

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO. 2)

HOUSING AND PLANNING BILL: COMPULSORY PURCHASE ETC.

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly for Wales.
2. The Housing and Planning Bill (the “Bill”) was introduced in the House of Commons on 13 October 2015. The Bill can be found at:
<http://services.parliament.uk/bills/2015-16/housingandplanning.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Department for Communities and Local Government. The UK Government’s claimed policy objectives for the Bill are to take forward proposals to build more homes that people can afford, give more people the chance to own their own home, and ensure the way housing is managed is improved.
4. The Bill is now in nine parts on introduction to the House of Lords:
 - Part 1 makes provision about new homes in England.
 - Part 2 provides greater powers for local authorities to tackle rogue landlords and letting agents in England.
 - Part 3 reforms rules around abandonment of rented properties in England.
 - Part 4 makes provision regarding social housing in England.
 - Part 5 makes provisions regarding housing needs in England, introduces a more stringent ‘fit and proper’ person test for landlords letting out licensed properties, such as Houses in Multiple Occupation in England, requires Tenancy Deposit Scheme data to be shared with local authorities in England, amends the Estate Agents Act 1977, makes provision for leaseholds and rent charges in England and Wales.
 - Part 6 makes provision for planning in England.
 - Part 7 makes provision to improve the compulsory purchase regime, with the stated aim of making it ‘clearer, fairer and faster’.
 - Part 8 makes provision about public authority land.
 - Part 9 makes general provisions.

Provisions in the Bill for which consent is sought

5. This LCM relates to Part 7 of and Schedules 14 to 19 to the Bill which make various provision with the aim of improving the compulsory purchase regime.

6. The Bill amends overarching legislation including:
- Land Compensation Act 1961;
 - Compulsory Purchase Act 1965;
 - Land Compensation Act 1973;
 - Compulsory Purchase (Vesting Declarations) Act 1981; and
 - Acquisition of Land Act 1981.
7. The Bill also seeks to make consequential amendments to topic specific compulsory purchase provisions within various Acts that are within areas of devolved competence including economic development, transport, housing, and planning.
8. Broadly, the relevant provisions included in the Bill cover the following (clause numbers referred to below are those for the Bill as introduced in the House of Lords):

New general power of entry for survey and valuation purposes

9. The current ability of certain bodies (such as local authorities) to access land for survey and valuation work is extended to all acquiring authorities in connection with a proposal to acquire land, by clause 152.
10. Clauses 153-158 make further provision in connection with this new general power.
11. Clause 159 also introduces Schedule 14 which clarifies how existing powers of entry will interact with the new general power of entry in clause 152.

Confirmation and time limits

12. So as to address the fact that, once a compulsory purchase order has been submitted to the confirming authority the process can be lengthy and the timescales for a decision unclear, in relation to Wales, clauses 160 - 161 provide that:
- the Welsh Ministers may publish one or more timetables in relation to steps to be taken by them in confirming a compulsory purchase order;
 - the Welsh Ministers must lay an annual report before the National Assembly for Wales setting out the extent to which confirming authorities have complied with any applicable timetable; and
 - some Ministerial decision-making powers can be delegated to inspectors.
13. Clause 162 makes amendments to the Compulsory Purchase Act 1965 and to the Compulsory Purchase (Vesting Declarations) Act 1981.

14. Clause 162(1) clarifies the time limit for exercising compulsory powers where the notice to treat procedure is to be followed, i.e. that a notice to treat may not be served after the end of the period of 3 years beginning on the day on which the compulsory purchase order becomes operative. This confirms the position already established by case law (*Salisbury (Marquis) v G. N. Ry* (1852) 17 Q.B. 840; approved in *Tiverton, etc Ry v Loosemore* (1884) 9 App.Cas. 480).
15. Clause 162(2) clarifies that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative. The intention behind this provision is noted as being to end any uncertainty created by the decisions of *Westminster City Council v Quereschi* (1990) 60 P. & C.R. 380 and *Co-operative Insurance Society Limited v Hastings BC* (1993) 91 L.G.R. 608.

Vesting declarations: procedure

16. Clause 163 and 164 (together with Schedule 15, which clause 163 introduces) change the notice requirements and the earliest vesting date for general vesting declarations.
17. The notice period for taking possession under the general vesting declaration procedure is extended to a minimum of 3 months, from the current minimum of 28 days.

Possession following notice to treat etc.

18. Various changes are made within the Bill to harmonise processes and increase the notice period given to persons in possession of land.
19. Clause 165 amends section 11 of the Compulsory Purchase Act 1965 so as to extend the notice period for taking possession under the notice to treat/notice of entry procedure to a minimum of 3 months, from the current minimum of 14 days.
20. Clause 166 makes provision to address the situation where an acquiring authority does not enter and take possession on the date specified in a notice of entry served. It inserts a new section 11B into the Compulsory Purchase Act 1965 which enables a person in possession of the land to serve a counter notice requiring the acquiring authority to take possession of the land on a specified date. That date must not be less than 28 days after the date the counter notice is served and must not be before the end of the period specified in the notice of entry or any extended period that the person has agreed with the acquiring authority.

21. Clause 167 further amends the Compulsory Purchase Act 1965 so as to make clear that an acquiring authority may extend the period specified in a notice of entry by agreement with each person on whom it was served.
22. Clause 168 makes corresponding changes to those made by clauses 165 to 167 in relation to the New Towns Act 1981.
23. Clause 169 introduces Schedule 16 which abolishes the alternative procedure for taking possession of land under section 11(2) of, and Schedule 3 to, the Compulsory Purchase Act 1965 on the basis that this procedure is no longer used.
24. Clause 170 amends section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 so as to extend the minimum notice period for taking possession from 14 days to three months.

Compensation

25. Clauses 171 -175 make various provision about compensation payments to claimants by acquiring authorities. This includes provision about making a request for advance payment of compensation; power to make and timing of advance payment; interest on advance payments of compensation; and provision about the repayment of advance payment where there is no compulsory purchase.

Disputes

26. Where claimants wish to challenge the acquiring authority's proposal to take only part of their land, because of the material detriment that will be suffered to their retained land, they can serve a counter-notice on the acquiring authority requesting that they purchase the entire property.
27. Currently, the procedure for claiming "material detriment" differs depending on whether an acquiring authority uses a notice to treat or a general vesting declaration to exercise its compulsory purchase powers.
28. Provision is therefore made in Schedules 17 and 18 (as introduced by clause 176) so as to harmonise as far as possible the approach to the treatment of material detriment under the vesting declaration and notice to treat procedures.
29. Clause 177 widens the remedies available to the courts. It clarifies that the court has the power to quash the decision to confirm the compulsory purchase order as well as the power to quash the whole or any provision of the order itself. Where the compulsory purchase order itself is found to be sound but there is an error in the decision to confirm the order, the court may decide to quash the decision alone.

30. Provision is also made in clause 178 to extend the time available for implementation, to take account of the time used for the challenge process.

Extension of powers to override easements and other rights

31. Clause 179 introduces a new power which extends the existing powers to override easements and restrictive covenants under the Town and Country Planning Act 1990 and other legislation to acquiring authorities, such as statutory undertakers, which do not already have those powers.

32. Clause 180 makes provision for payment of compensation where rights are overridden.

33. Clause 181 defines the terms used in sections 179 and 180.

34. Clause 182 introduces Schedule 19 which contains consequential amendments to existing legislation and repeals existing powers to override easements and other rights which will be replaced by the new power in clause 179.

35. The provisions apply in relation to Wales.

36. Compulsory purchase powers are an important tool for assembling land needed to help deliver social, environmental and economic change. As such, there are a number of devolved subject matters under Schedule 7 to the Government of Wales Act 2006 to which their exercise may relate. Those Subjects include (but are not limited to) ‘*archaeological remains. Ancient monuments. Buildings and places of historical or architectural interest*’ (par. 2) ‘*economic regeneration and development, including social development of communities, reclamation of derelict land and improvement of the environment*’ (par. 4), “*highways*” (par. 10), “*housing*” (par. 11), “*powers and duties of local authorities*” (par. 12), “*town and country planning, including listed buildings*” (par. 18), “*water supply, water resources management...flood risk management and coastal protection*” (par.19).

37. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to devolved Subjects such as those identified in the previous paragraph.

Advantages of utilising this Bill rather than Assembly legislation

38. In the view of the Welsh Government, it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

39. The changes to the Compulsory Purchase regime would be beneficial both in terms of improving efficiency and fairness to property holders in Wales subject to compulsory purchase powers and bodies using such powers. Furthermore as the law as it relates to land and land ownership in England and Wales is closely connected, it is appropriate to deal with the compulsory purchase provisions in this UK Bill and ensure they come into force in England and Wales at the same time.

Financial implications

40. There are no financial implications for the Welsh Government

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Minister for Natural Resources
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