The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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15 - Compulsory Purchase Orders
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1. 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.

2. 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 relevant factors are set out in Appendices A to F of Circular on CPOs (14(2)/2004):

01. Orders made under section 226 of the Town and Country Planning Act 1990;
02. Orders made under housing legislation;
03. Orders made under Part 7 of the Local Government Act 1972 for purposes of other powers;
04. Orders made under section 89(S) of the National Parks and Access to the Countryside Act 1949;
05. Orders for educational purposes, and for public libraries and museums; and
06. Compulsory acquisition for highway purposes.

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 (14(2)/2004) advises that local authorities should use specific powers available for the purpose in mind and only general powers where unavoidable.

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.

3. 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.

4. 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(4) 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.

Defra’s (UK Government’s Department for Environment, Food and Rural Affairs) Compulsory purchase system guidance (which is applies to England but is also relevant in Wales) details the validity of objections, stating that:

In general, any objection will be valid if properly made. The Minister is, however, entitled to disregard objections:

- If he is satisfied that the objection relates exclusively to matters which can be dealt with by the Lands Tribunal. This means disputes regarding the appropriate level of compensation and disputes on whether part only of a property may be compulsorily acquired or whether the authority should be compelled to acquire the whole – even if it only requires part for the scheme…
If, in the case of a CPO under the Town and Country Planning Act 1990, the objection amounts to an objection to the provisions of the adopted development plan defining the use of land.

Defra’s guidance sets out the three categories that objections usually fall into:

- You may agree with the purpose of the scheme, but you would like to see minor amendments to minimise the impact on you. Objections of this nature may secure changes to reduce the visual or noise intrusion of a scheme, or minor adjustments to the land required; or

- You may agree with the purpose of the scheme but you feel that it should be located elsewhere; or

- You may object to the scheme completely. As stated above, however, this cannot be solely on the grounds that you object to adopted planning policy.

If objections are received and not withdrawn following negotiations with the acquiring authority, the confirming authority will appoint an Inspector from the Planning Inspectorate. Either a public local inquiry will be arranged or, where all the remaining objectors agree to it, the objections can be considered through the written representations procedure. The written representations procedure is set out in Defra’s guidance Compulsory purchase and compensation booklet 1: compulsory purchase procedure (PDF 330.56KB).

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.

### 5. Compensation

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.

6. Devolution of CPO and land compensation

The current devolution settlement is based on a ‘conferred powers’ model; Schedule 7 of the Government of Wales Act 2006 sets out the 21 devolved areas in which the Assembly can legislate.

Currently under the conferred powers model, compulsory purchase and land compensation is not specified as a devolved subject, nor as an exception from the Assembly’s competence. It is therefore a ‘silent subject’. The Assembly may legislate on a silent subject provided the provision ‘fairly and realistically’ relates to a devolved subject. Thus the Assembly can currently legislate in relation to compulsory purchase and land compensation to the extent that the provision relates to the acquisition of land for a devolved purpose, for example for roads.

The Wales Act 2017

The Wales Act 2017 introduces a ‘reserved powers’ model of devolution. It sets out the areas that will be outside the Assembly’s legislative competence, leaving everything else devolved to Wales. The reserved powers model is expected to come into force in April 2018.

The Wales Bill, as originally introduced, would have reserved the ‘compulsory purchase of land’ transferring current 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 but powers around compensation reserved in respect of:

a) interference with rights in land as a result of the exercise of statutory powers; and

b) depreciation in the value of land as a result of works or land provided or used in the exercise of a statutory power.

Once the relevant provisions of the Wales Act 2017 come into force, the Assembly’s competence to legislate in the area of land compensation will be very limited.
7. Key sources

Welsh Government
– Welsh Government: Circular on CPOs (14(2)/2004)

Defra
– Defra, Compulsory purchase system guidance

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