



Welsh Government
Consultation – Summary of Response

Updated Compulsory Purchase Policy and Guidance in Wales

New Welsh Government Circular on Compulsory Purchase
Procedure in Wales (including the ‘The Crichef Down Rules’ (Wales
Version, 2019)) and revised national planning policy on the use of
compulsory purchase powers

April 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

- 1.1 The “Updated Policy and Guidance on Compulsory Purchase in Wales” consultation was launched on 9 October 2019 and was open for responses for a 12 week period until 17 January 2020. On the request of a number of consultees it was agreed to extend the deadline for responses to 24 January 2020. A total of 11 specific questions were set out in the consultation document, with a standard form provided for ease of response. Comments were also made outside of the standard questions.
- 1.2 This document details a summary of responses to the consultation, the Welsh Government’s response and the next steps. It is separated into two sections.
- 1.3 Section 2 provides an overall statistical summary of the consultation and details how the consultation was conducted.
- 1.4 Section 3 provides a summary of all responses received. This includes:
- A summary of the key findings under each consultation question.
 - A statistical analysis of the views expressed on each consultation question, where statistics could be extracted.
 - A summary and analysis of the key themes generated for each question.
 - The Welsh Government’s response to the analysis.
 - An explanation of what the Welsh Government will do following the response to each question.
- 1.5 In analysing and summarising the response to this consultation, this report does not address the following:
- **Matters outside the scope of the consultation and the Welsh Ministers’ competence:** Where comments were made which are relevant to this consultation, but were made in relation to matters outside of the scope of the question or the legal competence of the Welsh Ministers, efforts have been made to summarise them under the correct question. However, comments outside of the remit of this consultation and the legal competence of the Welsh Ministers will not be addressed.
 - **Comments which incorrectly interpret the proposed policy and existing legislation:** Responses have been received which request changes to policy which, in fact, either reflect the intentions set out in the consultation paper or reflect existing legislation which is to be unchanged.

2. Responses

- 2.1 On 9 October 2019 over 300 stakeholders, including individuals and organisations were notified by email of the publication of the consultation. These were drawn from the core consultation list held by the Planning Directorate of the Welsh Government, as well as a number of other bodies who expressed an interest. This included all local planning authorities (“LPAs”) in Wales, public bodies, special interest groups and other groups. The consultation was made available on the Welsh Government’s consultation website. Officials also presented the proposals at two consultation events hosted by the Compulsory Purchase Association (CPA) in North and South Wales.
- 2.2 The consultation generated 24 responses and we are grateful to all those who took the time to submit a response. All the consultation responses have been read and considered as part of this analysis.
- 2.3 A consultation form was provided as an annex to the consultation document and made available separately on the Welsh Government’s website. Respondents were asked to assign themselves to one of six broad respondent categories. Table 1 shows the breakdown of respondents:

Category	Number	% of total
Businesses / Planning Consultants	2	8%
Government Agency/Other Public Sector	4	17%
Local Authorities (including National Park Authorities)	7	29%
Others (other groups not listed)	4	17%
Professional Bodies/Interest Groups	6	25%
Voluntary Sector	1	4%
Total	24	

- 2.4 Consultation questions 1, 3 to 9 posed policy specific questions. The questions required one of the following responses; ‘yes’, ‘yes (subject to comment)’ or ‘no’. A statistical overview of the responses showing the nature of the responses to the questions is presented as part of the analysis to each question in section 3. Where respondents did not specify a particular answer, these were considered and recorded as ‘Don’t Know’. Where respondents provided comments and were clear in their views, but did not specify a particular answer, these responses were either assigned ‘Yes (subject to comment) or ‘No’.

Table 2: Consultation Questions	
Q1	Do you agree the guidance on the different stages of the compulsory purchase process in Part 1 of the Circular is clear? If not, why not?
Q2	In Part 1 of the Circular we have included examples of best practice relating to the erection and maintenance of site notices. We would welcome your examples of other best practices in the compulsory purchase order making process. Please use the space below.
Q3	Do you agree the template model claim form set out in Part 1 of the Circular captures the relevant information required for: (a) a claim for compensation for the compulsory acquisition of land and / or taking of temporary possession; or (b) an application for an advance payment of compensation?
Q4	Do you agree the guidance on the compulsory purchase enabling powers in Part 2 of the Circular is clear? If not, why not?
Q5	Do you agree the procedural issues relating to compulsory purchase orders are clearly set out in Part 3 of the Circular? If not, why not?
Q6	Do you agree the overview of the compulsory purchase process for non-ministerial compulsory purchase orders in Part 4 of the Circular is clear for both acquiring authorities and remaining objectors? If not, why not?
Q7	Do you agree the rules and procedures for the disposal of surplus government land set out in Part 5 of the Circular ('The Crichef Down Rules' (Wales version 2019)) are clear to former landowners/ their successors, local authorities and statutory bodies. If not, why not?
Q8	Do you agree with the proposal to revise paragraph 3.53 of Planning Policy Wales (Edition 10) set out in paragraph 25 of the 'Consultation Executive Summary' document?
Q9	Do you agree with the proposal that LPAs should adopt general policies detailing the criteria they will apply when considering whether or not to exercise their compulsory purchase powers?
Q10	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.
Q11	We would like to know your case studies of where compulsory purchase powers have been used successfully to deliver housing-led regeneration schemes. Please use the space below.
Q12	We would welcome your ideas on where you think changes could be potentially made to the compulsory purchase system to improve the delivery of housing-led compulsory acquisition schemes. Please use the space below.

3. Summary of Responses - Question 1

Q1		Do you agree the guidance on the different stages of the compulsory purchase process in Part 1 of the Circular is clear? If not, why not?				
The consultation proposes guidance on the compulsory purchase process which is separated into 6 broad stages.						
Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	2	0	0	2	4
C	Local Planning Authorities (including National Park Authorities)	4	3	0	0	7
D	Others (other groups not listed)	0	3	1	0	4
E	Professional Bodies/Interest Groups	1	2	1	2	6
F	Voluntary Sector	0	1	0	0	1
Total all respondents		8	9	2	5	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	17	2
Overall Percentage	89%	11%

Statistical review

- 3.1 The majority of respondents agreed the guidance on the compulsory purchase process contained in Part 1 of draft Circular 003/2019 is clear. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 89% were in agreement, while 11% disagreed.
- 3.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups and Voluntary Sector were all in favour of the proposals. Objections were received from one Professional Bodies/Interest Group and one respondent from the Others sector. One Government Agency/Other Public Sector and one Professional Bodies/Interest Group did not respond to the consultation question.

Key themes

3.3 The key themes in response to question 1 were as follows:

- General consensus that the guidance in Part 1 is clear, helpful and will bring uniformity.
- Specific amendments to Part 1 put forward.
- Positive to see the Well-being of Future Generations Act 2015 (“WBFG Act”) duty included in the guidance.

Overview

3.4 Overall, there was general support for the guidance in Part 1. One LPA, who agreed the guidance in Part 1 is clear, welcomed the positive approach to the use of compulsory purchase orders (“CPOs”) and commented the questions at paragraph 36 in Part 1 serve as a useful checklist.

3.5 A Professional Bodies/Interest Groups respondent, although in agreement, suggested it would be helpful if the advice at paragraph 64 in Part 1 that “acquiring authorities should consider funding landowners’ reasonable costs of early engagement” was noted in paragraphs 34 and 52 in Part 1. The respondent maintained that where the cost of reasonable professional fees is met, affected parties get the support and assistance they need at an early stage and good relations can be established, helping the project to proceed more smoothly. Furthermore, it is important acquiring authorities make realistic provision for the full cost of professional advice, which may include advice from lawyers and accountants as well as surveyors and valuers.

3.6 A Professional Bodies/Interest Groups respondent suggested it would be worthwhile considering any feedback from the use of the guidance to help improve its usefulness.

3.7 A LPA highlighted there are different legislative areas which compulsory purchase powers can be derived, e.g. statutory undertakers under the Electricity Act 1989 and Communications Act 2003 where the Secretary of State is the confirming authority. It is accepted in several areas it is beyond the scope of the Welsh Government’s devolved competence to streamline the CPO process.

3.8 Another LPA commented it is positive Part 1 focuses on acquisition by agreement and the use of CPOs as a tool to encourage landowners to enter more readily into meaningful negotiations.

3.9 A Professional Bodies/Interest Groups respondent provided the following comments on Part 1:

- Paragraph 31: to achieve the widespread acquisition of land, more has to be done to ensure a CPO can run alongside the voluntary process and it would be helpful to set out specific steps required or references to relevant parts of the guidance.
- Paragraph 34: funding is a very important consideration and should be in a separate section of its own.
- Paragraphs 38 and 39: should clarify where back-to-back agreements apply, as opposed to the arrangements referred to in paragraph 38 which are not necessarily of this type.

- Paragraph 151: Acquisition using a General Vesting Declaration (GVD) entails the acquisition of the land still subject to easements/restrictions/charges if these are not removed prior to the order being made. Ideally a compulsory purchase process would lead to the acquisition of land free from any impediments, but this is not always the case.

3.10 A LPA submitted the following comments on Part 1:

- Compulsory purchase is equally relevant in facilitating commercial development as it is housing, it is requested this is given equal recognition and focus in the Circular and case studies.
- It can be more beneficial to the public purse to agree the purchase of a property at an inflated value than employ a CPO even where the order had been granted. Flexibility to agree purchase prices which exceed likely market value, where it can be demonstrated the likely end cost of acquiring the property via CPO will exceed the inflated cost and thus is the best value for public money, could be formally included within the guidance.
- CPOs to acquire and redevelop premises are likely to become redundant for sites outside of town and city centres if they are sterilised in terms of their eligibility for public funding.
- Paragraph 17, bullet point four : after “whether”, “how” should be deleted.
- Paragraph 56: there is a need to demonstrate no obvious reason for planning permission to be withheld, the same principle applies to conservation area and listed building consents.
- Paragraph 97: clarification is sought i.e. the first sentence states a site visit must be conducted and the second sentence notes that “where there has not been a site visit...”.

Part of the response was submitted under question 10. It was deemed more appropriate to consider the response under the analysis of this question given it relates to guidance contained in Part 1.

3.11 A respondent from the Others sector provided the following comments on Part 1:

- (a) It would be useful to summarise in a list the constraints affecting the use of CPOs and what needs to be achieved before CPO powers should be sought i.e.
 - only as a matter of last resort;
 - reasonable attempt should have been made to acquire by agreement;
 - taking the land must be necessary;
 - a compelling case in the public interest needs to be demonstrated; and
 - must be clear evidence the public benefit will outweigh the private loss.
- (b) Paragraph 22 and Paragraph 23 should clarify acquiring authorities should make reasonable offers which includes all sums which landowners are entitled to under the relevant heads of compensation. This will help improve public reassurance that they are provided with the best possible offer at the outset.
- (c) The Canal & River Trust should be added to the list of acquiring authorities in Table 1 as they hold compulsory purchase powers under section 15(2A) of the Transport Act 1962.

3.12 A Professional Bodies/Interest Groups respondent agreed Part 1 is clear subject to the following matters being addressed:

- (a) Paragraphs 15 to 18: further guidance is required on what is meant by “expect reference to be made to the principals” of the WBFG Act.

It is considered private sector acquiring authorities should take an identical approach to the public sector.

- (b) Paragraph 36: the following should be added to the checklist of questions –
 - (i) Do any impediments exist which would prevent our proposed project proceeding if we acquired the land?
 - (ii) Is planning permission needed and, if so, has it been secured? If not, why not?
- (c) It should be made clear the National Development Framework will form part of the development plan rather than material consideration.
- (d) Paragraph 41: it should be made clear if an enabling Act is silent on back-to-back agreements then local authorities should rely on wider local authority powers to enter into various types of agreements.
- (e) Paragraph 63: it would be beneficial to add an explanation on what each alternative dispute resolution (ADR) technique means and involves.

3.13 A Business / Planning Consultants respondent stated guidance should be provided under the 'General Overview' sub-section in Part 1 on the current position on the Welsh Ministers' legislative competence in respect of compulsory purchase powers, procedure and compensation. Also, 'Stage 6: Compensation' sub-section should refer to the effect of section 4(2) of the Land Compensation Act 1961 relating to the disregard of works or the creation of interests done for the purpose of increasing the amount of compensation payable. The respondent suggested amendments be made to the following guidance in Part 1:

- Paragraph 10: re-draft and re-title as "The purpose and justification for compulsory purchase".
- Paragraph 11: combine with paragraphs 22-23, 30-31 and 33 so the guidance on the initiation of CPOs and the obligation to seek voluntary acquisition of land is in one place.
- Paragraph 12: re-draft to outline many public bodies have "powers of compulsory purchase in support of their functions and activities" and give examples of statutory undertakers and executive agencies with CPO powers.
- Paragraph 12: make clear whether the Welsh Ministers are the confirming authority and amplify the reference to the Welsh Ministers' own CPO powers.
- Paragraphs 15 to 17: should precede the Public Sector Equality Duty section.
- Paragraph 20: re-title as "Other persons eligible to initiate compulsory acquisition".
- Paragraph 21: re-title as "Other ways powers of compulsory purchase are obtained" and insert reference to the Cardiff Bay Barrage Act 1993.
- Paragraph 21: reference to "UK" should be reviewed as a Bill extending to England and Wales but applying specifically in terms of its CPO provisions to affected landowners.
- Paragraph 21: insert reference that the methods referred to in this section have their own applicable guidance and practice.
- Paragraph 25: reference to special Acts overlaps with paragraph 21 and the topics in Table 1 should be listed alphabetically.
- Paragraphs 34 to 35: guidance on funding requires a separate sub-section heading and further guidance is suggested on what evidence an acquiring authority should produce where a scheme is funded in whole or in part by finance from the Welsh Ministers.
- Paragraph 36: checklist should appear at the end of the suggested section titled "Initiating a Compulsory Purchase" with each bullet point containing a sign-post to paragraphs which contain further guidance on the point.

- Paragraph 37: guidance should follow the advice on early planning and preparation for the potential use of CPO powers and the reference to “12 – 18 months to be determined” needs amplification.
- Paragraphs 38 to 41: distinction is required between: (a) where a site is to be assembled and brought to the market by the acquiring authority for development in accordance with the underlying scheme and a development “partner” has been identified and whose scheme is the basis of the CPO; and (b) where there is a development agreement in place.
- Paragraphs 38 to 41: guidance should state the acquiring authority and the developer should be prepared to disclose the terms of the development agreement or a full summary, subject only to the redaction of properly commercially confidential terms.
- Paragraphs 42 to 44: guidance could be clearer and attention drawn to section 233(5) - (7) of the Town and Country Planning Act 1990 which provides relevant occupiers with an opportunity for accommodation when a development on land held for planning purposes is subject of a disposal and the case law on the extent of the obligation.
- Paragraph 45: guidance should be separated and sign-posted to ‘The Crichel Down Rules (Wales version 2019)’.
- Paragraph 47: guidance should cross-refer to earlier references to the key test.
- Paragraphs 48 to 49: should sit alongside the sections on the WBFG Act and the Public Sector Equality Duty.
- Paragraph 54: guidance on funding which is also covered at paragraphs at 34 and 35 could usefully be dealt with in one section, with references to funding elsewhere signposting the extensive discussion of this aspect.
- Paragraphs 55 to 56: the requirement to deal with the planning permission (and other consents) is a key consideration in preparing and timetabling a CPO, this merits a section under its own heading “Planning Permission and Other Consents and Impediments”.
- Paragraph 57: guidance on undertaking and keeping up to date impact assessments and mitigation proposals is relevant to any scheme with environmental impacts.
- Paragraphs 59 to 60: the strength of the statutory protection afforded to statutory undertakers should be enhanced.
- Paragraph 61 to 62: reference should be made to the provision in the Upper Tribunal (Lands Chamber) Rules for the Tribunal to suggest and facilitate the use of ADR techniques in cases before it, which is backed-up by a requirement when dealing with costs to consider whether a party has unreasonably refused to consider ADR techniques.
- Paragraph 64: best practice in the final bullet point is applicable in respect of large-scale highway schemes and these suggestions could be inserted into the CPO Manual where they can be developed at greater length and a reference to that signposted here.
- Paragraphs 65 to 66: guidance should signpost the guidance in paragraphs 73 – 74 on the technical pre-checking by the Welsh Government and these paragraphs should be grouped as they cover the same subject.
- Paragraph 67: relevant sections in Part 3 of the Circular could usefully be signposted here.
- Paragraph 71: the level of practical detail on best practice may be better suited to the CPO manual.

- Paragraph 71: “have effect” in the sixth sentence could be construed as meaning if an objection is insufficiently relevant it may be considered invalid, it is suggested a letter of objection should outline the matters objected to.
- Paragraph 71: reference to the power to disregard objections relating compensation could usefully be made.
- Paragraph 71: it would be helpful if all the guidance on objections in this paragraph and in paragraphs 86-89 and 91-92 were combined.
- Paragraphs 109 to 110: split the treatment of the administrative costs from the question of the award of costs to an objector.
- Paragraph 144: it would be helpful to signpost to the provisions in section 31 of the Land Compensation Act 1961 on the withdrawal of a Notice to Treat.
- Paragraphs 198 to 213: guidance on the provision requiring acquiring authorities to make an advance payment when possession is taken should be highlighted at the outset of this section and further guidance is required on the limited application of the Lands Clauses Consolidation Act 1845.

3.14 A respondent from the Others sector suggested amendments should be made to the following guidance in Part 1:

- Paragraphs 39 to 41: “selected” should be substituted for “preferred”.
- Paragraph 42: “and that broad agreement has been agreed in writing with the affected community” should be added to the end of the first sentence in bullet point 3.
- Paragraph 52: guidance should be expanded to state local authorities should engage with the public by calling public meetings to explain proposals, answer questions and confirm whether alterations can be made to their plans.
- Paragraph 52: “public” in line five is spelt incorrectly.
- Paragraph 53: guidance could be amended to impose an obligation on local authorities to liaise with communities and to report to Welsh Ministers on how this has been achieved before any CPO is confirmed.
- Paragraph 54: “in” is missing from the last sentence.
- Paragraph 69: “and in any village/community magazine or newsletter circulating in the area which shall include a copy of the statement of reasons” should be added to the end of the paragraph.
- Paragraph 144: “A NTT can only be withdrawn in limited circumstances” this should be clarified by examples being given as in paragraph 152.
- Paragraph 176: does not read correctly i.e. there are 2 x no (ii).
- Paragraph 216: delete “is” from “This is model claim form....”.

The respondent also provided comments on the following guidance in Part 1:

- Paragraph 22: Credence should not be given to an emerging local development plan (LDP) at a “last resort stage” as provision in paragraphs 2.14.1 to 2.14.4 in Planning Policy Wales (PPW) (Edition 9) has not been replicated in PPW (Edition 10).
- Paragraph 84: The Welsh Ministers may return a CPO for confirmation by a local authority where there has been no objections. There should be an easy procedure for anyone who feels prejudiced to seek to overrule this decision and ask the Welsh Ministers to confirm the CPO.
- Paragraph 89: This paragraph is incompatible with the WBFG Act i.e. the fostering of cohesive communities. Community groups or special interest groups should have a right of audience in any inquiry if they have lodged an objection without relying on a decision by the inspector.

It would be better for an objector to have a right to be heard unless the inspector rules they are vexatious objectors. Also, what is to happen if an inspector refuses a right of audience to a community group, in such circumstances there should be a method of challenging such rejection after all a CPO is "a last resort".

- Paragraph 155: In the event of unregistered land being acquired by GDV, it would be preferable to make local authorities to apply for registration under section 3 of the Land Registration Act 2002.
- Paragraph 172: Eligibility for disturbance payments for the extinguishment of a business applies to those aged over 60 years. This seems incorrect in light of the Human Rights Act. The age should reflect either the state pension age of 68 or the situation where starting a new business or gaining employment over the age of 50 can be difficult.

3.15 A Professional Bodies/Interest Groups respondent, who disagreed Part 1 is clear, suggested there is scope for the Welsh Government to:

- (a) Provide further guidance on what constitutes the public interest especially where an agreement is on offer but the acquirer still wants to undertake the scheme using compulsory purchase i.e. could the same final result be achieved by agreement without compulsory purchase.
- (b) Clearly state in guidance compulsory purchase should only be used as a last resort when all other resolutions are not possible, rather than the easiest option for the acquiring authority, due to its severe impact on the livelihoods of individuals.
- (c) Impose through guidance a clear Duty of Care on acquiring authorities to consider, and mitigate, the impact on claimants from the outset.
- (d) Highlight in guidance that consultation which is carried out with individuals and businesses as part of scheme detailing, planning, funding and final acquisition is in full and undertaken in a timely manner.
- (e) Clarify through guidance that those who have rights over land (rather than landowners/occupiers) are also served notice of the making of a CPO as whilst they might not be losing land they could be affected if they depend on those rights.
- (f) Reiterate throughout guidance potential claimants should have the right to be heard in person, both when decisions are made throughout the scheme development and then finally at an inquiry when the final decision is made.
- (g) Clarify:
 - (i) paragraph 39 as it implies any surplus value could be retained by either the developer or the local authority and this should not be the case as any surplus should be returned to the landowner; and
 - (ii) paragraph 50 as there is concern it does not provide sufficient clarity as CPOs should not be speculative and it is possible for them to be made when the funding and planning permission has not been obtained.

3.16 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q1 Welsh Government Response

Specific amendments to Part 1

Consideration will be given to amending the following guidance in Part 1 in line with respondents' comments outlined above:

- Paragraphs 10 to 12
- Paragraphs 15 to 17
- Paragraphs 20 to 21
- Paragraph 25
- Paragraphs 34 to 45
- Paragraphs 47 to 49
- Paragraph 50
- Paragraphs 52 to 53
- Paragraphs 54 to 57
- Paragraphs 59 to 62
- Paragraphs 64 - 67
- Paragraph 69
- Paragraph 71
- Paragraphs 109 to 110
- Paragraph 144
- Paragraph 176
- Paragraphs 198 to 213
- Paragraph 216

General amendments to Part 1

Consideration will be given to making the following amendments to the guidance in Part 1:

- Give equal recognition and focus in the guidance to compulsory purchase being relevant in facilitating commercial development.
- List the constraints affecting the use of CPOs and what needs to be achieved before CPO powers should be sought.
- Provide further guidance on what constitutes the public interest, especially where an agreement is on offer, but the acquirer still wants to undertake the scheme using compulsory purchase.
- Clearly state compulsory purchase should only be used as a last resort when all other resolutions are not possible due to its severe impact on the livelihoods of individuals.
- Impose through guidance a clear Duty of Care on acquiring authorities to consider, and mitigate, the impact on claimants from the outset.
- Highlight consultation carried out as part of scheme detailing, planning, funding and final acquisition should be undertaken in full and in a timely manner.
- Clarify those who have rights over should be served notice of the making of a CPO.
- Reiterate potential claimants should have the right to be heard in person, both when decisions are made throughout the scheme development and at an inquiry.

Purchase prices which exceed market value

We will publish a CPO Manual alongside Circular 003/2019 which will contain detailed best practice.

Hyperlinks will be inserted in Circular 003/2019 to reference the best practice contained in the Manual. Consideration will be given to including references in the CPO Manual to the practice of achieving best value for public money through acquisition by agreements which exceed market value but are lower than the end cost of acquiring via a CPO.

Use of Circular 003/2019

Following implementation of Circular 003/2019 we will monitor the use of the guidance through:

- an annual review of CPO activity by acquiring authorities;
- the Welsh Government's technical pre-checking service for draft CPOs; and
- seeking feedback on implementation from the practitioners.

Obligation on local authorities to liaise with communities

Consideration will be given to strengthening the guidance in Part 1 to emphasise best practice on acquiring authorities engaging and consulting communities on land acquisition schemes during the planning and preparation stage. Acquiring authorities' performance of engaging and consulting with communities will be monitored through the Welsh Government's technical pre-checking service for draft CPOs.

Development plans

Advice on giving consideration to emerging or outdated development plans is included in Chapter 7 of the Development Plans Manual (Edition 3) and is still extant. We therefore reject calls for paragraph 22 in Part 1 of Circular 003/2019 to be amended.

Delegation of the confirmation decisions to local authorities: prejudice to interested or affected parties

The power for the Welsh Ministers to delegate a confirmation decision to a local authority is provided by section 14A of the Acquisition of Land Act 1981 ("the 1981 Act"). Section 14A of the 1981 Act provides delegation to a local authority may occur where there are no objections remaining to a CPO and the statutory notice and publication requirements set out in the 1981 Act have been met. Providing these statutory requirements have been met then no interested or affected party should be prejudiced.

Objections: third parties' right to be heard

The purpose of a CPO is to transfer land or the rights over land to an acquiring authority outside of a voluntary agreement. The guidance reflects primary legislation which establishes all objectors to a CPO i.e. those eligible for compensation if a CPO is confirmed (referred to as "remaining objectors") have a right to be heard. We are not proposing to amend this provision in primary legislation. If a community group or interest group is a remaining objector to a CPO they will have a statutory right to ask for an inquiry to be held.

The guidance in paragraph 89 in Part 1 reflects current practice of inspectors having discretion to allow third parties to be heard at inquiry even though they may not be a remaining objector.

Registration of unregistered land under section 3 of the Land Registration Act 2002

The GVD procedure allows for the conveyance of ownership over unregistered land to be transferred to an acquiring authority. Through this process the Land Registry will be informed of the new ownership.

Disturbance payments: extinguishment of a business owned by a person aged over 60 years

Compensation is a matter reserved to the UK Government. As such, the Welsh Ministers have no competence to amend legislation relating to disturbance payments or land compensation in general.

Accessibility of guidance

A review of Part 1 will be undertaken to improve the accessibility of the guidance.

Next steps

- 3.18 It is proposed to adopt the guidance in Part 1 in the final version of Circular 003/2019 subject to amendments proposed by respondents which we accept (see the Welsh Government response above).
- 3.19 Use of Circular 003/2019 and engagement and consultation with communities by acquiring authorities will be monitored through:
- an annual review of CPO activity;
 - the Welsh Government's technical pre-checking service for draft CPOs; and
 - seeking feedback on implementation from the practitioners.

4. Summary of Responses - Question 2

Q2	In Part 1 of the Circular we have included examples of best practice relating to the erection and maintenance of site notices. We would welcome your examples of other best practices in the compulsory purchase order making process. Please use the space below.
The consultation sought respondents' examples of best practice of undertaking the CPO making process.	

Key themes

4.1 The key themes in response to question 2 were as follows:

- Support for inclusion of best practice in Circular 003/2019 and further best practice on erecting site notices.
- Best practice on issuing pre-notification letters prior to the publishing of site notices.
- Best practice on compensation related matters.
- Best practice on the decision making process leading to a resolution to make a CPO.
- Emphasis on good communication throughout the entire CPO process.

Overview

- 4.2 Overall, there was general support for the inclusion of best practice in Circular 003/2019. One LPA, who supported the inclusion of best practice, commented it is helpful to ensure CPOs are made correctly.
- 4.3 One Business / Planning Consultant respondent commented the best practice on erecting and maintaining site notices could be enhanced by suggesting photographic records of inspections should be kept to show date and times. A Government Agency / Other Public Sector respondent stated checks on site notices should be undertaken more frequently than once a week. A Professional Bodies/Interest Groups respondent suggested best practice on site notices should be extended to ensure acquiring authorities consider appropriate coverage of site notices, taking account of the size of the CPO land and the location(s) where they are displayed in terms of accessibility and visibility to the public.
- 4.4 One LPA suggested best practice on the issuing of a letter to landowners giving them prior notification of the erection of site notices and including a draft version of the notices. The respondent commented this would provide the landowner with additional time to consider the implications of the notice and to take seriously the intentions of the acquiring authority. Furthermore, it is considered best practice to share information with affected parties as early as reasonably possible in the process.
- 4.5 One respondent from the Others sector commended it would be helpful for best practice on what compensation will be available to landowners including all heads of compensation which could be reasonably applied. Another respondent from the Others sector stated it is best practice for acquiring authorities to form well-qualified project teams to undertake consultation and negotiations with landowners and interested parties involved. Also, acquiring authorities should consider the potential need for an enforcement team to take possession.

- 4.6 A Professional Bodies / Interest Groups respondent suggested best practice would be useful on the decision making process leading to a resolution to make a CPO given there is limited advice in the draft Circular on how to evidence the need to make a CPO. The respondent highlighted Committee reports usually outline the powers and considerations involved to ensure decisions on whether or not to make a CPO are robust and end with a recommendation and a resolution. Furthermore, best practice on this matter would be applicable to all acquiring authorities i.e. statutory undertakers and private companies as it will help ensure decisions to resolve to make CPOs are evidenced.
- 4.7 Another Professional Bodies / Interest Groups respondent suggested it would be useful if best practice in Circular 003/2019 could be differentiated from the general guidance, for example, through the use of shaded boxes or italic text. Also, it would be beneficial if best practice points were compiled into a checklist for easier reference. The respondent provided the following examples of best practice:
- If the cost of reasonable professional fees is met by an acquiring authority, the affected parties will get the support and assistance they require at an early stage and good relations can be established which will help the project to proceed more efficiently.
 - Good, reliable and timely communication with all those affected throughout the CPO process is fundamental to help reduce uncertainty, allow trust to develop and foster good working relations.
 - Acquiring authorities should engage actively in negotiations to determine the fair and reasonable amount of compensation. Where there is disagreement over a claim, acquiring authorities should explain why and share evidence with the claimant to support their position.
 - Compensation payments (including claims for professional fees) should be paid promptly once agreement has been reached as it is not reasonable for a claimant to be kept waiting.
 - For larger, complex claims, claimants should make a skeleton claim in the first instance, submitting further evidence to support the detailed position when it becomes available in sufficient form and detail to allow the acquiring authority to make a proper assessment.
 - It may be possible for the parties to reach agreement on certain issues, for example, the value of land taken so compensation for that element can be paid while other elements of the claim such as disturbance may not be finalised until a later date. Claimant's losses should be mitigated by receiving some payment earlier rather than having to wait until the whole matter is agreed.
 - To encourage more careful use of CPO powers, reduce the impact on affected parties and the scope for dispute which would save time and cost to the acquiring authority, there should be a mechanism for recording performance and complaints against acquiring authorities failure to observe best practice.

Q2 Welsh Government Response

Best practice

We propose to adopt in guidance the examples of best practice put forward in response to Question 2.

Consideration will be given to amalgamating a check-list of best practice in the CPO Manual. Sign-posting to best practice contained in the Manual will be inserted into Circular 003/2019.

Monitoring performance of acquiring authorities

Through the Welsh Government's proposed technical pre-checking service for draft CPOs, acquiring authorities' performance and application of best practice principles will be monitored. Failure to adopt best practice will be raised with acquiring authorities through responses to technical pre-checking requests of draft CPOs.

Next steps

- 4.8 It is proposed to adopt the examples of best practice suggested by respondents in Welsh Government guidance. A CPO Manual will be published alongside Circular 003/2019 and will contain best practice points. Circular 003/2019 will sign-post to the best practice in the Manual.
- 4.9 It is proposed to establish a Welsh Government technical pre-checking service for draft CPOs for acquiring authorities to utilise. Through this service, acquiring authorities' performance and application of best practice principles will be monitored as part of technical pre-checks of draft CPOs.

5. Summary of Responses - Question 3

Q3	Do you agree the template model claim form contained in Part 1 of the Circular captures the relevant information required for: (a) a claim for compensation for the compulsory acquisition of land and / or taking of temporary possession; or (b) an application for an advance payment of compensation?
The consultation proposes a template model form for stakeholders to use when submitting claims for compensation and applications for advance payment of compensation.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	0	1	0	1	2
B	Government Agency/Other Public Sector	1	0	1	2	4
C	Local Planning Authorities (including National Park Authorities)	4	2	0	1	7
D	Others (other groups not listed)	2	0	2	0	4
E	Professional Bodies/Interest Groups	3	1	0	2	6
F	Voluntary Sector	0	0	0	1	1
Total all respondents		10	4	3	7	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	14	3
Overall Percentage	82%	18%

Statistical review

- 5.1 The majority of respondents agreed with the proposal relating to a template model claim form for use by stakeholders. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 82% were in agreement, while 18% disagreed.
- 5.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, and Professional Bodies / Interest Groups were all in favour of the proposal. Objections were received from one Government Agency/Other Public Sector and two respondents from the Others sector. Two Government Agency/Other Public Sector, two Professional Bodies/Interest Groups, one Voluntary Sector and one Local Planning Authority did not respond to the consultation question.

Key themes

5.3 The key themes in response to question 3 were as follows:

- Support for the template model claim form.
- Its accessibility should be improved.
- The template model claim form should be amendable in certain circumstances.

Overview

- 5.4 Overall, there was general support for the template model claim form contained in Part 1. One Professional Bodies / Interest Groups respondent, who agreed the template model claim form captures the relevant information, commented it was good practice to adopt the template model claim form used by UK Government as it is helpful for advisers acting in both England and Wales.
- 5.5 One LPA and one Professional Bodies / Interest Groups respondent stated acquiring authorities should be able to amend the template model claim form in certain circumstances but making sure it contains all the relevant information.
- 5.6 One Government Agency / Other Public Sector respondent stated the template model claim form should be redrafted to extend its accessibility.
- 5.7 One Professional Bodies / Interest Groups respondent suggested the template model claim form should appear in a separate Appendix to Circular 003/2019. Also, acquiring authorities should be proactive in making it available to claimants which includes making it available in electronic form on the acquiring authority's website.
- 5.8 One respondent from the Others sector stated the template model claim form requires considerable information from the landowner which will likely require expert specialist input. Furthermore, a template form containing simpler and plain guidance might be useful to enable landowners to understand the concepts which are being asked.
- 5.9 Another respondent from the Others sector disagreed with the proposal and stated it did not have merit.

Q3 Welsh Government Response

Adaptability of the template model claim form

Guidance in Circular 003/2019 will advocate the use of the template model claim form by acquiring authorities as best practice. However, acquiring authorities will be able to amend and/or adopt their own model claim form to meet their circumstances. Circular 003/2019 will advise where acquiring authorities are considering this approach they should follow the template model claim form wherever possible.

Accessibility of the template model claim form

Prior to publication of the final version of Circular 003/2019 we propose to review the template model claim form to improve its accessibility including the language used.

The template model claim form will be included in a separate Appendix to Circular 003/2019 and available to download as an electronic form from the Welsh Government's website.

Consideration will given to the production of Welsh Government plain English guidance to help landowners and affected parties understand the compensation regime, including the different heads of claim available.

Next steps

- 5.10 It is proposed to adopt the template model claim form in Circular 003/2019 following a review of its accessibility including the language used. The template model claim form will be included in a separate Appendix to Circular 003/2019 and be available to download as an electronic form from the Welsh Government's website.
- 5.11 We will give consideration to the production of Welsh Government plain English guidance on compensation and the different heads of claim available to landowners and other affected parties.

6. Summary of Responses - Question 4

Q4	Do you agree the guidance on the compulsory purchase enabling powers in Part two of the Circular is clear? If not, why not?
The consultation proposes guidance on common enabling compulsory purchase powers used by local authorities. The consultation also provides guidance on the Welsh Ministers' power to acquire land compulsorily.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	1	0	1	2	4
C	Local Planning Authorities (including National Park Authorities)	4	2	0	1	7
D	Others (other groups not listed)	0	2	2	0	4
E	Professional Bodies/Interest Groups	3	1	0	2	6
F	Voluntary Sector	0	1	0	0	1
Total all respondents		9	6	3	6	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	3
Overall Percentage	83%	17%

Statistical review

- 6.1 The majority of respondents agreed the guidance on common enabling compulsory purchase powers used by local authorities contained in Part 2 of draft Circular 003/2019 is clear. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 83% were in agreement, while 16% disagreed.
- 6.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups and Voluntary Sector were all in favour of the proposal. Objections were received from one Government Agency/Other Public Sector and two respondents from the Others sector. Two Professional Bodies/Interest Groups and one Local Planning Authority did not respond to the consultation question.

Key themes

6.3. The key themes in response to question 4 were as follows:

- General consensus the guidance in Part 2 clearly specifies the purpose, use and limitations of compulsory purchase powers under each relevant piece of legislation.
- Specific amendments to Part 2 put forward.
- Community and town councils should have more powers.

Overview

6.4 Overall, there was general support for the guidance in Part 2. One LPA, who agreed the guidance in Part 2 is clear, commented it contains useful detailed advice and reference to town centres needing to adapt and the likely increasing need for CPOs together with the public interest test. Also, it was positive to see reference to CPOs for the purpose of facilitating active travel routes.

6.5 One Professional Bodies/Interest Groups respondent, who agreed the guidance in Part 2 is clear, highlighted minor typographical errors and suggested formatting changes.

6.6 A LPA and a Government Agency/Other Public Sector respondent commented it would be useful if paragraph 1 in Section G was consistent with paragraph B13 in Technical Advice Note (TAN) 24 and the proposed revised national policy. The language used in paragraph 1 in Section G suggests the power under section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 will only be used in exceptional circumstances, whereas paragraph B13 in TAN 24 clarifies this further with the text "*The Welsh Ministers have the same powers, but these will only be used in exceptional circumstances*". The response by the Government Agency/Other Public Sector respondent was submitted under question 10. It was deemed more appropriate to consider the response through the analysis of this question given it relates to guidance contained in Part 2.

6.7 Some respondents who supported the proposals had concerns over specific aspects. One Professional Bodies/Interest Groups respondent welcomed the advice in Section F of Part 2 on the Highways Act 1980 but stated it could be improved in the following ways:

- (a) The guidance makes the distinction between works for improvement of an existing highway and works for the construction of a new highway. It recognises CPOs should make it clear which is being undertaken. In many cases it is both, and there is opportunity for Circular 003/2019 to make this clearer.
- (b) The guidance seeks to align improvement/construction with the permitted development conditions in every case. This is considered too simplistic and it should say "in most cases".

6.8 Two Government Agency/Other Public Sector respondents commented Section A of Part 2 makes no reference to community and town councils when matters concerning the community are referenced. In addition, community and town councils may be owners of buildings in town centres (e.g. Town Halls), recreational open space, and cemeteries where the use of CPO powers for improvements/extension may be useful.

The respondents stated the proposal to provide the General Power of Competence to community and town councils through the Local Government and Elections (Wales) (“LGE”) Bill and the responsibility to represent the community voice should be included in Circular 003/2019.

- 6.9 A respondent from the Others sector commented there are currently few punitive measures available to force LPAs to pay compensation to landowners within the relevant timescales and the guidance should expand on this point as a matter of best practice. The respondent set out further clarity is required on the following points in Part 2:
- (a) Section A - Paragraph 2: It does not clarify whether it is acceptable for LPAs to sell land for above market value if circumstances allow and what should occur in these circumstances.
 - (b) Section A - Paragraph 20: While an acquiring authority is not bound by the LDP to demonstrate public benefit, it is likely they will have to justify deviation from the development plan. Expanding this point will likely mitigate the risk of challenge.
 - (c) Section B - Paragraph 12: It refers to the use of undertakings to provide reassurance to a landowner a CPO will not be enforced unless it is apparent the property will not be brought back into use. The current wording does not make it explicit the CPO will need to be confirmed to be effective. Also, the section at the top of page 80 states: “*The Welsh Ministers have no powers to confirm a CPO subject to such conditions*”. This could be expanded upon, particularly in relation to the function of these undertakings and what action would likely occur in the event of non-compliance. The guidance could usefully provide sample wording for undertakings, to encourage reintegration of abandoned properties and introduce consistency in approach.
 - (d) Section C - Paragraph 16: It confirms community councils may become liable for costs. However, for paragraph 17 in Section C to operate correctly, it must be clear the community council will be able to meet the costs of a CPO on its own finances. It would not appear to be consistent for the LPA to derogate this requirement to the community council.
 - (e) Section G - Paragraph 6: It is not clear on what circumstances an appropriate authority should notify Welsh Ministers of an application to a magistrates’ court to contest a direction for minimum compensation. It is understood it is for appropriate authorities to include a direction for minimum compensation within the CPO at their own discretion but in what circumstances would a third party apply for such an order?
- 6.10 A Businesses / Planning Consultants respondent suggested Section C in Part 2 could be split with the guidance on community and town councils treated as a discrete topic which would be in line with the enhanced roles for community councils being proposed in the LGE Bill. On Section E in Part 2, the respondent highlighted there is detailed guidance set out in Department for Transport (DfT) Circular 2/97 “*Notes on the Preparation, Drafting and Submission of Compulsory Purchase Orders for Highway Schemes and Car Parks for which the Secretary of State for Transport is the Confirming Authority*”. Also, that as DfT Circular 2/97 is referred to by practitioners drafting highway CPOs in Wales as a source of guidance on technical drafting points, Circular 003/2019 should confirm the relevance of these notes to Wales or consideration should be given to bringing the content within the CPO manual. The respondent maintained there is no Welsh Government guidance on Side Roads Orders and subjects such as the provision of new private means of access and the diversion of navigable watercourses.

Furthermore, the only available guidance is found in DfT Circular 1/97 “*Highways Act 1980: Orders Under Section 14 of the Highways Act 1980 and Opposed Orders Under Section 124 of that Act*” and in the absence of Welsh Government guidance it would be of assistance to practitioners to know the status and relevance of this guidance to projects in Wales. The respondent set out amendments should be made to the following guidance in Part 2:

- Section A - Paragraph 15: as the LGE Bill when enacted will replace well-being powers under the Local Government Act 2000 (“the 2000 Act”), either (a) no further guidance should be provided on the meaning of well-being or (b) the guidance on the 2000 Act, so far as relevant to planning, could be inserted here.
- Section A - Paragraph 18: the final sentence is unclear on whether the intention is to state that such a strategy could form the basis on which to build a compelling case in the public interest.
- Section A – Paragraphs 19 – 25: guidance in paragraph 24 should be the basis for the guidance on the extent and nature of the planning basis necessary for an overall compelling case to be shown. Also, guidance would be useful on the position if a planning permission underlying a CPO is amended after it is confirmed as this highlights the importance of the description on the scheme in the CPO which sets the purpose of the acquisition.
- Section B - Paragraphs 6 and 7: it is not clear what the justification is for the guidance regarding the expectation housing development using CPO powers should be completed within 3 years of acquisition as major allocations for housing in development plans show they are typically multi-phase developments to be built out over an extended period.
- Section B – Paragraph 20: it should state: (a) section 29 of the Housing Act 1985 (“the 1985 Act”) relates to acquisition of housing for council staff, and (b) section 300 of the 1985 Act relates to the purchase of properties subject to a prohibition order judged capable of being made habitable.
- Section B - Paragraphs 21 to 26: the heading and paragraph 21 should state Part 7 of the Local Government and Housing Act 1989 is a code relating to the declaration and administration of Renewal Areas.
- Section F - Paragraph 4(d): the description of new lengths of highway is frequently more complex than the example given, especially where a new road is of significant length and intersects with existing highways.
- Section F - Paragraph 4(f): the CPO will usually state the purpose of acquisition to give effect to the special road scheme/order and it would be helpful to mention that special road schemes are only likely if a new local authority road is to connect to a new junction with a special road.
- Section F - Paragraph 5: it would be useful if the reference to section 110 could add that this relates to the diversion of watercourses, also if either Circular 003/2019 or CPO manual could address the question of the desirability of acquiring full title to existing highways included within a CPO.
- Section F - Paragraph 11: it would be helpful to refer to the powers conferred by the provisions outlined in this section.
- Section F - Paragraph 11: an alternative to the acquisition of the whole of a building is to compulsorily acquire part of a building and take rights to make good the remainder of the building (see the Newport City Council (Redevelopment of John Frost Square) CPO 2006).
- Section F - Paragraph 13: specific examples of rights might be better dealt with in the CPO Manual which may allow a wider range of examples of rights.

- Section F - Paragraph 18: it is best practice to deal with land required for one-off purposes in the Statement of Reasons although this will change when the powers to acquire temporary rights are commenced.
- Section F - Paragraphs 24 to 28: this could usefully cross-refer to the guidance on the desirability of integrating the laying of the groundwork for CPO into the overall planning process of an active travel project.

6.11 A respondent from the Others sector, who disagreed the guidance in Part 2 is clear, stated no reliance should be placed on an emerging LDP which has not been consulted upon and found sound until it has been adopted by a LPA. The respondent suggested amendments should be made to the following guidance in Part 2:

- Section A - Paragraph 7: “An adopted development plan” should replace “a development plan” as no credence should be given to an emerging development plan.
- Section A - Paragraph 10: “in better responding to the needs of the community” suggest the local authority has some knowledge of the needs of the community, this can be ascertained by heeding the results of any consultation with communities.
- Section A - Paragraph 11: This paragraph could enable local authorities to utilise the section 226(1)(a) of the Town and Country Planning Act 1990 power to overcome local opposition to housing. It is considered only when there has been full consultation with the community and their consent has been given that this power should be exercised. The words “and the community” should be inserted after “and their partners”.
- Section A - Paragraph 12: To reflect the WBFAG Act, “All decisions should comply with the principles of the WBFAG Act before being taken further” should be added at the end of the paragraph.
- Section A - Paragraph 13: “after meaningful consultation with the local communities on the overarching benefits from the proposals to the area and can provide a solid foundation for the overall wellbeing of their area so that it responds directly to local, regional and national issues.” should be inserted after “well-being” in line five.
- Section A - Paragraph 18(c): The last line should start “This could contribute to the.....” not “This could contribution”.
- Section A - Paragraph 20: The first sentence needs clarification as all LPAs have a duty under the Planning and Compulsory Purchase Act 2004 to produce a LDP.
- Section A - Paragraph 22: The last sentence from “Likewise” onwards should be deleted as no consideration should be taken of an emerging development plan.
- Section A - Paragraph 23: This paragraph should be deleted as no credence should be given to an emerging LDP in a “last resort stage”.
- Section A - Paragraph 24: This paragraph should be deleted - if there is no clear end purpose then compulsory acquisition should not be allowed.
- Section A - Paragraph 26(a): A full stop should be placed after “area” in line three and delete “or, where no such up to date development plan exists, with the draft development plan.”
- Section A - Paragraph 26(d): Although viability has a part to play in such decisions it should not be allowed to drive the development when it offends PPW provisions.

- Section B - Paragraph 15: “in” before “included” in the first line should be deleted and replace “favours” with “decides clearance is the best path to follow”.
- Section B - Paragraph 16: “favours retaining” should be replaced with “decides to retain”.
- Section F - Paragraph 13 “meter” is spelt incorrectly.
- Section F - Paragraph 27: Replace “favour” with “accept”.

6.12 One Government Agency/Other Public Sector did not agree the guidance in Part 2 is clear and commented the language should be improved to aid accessibility.

6.13 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q4	Welsh Government Response
	<p><u>Specific amendments to Part 2</u></p> <p>We will give consideration to amending the following guidance in Part 2 in line with respondents’ comments:</p> <ul style="list-style-type: none"> • Section A - Paragraphs 10 to 13 • Section A - Paragraph 15 • Section A - Paragraphs 18 to 25 • Section A - Paragraph 26 • Section B - Paragraphs 6 to 7 • Section B - Paragraphs 15 to 16 • Section B - Paragraphs 20 to 26 • Section F - Paragraphs 4 to 5 • Section F - Paragraph 11 • Section F - Paragraph 13 • Section F - Paragraph 18 • Section F - Paragraphs 24 to 28 <p><u>Consistency with Technical Advice Note (TAN) 24</u></p> <p>Paragraph B13 of TAN 24 refers to the issuing of repair notices rather than compulsory purchase, this is dealt with in paragraph B14 of TAN 24.</p> <p>The issuing of repair notices and the authorisation of compulsory purchase are two separate procedures. I.e. in order to demonstrate the justification in the public interest for the compulsory purchase of a listed building, a repair notice is required to be issued in the first instance. The term “exceptional circumstances” in paragraph B13 of TAN 24 focuses on the circumstances in which the Welsh Ministers would issue repair notices rather than the authorisation of a LPA’s listed building CPO.</p> <p>A review will be undertaken of paragraph 1 in Section G of Part 2 to replicate correctly section 47 of the Planning (Listed Buildings and Conservation Areas) Act 1990.</p> <p>A reference will be inserted to the compelling case test in paragraph 1 in Section G and “in exceptional circumstances” will be removed to improve clarity.</p>

Section F of Part 2: Highways Act 1980

The guidance in Section F of Part 2 will be reviewed to clarify:

- (a) CPOs should make it clear if works for the improvement of an existing highway and works for the construction of a new highway both form part of an acquisition scheme; and
- (b) the criterion to determine whether a CPO involves the construction of a new highway or the improvement of an existing highway, indicated in the wording of Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, will apply in most cases.

Consideration will be given to bringing the technical advice of DfT Circular 1/97 and 2/97 within the CPO Manual. Also, to amending the guidance in Section F of Part 2 to reference DfT Circular 1/97 and 2/97 or technical advice contained in the CPO Manual.

Community and town councils

Section A in Part 2 will be revised to make reference to community and town councils when matters concerning the community are referenced.

We acknowledge the comments made on extending the activities for which local authorities may make CPOs on behalf of community and town councils under the miscellaneous provisions in the Local Government Act 1972 (“the 1972 Act”).

Section 125 of the 1972 Act provides a general power for local authorities to acquire land compulsorily (subject to certain restrictions) on behalf of community and town councils which are unable to purchase by agreement land needed for the purpose of a statutory function.

As with the general power of compulsory purchase at section 121 of the 1972 Act, section 125 is (subject to certain constraints) to be used by local authorities in conjunction with other enabling powers (i.e. section 19, of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”) to compulsorily acquire land for the stated purpose i.e. recreational facilities in the case of section 19 of the 1976 Act.

To expand the purposes for which local authorities may compulsorily acquire land (subject to certain restrictions) on behalf of community and town councils, the legislation underpinning the statutory functions of community and town councils would first need to be amended. The LGE Bill is seeking to introduce a general power of competence which would allow qualifying community or town councils to do anything provided they are acting rationally, other than those activities which are specifically prohibited by other legislation. The emergence of a General Power of Competence for qualifying community and town councils may provide an appropriate legislative vehicle.

We will monitor the progress of the LGE Bill and update the guidance in Section C of Part 2 if appropriate. This may include separating the guidance on community and town councils in line with the enhanced roles for community councils as proposed in that Bill.

Consideration will be given to the need for further legislation to expand the purposes for which local authorities may compulsorily acquire land on behalf of community and town councils.

In relation to the guidance in Section C of Part 2 on when a community or town council may become liable for costs as a result of a CPO being made on its behalf by a local authority and it being confirmed. A local authority will only use its compulsory purchase powers following a request made by a community or town council. In those circumstances, it is only fair and reasonable for the local authority to recover its costs and it would be the relevant community or town council which would be liable for those costs as the promotor of the CPO.

Development plans

Paragraph 20 in Section A of Part 2 will be reviewed to make it clear if an acquiring authority's acquisition scheme is not in accordance with the development plan for the area, any deviation will need to be justified.

Advice relating to giving consideration to emerging or outdated development plans is included in Chapter 7 of the Development Plans Manual (Edition 3) and is still extant. We therefore reject calls for the following paragraphs in Section A of Part 2 in Circular 003/2019 to be amended:

- Paragraph 7;
- Paragraphs 22 and 23; and
- Paragraph 26(a).

Purchase prices which exceed market value

We will publish a CPO Manual alongside Circular 003/2019 to provide best practice points. Hyperlinks will be inserted in Circular 003/2019 to reference the best practice points contained in the CPO Manual. Consideration will be given to including in the CPO Manual reference to the practice of achieving best value for public money through acquisition by agreements which exceed market value but are lower than the end cost of acquiring via a CPO.

Acquiring authority undertaking not to implement a CPO

The guidance in paragraph 12 in Section B of Part 2 on use of undertakings by local authorities not to implement CPOs will be reviewed to ensure consistency with Welsh Government policy for supporting local authorities bring empty properties back into use through the greater use of enforcement powers such as CPOs.

Direction for minimum compensation in a CPO

Consideration will be given to clarifying the guidance in paragraph 6 in Section G of Part 2 on the circumstances when an appropriate authority should notify Welsh Ministers of an application to a magistrates' court to contest a direction for minimum compensation.

Third parties do not have the statutory power to make a CPO. As such, there is no provision for them to make a direction for minimum compensation in the circumstances relating to where a listed building has deliberately been allowed to fall into disrepair.

Accessibility of guidance

A review of Part 2 will be undertaken to improve the accessibility of the guidance.

Proceeding with a CPO

In paragraph 24 in Section A of Part 2 the guidance suggests it may not be feasible or sensible to wait until the full details of an acquisition scheme have been worked up, and planning permission obtained, before an acquiring authority proceeds with a CPO. This is relevant in cases where there is a pressing need to take urgent action i.e. removal of a dangerous building and it may not be sensible to wait until planning permission has been obtained. In this scenario the LPA would still need to demonstrate the compelling case in the public interest for the CPO to be successful.

Next steps

- 6.14 It is proposed to adopt the guidance in Part 2 in the final version of Circular 003/2019 subject to amendments proposed by respondents which we accept (see the Welsh Government response above).
- 6.15 We will review paragraph 12 in Section B of Part 2 to ensure consistency with Welsh Government policy for supporting local authorities bring empty properties back into use through the greater use of enforcement powers such as CPOs.

7. Summary of Responses - Question 5

Q5	Do you agree the procedural issues relating to compulsory purchase orders are clearly set out in Part 3 of the Circular? If not, why not?
The consultation proposes guidance on common procedural issues which have to be considered by an acquiring authority when making a CPO.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	1	0	1	2	4
C	Local Planning Authorities (including National Park Authorities)	5	0	0	2	7
D	Others (other groups not listed)	1	0	3	0	4
E	Professional Bodies/Interest Groups	3	1	0	2	6
F	Voluntary Sector	0	0	0	1	1
Total all respondents		11	1	4	8	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	12	4
Overall Percentage	75%	25%

Statistical review

- 7.1 The majority of respondents agreed the guidance on common procedural issues contained in Part 3 of draft Circular 003/2019 is clear. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 75% were in agreement, while 25% disagreed.
- 7.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups were all in favour of the proposal. Objections were received from one Government Agency/Other Public Sector and three respondents from the Others sector. Two Government Agency / Other Public Sector, two Local Planning Authorities, two Professional Bodies/Interest Groups and one Voluntary Sector did not respond to the consultation question.

Key themes

7.3 The key themes in response to question 5 were as follows:

- General consensus the guidance in Part 3 specifying the procedural issues relating to CPOs is clearly set out.
- Specific amendments to Part 3 put forward.

Overview

7.4 Overall, there was general support for the guidance in Part 3. A Professional Body/Interest Group respondent, who agreed the guidance in Part 3 is clear, commented they found the guidance helpful. The respondent identified minor typographical errors and suggested formatting changes.

7.5 Another Professional Body/Interest Group respondent, who agreed the guidance in Part 3 was clear, stated further detailed guidance could be provided on the Housing and Planning Act 2016 powers of appropriation. Furthermore, acquiring authorities would benefit from more guidance on the approach they should take to such powers.

7.6 A Government Agency/Other Public Sector respondent disagreed the guidance in Part 3 was clear due to the language used.

7.7 A respondent from the Others sector, who disagreed the guidance in Part 3 was clear, suggested a diagram would be useful to outline the timescales involved with a Certificate of Appropriate Alternative Development (CAAD). Also, it should be made clear what the benefits are of obtaining a nil CAAD.

7.8 A respondent from the Others sector, who disagreed the guidance in Part 3 was clear, stated no emphasis should be placed on an un-adopted LDP. Also, copies of all documentation in connection with a CPO should appear on a dedicated part of the planning portal so all parties involved and the general public can consider their rights to object. Furthermore, many people access information online and don't read a newspaper. The respondent suggested amendments should be made to the following guidance in Part 3:

- Section I - paragraph 11: after "section 78", "to" does not appear to relate to the text.
- Section I - paragraph 29: "Meaning of the "the Public" in regard to exchange land" should be in italics lettering and the first "the" deleted.
- Section I - paragraph 31: in line six after "open space" but before the semi-colon, insert "and the local authority wish to retain the same as an open space for the benefit of the public".
- Section U: the form is to be signed by Town Clerk/ Clerk of the County Council, the majority of CPOs, if not all CPOs, are signed by CEOs. This area of the form should be blank with a space provided for a description of the position of the signing official to be added.

7.9 A Businesses / Planning Consultants respondent suggested an alternative distribution of the contents in Part 3 would be helpful i.e.

- Sections I, J, K and N relate more to guidance in Part 2.
- Sections L and M form a discrete part dealing with "Procedures Ancillary to Compensation Claims".

- Section P could be re-titled “Guidance on drafting and serving the order and associated applications”.
- Sections R and S could be merged.
- The remaining sections in Part 3 sit logically in a section covering “Procedural and Drafting Issues”.

The respondent commented best practice on decision-making on the power to overriding easements and other rights should be considered as these rights may come to be exercised without there having been a formal CPO process. Also, additional guidance on the service of notices and the form of press notice could usefully be added. The respondent suggested amendments should be made to the following guidance in Part 3:

- Section I - paragraph 1: this should be described as “additional protection” in the sense these provisions are additional to the rights of objection and challenge enjoyed by all owners.
- Section I - paragraph 5: there appear to be some grammatical errors in the gas transporter example.
- Section I - paragraph 7: an up-to-date list of Welsh Ministers and departments of the Welsh Government with supervisory/operational responsibility would be useful.
- Section I - paragraph 9: the nature of the provisions referred to in section 31(1) of the 1981 Act should be set out to explain the policy basis for the types of CPO which can proceed if there is a joint confirmation notwithstanding the absence of a section 16 certificate.
- Section I - paragraphs 18 to 26: the CPO manual might usefully consider suggesting a model non-statutory format for presenting a section 19 certificate application.
- Section I - paragraph 33: it would be helpful to indicate what acquisitions, if any, this provision applies to.
- Section J - paragraphs 7 to 8: guidance on the drafting of new rights provisions should be placed in Section P and acquiring authorities should, when drafting new rights, adopt a similar degree of precision to that employed in drafting the terms of easements and rights in connection with property transactions. Also, legal advice should be taken on the drafting of new rights.
- Section K - paragraph 4: the final bullet point appears to be a heading.
- Section K - paragraph 7: the guidance would be better placed in Section P and sign-posted here.
- Section P - paragraph 2: attention should be drawn to the numerous specific powers contained in the Highways Act 1980.
- Section P - paragraphs 5 to 8: guidance on minerals and the general rules regarding the need for specific acquisition should be included under Section I and cross-reference added to the guidance on the actual drafting of the provisions applying the Minerals Code.
- Section P - paragraph 16: it would be helpful if the guidance is amplified by dealing with the importance of acquiring satisfactory title where the land is to be transferred on to third parties to develop, as is frequently the case under planning and housing CPOs.
- Section P - paragraph 18: the guidance in sub-paragraphs (a) to (p) could be presented alphabetically in tabular form.
- Section P - paragraph 27: it would be useful to remind acquiring authorities that where one of the purposes of the CPO is to give effect to another instrument, then that instrument should be sealed first e.g. where one of the purposes of a highways or planning CPO is to give effect to a Side Roads Order.

- Section Q - paragraph 4: many acquiring authorities identify the CPO maps by affixing an impression of the seal on them, in addition to the seal on the Order itself.

7.10 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q5 Welsh Government Response

Specific amendments to Part 3
 Consideration will be given to amending the following guidance in Part 3 in line with respondents' comments:

- Section I - paragraph 1
- Section I - paragraph 5
- Section I - paragraph 7
- Section I - paragraph 9
- Section I - paragraph 11
- Section I - paragraphs 18 to 26
- Section I - paragraph 29
- Section I - paragraph 31
- Section I - paragraph 33
- Section J - paragraphs 7 to 8
- Section K - paragraph 4
- Section K - paragraph 7
- Section L - paragraph 11
- Section P - paragraph 2
- Section P - paragraphs 5 to 8
- Section P - paragraph 16
- Section P - paragraph 18
- Section P - paragraph 27
- Section Q - paragraph 4
- Section U

An alternative distribution of the contents in Part 3 will also be considered in line with respondents' comments.

Housing and Planning Act 2016 appropriation powers
 Consideration will be given to reviewing Part 3 to provide more detailed guidance on the following Housing and Planning Act 2016 powers of appropriation and the approach acquiring authorities should take to the use of such powers:

- material detriment,
- overriding easements, and
- other rights.

Consideration will also be given to including best practice in Part 3 on decision-making relating to the power to override easements and other rights.

Accessibility of guidance

A review of Part 3 will be undertaken to improve the accessibility of the guidance.

Section L: Certificate of Appropriate Alternative Development (CAAD)

Consideration will be given to inserting a diagram in Section L in Part 3 to outline the timescales involved with the issuing of a CAAD. Also, providing further guidance on what the benefits are of obtaining a nil CAAD.

Development plans

Advice relating to giving consideration to emerging or outdated development plans is included in Chapter 7 of Development Plans Manual (Edition 3) so is still extant. We therefore reject calls for the guidance in Part 3 of Circular 03/2019 to be amended in this regard.

Electronic copies of documentation and notices associated with a CPO

The requirement to publish documentation and notices in connection with a CPO is set out in provisions under the Acquisition of Land Act 1981 ("the 1981 Act"). This consultation did not propose changes to those provisions and any such changes would be required to be made via primary legislation. The modernisation of the notice and publicity requirements under the 1981 Act will be considered under future reforms to the CPO process.

Service of notices including press notices

Consideration will be given to inserting additional guidance in Part 3 on the service of notices and the form press notices advertising CPOs should take.

List of Welsh Ministers and departments of the Welsh Government

A hyper-link will be included in the CPO Manual to the Welsh Government web page detailing the list of Welsh Ministers and their responsibilities.

Model non-statutory format for a section 19 certificate application

Consideration will be given to the appropriate format a model non-statutory form for a section 19 certificate application should take. The modernisation of the section 19 certificate application procedure will be considered under future reforms to the CPO process.

Next steps

- 7.11 It is proposed to adopt the guidance in Part 3 in the final version of Circular 003/2019 subject to amendments proposed by respondents which we accept (see the Welsh Government response above).
- 7.12 Consideration will be given to modernising the:
- (a) notice and publicity requirements, and
 - (b) section 19 certificate application procedure
- under the 1981 Act. This will be taken forward under future reforms to the CPO process.

8. Summary of Responses - Question 6

Q6	Do you agree the overview of the compulsory purchase process for non-ministerial compulsory purchase orders in Part 4 of the Circular is clear for both acquiring authorities and remaining objectors? If not, why not?
The consultation proposes an overview of the CPO process for non-ministerial compulsory purchase orders in a diagrammatic form.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	1	0	1	2	4
C	Local Planning Authorities (including National Park Authorities)	5	0	0	2	7
D	Others (other groups not listed)	1	0	2	1	4
E	Professional Bodies/Interest Groups	2	1	0	3	6
F	Voluntary Sector	0	0	0	1	1
Total all respondents		10	1	3	10	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	11	3
Overall Percentage	79%	21%

Statistical review

- 8.1 There was almost an equal split between respondents who did not answer the question and respondents who agreed the overview of the CPO process in Part 4 of draft Circular 003/2019 is clear. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 79% were in agreement, while 21% disagreed.
- 8.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others and Professional Bodies / Interest Groups were all in favour of the proposal. Objections were received from one Government Agency/Other Public Sector and two respondents from the Others sector. Three Professional Bodies/Interest Groups, two Government Agency / Other Public Sector, one Local Planning Authority, one Other and one Voluntary Sector did not respond to the consultation question.

Key Themes

8.3 The key themes in response to question 6 were as follows:

- The overview of the CPO process is helpful.
- The overview of the CPO process is straightforward.

Overview

- 8.4 Overall, there was general support for the overview of the CPO process in Part 4. One Professional Bodies / Interest Groups respondent, who agreed Part 4 is clear, commented it would be helpful to add a cross-reference to the CPO Manual. In particular, relating to the preparation of a CPO prior to its submission. Also, Figure 3 in Part 4 should include reference to the requirement to make advance payments on possession.
- 8.5 One Government Agency / Other Public Sector respondent stated the language in Part 4 could be clearer.
- 8.6 Another Professional Bodies / Interest Groups respondent maintained it wasn't clear how reference to "Scheme to be blocked by planning issues?" in Figure 3 in Part 4 fits as a stage in the process.
- 8.7 One respondent from the Others sector suggested Figures 1 - 3 should be located earlier in the guidance and the following points on Part 4 were raised:
- Figure 1: what is the relevance of the side boxes "Planning Considered" and "Acquisition Programme"?
 - Figure 1: the two boxes following "Objections: To be considered by inquiry" lack sufficient detail to be useful;
 - Figure 1: it is not clear what the difference is when a pre-inquiry meeting is held;
 - Figures 1 and 2: there is wording which refers to "A: Authority"; and
 - Figure 3: what is the relevance of the box "Scheme to be blocked by planning issues"? If they are "blocked", then the order should not even be made.
- 8.8 One LPA identified the version of the "*Annex A - Draft Circular 003_2019 on Compulsory Purchase in Wales and 'The Crichef Down Rules (Wales Version, 2019)*" document which was uploaded on the Welsh Government website on the consultation launch date did not contain the correct Part 4. I.e. the overview of the CPO process was missing and 'The Crichef Down Rules' formed Part 4.
- 8.9 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q6 Welsh Government Response

Amendments to the overview of the CPO process

Part 4 will be amended to include reference to technical guidance in the CPO Manual, in particular on the preparation of CPOs prior to their submission. Reference will be inserted in Figure 3 to the requirement to make advance payments on possession. Figure 3 will also be reviewed to consider how the box titled "The scheme being blocked by planning issues" fits in as a stage in the process.

A review of the language used in Part 4 will be undertaken with a view to improving its accessibility prior to the publication of Circular 003/2019.

A suggestion was made for Figures 1 – 3 to be located earlier in the Circular to aid understanding by non-professionals. Hyperlinks to Figures 1 – 3 will be inserted into Circular 003/2019 to improve cross-referencing. This will enable users to be directed to the relevant Figure and help reduce duplication of guidance.

A query was raised on the relevance of the side boxes “Planning Considered” and “Acquisition Programme” in Figure 1. These boxes outline the activities which should be taken by acquiring authorities in parallel to the making of a CPO and which do not form part of the statutory compulsory purchase process. Although they are separate activities from the CPO process, they are linked to the justification for a CPO and the ultimate success of a land acquisition scheme. The CPO Manual will provide detailed technical guidance on these aspects and a reference to the CPO Manual will be inserted into Part 4.

A comment was made that the two boxes following “Objections: To be considered by inquiry” in Figure 1 lack sufficient detail to be useful. Consideration will be given to expanding the guidance in the following two boxes in Figure 1:

- (a) "Objections: To be considered by inquiry" to confirm when one remaining objector wants to be heard, a public inquiry will be held; and
- (b) "WM to give notice of substance of objections" to confirm which parties will be sent the notice of substance and when.

It was also stated Figure 2 is not clear on the difference in the process when a pre-inquiry meeting is held. Figure 2 will be expanded to elaborate on why a pre-inquiry meeting may be required. Also, the design and layout of Figure 2 will be amended to help differentiate in the process between where a pre-inquiry meeting is held and where one isn't held.

Clarity was requested on use of the term “A: Authority” in Figures 1 and 2. The term “A: Authority” in Figures 1 and 2 will be replaced with the term “Acquiring Authority”.

A respondent queried the relevance of the box “Scheme to be blocked by planning issues” in Figure 3 and commented if a scheme is “blocked” then the CPO should not even be made. A CPO may be progressed in parallel with a planning application or an appeal. If planning permission is withheld or held-up then this will be taken into account in the confirmation decision. This doesn't prevent a CPO from being made by an acquiring authority, only that it may present a barrier to the CPO being confirmed.

Publication of incorrect version of Annex A

When the consultation was launched on 9 October 2019 a technical error occurred when the “*Annex A - Draft Circular 003_2019 on Compulsory Purchase in Wales and 'The Criche Down Rules (Wales Version, 2019)*” document was uploaded onto the Welsh Government's website.

The correct Part 4 was missing. The correct version of Annex A was uploaded onto the Welsh Government's website on 12 November 2019 which contained the 'Overview of the CPO Process' in Part 4. The LPA which raised this issue has been responded to directly.

Next steps

- 8.10 It is proposed to adopt the guidance in Part 4 in the final version of Circular 003/2019 subject to amendments to improve its clarity and to make reference to technical guidance in the CPO Manual. Part 4 will be re-designed and a review of its language undertaken to improve accessibility.

9. Summary of Responses - Question 7

Q7	Do you agree the rules and procedures for the disposal of surplus government land set out in Part 5 of the Circular ('The Criche Down Rules' (Wales version 2019)) are clear to former landowners/ their successors, local authorities and statutory bodies. If not, why not?
The consultation proposes updated rules and procedures for the disposal of surplus government land which was acquired by, or under a threat of, compulsory acquisition.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	1	1	0	2	4
C	Local Planning Authorities (including National Park Authorities)	4	2	0	1	7
D	Others (other groups not listed)	2	1	1	0	4
E	Professional Bodies/Interest Groups	2	2	0	2	6
F	Voluntary Sector	0	1	0	0	1
Total all respondents		10	7	1	6	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	17	1
Overall Percentage	94%	6%

Statistical review

- 9.1 The majority of respondents agreed the updated rules and procedures for the disposal of surplus government land, which was acquired by, or under a threat of, compulsory acquisition, in Part 5 of draft Circular 003/2019 is clear. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 94% were in agreement, while 6% disagreed.
- 9.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups and Voluntary Sector were all in favour of the proposal. Objections were received from a respondent from the Others sector.

Two Professional Bodies/Interest Groups, two Government Agency / Other Public Sector, and one Local Planning Authority did not respond to the consultation question.

Key themes

9.3 The key themes in response to question 7 were as follows:

- A significant majority agreed ‘The Crichel Down Rules’ (Wales version 2019) are clear.
- Reference to local authorities and statutory bodies following the same rules should be strengthened.

Overview

9.4 Overall, there was general support for the guidance in Part 5. One LPA and two Professional Body / Interest Groups respondents, who agreed the guidance in Part 5 is clear, commented it was good practice to mirror closely the UK Government version of ‘The Crichel Down Rules’ as it is helpful for advisers acting in both Wales and England.

9.5 One respondent from the Government Agency/Other Public Sector and one from the Others sector commented it should be mandatory for local authorities and statutory undertakers to follow the guidance in Part 5.

9.6 One Voluntary Sector respondent commented it is clear from the guidance in Part 5 land should be offered back to landowners first.

9.7 A Professional Body / Interest Group stated ‘The Crichel Down Rules’ (Wales version 2019) should be converted to statute and the guidance should be amended to make it an obligation to offer back all land compulsory purchased to the original landowner or successor.

9.8 One Businesses / Planning Consultant respondent suggested it would be useful to include information on Public Request to Order Disposal under the Local Government, Planning and Land Act 1980.

9.9 Another Businesses / Planning Consultant respondent put forward the following suggested amendments to the guidance in Part 5:

- Paragraphs 1 and 2 could be clearer in explaining the bodies for whom the Rules are mandatory and those to whom they are commended as good practice. As such, the content of paragraphs 1 – 3 in Appendix C could be brought forward to the introductory part of the main body of the Rules.
- The separation of guidance in Appendix C from the main body of the Rules leads to unnecessary duplication i.e. Rule 10 with paragraph 8 of Appendix C.
- There is an incorrect reference to “National Assembly for Wales public bodies” in paragraph 1 of Appendix C.

9.10 A LPA raised the following point:

- Part 5: Paragraph 23 - it notes the need for site notices announcing the disposal of land but it is not clear for how long. Also, previous mention of site notices in draft Circular 003/2019 provides a provision for frequent checks to ensure they have not been removed etc. This should be standard practice.

The response was submitted under question 10. It was deemed more appropriate to consider the response through the analysis of this question given it relates to guidance contained in Part 5.

- 9.11 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q7 Welsh Government Response

Mandatory for local authorities and statutory undertakers to follow 'The Criche! Down Rules' (Wales version 2019)
It is our intention to strengthen the 'The Criche! Down Rules' to make it clear the guidance should be followed by all acquiring authorities as best practice.

Convert to statute
We consider it an unnecessary step to convert 'The Criche! Down Rules' to statute as they are established working principles and advocate best practice.

Consideration will be given to amending the guidance in Part 5 to make it an obligation to offer back all land compulsory purchased to the original owner or successor.

Public Request to Order Disposal
Further research will be undertaken on the Public Request to Order Disposal under the Local Government, Planning and Land Act 1980 to inform a decision on whether to include information on this matter in the Rules.

Amendments to the 'The Criche! Down Rules' (Wales version 2019)
We will give consideration to making the following changes to the guidance in Part 5:

- amending paragraphs 1 and 2 to make it clearer whom the guidance is mandatory;
- combining paragraphs 1 – 3 and 8 in Appendix C with the introductory part of the main body of the guidance and paragraph 10;
- amending paragraph 23 to clarify how long site notices announcing the disposal of land should be erected for and maintained, also when checks should be undertaken;
- replacing the reference to "National Assembly for Wales public bodies" in paragraph 1 of Appendix C.

Next steps

- 9.12 It is proposed to adopt the guidance in Part 5 in the final version of Circular 003/2019 subject to amendments to clarify which bodies the guidance is mandatory and those which they are commended as best practice. Consideration will be given to merging the content of Appendix C with the introductory part of the main body of the guidance and paragraph 10. The guidance in paragraph 23 in Part 5 on the publishing of site notices announcing the disposal of land will be amended.

9.13 Further research will be undertaken on the reference to “National Assembly for Wales public bodies” in paragraph 1 of Appendix C and updated if necessary.

10. Summary of Responses - Question 8

Q8	Do you agree with the proposal to revise paragraph 3.53 of Planning Policy Wales (Edition 10) as set out in paragraph 25 of the 'Consultation Executive Summary' paper?
The consultation proposes a revision to national planning policy, contained in paragraph 3.53 of PPW (Edition 10), to strengthen the use of CPO powers by local authorities to bring empty properties and vacant land back into use in the public interest.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	2	0	0	2	4
C	Local Planning Authorities (including National Park Authorities)	4	3	0	0	7
D	Others (other groups not listed)	0	1	2	1	4
E	Professional Bodies/Interest Groups	2	3	0	1	6
F	Voluntary Sector	1	0	0	0	1
Total all respondents		10	7	2	5	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	17	2
Overall Percentage	89%	11%

Statistical review

- 10.1 The majority of respondents agreed with the proposal to revise paragraph 3.53 of Planning Policy Wales (Edition 10) to strengthen the use of CPO powers by local authorities. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 89% were in agreement, while 11% disagreed.
- 10.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups and Voluntary Sector were all in favour of the proposal. Objections were received from two respondents from the Others sector. One respondent from the Others sector did not respond to the consultation question.

Key themes

10.3 The key themes in response to question 8 were as follows:

- Support for the emphasis on the use of compulsory purchase powers “in the public interest” is less restrictive.
- The removal of the term “exceptional circumstances” provides broader platform for CPO intervention.
- Compulsory purchase policy needs more profile through a broader narrative associated with placemaking.

Overview

- 10.4 Overall, there was general support for the proposal to revise paragraph 3.53 of Planning Policy Wales (“PPW”) (Edition 10). A LPA, who was in support, commented the revised policy will ensure greater clarity on the use of CPO powers. Another LPA stated it will encourage the use of CPOs to unlock potential development sites and provide LPAs with an additional justification for undertaking CPOs.
- 10.5 A respondent from the Others sector suggested although the proposed revised national policy is useful, further clarity is required on what the term “de-risking” means.
- 10.6 A LPA commented the change in policy to “in the public interest” will result in a more proactive approach among LPAs, local communities, landowners and the development industry in terms of ensuring good, community-minded development.
- 10.7 A respondent from the Voluntary sector welcomed the statement to seek agreement wherever possible as it avoids uncertainty to landowners and communities. The respondent also commented early involvement and sharing of information with affected communities will help bring clarity to the process.
- 10.8 A LPA commented the proposed revised national policy does not reflect the guidance in the draft Circular as ‘where necessary’ is a very different approach to the phrase ‘as a last resort’. The respondent recommended the proposed revised national policy be reviewed to ensure the language is consistent with the guidance in the published version of Circular 003/2019.
- 10.9 A Professional Bodies/Interest Groups respondent, while supportive of the proposed change in policy from ‘exceptional circumstances’ to ‘where necessary ... in the public interest’, questioned whether the proposed revised national policy could be more positive and simplified further given the aim of the consultation.
- 10.10 A Professional Bodies/Interest Groups respondent welcomed the proposed strengthening of support for the use of CPO through national planning policy and provided the following comments:
- (a) the “de-risking” approach could be better defined;
 - (b) the wording of the proposed revised national policy could be improved to make it clear compulsory purchase should be seen as an option to be borne in mind, and planned for, from the outset; and
 - (c) it is not clear whether the intention is to revise PPW (Edition 10) or introduce a new PPW.

- 10.11 Two Government Agency/Other Public Sector respondents believe national planning policy on compulsory purchase needs more profile through a broader narrative associated with placemaking as it currently appears under the “Previously Developed Land” section in Chapter 3 of PPW (Edition 10). The respondents recommended:
- (a) compulsory purchase policy should have a heading in the contents page of PPW;
 - (b) consideration be given to incorporating the proposed revised national policy in Chapter 2 of PPW (Edition 10) as it includes a section on “Placemaking in Action” which currently lacks reference to legislation and other tools and policy essential to achieving placemaking in practice; and
 - (c) the definition of “de-risking approach” in Chapter 6 of PPW (Edition 10) should include reference to the consideration of the use of CPO powers.
- 10.12 A Businesses / Planning Consultants respondent welcomed the proposed strengthening of support for the use of CPOs but suggested alternative wording for the proposed revised national policy.
- 10.13 A Professional Bodies/Interest Groups respondent commented the proposed revised national policy strengthens the use of CPO in a planning policy context and support was given for the removal of the reference to “exceptional circumstances” being the test for CPO. The respondent suggested the proposed revised national policy could be strengthened further and the following amendment was put forward:
- after the words “use of compulsory purchase powers” insert “which should be regarded by authorities as an important tool in securing development and which should be used proactively”.
- 10.14 A LPA, although supportive of the proposed revised national policy, recommended for clarity purposes, and to ensure greenfield sites are not ruled out, the following amendments be made:
- after the word “facilitate” insert “new development, including redevelopment or improvement”.
- The LPA outlined this change would align the proposed revised national policy with the definition in section 226 of the Town and Country Planning Act 1990 and avoid potential misinterpretation.
- 10.15 A Professional Bodies/Interest Groups respondent suggested the following amendment to the proposed revised national policy as a reminder that public interest should be balanced against private property rights:
- after the words “secure better development outcomes” insert “where the public interest in doing so outweighs private property interests” and delete the earlier reference to “public interest”.
- 10.16 A respondent from the Others sector disagreed with the proposed revised national policy on the basis it would make it easier for national government or local authorities to purchase property at prices lower than open market value. The respondent outlined such acts should only be permitted under extreme circumstances and to make it easier will mean it will happen more frequently.

Q8 Welsh Government Response

Amendments to the proposed revised national policy

The proposed revised national policy will be adopted subject to amendments in line with respondents comments to:

- (a) further strengthen the use of compulsory purchase powers;
- (b) ensure consistency with definitions outlined in legislation;
- (c) include reference to the need to demonstrate the “compelling case”;
and
- (d) highlight the balance between the public interest and private rights.

The alternative wording for the proposed revised national policy suggested by the Businesses / Planning Consultants respondent was rejected given the majority of respondents to the consultation were in favour of the proposed revised national policy. It was also deemed the alternative wording provided less clarity and went against the spirit of the consultation.

“De-risking approach”

Consideration will be given to strengthening the term “de-risking approach” in the proposed revised national policy. Likewise, whether or not it is appropriate to include a reference to compulsory purchase in the definition of “de-risking approach” in Chapter 6 of PPW.

Consistency with updated Circular guidance

The proposed revised national policy will be reviewed prior to adoption to ensure its language is consistent with the guidance contained in the published version of Circular 003/2019.

Raising awareness of CPOs as a tool in placemaking

The next edition of PPW (Edition 11) is programmed to be published in Autumn 2020. Consideration will be given to reviewing PPW to raise the profile and awareness of compulsory purchase as an effective place-making in action tool. Likewise, whether the contents page of PPW should include a sub-heading to compulsory purchase policy to improve sign-posting.

Ahead of the publication of PPW (Edition 11), the intention is to publish a policy clarification letter announcing the revised national planning policy on use of compulsory purchase powers.

Purchasing of property at lower prices than open market value

The proposed revised national policy will have no impact of the calculation of compensation payments as a result of a CPO being confirmed and land being entered and taken. Compensation is a matter reserved to the UK Government. As such, the Welsh Ministers have no competence to amend legislation relating to land compensation.

Next steps

- 10.17 It is our intention to adopt the proposed revised national policy set out in the consultation, subject to minor amendments in line with respondents' comments. The next edition of PPW (Edition 11) is programmed to be published in Autumn 2020. As such, ahead of the publication of PPW (Edition 11) we will publish a policy clarification letter announcing the revision to national planning policy on use of compulsory purchase powers.
- 10.18 We will give consideration to reviewing PPW to:
- (a) include a reference to compulsory purchase in the definition of “de-risking approach” in Chapter 6;
 - (b) raise the profile and awareness of compulsory purchase as an effective place-making in action tool; and
 - (c) improve sign-posting to compulsory purchase policy through amending the contents page of PPW.

11. Summary of Responses - Question 9

Q9	Do you agree LPAs should adopt general policies detailing the criteria they will apply when considering whether or not to exercise their compulsory purchase powers?
The consultation proposes whether local planning authorities should adopt criteria for assessing when they may consider using their CPO making powers.	

Statistical Summary						
Sector		Yes	Yes (subject to comment)	No	Don't Know	Total
A	Businesses / Planning Consultants	1	0	0	1	2
B	Government Agency/Other Public Sector	2	0	0	2	4
C	Local Planning Authorities (including National Park Authorities)	3	1	3	0	7
D	Others (other groups not listed)	0	3	1	0	4
E	Professional Bodies/Interest Groups	1	3	0	2	6
F	Voluntary Sector	1	0	0	0	1
Total all respondents		8	7	4	5	24

	Yes/Yes subject to comment	No
Total Respondents indicating a response	15	4
Overall Percentage	79%	21%

Statistical review

- 11.1 The majority of respondents agreed with the proposal for local planning authorities to adopt criteria for assessing when they may consider using their CPO making powers. Of those who provided a response (either 'Yes', 'Yes, subject to comment' or 'No'), 79% were in agreement, while 21% disagreed.
- 11.2 Business / Planning Consultants, Government Agency / Other Public Sector, Local Planning Authorities, Others, Professional Bodies / Interest Groups and Voluntary Sector were all in favour of the proposal. Objections were received from three Local Planning Authorities and one respondent from the Others sector. All respondents responded to the consultation question.

Key themes

11.3 The key themes in response to question 9 were as follows:

- The process of defining and adopting criteria-based policies should be subject to full public consultation.
- The proposal is not clear on whether this is advocating policies in a LDP, supplementary planning guidance or other policy initiative.
- The adoption of criteria-based policies would restrict LPAs in use of their CPO powers and be in potential conflict with legislative criteria.
- Clear criteria of how CPOs powers will be used by LPAs will benefit communities as it will provide clarity and consistency on how such powers will be used.

Overview

- 11.4 Overall, there was general support for the proposal for LPAs to adopt general policies detailing the criteria they will apply when considering whether or not to exercise their CPOs powers. However, almost a third of respondents who indicated a response commented on the proposals. A respondent from the Others sector, who agreed with the proposal, suggested criteria which LPAs should adopt would be best set out within PPW to ensure consistency. Also, with the benefit of guidance from PPW, LPAs could direct their efforts towards implementing specific local projects considered appropriate for CPO powers. A LPA, who agreed with the proposal, commented due to the range of legislative areas from which CPO powers can be derived it would be difficult for LPAs to adopt general criteria to cover all scenarios. However, setting out of a policy position on the part of the LPA would be beneficial.
- 11.5 A respondent from the Others sector and a Professional Bodies/Interest Groups respondent stated the adoption of criteria-based policies could enable LPAs to apply CPO powers on a consistent approach. The Professional Bodies/Interest Groups respondent noted not all LPAs will be in a position to introduce criteria-based policies if a review of their LDP is not imminent. Also, if criteria-based policies are to be used, they ought to be detailed. The respondent raised concerns on the prospect of LPAs producing non-statutory guidance which could be vague, difficult to apply in practice, and result in legal issues.
- 11.6 A Professional Bodies/Interest Groups respondent suggested a carefully considered and tested criteria-based policy would be of benefit to those living and working in an area as it would offer some certainty towards the use of CPO powers. Furthermore, the process of defining and adopting such policies should be subject to public consultation.
- 11.7 A Voluntary sector respondent outlined the provision of a criteria-based policy will be of benefit to communities in providing clarity and understanding of the CPO process and how CPO powers will be used by LPAs. Furthermore, a degree of deliberate policy announcement by LPAs in advance of the making of a CPO provides an opportunity to raise pertinent issues outside formal inquiry processes.

- 11.8 A Professional Bodies/Interest Groups respondent and a LPA stated it was not clear what form such criteria-based policies should take i.e. included within a LDP, set out within separate guidance possibly as Supplementary Planning Guidance, or formulated and implemented as part of another corporate process.
- 11.9 A Professional Bodies/Interest Groups respondent commented LPAs should apply local policies when making their decisions and use PPW and Circular 003/2019 to inform the decision-making process.
- 11.10 A Professional Bodies/Interest Groups respondent maintained it appeared unnecessary for a criteria-based policy to be adopted as it has the potential to conflict with the legislative criteria already in place. Also, it is considered the specific scope of enabling statutory powers contain the relevant test for CPOs and the CPO guidance contains detailed policy in relation to what should be taken into account. Furthermore, the proposed revised national policy will result in less need for local policy to be drawn up. The respondent outlined in most cases development proposals, such as regeneration or road schemes, are contained within and supported by local planning policy. Also, in some cases, policies will also state the LPA will consider using CPO powers to assist with delivery if necessary.
- 11.11 A Businesses / Planning Consultants respondent stated the proposal is unhelpful as such criteria-based policy would be non-statutory and could not affect the LPA's right to use its statutory powers. Also, such an approach could risk acting as an unlawful deterrent on the circumstances where consideration of CPO action could be appropriate. The respondent suggested an alternative approach would be to encourage and advise LPAs to consider their CPO powers as an option when adopting policies and plans in relations to functions where CPO powers are available e.g. in relation to empty homes and buildings policies.
- 11.12 A Government Agency/Other Public Sector respondent commented a more considered Placemaking in Action approach would provide the basis for the criteria approach suggested in question 9 of the consultation.
- 11.13 A LPA highlighted the idea of adopting criteria-based policies was helpful in principle, however, these policies would need to cover all of the CPO powers available to LPAs. In addition, having these types of general policies would limit the flexibility of LPA and guidance is preferred to policy.
- 11.14 Another LPA suggested adopting criteria-based policies would be restrictive, set unrealistic expectations, and the proposed revised national policy is what is required. Also, the ability to use CPOs powers could be outlined explicitly in a policy within a LDP although unless there is a firm expectation or works have begun this has the potential to raise expectations. The respondent confirmed Circular 003/2019 and the proposed revised national policy are clear CPOs powers should only be used in the case of last resort and for local authorities to set out a criteria-based policy would seemingly undermine this approach.
- 11.15 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q9 Welsh Government Response

It is clear from respondents' comments there are widespread views on the potential impact of the proposal. Further consideration and discussion is required on the detail of the proposal including whether the proposed revised national policy and Circular 003/2019 are sufficient to provide clarity and encouragement on how LPAs should use their CPO powers. We will keep under review implementation of the revised national policy and Circular 003/2019 to monitor use of CPOs by LPAs.

Next steps

- 11.16 Further consideration will be given to the proposal and its possible wider impact including monitoring the use of CPOs by LPAs through implementation of the revised national planning policy on use of CPO powers and Circular 003/2019.

12. Summary of Responses - Question 10

Q10	We have asked a number of specific consultation questions. If you have any related issues which we have not specifically addressed, please use the space below to raise them.
The consultation provided an opportunity for respondents to make any other comments relating to the consultation they considered to be relevant.	

Key themes

12.1 The key themes in response to question 10 were as follows:

- Community and town councils' CPO powers should be extended to address current and emerging forms of activity reflecting placemaking principles and types of community asset.
- A sharing of expertise on a regional basis is required to increase capacity of local authorities.
- It can be difficult to understand the reasons why certain confirmation decisions are made and what CPO powers are used for specific purposes.
- There is no framework for acquisition by agreement in advance of a CPO.
- Funding should be linked to credible timelines for use of statutory powers.

Overview

12.2 A Business / Planning Consultants respondent requested a comprehensive contents be inserted in Circular 003/2019 noting all the different headings in the guidance.

12.3 Two Government Agency/Other Public Sector respondents identified community and town councils do not have CPO powers which are concerned with placemaking. Furthermore, the miscellaneous provisions under Part 7 of the 1972 Act which provide local authorities may use their CPO powers on behalf of community and town councils should be extended to address current and emerging forms of community and town council activity and types of community asset. The respondents drew attention to the extended General Power of Competence which is included in the LGE Bill and aimed at giving more flexibility in terms of function and finance to qualifying community and town councils. The respondents also commented there is a need to look at community awareness of the potential tools available which deserve better exposure in PPW or a popular version of PPW if communities are to be fully involved.

12.4 A LPA outlined the capacity of local authorities will be a real factor in the implementation of the increased use of CPO powers. Also, a Government Agency/Other Public Sector respondent suggested it would be invaluable to have a specialised legal advice service available regionally to provide support on CPOs.

12.5 A Professional Body / Interest Group respondent raised the following points on the CPO process:

- (a) There are a number of themes repeated in recent CPO schemes which can negatively affect the CPO process i.e.:
- poor communication between acquirer, contractors and claimants;
 - failure by acquiring authorities to understand the true cost of professional advice required for meaningful early engagement;
 - poor management of contractors by acquirers;

- inadequate evidence produced by claimants to support claims;
 - acquiring authorities' agents having insufficient authorisation to settle claims;
 - inadequate payment systems which fail to make prompt settlement of agreed claims;
 - lack of willingness on all sides to use ADR techniques to resolve disputes.
- (b) Better communication and contact between acquiring authorities and those representing claimants would assist all sides in the process.
- (c) The Welsh Government should consider establishing a stakeholder group of those interested in CPO matters so communication can be improved, general problems identified and solutions developed. Such a group should include representatives from land and property based organisations i.e.: CAAV; NFU; Farmers' Union of Wales; CLA; British Property Federation; CPA.
- 12.6 A respondent from the Others sector commented CPO decisions are often difficult to locate and understand why certain decisions are made. Also, what CPO powers may be used for specific purposes.
- 12.7 A Government Agency/Other Public Sector respondent highlighted Circular 003/2019 would benefit from clear cross-referencing for ease of reference and the rights of community and town council raised.
- 12.8 A Voluntary Sector respondent commented as CPOs can impact communities it is important Circular 003/2019 makes clear the importance of local communities being fully informed of the CPO process and procedures. Also, it is considered a suitable guide to CPO procedures for communities would be helpful to understand the process and how they can engage with it.
- 12.9 A Government Agency/Other Public Sector respondent raised the following points:
- (a) The proposed revised national policy does not appear to be reflected in any detail in draft Circular 003/2019.
 - (b) A clear statement in PPW and technical advice is required setting out where the use of CPO powers to secure land for housing development could be appropriate. Such clear policy is essential if the use of such powers are to stand up to any potential challenges.
 - (c) There should be a clear explanation for how challenges to using CPOs powers would be dealt with including arrangements to calculate the cost of purchase, or costs from failed attempts to use such powers. They could be linked to applications considered by Planning Inspectorate Wales or by a stand-alone process. Without clarity on policy support and on procedural arrangements, especially costs, local authorities could be very reluctant to use such CPO powers.
 - (d) We assume the detailed procedural advice in the CPO Manual is proposed to be absorbed into Circular 003/2019. We would support having all the information available in one place.
 - (e) The consultation refers to the '*Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales*' (2018) consultation. It does not mention whether or how the proposals set out in the 2018 consultation have been implemented. Interim arrangements are currently in place to deal with the consenting of infrastructure devolved to the Welsh Ministers. It is not clear whether compulsory acquisition is available under the interim arrangements or whether these will be replaced with the bespoke consenting process.

Circular 003/2019 should refer to compulsory acquisition powers available to overhead lines and / or offshore generating stations if they are available. If not, Welsh Government should set a timeline for introducing compulsory acquisition powers in accordance with the intentions set out in the 2018 consultation.

- 12.10 A LPA stated many local authorities rely on external gap funding which can be subject to restricted timelines for use by or, if it is in the form of a loan, a requirement to recycle the funds every five years. Also, linking funding to a credible timeline associated with the use of statutory powers would encourage more authorities to be more interventionist if the funding and the delivery timelines were linked.
- 12.11 A Business / Planning Consultants respondent commented there is no framework for acquisition by agreement in advance of a CPO provided by the Compulsory Purchase Act 1965 beyond stating they are permissible. Also, in practice, it can be a risk for claimants and not useful in advancing matters for acquiring authorities. The respondent maintains employing a fair and structured process in the legislation for acquisition by agreement would ensure constructive early dialogue and mutual appreciation of parties' position. Also, it will provide a clear and focused process for robust and transparent discussions to take place with each party protected in their respective positions and with regard to costs. The respondent suggests as well as protecting claimants from incurring unrecoverable losses, a framework for acquisition by agreement would motivate acquiring authorities to adopt a transparent approach and would encourage early and thorough dialogue with claimants such as businesses who commence relocation. Furthermore, this best practice suggestion would facilitate all types CPOs.
- 12.12 A comment was received from a respondent from the Others sector which suggested the proposals outlined in the consultation would make it easier for governmental agencies to pay lower costs to take people's property away.
- 12.13 A comment was received from a respondent from the Others sector which was not relevant to the consultation.

Q10 Welsh Government Response

Amendments to draft Circular 003/2019

We will give consideration to:

- Amending the contents page to include a comprehensive list of all sub-headings used in the guidance.
- Enhancing the guidance to address negative themes such as:
 - poor communication between acquirer, contractors and claimants;
 - failure by acquiring authorities to understand the true cost of professional advice required for meaningful early engagement;
 - poor management of contractors by acquirers;
 - inadequate evidence produced by claimants to support claims;
 - acquiring authorities' agents having insufficient authorisation to settle claims;
 - inadequate payment systems which fail to make prompt settlement of agreed claims;

- lack of willingness on all sides to use ADR techniques to resolve disputes.

Best practice on communicating and maintaining contact between acquiring authorities and those representing claimants will be included in the CPO Manual.

- Inserting hyperlinks to improve cross-referencing in the guidance.
- Aligning the guidance more closely to the proposed revised national planning policy through adding stronger wording to the 'General overview' section in Part 1.
- Amending paragraph 6 in Section B of Part 2 to provide specific guidance on the types of housing development the Welsh Ministers would regard the use of compulsory purchase powers as justified.

In relation to the rights of community and town councils to compulsory purchase land, we believe this is covered extensively in the guidance under Section C in Part 2. Consideration will be given to inserting hyperlinks in Circular 003/2019 to improve cross-referencing to guidance relating to community and town councils.

Extension of Community and Town Council CPO powers

We acknowledge the comments made on extending the activities for which local authorities may make CPOs on behalf of community and town councils under the miscellaneous provisions in the 1972 Act.

Section 125 of the 1972 Act provides a general power for local authorities to acquire land compulsorily (subject to certain restrictions) on behalf of community and town councils which are unable to purchase by agreement land needed for the purpose of a statutory function.

As with the general power of compulsory purchase at section 121 of the 1972 Act, section 125 is (subject to certain constraints) to be used by local authorities in conjunction with other enabling powers (i.e. section 19, of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") to compulsorily acquire land for the stated purpose i.e. recreational facilities in the case of section 19 of the 1976 Act.

To expand the purposes for which local authorities may compulsorily acquire land (subject to certain restrictions) on behalf of community and town councils, the legislation underpinning the statutory functions of community and town councils will need to be amended in the first instance. The LGE Bill seeks to introduce a general power of competence which would allow qualifying community or town councils to do anything provided they are acting rationally, other than those activities which are specifically prohibited by other legislation. The emergence of a General Power of Competence for qualifying community and town councils may provide an appropriate legislative vehicle to expand the purposes for which local authorities may compulsorily acquire land on behalf of community and town councils.

We will monitor the progress of the LGE Bill and update the guidance in Circular 003/2019 if appropriate.

Consideration will be given to the need for further legislation to expand the purposes for which local authorities may compulsorily acquire land on behalf of community and town councils.

Raising awareness of CPOs as a tool in placemaking: PPW

The next edition of PPW (Edition 11) is programmed to be published in Autumn 2020. Consideration will be given to reviewing PPW (Edition 10) to raise the profile and awareness of compulsory purchase as an effective place-making in action tool. Likewise, whether the contents page can include a sub-heading on compulsory purchase policy to improve sign-posting.

Local authority capacity and sharing of expertise

Consideration will be given to whether the LGE Bill may provide a vehicle for the sharing of resources, expertise and exercising of functions relating to the use of CPO powers by local authorities on a regional basis via the proposed Corporate Joint Committees.

CPO stakeholder group

The Welsh Government recognises one of the most prevalent mechanisms for engagement is through a stakeholder advisory group. However, as we respond to the Welsh Government's *Prosperity for All: The National Strategy*, and look to further embed the WBFG Act, we are committed to improving our approach to engagement and collaboration through innovative and digital routes. This means a move away from establishing new stakeholder advisory groups.

We will look to maximise existing stakeholder group forums wherever possible to communicate information and best practice, raise issues with compulsory purchase practitioners to achieve common policy objectives.

Register of CPO Decisions

There are no plans to publish Welsh Ministers' decisions on CPOs or corresponding inspectors' reports. However, an option will be explored to publish on the Welsh Government's website an online register of CPO decisions made by the Welsh Ministers. It is anticipated this will provide support to local authorities by introducing a consistency in approach to how CPO powers are used, develop understanding on the different CPO powers available and their purpose.

Landowner/business/communities guidance

Consideration will be given to working with stakeholders to develop Welsh Government guidance for landowners, businesses, and communities to help them understand the CPO process.

Overcoming challenges to using CPOs powers

The Welsh Government has established a Land Division to support the development of public land for public policy benefit. The Land Division seeks to share expertise and training with local authorities on land assembly and investing in the right sort of commercial skills, both of which are core elements of the compulsory purchase process.

The Welsh Government is committed to establishing a technical pre-checking service for draft CPOs to provide further support to acquiring authorities on how challenges to securing a successful CPO can be overcome. The CPO Manual will also contain technical guidance on costs although any challenges faced by acquiring authorities on compensation issues should be raised with professional advisors.

CPO Manual

Detailed, technical step-by-step guidance and best practice on the non-statutory stage of the CPO process will be included in a CPO Manual. The CPO Manual will be available in electronic format only and contain hyperlinks cross-referencing guidance in Circular 003/2019. The CPO Manual and Circular 003/2019 will sit alongside each other on the Welsh Government's website.

'Changes to the consenting of infrastructure: Towards establishing a bespoke infrastructure consenting process in Wales' (2018) consultation

Compulsory acquisition powers are not available under the interim arrangements for the consenting of devolved energy generating projects. CPO powers for acquisition of land for overhead lines and / or offshore generating stations have to be applied for under the Electricity Act 1989 and consented by the UK Government. The Welsh Ministers are of the view this is an unsatisfactory situation and the consenting function should be transferred to them.

To ensure the interim arrangements provide the full range of powers developers require, we will continue to press the UK Government for the transfer of functions relating to the powers under Schedule 3 and 4 to the Electricity Act 1989 for the Welsh Ministers to authorise CPOs, give consent for necessary wayleaves or the felling or lopping of tress associated with devolved onshore generating stations. While the provision of a new unified consenting process is a Welsh Government objective set out in *Prosperity for All: The National Strategy*, it is not currently in the Welsh Government's legislative programme. This is reviewed annually. Once a new unified Welsh infrastructure consenting process is in place, it is envisaged compulsory acquisition powers will be available through that regime.

Funding and delivery timescales

When justifying the use of compulsory purchase powers acquiring authorities need to demonstrate how they will make funding available to meet any likely compensation claims.

We will enhance guidance in Circular 003/2019 and include best practice in the CPO Manual on linking funding to a credible timeline for the implementation of a CPO.

Consideration will be given to whether the introduction of statutory timescales for CPO decisions would bring more certainty to local authorities and encourage more interventionist approaches as funding timelines could be linked to statutory timescales.

Acquisition by agreement in advance of a CPO

The CPO Manual will include best practice on the following aspects of the advance acquisitions process:

- (1) Acquiring authorities should implement a fair and equal process especially with contentious compensation claims.
- (2) Acquiring authorities should consider offering an undertaking to cover professional fees with a percentage being paid upfront and the remainder being reimbursed at completion of sale.
- (3) Acquiring authorities should enter negotiations for advance acquisitions with a clear budget, have the funds available to complete the acquisition, and have a serious intention to purchase the property to prevent:
 - (a) matters becoming protracted;
 - (b) low offers and settlements being given;
 - (c) hardship, resentment and entrenched positions being generated; and
 - (d) a delay or cancellation of a transaction.
- (4) Acquiring authorities should maintain goodwill and positive engagement with claimants in negotiations if they agree to provide indemnity for fees and actual costs incurred by claimants.

Also, that this can prevent:

- (a) delays to a scheme resulting in an overall reduction in cost to the acquiring authority;
- (b) reduction in financial losses by a businesses and thus potential pre-acquisition losses in future compensation claims;
- (c) the acquiring authority having to face the expense of preparing for and conducting a CPO inquiry.

Establishing a framework for the acquisition by agreement in advance of a CPO would require a change to primary legislation. This proposal will be considered in more detail through future reforms to the primary legislation underpinning the CPO process.

Lower costs of compensation

Circular 003/2019 and the proposed revised national policy will have no impact on how compensation is calculated as a result of a CPO being confirmed and land being entered and taken. Compensation is a matter reserved to the UK Government. As such, the Welsh Ministers have no competence to amend legislation relating to disturbance payments or land compensation in general.

Next steps

12.14 When finalising Circular 003/2019 we will give consideration to:

- Amending the contents page to include a comprehensive list of all sub-headings used in the guidance.
- Enhancing the guidance to address negative themes such as:
 - poor communication between acquirer, contractors and claimants;
 - failure by acquiring authorities to understand the true cost of professional advice required for meaningful early engagement;
 - poor management of contractors by acquirers;

- inadequate evidence produced by claimants to support claims;
- acquiring authorities' agents having insufficient authorisation to settle claims;
- inadequate payment systems which fail to make prompt settlement of agreed claims;
- lack of willingness on all sides to use ADR techniques to resolve disputes.
- Amending the guidance to highlight the need for funding to be linked to a credible timeline for the implementation of a CPO.
- Inserting hyperlinks to improve cross-referencing in the guidance.
- Aligning the guidance more closely to the proposed revised national policy by adding stronger wording to the 'General overview' section in Part 1.
- Amending the guidance in paragraph 6 in Section B of Part 2 to be more specific on the types of housing development the Welsh Ministers would regard the use of compulsory purchase powers as justified.

- 12.15 Best practice on communicating and maintaining contact between acquiring authorities and those representing claimants will be included in the CPO Manual.
- 12.16 We will continue to press the UK Government for the transfer of functions relating to the powers under Schedule 3 and 4 to the Electricity Act 1989 for the Welsh Ministers to authorise CPOs, give consent for necessary wayleaves or the felling or lopping of tress associated with devolved onshore generating stations. Circular 003/2019 will be updated to reflect these policy changes when these functions have been transferred to the Welsh Ministers.
- 12.17 We will monitor the progress of the LGE Bill in particular the General Power of Competence for qualifying community and town councils provision and update the guidance in Circular 003/2019 if appropriate. Subject to the final provisions of that Bill, we will consider the need for the introduction of legislation to expand the purposes for which local authorities may compulsorily acquire land on behalf of community and town councils. This will be considered under future reforms to the legislation framework underpinning the compulsory purchase regime.
- 12.18 We will work with colleagues across the Planning Directorate on the review of PPW (Edition 10) ahead of the programmed publication in Autumn 2020 of PPW (Edition 11). We will seek agreement to include a sub-heading on compulsory purchase policy in the contents page to improve sign-posting. Likewise, to include reference in Chapter 3 to the use of CPOs as a placemaking in action tool to raise profile and awareness.
- 12.19 We will continue to communicate information and best practice, raise issues and develop solutions with practitioners through existing stakeholder groups, including the CPA Wales Steering Group, to achieve common policy. We will work with existing stakeholder groups to influence the broadening of membership of those groups.
- 12.20 We will explore the option of publishing on the Welsh Government's website an online register of CPO decisions made by the Welsh Ministers to provide support to local authorities on making efficient use of CPO powers.
- 12.21 We will give consideration to working with stakeholders on the future publication of Welsh Government guidance for landowners, businesses, and communities to help aid understanding of the CPO process.

12.22 We will give consideration to introducing statutory timescales for CPO decisions to bring more certainty for local authorities to enable funding timelines to be linked to statutory decision-making timescales which in turn could strengthen use of CPO powers. This will be taken forward under future reforms to the compulsory purchase regime.

13. Summary of Responses - Question 11

Q11	We would like to know your case studies of where compulsory purchase powers have been used successfully to deliver housing-led regeneration schemes. Please use the space below.
The consultation sought respondents' case studies on where CPO making powers have been used to deliver housing related regeneration schemes.	

Key themes

13.1 The key themes in response to question 11 were as follows:

- Case studies provided on the use of CPO powers to deliver regeneration schemes.
- Best practice on how CPOs can be used to deliver spin-off benefits.

Overview

- 13.2 A Professional Bodies / Interest Groups respondent provided a case study on the Leicester Waterside scheme which involved the regeneration of 17 acres of city centre land by Leicester City Council and comprised 80 separate interests for new housing, offices and public space. The case study provides best practice on how acquiring authorities should make early offers to allow existing viable businesses to relocate. Also, prioritising relationship management and demonstrating a commitment to engage early, and being fair and reasonable to give claimants the confidence to do deals.
- 13.3 A LPA provided a case study on the West Rhyl Regeneration Area scheme which involved the use of CPO powers to remove poor specification of private rented accommodation, provide new homes, open space, and encourage private investment.
- 13.4 A respondent from the Government Agency/Other Public Sector provided a case study on the use of CPO powers alongside a back-to-back agreement with a RSL to progress a scheme to regenerate several derelict properties in Penarth. The case study provides best practice on how a CPO and the GVD procedure can help progress stalled schemes whilst negotiations on compensation are undertaken.
- 13.5 A Professional Bodies / Interest Groups respondent suggested CPO schemes which aim to facilitate economic benefits such as jobs and investment can deliver spin-off benefits such as housing improvements.
- 13.6 Another Professional Bodies / Interest Groups respondent commented the use of highway related CPOs can open-up land for housing-led regeneration in the future.
- 13.7 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q11 Welsh Government Response

Case studies

The following case studies on the use of CPOs to deliver housing-led regeneration will be included in the CPO Manual:

- (a) Leicester Waterside scheme;
- (b) West Rhyl Regeneration Area scheme;
- (c) Penarth.

Best practice

Best practice will be included in the CPO Manual on giving consideration to the potential spin-off benefits following the use of CPOs for the purpose of facilitating economic benefits such as jobs and investment. Also, how the use of highway related CPOs has the potential to open-up land for possible housing-led regeneration in the future if it accords with the adopted LDP for the area.

Next steps

- 13.8 We will include case studies in the CPO Manual on the following schemes which involved the use of CPO powers:
- (a) Leicester Waterside scheme;
 - (b) West Rhyl Regeneration Area scheme;
 - (c) Penarth town centre.
- 13.9 We will include best practice in the CPO Manual on the following:
- (a) Acquiring authorities should, from the outset, consider the potential spin-off benefits which could arise as a result of the use of a CPO for the purpose of facilitating economic benefits such as jobs and investment.
 - (b) Acquiring authorities should give strategic thought to how a highway scheme involving the use of CPO powers could open-up land for possible housing-led regeneration in the future if it accords with the provisions of the adopted LDP for the area.

14. Summary of Responses - Question 12

Q12	We would welcome your ideas on where you think changes could be potentially made to the compulsory purchase system to improve the delivery of housing-led compulsory acquisition schemes. Please use the space below.
The consultation sought respondents' views on whether changes could be made to the compulsory purchase regime to improve the delivery of CPOs made for housing purposes.	

Key themes

14.1 The key themes in response to question 12 were as follows:

- The pooling of relevant skills in planning, preparing and promoting a CPO would help deliver housing.
- Amend paragraph 6 of Section B in Part 2 of Circular 003/2019.
- Empower acquiring authorities to acquire property by agreement to ensure the early delivery of schemes.
- Promote best practice on the need for the CPO process to be fair and transparent.

Overview

- 14.2 A Business / Planning Consultants respondent suggested the guidance in paragraph 6 in Section B of Part 2 of Circular 003/2019 could be clearer on the types of development it applies to. Also, there is an issue with a lack of confidence and access to a pool of relevant skills in planning, preparing and promoting housing-led schemes involving CPOs. The re-establishment of focussed experience and expertise, such as Land Authority for Wales, is addressed in Recommendation 7 of The Senedd's Economy, Infrastructure and Skills Committee Report (2019) on Compulsory Purchase.
- 14.3 A Professional Bodies/Interest Groups respondent commented acquiring authorities should be empowered to acquire property by consent early in a scheme to ensure schemes are delivered more quickly and cheaply, with fewer objections and disputes. Also, local authorities would need to ensure such an approach is done in accordance with their obligations to obtain best value for money.
- 14.4 A LPA stated guidance should promote best practice on the need for the CPO process to be fair and transparent.
- 14.5 A LPA commented local authorities should only consider using their statutory powers, where private sector involvement is likely, on the most favourable terms given the risk/costs involved.
- 14.6 A comment was received from a Professional Bodies/Interest Groups respondent relating to changing the taxation uncertainty around land pooling to make it easier for landowners to work together to bring forward development. It was deemed this matter fell outside the scope of the consultation as it did not relate to a change to the CPO system.

- 14.7 A respondent from the Government Agency/Other Public Sector stated unknown ownership of land can be an obstacle to the progress of land acquisition schemes. The response was submitted under question 9. It was deemed more appropriate to consider the response through the analysis of this question given it relates to potential improvements to the delivery of housing-led CPOs.
- 14.8 A comment was received from a respondent from the Others sector which was not relevant to the question.

Q12 Welsh Government Response

Adjustment of policy in paragraph 6 of Section B in Part 2 of Circular 003/2019

Consideration will be given to amending the guidance in paragraph 6 in Section B of Part 2 to be specific on the types of housing development the Welsh Ministers would regard the use of CPO powers as justified.

Lack of confidence and access to a pool of relevant skills

The Welsh Government has established a Land Division to accelerate the development of public land for public policy benefit and provide a mechanism for sharing expertise and training across the public sector on land assembly; identifying best practice; and investing in the right sort of commercial skills.

Consideration will be given to whether the LGE Bill may provide a vehicle for the sharing of resources, expertise and exercising of functions relating to the use of CPO powers by local authorities on a regional basis via the proposed Corporate Joint Committees.

Empowerment of acquiring authorities to acquire property by agreement

Circular 003/2019 will be strengthened to empower acquiring authorities to acquire properties early in a scheme. It will highlight the benefits of this approach i.e. ensuring quicker and cheaper delivery of schemes with fewer objections and disputes. Also, that such approach will be in accordance with obtaining best value for money.

Establishing a framework for the acquisition by agreement in advance of a CPO would require a change to primary legislation. This proposal will be considered in more detail through future reforms to the primary legislation underpinning the CPO process.

Need for the CPO process to be fair and transparent

The CPO Manual will include best practice on the need for the CPO process to be fair and transparent.

Private sector involvement

Circular 003/2019 will be strengthened to advise local authorities to consider lowering the risk and cost associated with a CPO scheme by seeking involvement with the private sector on terms favourable to the local authority.

Unknown ownership of land

Consideration will be given to modernising the procedure for the serving of site notices under section 11(4) of the 1981 Act where, following diligent inquiry, the acquiring authority is satisfied it is not practicable to trace the name or address of a land interest on whom is likely to be included in the CPO. This will take forward under future reforms to the CPO process.

Next steps

- 14.9 We will amend Circular 003/2019 to:
- (a) be specific on the types of housing development the Welsh Ministers would regard use of compulsory purchase powers as justified; and
 - (b) empower acquiring authorities to acquire properties early in a scheme.
- 14.10 We will include in the CPO Manual best practice on:
- (a) the need for the CPO process to be fair and transparent; and
 - (b) the advance acquisitions process.
- 14.11 Consideration will be given to modernising the procedure under the 1981 for the posting of site notices where the name or address of a land interest cannot be traced. This will be taken forward under future reforms to the CPO process.

ANNEX A – LIST OF RESPONDENTS BY CATEGORY

Businesses / Planning Consultants		Local Planning Authorities	
005	Geldards	004	Caerphilly County Borough Council
009	Whitecroft Property Services Ltd	007	Newport City Council
Government Agency / Other Public Sector		008	Isle of Anglesey County Council
003	Bay of Colwyn Town Council	010	Powys County Council
006	Penarth Town Council	014	Carmarthenshire County Council
012	One Voice Wales	022	Conwy County Borough Council
013	Barry Town Council	024	Denbighshire County Council
Professional Bodies / Interest Groups		Voluntary sector	
015	Central Association of Agricultural Valuers	019	Planning Aid Wales
016	Theatres Trust	Other	
018	RTPI Cymru	001	Private Individual
020	Compulsory Purchase Association	002	Private Individual
021	Law Society	011	Glandŵr Cymru (“Canal & River Trust”)
023	Country Land and Business Association	017	Private Individual

For data protection purposes the name and address details for those respondents who did not wish to be identified have been removed from the above index and from the published consultation responses.