

Department for Communities and Local Government
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CLLS Planning & Environmental Law Committee response to Department for Communities and Local Government’s Consultation on further reform of the compulsory purchase system

The City of London Law Society (“CLLS”) represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. The views of its Planning & Environmental Law Committee (the “Committee”) in respect of proposed further reform of the compulsory changes to the compulsory purchase system are set out herewith:

| No. | Question | Response |
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| 1. | Do you agree with the proposal to codify the ‘no scheme world’ valuation principle in legislation? | Yes, bringing more clarity to the existing system is welcomed, but no code can cover every eventuality. So we expect that judicial interpretation and opinion on the new Code as circumstances present will still be required. |
| 2. | Do you consider that the proposal by the Law Commission (Rule 13) should be used as the basis on which to take forward amendments to the relevant | Yes, subject to a further review by a standing body of any case law developments since the Law Commission’s proposal. |

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| | legislation? | |
| 3. | Do you agree that the date on which the scheme is assumed to be cancelled should be the launch date, not the valuation date as proposed by the Law Commission? | No. the launch date could be a long time before the valuation date. We think that for the purposes of valuation, assuming that the scheme is cancelled on the valuation date is preferable and more logical. This is consistent with the National Infrastructure Planning Association's views. |
| 4(a) | Should the definition of the statutory project be extended to include an enabling power which would allow specific transport infrastructure projects to be identified that are to be disregarded within a defined area, over a defined period of time? | <p>We think that this requires more thought to ensure fairness to those whose property values already benefit from existing transport infrastructure projects.</p> <p>Achieving consistency when defining statutory project areas will be extremely difficult because of the diversity and scale of these types of transport infrastructure projects. So rather than simplifying the process it is likely to make it more complex and time-consuming.</p> <p>The suggestion would potentially create exceptions to the no scheme rule, the rationale for which seems to be to limit claims.</p> |
| 4(b) | If yes, do you have any views on how the wider definition should be expressed? | We disagree because defining the statutory definition consistently would be very difficult (see 4 above). |
| 5 | Should other types of infrastructure schemes also be included within an extended definition of the statutory project? | As in 4 above, we think that this requires further thought, but in principle any infrastructure which increases the value of the affected land should be treated equally. |
| 6. | Do you agree that for the purposes of assessing compensation the whole mayoral development corporation area and all development in it should be disregarded in the same way as it is for new town and urban development corporations? | Yes. We agree that this would be fairer and query why mayoral development corporation areas should be treated differently when the reforms are striving for a simpler, fairer process. |
| 7 | Do you agree that the compensation payable to those with minor tenancies should take account of the period for which the land occupied by the claimant might reasonably have been expected to | We agree that compensation payable to rolling tenancies such as these should take account of the period for which the land might reasonably have been expected to be available to the claimant. |

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| | be available for the purpose of their trade or business? | For example small start-ups in the technology sector might grow very quickly before they have established. However, we query how this subjective exercise will be undertaken and look forward to seeing the proposed legislation. |
| 8 | Do you agree that the current loss payments should be adjusted as set out in paragraphs 35 – 37 of this consultation paper? | Equalizing loss payments between owners and occupiers appears to be a fairer way of calculating the payments. This is consistent with the National Infrastructure Planning Association's views. |
| 9 | Do you agree that the method of calculating the 'buildings amount' should be changed to the net lettable area? | We suggest leaving this question to the surveyors to respond to. |
| 10 | Do you agree that the penal rate of interest should be set at 8% above base rate while debt remains unpaid? | We consider 8 per cent. above base rate to be an appropriate rate. |
| 11 | Do you agree with the proposal to increase the qualifying rateable value limit to serve a blight notice in London? | We agree that the rateable value limit should be increased. However, we question whether the government has considered alternative approaches to assessing eligibility to make a blight claim? |
| 12(a) | Do you consider there are other parts of the country that may need a higher rateable value limit? | We do not have relevant data available to enable us to provide an evidence-based response to this question but it seems likely that other parts of England and Wales, particularly in the South East of England, should be included in revised threshold. |
| 12(b) | If yes, please state locations where a higher rateable limit should be set. | See our response to 12(a) |
| 13 | Do you agree we should repeal section 15(1) of the Land Compensation Act 1961? | We do not consider this to be necessary. The repeal of section 15(1) will not simplify the assessment of compensation. |
| 14 | Do you agree that we should repeal Part 4 of the Land Compensation Act 1961? | Yes |
| 15 | Do you agree with the proposal to allow the Greater London Authority and Transport for London to promote a joint compulsory purchase order? | The principle of enabling a single CPO to be brought forward by two acquiring authorities that relates to more than one purpose, such as transport and regeneration, is one we support. The Government's proposal is to introduce the change for the benefit of TfL and the GLA and, possibly, new combined authorities. |

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| | | <p>We urge the Government to extend the change to other acquiring authorities including local authorities and development corporations, such as the London Legacy Development Corporation.</p> <p>We have also encountered uncertainty about the scope and extent of acquiring authorities' regeneration powers. For example, a Mayoral Development Corporation's compulsory acquisition powers are expressed, under section 201 of the Localism Act 2011, as being to "secure the regeneration of its area". Has the government considered providing greater clarity as to the scope of such powers through legislative change or guidance? If authorities have greater certainty that their powers could be used for a broader purpose, for example including transport works that facilitate a regeneration objective, then the need for a joint CPO could be avoided.</p> |
| 16 | Do you agree that the proposal should also apply to new combined authorities with mayors? | Yes |
| 17 | Do you agree that all acquiring authorities should have the same power to take temporary possession of land? | <p>Yes. Guidance will need to be updated to make it clear that there must be a compelling case in the public interest justifying the compulsory power.</p> <p>For CPOs where temporary possession powers are not available, acquiring authorities rely on powers to acquire new rights over land to provide them with the necessary powers. Those rights can result in significant limits being placed on the owner's and occupier's ability to use the property so that the acquisition of new rights has the same effect as a permanent acquisition. We urge the government to clarify the extent of new rights that acquiring authorities can properly seek compulsorily in the context of the new temporary possession powers.</p> |
| 18 | If introduced, do you agree that the power should be based on precedent and model provisions and if so, which ones? If not, what would you suggest instead? | Yes. We consider that the model clauses in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 provide a useful starting point. |

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| 19 | Do you have any views on whether modifications to the standard advance payment regime are required for temporary possession cases? | No – we would expect prompt advance payments would be required for temporary possession cases just as much as where possession is taken permanently. |
| 20 | Do you agree that a target timescale should be introduced from confirmation of an order to the date the notice of confirmation is published? | Yes – this will provide welcome certainty to those impacted by a CPO that there will not be undue delay between the date of confirmation of the order, and the date it becomes operative (and therefore that there will be clarity of the dates of the three year period to exercise compulsory powers). |
| 21(a) | If introduced, do you agree that a 6 week target unless the Secretary of State agrees a different period is appropriate? | Yes. |
| 21(b) | If not, what should the target timescale be? | N/A. |
| 22 | Do you agree with our assumptions that: | |
| 22(a) | 'ransom payments' where land is required on a temporary basis are likely to be small and limited in number? | Yes, although these are likely to vary in number from year to year. |
| 22(b) | there are likely to be 2 or fewer transport projects associated with regeneration promoted by public sector acquiring authorities backed by business per year? | It is difficult to predict with certainty exactly how many such projects may arise in any one year, but we suspect they will be relatively low in number. |
| 23 | Do you have any evidence in relation to: | |
| 23(a) | the scale of 'windfall payments' to claimants where a compulsory purchase regeneration scheme is facilitated by transport improvements by the public sector? | We suggest surveyors who negotiate such payments are better placed to respond to this. |
| 23(b) | the number of compulsory purchase orders likely to be affected by each proposal? | We do not have the relevant data available to enable us to respond to this. |
| 23(c) | the impact on compensation payments for each proposal? | See our response to 23(b). |
| 24 | Do you agree with our assumptions on the impact of the proposal to reverse loss payment share for landlords and occupiers? | These assumptions seem reasonable to us. |
| 25 | Do you have any further comments on | No. |

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| | the likely impact of these proposals on business interests both for the acquiring authority and claimants? | |
| 26 | Do you consider that there are potential equalities impacts arising from any of the proposals in this consultation paper? Please provide details including your views on how any impacts might be addressed. | No comment. |

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