question 15. We provisionally propose that an acquiring authority, when it serves a notice to treat, must have made a clear decision to proceed with the purchase of the subject land. A corollary of this is that, where an acquiring authority has not made such a decision, it may not serve a notice to treat merely to extend its power to compulsorily acquire land beyond the initial time limit for implementation. Do consultees agree?

48. The Bar Council again defers to specialist practitioners on this matter but from practical and from the perspective of overall fairness would agree with this proposal.

Question 16. We provisionally propose that: 6 (1) the currently alternative procedures for implementing a compulsory purchase order (notice to treat and the general vesting declaration) should be replaced by a single unified procedure; and (2) the single unified procedure should be based on the more modern general vesting declaration procedure, with suitable modifications. Do consultees agree?

49. The Bar Council again defers to specialist practitioners on this matter nevertheless would suggest that there is clear logic and benefit from this proposed change.

Question 17. We invite views from consultees on whether the unified single procedure which we propose above should contain suitable modifications aiming to retain the flexibility and other features currently driving the use of the notice to treat procedure in a minority of acquisitions. In particular, some options include: (1) having a vesting period of anywhere between three months and three years after the execution of a general vesting declaration to mirror the three-year default expiry period of a notice to treat; (2) permitting acquiring authorities to bring forward the vesting date, by agreement with the landowner (as section 8A of the Compulsory Purchase (Vesting Declarations) Act 1981 currently only permits the date to be postponed by agreement); (3) introducing an alternative statutory notice procedure to acquire minor or long tenancies which are about to expire, replicating the effect of section 9(2) of the Compulsory Purchase (Vesting Declarations) Act 1981; (4) commencing the temporary possession provisions in sections 18 to 31 of the Neighbourhood Planning Act 2017 either generally or to the extent that they relate to the implementation of CPOs; and (5) making provision for the withdrawal of a general vesting declaration, applying some or all of the provisions in section 31 of the Land Compensation Act 1961 that apply to notices to treat. We welcome consultees' views on these, or any other options for retaining the flexibility driving the use of the notice to treat procedure in a minority of acquisitions.

50. The Bar Council again defers to specialist practitioners on this matter .

51. The Bar Council makes no comment upon or response to **Questions 18 to 50**. The Bar Council recognises that many of the proposals relating to the implementation stage following the confirmation of a CPO seek to simplify and clarify the process (e.g. using clearer language in the legislation to identify the counter notice procedure in Question 41 as well as the proposals generally to clarify and improve the counter notice process) and therefore as stated support the aims in principle but as noted elsewhere considers that the Law Commission is best assisted by the views of specialist practitioners.

52. Similarly with regard to **Questions 51 to 101** which address compensation the Bar Council makes no comment whilst again reiterating support for the Law Commission's aims behind their detailed analysis and suggested changes to update

and remove any anomalies that have arisen. Again the Bar Council would defer to the views expressed by specialist bodies and practitioners.

Question 102. We provisionally propose that there should be an official Government-sanctioned list of all general powers to acquire land compulsorily should be published and maintained by the Government. Do consultees agree?

53. The Bar Council agrees.

54. The Bar Council makes no comment upon or response to Question 103.

Consultation Question 104. We invite consultees' views on whether there ought to be a basic and standardised ancillary power to acquire rights over land which would apply wherever a primary power to compulsorily purchase land exists.

55. The Bar Council sees clear merit in this proposal.

56. The Bar Council makes no comment upon or response to Question 105 and 106 again deferring to the views of specialists.

Bar Council

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