

# The Planning Series

## 14 – Compulsory Purchase Orders

March 2021



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## 14 – Compulsory Purchase Orders

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**Paper Overview:**

Compulsory Purchase Orders (CPOs) allow certain bodies to buy land or property without the consent of the owner. This briefing provides a background to CPOs, the powers that can be used to implement a CPO and which authorities can do so. It also describes the objection process, compensation and devolution of CPOs..

This briefing provides an overview of what DNS are, the process of consenting for them and how communities are involved in the DNS process.



## Contents

<b>What are Compulsory Purchase Orders? .....</b>	<b>1</b>
<b>Devolution of CPO and land compensation .....</b>	<b>1</b>
<b>Under what powers can CPOs be put in place?.....</b>	<b>2</b>
<b>Which authorities have the competence to initiate CPOs? .....</b>	<b>3</b>
<b>What can an objecting land owner do? .....</b>	<b>3</b>
Decision.....	4
<b>Compensation.....</b>	<b>4</b>
<b>Key sources .....</b>	<b>5</b>
Welsh Government.....	5
Planning Aid Wales .....	5
Senedd Research .....	5

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## What are Compulsory Purchase Orders?

A Compulsory Purchase Order (CPO) allows certain bodies, ‘the acquiring authority’, (commonly local authorities) which need to obtain land or property, to do so without the consent of the owner. CPOs are granted to facilitate developments of public interest, for example when building motorways, on land the owner does not want to sell. The acquiring authority must be able to demonstrate that taking the land is necessary and that there is a ‘compelling case in the public interest’.

The acquiring authority does not have the powers to compulsorily acquire land until the ‘confirming authority’ approves the CPO. In Wales the confirming authority is the Welsh Government. The acquiring authority can acquire by agreement at any time and should attempt to do so before acquiring by compulsion, which should be a last resort.

The Welsh Government’s compulsory purchase guidance is set out in the **Welsh Government Circular 003/2019: Compulsory Purchase in Wales and ‘The Criche! Down Rules (Wales Version, 2020)’**. The Welsh Government has also published a **Compulsory Purchase Order Manual (Edition 1)** which supplements the Circular and provides detailed guidance for those responsible for preparing CPOs.

## Devolution of CPO and land compensation

The *Wales Act 2017* introduced a ‘reserved powers’ model of devolution. It sets out the areas that are outside of the Senedd’s legislative competence, leaving everything else devolved to Wales. The reserved powers model came into force in April 2018.

Prior to this, the devolution settlement was based on a ‘conferred powers’ model under the *Government of Wales Act 2006*. Under the previous model, compulsory purchase and land compensation were ‘silent subjects’. The Senedd could legislate on a silent subject provided the provision ‘fairly and realistically’ related to a devolved subject. Therefore the Senedd could legislate in relation to compulsory purchase and land compensation to the extent that the provision related to the acquisition of land for a devolved purpose, for example for roads.

The Wales Bill, as originally introduced, would have reserved the ‘compulsory purchase of land’, transferring powers to the UK Parliament in terms of both compulsory purchase and land compensation. However, following amendments

made to the Bill in the House of Lords, the scope of the reservation (number 185) was narrowed, leaving compulsory purchase devolved to Wales. Powers around compensation however are reserved.

## Under what powers can CPOs be put in place?

Compulsory purchase powers exist in many different pieces of legislation and are often specialised to the purpose for which an authority is seeking to acquire land. For example, acquisition of a dilapidated house can be made under housing legislation. The power used will in turn influence the factors which the Welsh Government will want to take into account in determining confirmation. Some of the most common powers and guidance on their use are set out in Part 2 of the Welsh Government **Circular on CPOs (003/2019)**. This includes:

- Orders made under section 226 of the *Town and Country Planning Act 1990*;
- Orders made under housing legislation;
- Orders made under Part 7 of the *Local Government Act 1972* for purposes of other powers;
- Orders made on behalf of Community Councils;
- Orders made under section 89(5) of the *National Parks and Access to the Countryside Act 1949*;
- Orders made for educational purposes;
- Orders made for highway purposes;
- Orders made for listed buildings in need of repair; and
- The Welsh Government’s power to acquire land compulsorily.

Section 226 of the *Town and Country Planning Act 1990* gives local authorities broad powers to acquire land compulsorily and is commonly used. The Circular on CPOs (003/2019) advises that this general power should not be used in place of other enabling powers and should only be used where there is no specific land acquisition power.

Section 226 of the *Town and Country Planning Act 1990* sets out circumstances under which compulsory purchase may be authorised:

(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area –

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land;

(b) 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.

(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects –

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.

## Which authorities have the competence to initiate CPOs?

Many bodies with statutory powers have compulsory purchase powers. Such powers are conferred by various acts as discussed above and require the approval of the Welsh Government. In practice, the greatest users of compulsory purchase powers are local authorities. Other statutory bodies who may make CPOs include government departments and major utilities such as water or electricity companies.

## What can an objecting land owner do?

The acquiring authority is expected to attempt to acquire land by agreement through negotiation in the first instance before acquiring by compulsion, which should be a last resort. If a CPO is required, there is a formal process for objections outlined below.

Section 12 of the *Acquisition of Land Act 1981* requires the acquiring authority to send a notice of the making of the CPO to every owner, lessee and occupier (except tenants for a month or any period less than a month) of any land comprised in the order. The notice invites objections to be submitted to the confirming authority, the Welsh Government. Section 13(3) of the *Acquisition of Land Act 1981* enables the Welsh Government to require objectors to state their grounds of objection in writing. Objections must reach the Welsh Government within the period specified in the notice. There is no specific format for the objection other than it must be in writing. Opponents may write the letter themselves or appoint a professional

adviser to submit the objection on their behalf.

If objections are received and not withdrawn following negotiations with the acquiring authority, the confirming authority will appoint a **Planning Inspector**. Remaining objections are then considered through the written representations procedure unless a remaining objector notifies the Welsh Government they wish for a public inquiry to be held. In such cases a public inquiry will be called in the normal way.

The ***Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004*** (the 2004 Regulations) set out the written representations procedure. The Welsh Government has consulted on ***Reforms to Compulsory Purchase Powers and Procedures***, including proposals to amend the 2004 Regulations to streamline the written representations procedure.

Appeals relating to compensation are treated separately and are heard by the Lands Tribunal. In the case of an inquiry the *Acquisition of Land Act 1981* requires objectors to provide **a statement of case** where parties should set out concisely the case they expect to prove.

## Decision

After considering the Inspector's report following either an inquiry or the use of the written representations procedure, the confirming authority (the Welsh Government) will decide to confirm, modify or reject the CPO. The confirming authority may make a decision contrary to the Inspector's recommendations, although this is not very common. When the Minister has reached their decision they will, in writing, notify the acquiring authority, the remaining objectors and any other person who appeared at the inquiry or made written representations and asked to be notified. The decision letter will set out the reasons for the decision.

## Compensation

As outlined earlier in this briefing, whilst compulsory purchase is devolved under the *Wales Act 2017*, land compensation is a reserved matter.

The *Land Compensation Act 1961* primarily governs the method of assessing the amount of financial compensation when compulsory acquisition is used. The Act sets out the basic rules for assessing compensation for the compulsory acquisition of land, including that:



- no allowance shall be made on account of the acquisition being compulsory;
- the value of the land shall...be taken to be the amount which the land if sold in the open market by a willing seller might expect to realise;
- no account is to be taken, in assessing the level of compensation payable, of any enhancement of the value of the land being acquired on account of the development or prospective development facilitated by the CPO.

In other words, the amount of compensation paid seeks to be the amount the land owner would have received had he/she decided to sell the land in the open market without the development resulting in the CPO being proposed.

If no agreement can be reached, matters of valuation and compensation are to be referred to, and determined by, the Lands Tribunal. The Lands Tribunal has power to determine the amount of compensation payable for land compulsorily purchased by a public authority or private body using statutory powers when the parties cannot reach agreement themselves. The Tribunal has no power to consider the validity of a CPO.

## Key sources

### Welsh Government

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

**Compulsory Purchase Order Manual (Edition 1)**

Consultation on **Reforms to Compulsory Purchase Powers and Procedures**,

### Planning Aid Wales

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