



FACULTY OF ADVOCATES

Response to Scottish Government's Consultation on Compulsory Purchase Reform in Scotland

Question 1: Do you agree that legislation governing compulsory purchase procedures and compensation in Scotland should be brought into a single statute?

The Faculty of Advocates ("Faculty") supports this proposal which will make the law more accessible.

Question 2: Do you have any specific concerns in relation to the repeal of existing legislation on CPO procedures and compensation that we should consider?

Faculty does not have any specific concerns in this respect.

Question 3: With the exception of the bodies referred to in paragraph 3.6, are there any gaps in acquiring authorities' enabling powers? Please provide specific examples.

Other consultees may be better placed to comment but Faculty is not aware of any such gaps.

Question 4: Are local authorities' compulsory purchase powers (set out below) sufficiently broad to cover the circumstances in which they may need to compulsorily acquire land in carrying out their statutory functions? If not, please specify which powers require to be amended, clarified or supplemented.

Faculty has no comment.

Question 5: Should there be a general power for acquiring authorities to create new rights in land and to attach conditions to such rights?

Faculty supports a power to create new rights or interests over land subject to its detailed submissions below, but suggests that the rights or interests which could be acquired should be listed in the statute.

Faculty considers that there should be a power to create new servitudes and real burdens. The limits of these rights are well defined and therefore there would be sufficient protection for the interests of the landowner. For example, a servitude must be exercised *civiliter*, and real conditions must not be repugnant with ownership. The Faculty considers that there should be a power to impose conditions in respect of the acquired rights, although this should be subject to a requirement that the conditions benefit the acquired right (in a way similar to the test in section 3(3) of the Title Conditions (Scotland) Act 2003 concerning the constitution of real burdens).

The Faculty supports a power to acquire a 'wayleave', although the concept of wayleaves more generally requires further consideration.

The Faculty does not consider that there should be the power to create a lease (see below). A lease would involve the landowner being forced into a contractual arrangement with the acquiring authority, and would impose obligations on the landowner. The Faculty does not consider this would be appropriate without the landowner's consent.

There is no apparent reason for the acquiring authority to have a power to create a wayleave.

Question 6: Should there be a general power for acquiring authorities to seek temporary possession of land?

Yes. Faculty considers that such a power could be extended, and that it should be specifically set out in the statute.

Question 7: Do you agree with the proposed list of matters that should be addressed in any new temporary possession power? If not, please give details.

Faculty agrees with the proposed list of matters that should be addressed in any new temporary possession power.

The Faculty considers that the power to take temporary possession might usefully include the option of non-exclusive possession in appropriate cases, for example the right to take access. It might also usefully provide that access can be taken over airspace in appropriate cases, for example for use of a crane.

Question 8: How might the use of back-to-back CPOs be further encouraged?

Faculty considers this a policy matter and has no comment.

Question 9: Do you agree that early and effective engagement is best promoted through non-statutory measures (e.g. guidance) rather than legislative requirements?

Faculty considers this a policy matter and has no comment.

Question 10: How might early and effective engagement between acquiring authorities and affected parties be further encouraged?

Faculty considers this a policy matter and has no comment.

Question 11: Would it be helpful to introduce a general power for acquiring authorities to require specified parties to provide information about ownership , occupation and other interests in land? Please explain your views.

Faculty considers this a policy matter and has no comment.

Question 12: Do you agree that acquiring authorities should have a general power of entry prior to the making of a CPO for the purposes of surveying etc.?

Faculty considers this a policy matter and has no comment.

Question 13: Does the outline proposal at paragraph 4.23 strike a reasonable balance between the needs of acquiring authorities and the rights of the owner/occupier? If not, how should it be changed?

This is a matter of policy on which Faculty makes no comment.

Question 14: Are any changes required to the legislation which prescribes the form and content of CPOs? If so, please give details.

Faculty considers this a policy matter and has no comment.

Question 15: Should any or all of the following documents be placed on a statutory footing? • Statement of Reasons • General Certificate • Protected Assets and Special Category Land Certificate

Faculty considers this a policy matter and has no comment.

Question 16: Do you agree that the notification requirements for CPOs should be prescribed through secondary rather than primary legislation?

Faculty agrees for the reasons given in paragraphs 5.23 and 5.24 of the consultation paper.

Question 17: Should heritable creditors be added to the list of parties who must be individually notified of a CPO? Should they have the status of statutory objectors?

Faculty considers this a policy matter and has no comment.

Question 18: Are any other changes required to the list of people to be individually notified?

Faculty considers this a policy matter and has no comment.

Question 19: Do you agree that the CPO (and map) should be published on a suitable website, in addition to being made available for inspection at a specified physical location?

Yes, Faculty agrees for the reasons given at paragraph 5.32 of the consultation paper.

Question 20: Should newspaper notices continue to be used to publicise the making of CPOs?

Faculty considers this to be a policy matter. It is, however, considered unlikely that online publication would be sufficient in itself as a means of bringing the making of a CPO to the attention of local residents who may not have access to the internet.

Question 21: What alternative approaches might be appropriate for publicising CPOs – either in addition to or instead of newspaper notices?

Faculty has no comment.

Question 22: Should Scottish Ministers have a power to prescribe (through secondary legislation) common data standards for compulsory purchase documentation? If not, please explain your reasons.

Faculty has no comment.

Question 23: Should acquiring authorities be able to serve compulsory purchase notices by electronic means, if a party agrees to this in writing and provides an address for this purpose? If not, please explain your reasons.

Yes, Faculty agrees.

Question 24: Should there be a statutory time period within which an opposed CPO should be referred to a Reporter after it has been submitted for confirmation? If not, please explain your reasons.

Faculty considers that there is merit in having a specified time limit for a referral to the DPEA. A landowner, whose land may be under the threat of a CPO, should have the matter determined within a reasonable timeframe.

Question 25: If there is to be a statutory time period, how long should it be?

Faculty considers that the time period is a matter of policy.

Question 26: Should express provision be made in legislation for objections to be considered through written submissions?

Faculty is strongly of the view that statutory objectors should always have the right to an inquiry in any case involving a CPO (unless they agree to a hearing or to written submissions). The state's right to acquire private property from private individuals and companies, whilst necessary, has been described by the courts as a "draconian" power (for example, by Purchas LJ in *Chilton v Telford Development Corporation* [1987] 1 WLR 872 at 878) and is one which should only be exercised after due consideration and due process. The right to an inquiry should be available to anyone who could be directly affected by a CPO, regardless of the size of their property. It is important that there is an opportunity for evidence to be led and witnesses to be cross examined. The right should therefore be to an inquiry rather than a hearing. Faculty considers that the right to an inquiry is an important element in ensuring that compulsory purchase law remains compliant with the European Convention on Human Rights. Further, our experience suggests that self-representing parties are often much better able to represent their position at a hearing in person than in writing.

Question 27: Should the procedural rules for hearings and written submissions for CPO cases be set out in secondary legislation?

Faculty agrees in respect of the overall framework, but the detail could be left to guidance.

Question 28: Do you agree that statutory objectors' right to be heard at either a PLI or a hearing should be retained?

The response to question 26 above is referred to.

Question 29: Should Scottish Ministers continue to decide whether a PLI or hearing is used? If not, in what circumstances should a PLI be required?

The response to question 26 above is referred to.

Question 30: Should provisions on awards of expenses be extended to cover cases where objections are considered through hearings and written submissions?

Faculty agrees. Assuming statutory objectors agree to a hearing or written submissions (the answer to question 26 above is referred to) it is anomalous that awards of expenses are not available under those procedures. The basis upon which awards of expenses are made ought to be that set out in Circular 6/1990 i.e. awards in favour of statutory objectors, which are payable by the order making authority, follow success (or are proportionate to the degree of success) while awards against statutory objectors may be made where unreasonable conduct has caused the order making authority unnecessary expense.

Question 31: Does the public interest test, as currently set out in Circular 6/2011, strike a fair balance between private and public interests? Please explain your views.

This is a matter of policy on which Faculty makes no comment.

Question 32: Do you agree that the public interest test should continue to be policy-based rather than statutory?

Faculty agrees for the reasons given in paragraphs 6.28 and 6.29 of the consultation paper.

Question 33: Should acquiring authorities be empowered to confirm unopposed CPOs?

Faculty considers this a policy matter and has no comment.

Question 34: If acquiring authorities are empowered to confirm unopposed CPOs, which approach outlined at paragraph 6.34 would be preferable – Option 1 or 2? Please explain your views.

Faculty considers this a policy matter and has no comment.

Question 35: Should Reporters be empowered to take CPO decisions, subject to published criteria regarding delegation by Scottish Ministers? Please explain your views.

Faculty agrees with the proposal subject to publication of Scottish Government policy on the circumstances in which cases would be likely to be recalled by the Scottish Ministers and those which would be decided by Reporters.

Question 36: Is additional scrutiny still needed for CPOs which include particular land? If yes, which of the four current special categories of land should this apply to? • land owned by a local authority • statutory undertaker land • land held inalienably by the National Trust for Scotland (NTS) • land forming part of a common or open space

Faculty considers that this is a policy matter and subject to the answer to question 38 below has no comment.

Question 37: If additional scrutiny of certain CPOs is needed, could there be alternative ways to achieve this other than Special Parliamentary Procedure? Please outline your suggestions.

Answer 36 is referred to.

Question 38: Should the restriction on confirmation of CPOs that include statutory undertaker land apply only where a relevant objection is made by the undertaker whose land is included in the Order? If not, please explain your reasons.

Faculty agrees for the reasons given at paragraph 6.54 of the consultation paper.

Question 39: Do you agree with the proposals at paragraph 6.57 regarding the interaction between CPOs and public rights of way? If not, please explain your reasons.

Faculty considers that it is extremely important that the right to an inquiry is retained in all cases, to ensure that any CPO which is objected to is properly considered. The Faculty does not consider that this right should be removed even if an alternative route is proposed, because the alternative route should be subject to the scrutiny of an inquiry if there is opposition. Provided that fundamental principle is borne in mind, the Faculty agrees that it is desirable to ensure that an inquiry is resolved as quickly as possible, and that it would be sensible for the inquiry into the CPO itself to be combined with the inquiry into the loss of a public right of way.

Question 40: Should there be a mechanism that would allow statutory objections to be addressed during the confirmation process, so avoiding unnecessary hearings or PLIs?

Faculty considers that it is desirable that there be a mechanism giving an acquiring authority greater flexibility to address statutory objectors' concerns during the confirmation process, in the interests of avoiding unnecessary, or unnecessarily long, hearings or PLIs.

It is thought that the most obvious means by which to discourage a statutory objector from insisting on an objection after the acquiring authority has agreed to a modification that would address its concerns would be through an award of expenses. This would operate by providing that an adverse award of expenses may be made relative to procedure that takes place after an acquiring authority has formally offered to enter into an agreement that would satisfactorily address the concerns raised.

Question 41: If provision for such a mechanism were made, what procedures or safeguards would need to be put in place to ensure fairness? Could either of the suggestions in paragraph 6.62 achieve this?

The answer to question 40 above is referred to.

Question 42: Would a power to confirm CPOs subject to conditions be helpful in terms of overall project delivery? Please explain your views.

Faculty considers this is essentially a policy matter. By way of general observation, however, the introduction of conditional CPOs would appear likely to have a potentially material adverse impact on affected proprietors for which appropriate compensation provision should be made, to cover circumstances whereby the CPO is not taken forward.

Question 43: If conditional CPOs were taken forward, what additional procedures and safeguards would need to be in place to ensure fair and proportionate use?

The answer to question 42 above is referred to. Further, conditions should only be imposed if clearly justified.

Question 44: Do you agree that the Scottish Government should publish target timescales for the issuing of CPO decisions, rather than having binding statutory time limits? If not, please explain your reasons.

This is a matter of policy on which Faculty makes no comment.

Question 45: If targets (statutory or otherwise) are not met, what sanctions might be appropriate?

This is a matter of policy on which Faculty makes no comment.

Question 46: Should the Scottish Government be required to report on compliance with any target timescales for CPOs?

This is a matter of policy on which Faculty makes no comment.

Question 47: Do you agree that the grounds on which a confirmed CPO may be legally challenged should be retained? If not please explain your reasons.

Faculty agrees. The Faculty strongly opposes any suggestion that the Court's powers to review a CPO decision should be restricted.

Question 48: Should the 6-week period within which a confirmed CPO may be legally challenged be retained? If not, what should the period be?

This is a policy matter upon which the Faculty has no comment.

Question 50: Do you agree that there should be a single procedure for implementing compulsory purchase, similar to GVD? If not, what problems do you see with this approach?

Faculty agrees.

Question 51: Should there be a single test for objection to severance, or a different categorisation? If you propose different categories, please explain what they would be.

Faculty considers that the current provisions adequately safeguard the interests of acquiring authorities and of the landowners of different types of land. Accordingly, any restatement of the law in this respect ought to contain the current tests as to whether there has been negative impact on, variously, houses, buildings, commercial premises, gardens and farmland.

Question 52: Under the new CPVD, should a notice of objection to severance prevent the land included in the CPO from vesting in the acquiring authority?

Faculty considers that this is a matter of policy upon which it has no comment.

Question 53: Should confirmation notices be required to be published within six weeks of the date on which the order is confirmed? If you disagree, what timing would you prefer, and why?

Faculty considers that in essence this is a matter of policy, but a time limit of six weeks for publication of a confirmation notice following confirmation of the order is likely to be a helpful clarification of the procedure.

Question 54: Do you agree that the standard implementation period should remain at three years?

Faculty considers that the three-year period is reasonable and it is not aware of any practical difficulties which it has caused.

Question 55: Should confirming authorities be able to specify a longer or shorter implementation period?

Faculty considers that this is essentially a matter of policy, however, if the confirming authority is to have a power to set a longer or shorter time period for implementation than is otherwise provided for by default, publication of an updated Circular is highly desirable to provide guidance as to the basis and circumstances in which the exercise of that discretion would be appropriate.

Question 56: Do you agree that the time limit should be suspended during any court challenge to the validity of the CPO?

Faculty considers that this is a matter of policy upon which it has no comment.

Question 57: Please add any comments on the time limit for implementation, if you wish to expand on your answers to questions 53 to 56.

Faculty has no further comment.

Question 58: Do you agree that the new CPVD should take effect six weeks after notification that it has been made? If not, what should the period be, and why?

Faculty considers that the proposed time scale is reasonable.

Question 59: Is there a need for a separate stage to notify people with an interest in the land and seek information from them?

Faculty considers this is a matter of policy upon which it has no comment.

Question 60: Should the new CPVD provide the acquiring authority with a valid title, removing all defects, real burdens, servitudes, etc., and securities? If not, please explain your reasons.

Faculty considers this a policy matter and has no comment.

Question 61: In relation to section 107 of the Title Conditions Act, should the legislation be amended to clarify that the acquiring authority simply has to have relevant compulsory purchase powers? If not, please explain your reasons.

Faculty expresses no view on the policy choice underlying this question. If it is pursued, however, care will be required with the drafting to ensure that s 107 applies only in circumstances where an authority would otherwise have acquired the land compulsorily (rather than to every situation in which an authority having as a matter of generality compulsory powers acquires land, or situations in which it has the powers but an order could not have been obtained).

Question 62: Should acquiring authorities be able to include land in a CPVD which belongs to them, or where they are unsure if it does? If not, please explain your reasons.

Faculty considers that there may be some utility in such a provision in exceptional circumstances but it should not be used in substitution for the requirement to carry out extensive title searches or the requirement to seek authority from the court in cases where a question arises as to whether the land in question forms part of the common good.

Question 63: Should a note be added to the title sheet in the Land Register stating that the title was acquired by compulsory purchase? If not, please explain your reasons.

Yes.

Question 64: Would there be any difficulties in including all leases and interests in a CPVD , extinguishing them in return for compensation?

Faculty does not foresee any difficulties with what is proposed providing, of course, that those whose interests are extinguished are entitled to compensation, which should include, for those with an interest under a lease, the possibility that it would have been renewed or continued.

Question 65: Do you agree that compulsory purchase compensation in Scotland should continue to be based on the principle of equivalence? If not, please explain your reasons.

Faculty considers that the state's right to acquire private property from private individuals and companies whilst necessary is a draconian power. It is appropriate that the rules governing compensation for those whose property has been acquired should be founded on the principle of equivalence i.e. that they should be put, in financial terms, in the same position after acquisition as they would have been in had the property not been acquired, being left neither better nor worse off as a result.

Question 66: Should compensation for land acquired compulsorily continue to be based on an assessment of its market value (disregarding increases/decreases attributable to the CPO scheme)?

In the view of Faculty, it should. As noted above it is fundamental in terms of equivalence that those whose land is acquired compulsorily should be placed financially in the position in which they would have been in had the CPO scheme not taken place.

Question 67: Should acquiring authorities have the power to request that, for a specific CPO , compensation would take no account of the prospect of planning permission being granted for alternative development ? It would be for Scottish Ministers to make the decision when confirming the CPO. In what circumstances do you think this approach would be justified?

Faculty considers that, whilst in one sense this is a matter of policy upon which it makes no comment, granting authorities a power to request, and the Scottish Ministers a power to decide, that for a specific CPO, compensation should take no account of the prospect of planning permission for alternative development is likely to be regarded as unfair, and as being arbitrary, and that it would, if the power were to be exercised, contravene the long-established principle of equivalence. Such a step would engage the protections provided by the ECHR and is likely to violate them unless, potentially, properly justified in the specific circumstances of the case. The wider any potential power, the more likely a violation.

Question 68: Should the no-scheme principle be codified into the legislation?

In principle Faculty agrees, but notes that codifying it will not be an easy task.

Question 69: If the no-scheme principle is codified, do you agree with the outline proposal at paragraph 8.39? Are there any other matters that would need to be addressed?

Faculty reiterates that it is the detail that will be important.

Question 70: Should the planning assumptions be repealed and rewritten?

Faculty agrees.

Question 71: Do you agree with the broad outline for how the planning assumptions might be reformed set out in paragraphs 8.45 to 8.46? Do you have any comments on the proposed changes to the planning assumptions?

Faculty agrees with the broad outline of what is proposed but notes that the detailed drafting will be important.

Question 72: Should CAADs be retained as a tool to establish development value in a CPVO context, or should they be abolished? Please explain your reasons.

Faculty considers this to be a policy matter on which it has no comment.

Question 73: If CAADs were to be retained, how could they be made more effective, efficient, and equitable?

Faculty considers this to be a policy matter on which it has no comment.

Question 74: Should Part V of the 1963 Act be repealed and not re-enacted?

Faculty does not support the proposal that provisions in Part V of the 1963 Act for compensation, where permission is granted for additional development after compulsory acquisition, should be repealed and not re-enacted. Compulsory purchase powers are draconian powers which interfere with rights of property, and as a matter of general principle they ought not to be used more extensively than necessary. If an area of land is compulsorily purchased and is not required for the scheme and is not offered back to the original landowner, it seems unfair that the acquiring authority may obtain a windfall benefit from developing the land for an alternative valuable purpose which the original landowner is deprived of, and that as a result of the exercise of statutory powers for a purpose which is not in fact implemented in relation to the land in question. In addition, a Planning Authority has the ability to enhance the value of land which it has compulsorily acquired through the grant of an appropriate Planning Consent. Whilst it is correct to say that arrangements could be made to ensure that the divested landowner retains a right of claw back by disposing of land privately, it is more difficult to see how that could be protected where, say, land was acquired by GVD, absent the provision. A failure by an Acquiring Authority to act in good faith when using its powers could potentially be challenged by Judicial Review, but this would require the divested landowner to act after the event and would require evidence of bad faith, or irrationality etc. Faculty does not consider that any potential difficulties in budget planning for a project would justify repeal of this provision.

Question 75: Do you agree that the method of valuation for injurious affection should be dealt with in guidance rather than set in legislation?

Yes.

Question 76: Should set-off of betterment continue or be removed from the legislation? Please explain your views.

Faculty considers this to be a matter of policy on which it has no comment.

Question 77: Please provide details of any acquiring authorities which you believe would need new powers to enable them to carry out accommodation works on a discretionary basis.

Faculty is not aware of any such authorities.

Question 78: Do you agree that separate statutory provision should be made for compensation for disturbance? If not, please explain your reasons.

Yes.

Question 79: Should compensation for disturbance be able to cover losses incurred from the date on which the notice of making of the CPO is published (and the claimant's duty of mitigation should apply from the same date)? If not, from what date should compensation apply? Please explain your reasons.

Faculty agrees with this proposal.

Question 80: Should compensation for disturbance be payable to those who have a compensable interest in land included in the CPO when it is made, even if that land is not ultimately acquired?

Yes, in the view of the Faculty of Advocates, compensation for disturbance should be payable to those who have such a compensable interest in land included in the confirmed CPO even if the land is not ultimately acquired, providing of course that there is a causal connection between the acquisition and the loss claimed, that the loss is not too remote, and that the loss / cost has not been unreasonably incurred.

Question 81: Should owners who do not occupy the property be able to claim a wider range of disturbance compensation than at present?

While the ability of investment owners to claim a wider range of disturbance compensation than is currently permitted might be considered a matter of policy, Faculty considers that it would be consistent with the general principle of equivalence underlying the approach to compensation to allow for such claims (subject to considerations of causation, remoteness etc.).

Question 82: Would it be helpful to provide guidance on compensation in cases of complex corporate structures?

Faculty agrees that it likely that it will be difficult to legislate clearly in the case of complex corporate structures, and family business structures. Whilst guidance may be of some assistance, possibly in identifying principles to be applied, in the view of Faculty ultimately it will be more appropriate to leave such matters to be decided by the LTS and/or the courts, on a case by case basis.

Question 83: Do you agree that the impecuniosity rule should be removed?

Faculty considers that the rule should be removed, as (i) compensation should be available to all claimants, regardless of their financial circumstances, based upon the same criteria i.e. that there is a causal connection between the acquisition and the loss, that the loss is not too remote, and that the loss / expenditure must not have been incurred unreasonably, and (ii) that in each case the claimant should, having regard to his or her individual circumstances, be placed in the same position in which they would have been had it not been for the CPO. In essence compensation should be awarded on the basis that the acquiring authority must deal with each claimant as it finds them.

Question 84: Do you agree with the proposals on mitigation, including compensation for business relocation and extinguishment?

Yes, the Faculty is in agreement with the summary of the proposals.

Question 85: Should the jurisdiction of the LTS be extended to cover discretionary as well as mandatory disturbance payments?

Yes, the Faculty is in agreement with the proposal.

Question 86: Should the minimum period of residence necessary to qualify for a HLP (currently one year) be increased? If so, what should the period be, and why?

This is a matter of policy on which Faculty makes no comment.

Question 87: How should the amount of HLP be calculated, among the options discussed in paragraphs 8.104 to 8.110? Please add any comments on these options or other approaches.

This is in essence a matter of policy, however Faculty agrees that there would appear to be no good reason why such payments should be linked to the market value of the property acquired given the purpose of the payment is to compensate for emotional upset and inconvenience.

Question 88: If a person is displaced from an agricultural unit as a result of compulsory purchase, should they be eligible for a loss payment regardless of whether they continue farming elsewhere?

This is in essence a matter of policy, but Faculty considers it would be entirely reasonable for persons displaced to be eligible for a farm loss payment regardless of whether they continue farming elsewhere.

Question 89: Should there continue to be a minimum area of land (currently 0.5 hectares) below which a FLP is not payable? If yes, what should the minimum area be?

This is a matter of policy on which Faculty makes no comment.

Question 90: Do you agree that we should move away from the current profit-based approach to calculating FLP?

This is a matter of policy on which Faculty makes no comment.

Question 91: If a new approach to calculating FLP is taken forward, which of the options outlined in paragraph 8.118 would you prefer?

This is, in essence, a matter of policy.

Question 92: Should loss payments be extended to other non-residential interests displaced as a result of compulsory purchase? Please explain your views.

This is, in essence, a matter of policy, however, there is considerable force in the observation at paragraph 8.120 of the Consultation Paper that owners of businesses other than farms may suffer stress and inconvenience as a result of displacement, and it is not clear why such parties should not also be eligible for compensation in that respect.

Question 93: Should acquiring authorities be required to advise owners of their rights to compensation and how to claim it?

Faculty agrees.

Question 94: Should a statutory claim form be provided to collect more information about the amount of compensation sought?

Faculty agrees.

Question 95: Should acquiring authorities be required to provide information on their assumptions relating to compensation, if this is requested by a claimant?

Faculty agrees. Acquiring authorities should operate on a transparent basis.

Question 96: Should acquiring authorities be required to offer compensation, rather than requiring owners to claim it?

This is a matter of policy on which the Faculty of Advocates makes no comment.

Question 97: Please provide any comments about the procedure for claiming compensation, if you wish to expand on your responses to questions 93 to 96.

Faculty has no further comment.

Question 98: Do you agree that an application to the LTS should be able to be made from the date of vesting? If not, when should the earliest date for application be?

Faculty considers this is a matter of policy upon which it makes no comment.

Question 99: Should there be a final time limit for making a claim for compensation? If yes, what should the limit be?

Faculty considers that because of the potential lapse of time in quantifying a claim for compensation, a six-year period remains appropriate, running from the date of vesting (or from the date when the claimant first knew, or could reasonably have been expected to have known, of the date of vesting).

Question 100: Are any other changes needed in relation to the timing of compensation claims?

Faculty has no further comment.

Question 101: Are any new powers needed to enable acquiring authorities to make discretionary advance payments if one is sought before they take possession?

Faculty considers this to be a matter of policy and makes no comment.

Question 102: Would it be helpful to enable advance payments to be made to heritable creditors, with the landowner's agreement?

Faculty considers this to be a matter of policy and makes no comment.

Question 103: What mechanisms do you think would help to ensure advance payments are made promptly? • Enforcement through the courts • LTS enforceable valuation • Penalty interest • Other (please explain).

Faculty considers that the imposition of a liability to pay interest at an appropriate rate is materially likely to encourage authorities to comply with the obligation to make an advance payment promptly.

Question 104: Should acquiring authorities have the power to offer advance payments even where one is not requested? If so, should interest on the amount of outstanding compensation be capped?

Faculty considers this to be a matter of policy and makes no comment.

Question 105: What should be the basis for the interest rate payable on outstanding compensation? • Current rate (0.5% below standard rate) • Average rate for overdrafts • Average rate for loans • Statutory interest • Other (please give details)

Faculty considers this to be a matter of policy and makes no comment.

Question 106: Should local authorities be able to instruct the sale of a property without permission from the property owner? Please explain your reasons.

This is a matter of policy on which Faculty makes no comment.

Question 107: In what circumstances might compulsory sale be justified, and what benefits or drawbacks might there be?

This is a matter of policy on which Faculty makes no comment.

Question 108: If a CSO process was introduced, would the procedures involved in preparing a CSO need to be equivalent to those that apply to a CPO? If not, how should those procedures differ?

This is a matter of policy on which Faculty makes no comment.

Question 109: What governance or regulatory frameworks would need to be introduced to ensure that any future CSO process is used fairly and effectively?

This is a matter of policy on which Faculty makes no comment, save that the principle of equivalence should continue to apply to the assessment of compensation.

Question 110: What measures could be taken to control the use of the property by the new owner?

This is a matter of policy, on the principle of which Faculty makes no comment. However, a contractual mechanism which binds only the new owner will have limited effect as it will cease to bind the owner if the property is sold. One possible mechanism for longer-term control of the land would be the use of title conditions or provision equivalent to them. This would be likely to require amendment to the Title Conditions (Scotland) Act 2003 (by analogy, for example, with the rural housing burdens created in s 43 of that Act).

Question 111: How long should a property subject to a CSO remain on the market?

This is a matter of policy on which Faculty makes no comment.

Question 112: What should happen if the property does not sell?

This is a matter of policy on which Faculty makes no comment.

Question 113: Should local authorities be able to instruct the lease of a property without permission from the property owner? Please explain your reasons.

This is a matter of policy on which Faculty makes no comment, save to point to its answer 5 and to note the same objections would apply to a CLO. As a matter of practicality, significant difficulties may arise from requiring landlords to enter into a contractual relationship imposing significant obligations and benefits in a situation where one party has not agreed to such a relationship being established.

Question 114: In what circumstances might compulsory lease be justified, and what benefits or drawbacks might there be?

Reference is made to answer 113 above.

Question 115: If a CLO process was introduced, would the procedures involved in preparing a CLO need to be more onerous than those that apply to a CPO? Please explain your views.

Faculty makes no comment.

Question 116: If you think there are any other measures or issues that we should be aware of as part of our consideration of CLOs, please tell us more about these.

Faculty makes no comment.

Question 117: Do you think that the introduction of either Compulsory Sale Orders or Compulsory Lease Orders in Scotland would add any benefits beyond a

reformed CPO process, as a tool for tackling long-term vacant or derelict properties? Please provide details.

Faculty has no comment.

Question 118: Do you have any comments on the draft BRIA provided in the Annex?

This is a matter of policy on which Faculty makes no comment.

Question 119: Do you consider that any of the options and proposals in this consultation document would impact (positively or negatively) on people with protected characteristics? Please provide details.

This is a matter of policy on which Faculty makes no comment.

Question 120: Do you consider that any of the options and proposals in this consultation document would affect children's rights and wellbeing? Please provide details.

This is a matter of policy on which Faculty makes no comment.

Question 121: Do you consider that any of the options and proposals in this consultation document would have a significantly different impact on island communities from other communities? Please provide details.

This is a matter of policy on which Faculty makes no comment.

Question 122: Do you consider that any of the options and proposals in this consultation document would impact (positively or negatively) on people who are socio-economically disadvantaged? Please provide details.

This is a matter of policy on which Faculty makes no comment.

