

## **SURF CONSULTATION RESPONSE:**

### **Compulsory Purchase Order Reform**

#### *About This Paper*

Compulsory Purchase Orders (CPO) are a mechanism by which organisations can acquire land (including buildings) without the consent of their owner. These powers can be used by a wide range of public sector bodies – known as acquiring authorities. This includes – amongst others – Local Authorities, Scottish Ministers through various national agencies such as Transport Scotland, most executive non-departmental public bodies such as Highlands and Islands Enterprise and Scottish Enterprise, and public companies such as Scottish Water.

Early engagement is fundamental to the CPO process and – wherever possible – acquiring authorities should ideally seek to acquire land through other means. A CPO should therefore be seen as a measure of last resort.

Compulsory Purchase Orders must specify which [enabling powers](#) are being used – which link to each acquiring authority's statutory functions. Although some are fairly narrow (i.e. Transport Scotland can use a CPO to construct roads or rail lines, for instance), others – especially for Local Authorities – are broad due to their wide remit, encapsulating wide-ranging areas such as housing, transport, heritage, transportation, and any of its other functions.

CPOs must be confirmed and approved by Scottish Ministers. In particular, Ministers must be satisfied that there is a clear public interest to justify the acquisition. Anyone whose property is acquired compulsorily will receive compensation, which seeks to ensure that they are left neither better off or worse off as a result of the CPO – a principle known as 'equivalence.' In practice, the debate around the 'fairness' of compensation – along with a general discussion around the legalities of forcibly disowning someone of their property – mean that Compulsory Purchase Orders remain a hotly-contested and, at times, controversial power.

Given the cumbersome and legally complex framework surrounding its use – much of which is outdated – SURF's general view is that the legislation regarding CPOs should, wherever possible, be simplified, streamlined, and rationalised. At the moment, CPOs are often lengthy and costly affairs, and suffer from a lack of transparency and clarity.

The overarching goal of the Scottish Government's reform process aims to move towards a system that is:

- Equitable: Compensates claimants fairly and timeously.
- Effective: Supports efficient decision-making, whilst ensuring procedural fairness, openness, and transparency.
- Easy to understand: Provides all parties with certainty and clarity about how the process works and their rights, roles and responsibilities within it.

Our responses to this consultation reflect this wider aim, and we believe that CPOs – when used by and for communities – can be useful regeneration tools. In particular, SURF is interested in how communities can best engage with CPOs through, for instance, back-to-back CPOs delivered in partnership with other acquiring authorities – such as Local Authorities. We also note that – given possible confusion and even overlap with other related instruments – such as Community Right to Buy – more can and must be done to help communities understand key differences between various pathways, and how best to exercise and work with key stakeholders to achieve regenerative outcomes.

Relevant consultation documents can be found [here](#).

Below are SURF's responses to selected consultation questions. Please note that responses are best read in conjunction with the [wider consultation document](#), which provides relevant background and context to each question.

## Overview

**Question 1:** *Do you agree that legislation governing compulsory purchase procedures and compensation in Scotland should be brought into a single statute?*

Yes.

**Question 2:** *Do you have any specific concerns in relation to the repeal of existing legislation on CPO procedures and compensation that we should consider?*

No.

## Enabling powers

**Question 3:** *With the exception of SOSE and Network Rail, are there any gaps in acquiring authorities' enabling powers? Please provide specific examples.*

See question 4.

**Question 4:** *Are local authorities' compulsory purchase powers (set out on page 13-14) sufficiently broad to cover the circumstances in which they may need to compulsorily acquire land in carrying out their statutory functions?*

They are broad – in some instances perhaps too broad – as references are made to LAs making a CPO 'for the purposes of any of its functions.' This provides significant opportunities for Local Authorities, but perhaps also ambiguity. And given the broadening of council remits, and how wide-ranging economic development or even Community Wealth Building are, more should be done to empower LAs to fully understand the opportunities open to them – especially where they stray beyond the typical / clear-cut areas such as housing, transport, etc.

If not, please specify which powers require to be amended, clarified or supplemented.

**Local Government  
(Scotland) Act 1973**

s.71

Local  
Authority

For the purposes of  
any of its functions

**Question 5:** *Should there be a general power for acquiring authorities to create new rights in land and to attach conditions to such rights?*

Yes.

**Question 6:** *Should there be a general power for acquiring authorities to seek temporary possession of land?*

This makes sense and would avoid a lengthy back and forth over land where its use is constrained to a short period of time / activity.

**Question 7:** *Do you agree with the proposed list of matters that should be addressed in any new temporary possession power? If not, please give details.*

Yes.

**Question 8:** *How might the use of back-to-back CPOs be further encouraged?*

More awareness of back-to-back CPOs would be welcome – specific outreach especially to LAs would be particularly useful, but also to community groups in order to understand key differences between CRtB and CPOs, and how best to work with Local Authorities to realise projects. At the moment, both processes are daunting from a community perspective. Community Action Plans are crucial in helping to shape community aspirations and – when done well and undertaken collaboratively with the Community Planning Partnership – can significantly aid Local Authorities in understanding the development landscape, and where back-to-back CPOs might be relevant.

Local Authorities are also well-placed to understand specific community aspirations relating to vacant land.

The document also outlines that CPOs can be pursued if CRtB is not considered suitable, but more guidance should be provided to both authorities and communities to understand the sequencing of such processes, and when to pursue which process.

## Early engagement and preliminary steps

**Question 9:** *Do you agree that early and effective engagement is best promoted through non-statutory measures (e.g. guidance) rather than legislative requirements?*

Yes.

**Question 10:** *How might early and effective engagement between acquiring authorities and affected parties be further encouraged?*

**Question 11:** *Would it be helpful to introduce a general power for acquiring authorities to require specified parties to provide information about ownership, occupation and other interests in land? Please explain your views.*

Yes – but this should be clearly communicated as ideally taking place after early and effective engagement. Where early engagement does not lead to establishing the above, there should be a power for acquiring authorities to ascertain more information about the ownership and occupation, and interest of the land – especially where these are not publically known. Otherwise, it becomes too easy for specified parties to walk away from the process, fail to engage, which then lengthens the overall process.

**Question 12:** *Do you agree that acquiring authorities should have a general power of entry prior to the making of a CPO for the purposes of surveying etc?*

Yes.

**Question 13:** *Does the outline proposal for a general power of entry strike a reasonable balance between the needs of acquiring authorities and rights of the owner/occupier? If not, how should it be changed?*

Yes – it sounds reasonable.

## Notification and advertisement of a CPO

**Question 16:** *Do you agree that the notification requirements for CPOs should be prescribed through secondary rather than primary legislation?*

Yes.

**Question 17:** *Should heritable creditors be added to the list of parties who must be individually notified of a CPO? Should they have the status of statutory objectors?*

No – and if they are to be notified, they should not have the status of statutory objectors, meaning a new category should be created. However, this seems needlessly complex. It should be up to the recipient of the CPO to inform relevant creditors – they may also not all be known publically.

**Question 18:** *Are any other changes required to the list of people to be individually notified?*

No.

**Question 19:** *Do you agree that the CPO (and map) should be published on a suitable website, in addition to being made available for inspection at a specified physical location?*

Yes.

**Question 20:** *Should newspaper notices continue to be used to publicise the making of CPOs?*

Yes – at least in the short term. But this should be subject to review and should be easy to change in future. Moreover, many newspapers occupy digital platforms, so notices will still be viewable on online platforms.

**Question 21:** *What alternative approaches might be appropriate for publicising CPOs – either in addition to or instead of newspaper notices?*

Agree on the proposal of adding CPOs to planning authority lists given relevance and overlap there. Another idea could be to have them listed / advertised by the relevant Community Council – if there is one active in the area. These often maintain social media presences, regular meetings, and public noticeboards.

The burden should be on the acquiring authority to liaise with relevant noticeboards or the above – to keep admin for those organisations to an absolute minimum.

A potential risk with this is that the above bodies become a forum for discussion about the merit / need of the CPO – and that such organisations are seen to be endorsing the CPO in question. This should be carefully considered and clearly identified in comms.

## Digitisation

**Question 22:** *Should Scottish Ministers have a power to prescribe (through secondary legislation) common data standards for compulsory purchase documentation? If not, please explain your reasons.*

Yes, this would significantly help our understanding of the process and what legislation is needed to facilitate CPOs in future.

**Question 23:** *Should acquiring authorities be able to serve compulsory purchase notices by electronic means, if a party agrees to this in writing and provides an address for this purpose? If not, please explain your reasons.*

Yes.

## Confirmation procedures – Deciding a CPO

### Considering objections to a CPO

**Question 24:** *Should there be a statutory time period within which an opposed CPO should be referred to a Reporter after it has been submitted for confirmation? If not, please explain your reasons.*

Yes.

**Question 26:** *Should express provision be made in legislation for objections to be considered through written submissions?*

Yes – this could significantly shorten timescales.

**Question 27:** *Should the procedural rules for hearings and written submissions for CPO cases be set out in secondary legislation?*

Yes.

**Question 28:** *Do you agree that statutory objectors' right to be heard at either a PLI or a hearing should be retained?*

Yes – but more clarity and guidance should be set out as to the difference, and why certain cases progress to a PLI.

**Question 29:** *Should Scottish Ministers continue to decide whether a PLI or hearing is used? If not, in what circumstances should a PLI be required?*

As above – yes, but more guidance should be set to provide further clarity. At the moment, this seems unclear and has led to the assumption that all objectors have a right to a PLI.

**Question 30:** *Should provisions on awards of expenses be extended to cover cases where objections are considered through hearings and written submissions?*

Yes.

### How CPOs are decided

**Question 31:** *Does the public interest test, as currently set out in Circular 6/2011, strike a fair balance between private and public interests? Please explain your views.*

Yes – although more clarification could be provided. Specifically, regarding Strategic Fit, which strategies, policies or programmes should be referenced? It should, for example, make clear that – from a community perspective – Community Action Plans should be carefully considered and aligned, especially where back-to-back CPOs are being pursued.

Regarding funding – this remains challenging and is a major barrier for CPOs moving forward. A degree of flexibility regarding funding could be useful, especially in the current context of constrained public finances – notably where land or future assets could be leveraged to ensure deliverability in future.

### Who takes CPO decisions

**Question 33:** *Should acquiring authorities be empowered to confirm unopposed CPOs?*

Yes.

Also – the fact that so many CPOs end up being unopposed may suggest that there is more scope for better and earlier engagement to help avoid the process altogether. More must be done to understand why so many CPOs end up being unopposed and what could be done to help streamline this process – i.e. better mediation, clearer engagement, better guidelines or advice, etc.

**Question 34:** *If acquiring authorities are empowered to confirm unopposed CPOs, which approach would be preferable – Option 1 or 2? Please explain your views.*

Option 1 – potentially as an interim measure. Option 2 might erode trust in the system and – even though it is unlikely to actually lead to unfairness – the perception of unfairness in an already legally complex area around rights might harm, rather than aid, the process.

**Question 35:** *Should Reporters be empowered to take CPO decisions, subject to published criteria regarding delegation by Scottish Ministers? Please explain your views.*

Yes.

## Scope and timing of CPO decisions

**Question 42:** Would a power to confirm CPOs subject to conditions be helpful in terms of overall project delivery? Please explain your views.

Yes – it would significantly help de-risk project and could help with ensuring funding is in place. However, with a key outcome of this reform being to minimise the time involved in a CPO, this key addition likely will achieve the opposite – if anything it will lengthen the CPO timeline considerably. It may also make it even easier for funders to hesitate when it comes to project funding, thus effectively creating a situation whereby conditional CPOs become the default, and not the exception.

It also likely places significant additional burdens on already stretched planning departments, for example, if planning is sought before the CPO is confirmed.

**Question 44:** *Do you agree that the Scottish Government should publish target timescales for the issuing of CPO decisions, rather than having binding statutory time limits? If not, please explain your reasons.*

Target timescales will not be useful unless there is an incentive to meet them. Although there are risks to implementing statutory time limits, the intention of this reform process is to reduce CPO complexity and reduce the time involved.

**Question 46:** *Should the Scottish Government be required to report on compliance with any target timescales for CPOs?*

Yes – and this may effectively inform whether target timescales (if implemented) can shape statutory ones.

## Challenges to a CPO

**Question 47:** Do you agree that the grounds on which a confirmed CPO may be legally challenged should be retained? If not, please explain your reasons.

Yes.

**Question 48:** *Should the 6-week period within which a confirmed CPO may be legally challenged be retained? If not, what should the period be?*

It should be retained.

**Question 49:** *If a legal challenge is successful, should the court have discretion to quash just the confirmation decision, rather than its only remedy being to quash the Order itself?*

Yes.

## Timing

**Question 53:** *Should confirmation notices be required to be published within 6 weeks of the date on which the order is confirmed? If you disagree, what timing would you prefer, and why?*

Yes.

**Question 54:** *Do you agree that the standard implementation period should remain at three years?*

Yes.

**Question 55:** *Should confirming authorities be able to specify a longer or shorter implementation period?*

Yes – especially for complex or back-to-back CPOs.

## Compensation

### Value of land acquired

**Question 65:** *Do you agree that compulsory purchase compensation in Scotland should continue to be based on the principle of equivalence? If not, please explain your reasons.*

Yes.

**Question 66:** *Should compensation for land acquired compulsorily continue to be based on an assessment of its market value (disregarding increases/decreases attributable to the CPO scheme)? Please note that the following questions consider potential exceptions to this approach.*

Yes – however, this may be somewhat ambiguous in the above-mentioned question relating to a conditional CPO, especially where a CPO is conditional on planning being sought and received. In that instance, a CPO has not yet progressed; yet the value has likely increased significantly – there is an ambiguity here as the ‘hope

value' has now become tangible, before a CPO has been implemented fully. Guidance and policy should make clear the positions in the eventuality that conditional CPOs are pursued – which as noted above are worthwhile instruments.

**Question 67:** *Should acquiring authorities have the power to request that, for a specific CPO, compensation would take no account of the prospect of planning permission being granted for alternative development? It would be for Scottish Ministers to make the decision when confirming the CPO.*

Yes – especially where a CPO is conditional as mentioned in the above question.

**Question 68:** *Should the no-scheme principle be codified in the legislation?*

Yes.

**Question 69:** *If the no-scheme principle is codified, do you agree with the outline proposal? Are there any other matters that would need to be addressed?*

Yes.

**Question 70:** *Should the planning assumptions be repealed and re-written?*

Yes.

**Question 71:** *Do you agree with the broad outline for how the planning assumptions might be reformed? Do you have any comments on the proposed changes to the planning assumptions?*

**Yes.**

## Compensation procedures

### Making a claim

**Question 93:** *Should acquiring authorities be required to advise owners of their rights to compensation and how to claim it?*

Yes.

**Question 94:** *Should a statutory claim form be provided to collect more information about the amount of compensation sought?*

Yes.

**Question 95:** *Should acquiring authorities be required to provide information on their assumptions relating to compensation, if this is requested by a claimant?*

Yes.

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End of SURF's response

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Visit our [policy page](#) for more on SURF's policy influencing activities and other consultation responses.