

Changes to the confirmation and execution of Compulsory Purchase Orders

Introduction

1. There have been two rounds of reform to the procedures for the confirmation and execution of CPOs within a year. The Housing and Planning Act 2016 (“HPA 2016”) and the Neighbourhood Planning Act 2017 (“NPA 2017”) both contain amendments to the procedures for the confirmation of CPOs and their execution. This paper highlights the main changes. Neither Act makes radical changes to the procedural regime for CPO confirmation and execution. However, the amendments are designed to streamline certain aspects of the process and remove elements of uncertainty in the existing regime, particularly regarding the interpretation of certain provisions of the Compulsory Purchase Act 1965 (“CPA 1965”) and Compulsory Purchase (Vesting Declarations) Act 1981 (“CP(VD)A 1981”) regarding the time limits for service of notices to treat (“NTTs”) and general vesting declarations (“GVDs”). The changes appear designed to standardise as far as possible the differing time limits for the service of the requisite notices under either regime and to harmonise the two different methods of executing a CPO. It is important to note that not all of these provisions have come into force yet (I have set out where that is the case under each of those provisions).

Background: legislative framework to the confirmation and implementation of CPOs

2. The procedure for making and confirming CPOs is, in most cases, governed by the Acquisition of Land Act 1981 (“ALA 1981”), as amended by the Planning and Compulsory Purchase Act 2004.
3. The DCLG guidance on compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion (CPPCDRG) provides detailed guidance and best practice to acquiring authorities in

England making CPOs to which the ALA 1981 applies. However that guidance dates from October 2015 and has not yet been updated to reflect the legislative changes in HPA 2016 and HPA 2017.

4. The CPA 1965 regulates the implementation of a CPO by notice to treat and notice of entry. The CP(VD)A 1981” regulates the implementation of a CPO by a GVD.
5. The choice of procedure will depend on the objectives of the acquiring authority. The CPA 1965 procedure is normally used if an acquiring authority is developing the CPO land itself and needs to commence works on site immediately following confirmation of the CPO. By serving notice to treat, the authority can secure a right to possession in the short term and leave the assessment of compensation and the acquisition of title to the CPO land to a later date.
6. The procedure under the CP(VD)A 1981 is useful if the acquiring authority intends to sell the CPO land for development by a third party under a development agreement and therefore needs to acquire title to the land rather than simply to obtain possession (in practice, this is more common). A GVD enables the acquiring authority to assemble clean title to a site quickly. A GVD may also be preferred where details of all interests in the land are unclear. The GVD can operate to vest all interests in the land in the acquiring authority, thereby “cleaning” the acquiring authority’s title to the land.
7. The main disadvantage of the GVD process, to an acquiring authority, is that compensation is assessed at (and interest accrues from) the vesting date, notwithstanding that entry may not actually be required until later.
8. It is not necessary for an acquiring authority to acquire all of the land within the CPO at the same time, or by the same method, however it cannot use both methods in respect of the same interest.

Summary of changes introduced by the HPA 2016 and NPA 2017 at a glance

9. The main changes introduced by HPA 2016 to the procedural regime governing CPO confirmation and execution are as follows:
- a. **Timetables for confirmation of CPOs.** The Secretary of State is now required to publish timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order.
 - b. **Confirmation by inspector.** Inspectors can now be appointed to make the confirmation decision on behalf of the confirming authority.
 - c. **Power of the court to quash decision to confirm.** The Act clarifies that the court has power to quash the decision to confirm the CPO either generally or in so far as it affects any property of the applicant. So the Court has a discretion not to quash the making of the CPO in the first place (and so the acquiring authority does not have to be forced back to square one).
 - d. **Extensions of time limit for service of notice to treat or execution of a GVD during High Court challenges.** The time limits for service of a notice to treat or execution of a GVD are now automatically extended if a challenge is brought under section 23 Acquisition of Land Act in respect of a compulsory purchase order).
 - e. **Time limits for notice to treat and execution of general vesting declaration.** Time limits for exercising compulsory purchase powers have been clarified. A notice to treat may not be served (and a general vesting declaration may not be executed) after the end of three years beginning on the day the CPO becomes operative.
 - f. **Procedure for general vesting declarations.** A preliminary notice of intention is no longer required before a GVD is executed.

- g. **Notice requirements for general vesting declarations.** The minimum period after which land may vest in an acquiring authority after the service of the notices required under the Compulsory Purchase (Vesting Declarations) Act 1981 has been extended: the notice period for taking possession is now extended to a minimum of 3 months rather than the current minimum of 28 days.
 - h. **The procedure for notices of entry following service of NTTs.** The timescale has been extended (there is now a requirement for 3 months' minimum notice rather than the previous 14 day). A new provision for counter-notices requiring possession to be taken on a certain date has also been introduced.
 - i. **Procedure for objecting to division of land.** The procedure to object to division of land following either a GVD or notice of treat has been amended
10. The main procedural change introduced by the NPA 2017 is under section 34. This introduces a requirement for an acquiring authority to issue confirmation notices within 6 weeks of the decision to confirm the CPO. If it fails to do so, the confirming authority can take those steps itself and recover the reasonable costs of doing so from the acquiring authority.

A. Timetables for confirmation of CPOs

11. Section 180 HPA 2017 inserted section 14B and 14C into the Acquisition of Land Act 1981. Section 14B requires the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order. Section 14C provides that the Welsh Ministers may also publish one or more timetables in relation to steps to be taken by them in confirming a compulsory purchase order.

12. The section requires the Secretary of State or the Welsh Ministers to publish an annual report to Parliament or the Welsh Assembly setting out the extent to which confirming authorities have complied with any applicable timetable.
13. This section is not yet in force and so there are current no examples of any timetables published by the Secretary of State.
14. It is questionable how much impact this provision will have on the timescales for the confirmation of CPOs. This is not least because a failure to adhere to any such timetable does not have any consequences. Subsection 4 states that: *“the validity of an order is not affected by any failure to comply with a timetable published under this section”*.

B. Confirmation of CPOs by an Inspector

15. Section 181 inserts a new section 14D into the Acquisition of Land Act 1981. The new section confers a power on a confirming authority to appoint an Inspector to act instead of it in relation to the confirmation of a compulsory order to which section 13A Acquisition of Land Act 1981 applies. The section also enables a confirming authority to revoke its appointment of an Inspector at any time until a decision is made. Section 14D states:

14D Power to appoint inspector

- (1) A confirming authority may appoint a person (“an inspector”) to act instead of it in relation to the confirmation of a compulsory purchase order to which section 13A applies.*
- (2) An inspector may be appointed to act in relation to—*
 - (a) a specific compulsory purchase order, or*
 - (b) a description of compulsory purchase orders.*
- (2) An inspector-*
 - (a) has the same functions as a confirming authority under this Part (excluding this section),*

*(b) retains those functions even if all remaining objections are withdrawn after the inspector has begun to act in relation to a compulsory purchase order, and
(c) may hold a public local inquiry under section 13A(3)(a) or act as the person appointed to hear remaining objections under section 13A(3)(b).*

(4) Where an inspector is to act in relation to a compulsory purchase order, the confirming authority must inform—

*(a) every person who has made a remaining objection, and
(b) the acquiring authority.*

(5) Where an inspector decides whether or not to confirm the whole or part of a compulsory purchase order, the inspector's decision is to be treated as that of the confirming authority.

*(6) The confirming authority may at any time—
(a) revoke its appointment of an inspector, and
(b) appoint another inspector.*

(7) If the confirming authority revokes its appointment of an inspector while the inspector is acting in relation to a compulsory purchase order and does not replace the inspector, the authority must give its reasons—

*(a) to the inspector whose appointment has been revoked, and
(b) to all those informed under subsection (4).*

(8) Where in any enactment there is a provision that applies in relation to a confirming authority acting under this Part, that provision is to be read as applying equally in relation to an inspector so far as the context permits.

(9) In this section “remaining objection” is to be construed in accordance with section 13A.”

16. This provision therefore seems intended to expedite the process for relatively uncontroversial CPOs: rather than an Inspector submitting a report and a recommendation to the relevant Minister, the Inspector can take that decision directly. This section is not yet in force.

C. Power to quash decision to confirm compulsory purchase order.

17. Section 201 inserts a new subsection (3) into section 24 of the Acquisition of Land Act 1981. It states:

(3) If the court has power under subsection (2) to quash a compulsory purchase order it may instead quash the decision to confirm the order either generally or in so far as it affects any property of the applicant.

18. Section 202 inserts provisions which provide for an automatic extension of time to serve NTT or to execute a GVD during any High Court challenge.

D. New 6 week time limit to serve a confirmation notice

19. Section 34 NPA 2017 inserts a new subsection 3A into section 15 ALA 1981. New subsection 3A states the following:

“(3A) The acquiring authority must comply with subsections (1) and (3) before the end of—

(a) the period of 6 weeks beginning with the day on which the order is confirmed, or

(b) such longer period beginning with that day as may be agreed in writing between the acquiring authority and the confirming authority.

(3B) If the acquiring authority fails to comply with subsections (1) and (3) in accordance with subsection (3A), the confirming authority may—

(a) take any steps that the acquiring authority was required but has failed to take to comply with those subsections, and

(b) recover the reasonable costs of doing so from the acquiring authority.”

20. The effect of this section is that the acquiring authority loses the power to issue a confirmation notice if it does not do so after 6 weeks. The confirming authority (i.e in most cases the Secretary of State) however has a power to step in and take the steps that the acquiring authority should have carried out. This seems to leave it open to the Secretary of State to remedy any failures or oversight by the acquiring in issuing the confirmation notice. This amendment to section 15 ALA 1981 has yet to come into force.

E. Clarification of time limits for NTTs and GVDs

21. Section 182(1) and (2) substitutes section 4 CPA 1965 and inserts a new section 5A into CP(VD)A 1981. The new section 4 CPA 1965 states:

A notice to treat may not be served by the acquiring authority after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative.

22. Section 5A states:

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.

23. The previous version of section 4 CPA 1965 had stated as follows:

The powers of the acquiring authority for the compulsory purchase of the land shall not be exercised after the expiration of three years from the date on which the compulsory purchase order becomes operative.

24. Clarifying that a GVD or NTT must be executed within 3 years of the compulsory order becoming operative ends the uncertainty on this issue created by the inconsistent decisions of Westminster City Council v Quereschi (1990) 60 PCR 380 and Co-operative Insurance Society Limited v Hastings BC (1993) 91 LGR 608.

25. In Co-operative Insurance Society, it was held that for the purposes of the three year time limit that the exercise of compulsory purchase powers could only be made by service of a notice to treat or by executing a vesting declaration. In Quereschi it had been held that the exercise of powers could be made by service a section 3 notice under CP(VD)A 1981 (thus potentially extending the time to serve an NTT or GVD by a further 3 years). This ends any uncertainty on this issue, and to that extent is a welcome clarification.

F. Vesting declarations: change to the notice requirements

26. Section 183 introduces Schedule 15 which changes the notice requirements for GVDs.
27. Schedule 15 repeals section 3 and section 5(1) of the CP(VD)A 1981. Under those provisions, a preliminary notice of intention was required to be served before a GVD could be executed. Now, a prescribed statement about the effects of Parts 2 and 3 CP(VD)A 1981 must be included in the confirmation notice itself under section 15 ALA 1981.
28. This therefore removes the cumbersome process of having to serve three separate documents, i.e a confirmation notice, a preliminary notice of intention, and the notice of the executed GVD itself.

G. Earliest vesting date under a GVD

29. Section 184 amends section 4 CP(VD)A 1981 so as to extend the minimum period after which land may vest in an acquiring authority after the service of notices required by section 6 of that Act (i.e the service of a notice after the execution of a GVD). This extends the notice period for taking possession under the general vesting declaration procedure to a minimum of 3 months, from the current minimum of 28 days.

H. Possession following notice to treat

30. Section 186(2) amends section 11 of the CPA 1965 and extends the notice period for taking possession following a notice to treat. A notice of entry must now give 3 months notice (rather than the current minimum of 14 days' notice).
31. Subsection (3) inserts a new section 11A into the 1965 Act. Section 11A applies where after having served notice of entry, but before entering on taking possession of the land, the acquiring authority becomes aware of an owner, lessee or occupier to whom they ought to have given a notice to treat under section 5 of the 1965 Act. Any notices

of entry already served remain valid, but the authority may not enter and take possession unless they serve a notice to treat and notice of entry on the recently discovered person. New section 11A(3) and (4) provide that where the newly identified person is not an occupier, or the authority had been unaware of the person because they received misleading information in response to their inquiries, a shorter minimum notice period will apply. That period will be a minimum of 14 days, or until the end of the period specified in the last notice of entry, whichever is the longer.

I. Counter-notices requiring possession to be taken on specified date

32. Section 187 makes provision for the service of counter-notices requiring possession to be taken on a specified date. This seems to be directing at removing the uncertainty and prejudice to an occupier in circumstances where an acquiring authority does not enter and take possession on the date specified in a notice of entry served under section 11(1) of the Compulsory Purchase Act 1965 (for example, a continuing liability to pay rent or insure the land and property that is the subject of the compulsory purchase order).
33. Section 187 inserts a new section 11B into the Compulsory Purchase Act 1965. New section 11B enables an occupier with an interest in the land to serve a counter-notice requiring the acquiring authority to take possession of the land on a specified date. The date specified in the counter-notice must not be less than 28 days after the date on which the counter notice is served and must not be before the end of the period specified in the notice of entry under section 11(1) or any extended period that the person has agreed with the acquiring authority.
34. Subsections (4) and (5) of new section 11B set out circumstances where a counter-notice requiring possession to be taken has no effect: either because the notice to treat has been withdrawn or ceases to have effect; or where the acquiring authority is prohibited from taking possession by other provisions of the 1965 Act. In the latter case, the occupier may serve a further counter-notice once the prohibition ceases.

J. Procedure for objecting to division of land

35. Part 1 of Schedule 17 inserts a new Schedule 2A into the Compulsory Purchase Act 1965, which sets out the process for serving counter-notices requiring the purchase of land not in the notice to treat.
36. Part 1 of Schedule 2A sets out detailed provisions in relation to when a counter-notice can be served, the effect of the counter-notice on the notice of entry, the options available to the acquiring authority to respond to the counter-notice and the effects of accepting a counter-notice or referring it to the Upper Tribunal. Part 1 applies in circumstances where the acquiring authority has served a notice to treat but not taken possession of the land before any counter-notice is served.
37. Under Part 1, if an owner serves a counter-notice, any notice of entry served on him in respect of the land proposed to be acquired ceases to have effect (paragraph 6 of new Schedule 2A).
38. Where the acquiring authority accepts a counter-notice or decides to refer it to the Upper Tribunal, it may serve a new notice of entry on the owner. If the authority has already served a notice of entry in respect of the land proposed to be acquired, the normal minimum three month notice period does not apply to the new notice of entry in respect of that land (see section 11(1B) of the Compulsory Purchase Act 1965 inserted by section 186(2)(b)). The period specified in any new notice of entry must be a period that ends no earlier than the end of the period in the last notice of entry (paragraph 13 of new Schedule 2A). This enables the acquiring authority to enter the land proposed to be acquired without delay. The normal three month minimum notice period will, however, apply in respect of "the additional land" (where the counter-notice is accepted).
39. The procedure in Part 2 of Schedule 2A applies (instead of Part 1) if the acquiring authority has taken possession of part of the claimant's land unlawfully (for instance, because they have not served a notice to treat).
40. Part 3 of Schedule 2A deals with the determination of counter-notices referred to the Upper Tribunal by the acquiring authority, the factors that must be taken into account

in the determination (including whether in the case of a building, house or factory it has suffered material detriment) and the effect of a determination that more land should be acquired.

JAMES NEILL

Landmark Chambers

25 September 2017

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