Office of the
Deputy Prime Minister
Creating sustainable communities

Compulsory Purchase and Compensation

Compulsory Purchase Procedure

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October 2004

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Foreword

This is the first in a series of five booklets which explain, in simple terms, how the compulsory purchase system works. If you think you may be affected by compulsory purchase you should read this booklet. It is important that you read this booklet before reading the others in the series as it provides an overview. In particular, this booklet explains:

- Why there is a need to make compulsory purchase orders (CPOs).
- Who can use these powers, and the procedure for gaining those powers.
- How the powers are implemented by the acquiring authority.
- What your rights are and what opportunities exist to resist or influence the procedure.

Once you have read this booklet you will be directed to one or more of the other four booklets. The other booklets in the series are:

Booklet 2	Compensation to Business Owners and Occupiers
Booklet 3	Compensation to Agricultural Owners and Occupiers
Booklet 4	Compensation to Residential Owners and Occupiers
Booklet 5	Mitigation Works

The titles of booklets 2, 3 and 4 are self-explanatory and you need only read the ones which deal with the type of property you own or occupy. These booklets explain your rights to compensation and how it should be assessed.

Booklet 5 deals with the limited circumstances in which an acquiring authority may undertake works to reduce or "mitigate" the adverse effects of its development.

Legislation in England and Wales gives many authorised bodies (referred to in this booklet as "acquiring authorities") the power to acquire land compulsorily where the landowner or occupier is not willing to sell by agreement. It can be very worrying and distressing to discover that the property you own or occupy is to be compulsorily acquired, and these booklets are intended to help you.

The law and procedure relating to compulsory purchase is complex. Of necessity the information set out in this series of booklets is a simplification and cannot cover every circumstance that may arise. The information contained in the booklets is not intended to be a complete guide to the law and carries no legal force. It should, however, provide an understanding of the compulsory purchase procedure, setting out the rights of landowners and occupiers and identifying where opportunities may exist to resist or influence the compulsory purchase procedure.

This guidance is not a substitute for professional advice. If you think your property may be the subject of a CPO you should seek advice from a professionally qualified person such as a chartered surveyor or solicitor, who should be able to advise on your rights and also act on your behalf if appropriate. It is best to seek professional help as early as possible.

The Royal Institution of Chartered Surveyors operates a Compulsory Purchase Helpline which can be contacted on 0870 333 1600. This helpline puts you in touch with experienced chartered surveyors in the local area who will provide up to 30 minutes of free advice.

1. Introduction

1.1 The guidance contained in this booklet comprises an explanation of the procedures that acquiring authorities must go through to obtain powers to acquire land compulsorily. It points out those areas where the landowner or occupier will be affected. You should read the whole text to understand the procedures and identify opportunities to minimise the potential impact on land where possible.

How to Use this Booklet

1.2 There are two flow diagrams within the text which are designed to help you find out which stage the compulsory purchase procedure may have reached and direct you to the particular area of the booklet which deals with that area.

1.3 Diagram 1 – "Am I Affected by a CPO?" is designed to help you find out whether your land is likely to be affected by compulsory purchase or other development works.

1.4 If after looking at Diagram 1 you think that your land may be affected you will be directed to Diagram 2 – "Compulsory Purchase – The Process" which will help you find out what stage the compulsory purchase procedure has reached.

Terms Used in Compulsory Purchase

1.5 This series of booklets is aimed at lay people and wherever possible the use of jargon and technical language has been avoided. There are, however, a number of important terms which have a specific meaning in compulsory purchase matters. The use of these terms could not be avoided.

1.6 It is important to understand these words and expressions and an explanation is in Appendix 1 of this booklet.

Useful Contacts

1.7 There are a number of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase. A list of useful contact names, addresses and telephone numbers is set out in Appendix 2 of this booklet.

The Need for Compulsory Purchase Powers

1.8 Compulsory purchase powers are provided to enable acquiring authorities to compulsorily purchase land to carry out a function which Parliament has decided is in the public interest. Anyone who has land acquired is generally entitled to compensation. This is dealt with separately in booklets 2, 3 and 4 on compensation.

Source of Compulsory Purchase Powers

1.9 The two most commonly used powers of compulsory purchase are:

- A Compulsory Purchase Order (CPO), based on a specific Act of Parliament.
- An Order under the Transport and Works Act 1992.

1.10 Separate guidance is available from the Department for Transport on Transport and Works Act orders, which are therefore not discussed further in this booklet. There are other sources of compulsory purchase powers but they are rarely used and are so are also beyond the scope of this booklet.

1.11 The procedures for promoting an Order, dealing with objections, public local inquiry, confirmation and challenge are similar for both a CPO and an Order under the Transport and Works Act. Those for a CPO are summarised in Diagram 2 and the accompanying text.

Who Can Obtain Compulsory Purchase Powers?

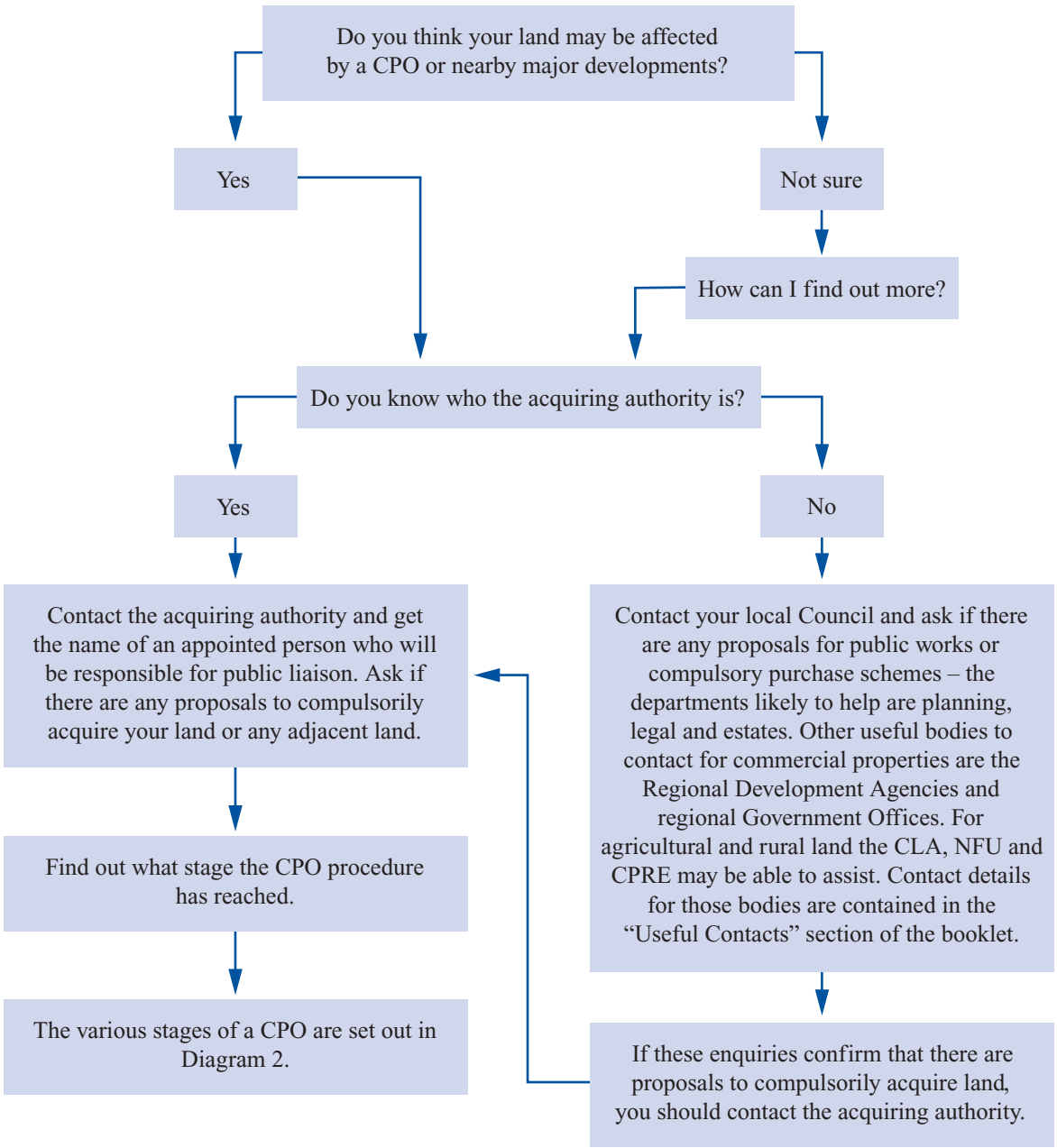
1.12 Many bodies with statutory powers have compulsory purchase powers. Such powers are conferred and prescribed by Acts of Parliament, and require the approval of the Government Minister specified in the particular Act (or the National Assembly in Wales). In practice, the greatest users of compulsory purchase powers are Local Authorities and the Highways Agency. Other statutory bodies who may make CPOs include Government Departments, Regional Development Agencies, English Partnerships, Urban Development Corporations and major utilities such as water or electricity companies. Those seeking to provide infrastructure (such as railways) will normally apply for an order under the Transport and Works Act 1992 which will give compulsory purchase powers.

2. Is My Land Affected by a CPO?

2.1 If you think you may be affected by a CPO there are some simple actions you can take to try and find out more. **Diagram 1** – "Am I Affected by a CPO?" will assist.

Diagram 1

AM I AFFECTED BY A CPO?



3. *Outline of Procedure*

3.1 The compulsory purchase process is made up of a number of stages. It is important to note that the acquiring authority does not have the powers to compulsorily acquire land until the appropriate Government Minister confirms the CPO. However, they can acquire by agreement at any time and they should attempt to do so before acquiring by compulsion. If you are keen to sell your property you should contact the acquiring authority to see if they are prepared to acquire your property early.

3.2 If the acquiring authority are unable to purchase by agreement because they are unable to agree or it is impractical to do so they will go down the compulsory purchase route. Various stages need to be completed before the powers are confirmed. The full process is summarised in Diagram 2 – "Compulsory Purchase – The Process" together with details of where further explanation can be found in the booklet.

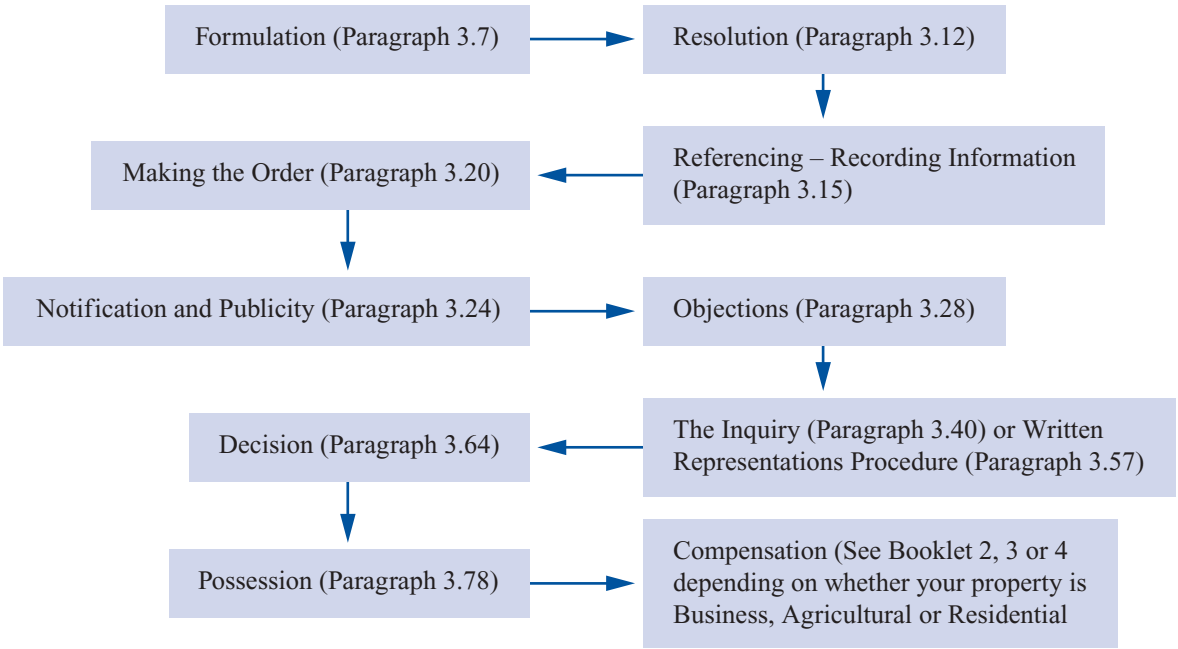
3.3 Once the compulsory purchase process starts it is important that you keep a comprehensive record of all communications with the acquiring authority. You should also keep detailed records of all expenses incurred and losses sustained as you may be able to recover these as part of your claim for compensation. You should bear in mind that you can only receive compensation for expenses and losses which occur as a direct and reasonable consequence of the acquisition of your property. **You are also under a duty to "mitigate your loss". This means that you should take steps to minimise your losses. If losses are increased as a result of your actions (or lack of them) you will not receive compensation for these increased losses.**

3.4 For example, you may need to employ a removals firm to assist with your move. If so, you should obtain quotes from three reputable firms. Assuming all three are the same service you should instruct the cheapest in order to mitigate your loss. In the case of a business occupier another example would be to ensure that the relocation of your business is undertaken in a timely and ordered manner so as to minimise any potential loss of profits.

3.5 The assessment of compensation is covered in Booklets 2, 3 and 4.

Diagram 2

COMPULSORY PURCHASE – PROCESS



3.6 Each of these stages is described below.

Formulation

3.7 The first stage is for the acquiring authority to decide that land is required for some particular purpose or scheme and that they are prepared to use compulsory purchase powers to assist in achieving this.

3.8 The acquiring authority must determine how much land they require for their scheme and are likely to undertake feasibility studies to define the boundaries of the scheme. This may involve walking the site and undertaking inspections of affected properties.

3.9 It is during this initial information-gathering exercise that you may first become aware of the prospect of a compulsory purchase. The acquiring authority may choose to make direct contact with owners and occupiers at this stage, and may seek to enter into negotiations to acquire land by agreement. They may use statutory powers to obtain information from landowners and occupiers or to enter land for survey purposes.

3.10 Clearly, if the authority make direct contact, you will be alerted to their intentions. If, however, no direct contact is made but you suspect that there are proposals to acquire your land, and you want to find out more, a sensible first step is to contact the local Council. The Estates Department, the Legal Department and the Planning Department may be able to assist.

3.11 Each of these Departments should know if the Council itself has proposals to use compulsory purchase powers. However, it may be that the body intending to use compulsory purchase is

not the local Council. If this is the case, it may still be able to assist by advising if it is aware of any proposals for development which will involve the acquisition of your property and suggesting which other bodies you could contact.

Resolution

3.12 Once the acquiring authority has completed their initial investigations and established the proposed CPO boundary, they can proceed to the next stage. This is the formal resolution to use compulsory purchase powers. If the CPO is to be made by a local Council, the Council Executive or the appropriate Executive committee will consider a report prepared by officers recommending the use of compulsory purchase powers and make a decision.

3.13 The resolution will define the land to be acquired (usually by reference to a plan) and state the purpose for which the land is required.

3.14 Whilst there is no requirement for resolutions by acquiring authorities other than Councils to be disclosed, it is good practice for such an acquiring authority (eg the Highways Agency or an electricity company) to inform the relevant local Council. If this occurs it should be possible to find out about resolutions by asking the local Council.

Referencing – Recording Information

3.15 This is the exercise undertaken by acquiring authorities of collecting and recording information on land ownership and occupation. The process builds upon the initial information-gathering exercise which an acquiring authority would have undertaken during the formulation stage.

3.16 The acquiring authority will be seeking to identify everyone who has a legal interest in, or right to occupy, the land they propose to acquire. This would include the freeholders, leaseholders, tenants and occupiers.

3.17 To assist in this process the authority will usually serve a "requisition for information" form on all people they think own or occupy property they wish to acquire. The form will ask for details of your interest in the land (for example, freehold or leasehold) and also of anyone else who has an interest in it. The form may include a map extract asking you to mark the boundary of your interest. **Failure to provide information, or making false or reckless statements, is a criminal offence.**

3.18 If you receive a notice of this kind and you are not sure what it means you should immediately contact the authority or organisation that sent the letter.

Making the Order

3.19 Once the information-gathering exercise is complete, the acquiring authority should be ready to make the CPO. The CPO will have a heading or title which identifies the general area within which the land is situated and the year in which the CPO was made. For example, "The Borough of Broxmere (Broad Street) Compulsory Purchase Order 2004".

3.20 The main body of the CPO will contain details of the Act authorising the acquisition, the purpose for which the CPO is being made and the name of the acquiring authority.

CPO Schedule and Map

3.21 Attached to the CPO will be a schedule showing the ownership of land within the CPO. The schedule will contain the extent, description and situation of the land and set out (where known) the names and addresses of reputed owners, leaseholders, tenants, occupiers, persons who enjoy rights over the land which will be interferred with, and persons who are likely to be entitled to make a claim for compensation because the value of their land will/may be reduced as a result of works carried out on the land being compulsorily acquired even though none of their land is being compulsorily acquired. More details about entitlement to make such claims can be found in Booklets 2, 3, and 4.

3.22 Each plot of land referred to in the schedule will have a reference number which will correspond with the relevant plot on the CPO map which will be attached to the CPO.

Statement of Reasons

3.23 The acquiring authority will usually prepare a document known as a Statement of Reasons for making the Order. This sets out the authority's reasons for seeking to acquire the land, and will accompany the CPO.

Notification and Publicity

Press Notices and Site Notices

3.24 Before the acquiring authority submits the CPO for confirmation, a notice must be published for two successive weeks in one or more local newspapers and must also be fixed on or near the land covered by the order.

Individual Notices

3.25 The acquiring authority must serve notice stating the effects of the order on:

- every owner, leaseholder, tenant, and occupier of any land comprised in the CPO; and
- any other person who may have the right to claim compensation either because:
  (a) they own rights in the land being acquired and these will be intefered with; or
  (b) the value of their land will/may be reduced as a result of works carried out on the land being compulsorily acquired (even though none of their land is being compulsorily acquired).

It may not be possible for the acquiring authority to identify all such people before the CPO is made. The authority must, therefore, also put up site notices on the land.

3.26 The content of both the press notice, the site notice, and the individual notices is very similar, and each will:

- State that a CPO is about to be submitted to a Government Minister (or to the Welsh Assembly Government) for confirmation.
- Specify the time within which objections to the CPO can be made. This must be at least 21 days from the date the notice is posted.
- Specify the manner in which objections to the CPO may be made.
- Say where in the locality the CPO and map may be inspected.

3.27 Objections are considered in further detail below.

Objections

3.28 The notifications of the making of the CPO invite the submission of objections to the relevant Government Minister or Welsh Assembly Government (referred to here for brevity as "the Minister"). **Objections must arrive with the Minister within the period specified in the notice.**

3.29 The details of the address to which objections should be sent and the time period for doing so are set out in the notice. There is no specific format for the objection other than it must be in writing. You can write the letter yourself or you may appoint a professional adviser to submit the objection on your behalf.

3.30 If no objections are made and the Minister is satisfied that the proper procedure for serving and publishing notices has been observed, he will consider the case on its merits and may confirm, modify or reject the CPO without the need for any form of hearing.

3.31 Objectors fall into two categories. A "statutory objector" is a person who has objected within the stipulated period and is:

- an owner, lessee, occupier or tenant of land within the CPO; or
- a person who may have the right to claim compensation either because:
  - (a) they own rights in the land being acquired and these will be intefered with; or
  - (b) the value of their land will/may be reduced as a result of works carried out on the land being compulsorily acquired (even though none of their land is being compulsorily acquired).

Any other objector is known as a "non-statutory objector". Only a statutory objector has a right to be heard at the public inquiry and the Minister is only obliged to hold an inquiry if there are statutory objections.

3.32 If objections are received and not withdrawn, the Minister will either arrange for a public local inquiry to be held or – where all the statutory objectors agree to it – arrange for the objections to be considered through the written representations procedure.

Grounds for Objection

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

- If he is satisfied that the objection relates exclusively to matters which can be dealt with by the Lands Tribunal. This means disputes regarding the appropriate level of compensation and disputes on whether part only of a property may be compulsorily acquired or whether the authority should be compelled to acquire the whole – even if it only requires part for the scheme. (This is referred to as "material detriment" and is explained in the Booklets 2, 3 and 4 on compensation).
- If, in the case of a CPO under the Town and Country Planning Act 1990, the objection amounts to an objection to the provisions of the adopted development plan defining the use of land.

3.34 Objections usually fall into three categories as follows:

- You may agree with the purpose of the scheme, but you would like to see minor amendments to minimise the impact on you. Objections of this nature may secure changes to reduce the visual or noise intrusion of a scheme, or minor adjustments to the land required; or
- You may agree with the purpose of the scheme but you feel that it should be located elsewhere; or
- You may object to the scheme completely. As stated above, however, this cannot be solely on the grounds that you object to adopted planning policy.

Negotiations with the Acquiring Authority

3.35 The acquiring authority will normally seek to negotiate with objectors prior to the public inquiry or, where relevant, during the written representations procedure.

3.36 If an objection relates to a specific matter which the acquiring authority can accommodate without prejudicing their scheme, they may be prepared to amend their scheme thus enabling the withdrawal of the objection.

3.37 It may also be possible to secure some form of undertaking from the authority limiting the way in which they will exercise their powers, probably in exchange for the withdrawal of the objection. **Before withdrawing your objection you should ensure that any agreement reached is in writing in some form of legally enforceable agreement. Your solicitor should advise you on this.**

3.38 If the acquiring authority is unable to secure the withdrawal of every statutory objector's objection there will either be a public local inquiry or (if all the statutory objectors have agreed to its use) the written representations procedure will be followed.

Consideration of objections

3.39 Shortly after the closing date for objections if the Minister thinks the objections could be considered through the written representations procedure he will write to the statutory objectors seeking their consent to this. If, however, he considers that the written representations procedure is not appropriate he will write to the acquiring authority and the objectors indicating that an inquiry is to be held. Similarly, where one (or more) statutory objector does not consent to the written representations procedure, the Minister will write to all parties indicating that an inquiry is to be held. The date of the letter indicating an inquiry is to be held is known as the "relevant date". (The written representations procedure is described at paragraph 3.57 below).

The Inquiry

3.40 Not later than six weeks after the "relevant date" and at least 28 days before the inquiry the acquiring authority must serve a "Statement of Case" on the Minister and each statutory objector. This sets out full particulars of the case to be put forward at the inquiry and justifies the reasons for making the CPO. Copies of all documents referred to in the Statement of Case must be attached, together with a list of any documents which the Council intends to refer to at the inquiry.

3.41 The acquiring authority must allow anyone who so wishes to inspect the Statement and documents and take copies. You should not be charged for inspecting documents, however, if you take copies of documents there may be a charge to cover reasonable administration costs.

3.42 Statutory objectors and anyone appearing at the inquiry may be asked by the Minister to provide a full statement of case. However, this usually only happens in the case of a complex or substantial objection.

3.43 There is no obligation for an objector to appoint legal or other representation. **However, if you intend to become involved in an inquiry you are strongly recommended to have the necessary specialist advice available.** Legal advice is usually needed as, although an inquiry is not a court of law, it is subject to procedures set down by law and decisions arising from the inquiry are legally binding. You will also probably need expert witnesses to give technical and professional evidence. This will have cost implications. For information about the award of costs see paragraph 3.67.

Date of Inquiry

3.44 The inquiry should normally be held within 22 weeks of the "relevant date". Each statutory objector and the acquiring authority must be given at least 42 days notice of the date, time and place of the inquiry. At least 14 days before the inquiry, site notices must be posted by the authority, advertising the details. A press notice may also be required.

3.45 In the case of CPOs which have attracted a large number of objectors, it is likely that a **pre-inquiry meeting** will be held to discuss the procedure, scope and programming of the inquiry. This meeting will be chaired by the Inspector appointed to conduct the inquiry, who may give directions, for example for the prior exchange of evidence. This will be a public meeting and all objectors will be invited to attend.

Inquiry Procedure

3.46 The procedure before, during and after the inquiry is generally governed by the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 – "The 1990 Rules". Inquiries under highways legislation, Transport and Works Act procedures and CPOs by Ministers have their own rules. The general principles are similar.

3.47 The inquiry procedure is also subject to the rules of natural justice. These rules, developed by the Courts, provide that there must be fairness in the conduct of an administrative process and, in particular, each side must have a fair opportunity to be heard and to hear and question the case against them. A CPO may be challenged if there has been a breach of either the rules of natural justice or the statutory rules of procedure. Challenges to the confirmation of a CPO are covered at paragraph 3.73.

3.48 The inquiry is held before an Inspector appointed by the Minister. Inspectors are usually specialists, for example surveyors, engineers or architects. The appointment of an Inspector for a specific inquiry will take into account the particular suitability of the Inspector for dealing with the matter in question. The Inspector determines how the inquiry is to proceed. He or she will make this known at the opening of the inquiry if there has not been a pre-inquiry meeting (see paragraph 3.45). Generally he or she will try to keep proceedings informal whilst ensuring that all parties are able to have their say in an organised and orderly manner.

3.49 Usually, the acquiring authority will present their case first. This is done by way of an opening statement by their advocate, followed by the calling of witnesses to give evidence.

3.50 The authority's witnesses may then be questioned by objectors ("cross-examination") and by the Inspector. The same process is followed by each objector. By this process, the case for and against acquisition is tested, hence the need for specialist advice and thorough preparation. Statutory objectors are entitled to cross-examine the acquiring authority's witnesses and any other witnesses. However, non-statutory objectors must obtain the Inspector's consent to cross-examine witnesses. In practice, this is almost always given.

3.51 The Inspector may require that evidence is given on oath but this is not common.

3.52 Following the evidence of the objectors, the acquiring authority has the opportunity of final reply.

3.53 If you are unable or unwilling to attend the inquiry you may, if you would prefer, make a written representation either before or during the inquiry. The Inspector is required to disclose the contents of written representations to the inquiry.

Site Visit

3.54 The Inspector will usually visit the site. Before or during the inquiry, he can visit it on his own. During or after the inquiry he can also make an accompanied site visit, ie the Inspector will visit the site accompanied by a representative of the acquiring authority and/or any statutory objector(s) who wishes to attend. The Inspector must make an accompanied visit if requested to do so by the acquiring authority or any of the statutory objectors. The date and time of an accompanied site visit will be announced by the Inspector during the inquiry. The acquiring authority and any statutory objectors will have the right to attend. The Inspector will refuse to discuss the merits of the case on an accompanied site visit.

Post Inquiry Procedure

3.55 After the close of the inquiry, the Inspector will produce a report for the Minister clearly setting out his or her conclusions and putting forward recommendations.

3.56 The Inspector does not make a decision, but recommends a course of action to the Government Minister.

The written representations procedure

3.57 As an alternative to holding an inquiry, objections can be considered by an Inspector through the written representations procedure. Instead of the acquiring authority and objectors (or their representatives) appearing in person before an Inspector, the cases for and against the order are elaborated entirely in writing. The written representations procedure is governed by the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004.

3.58 Where all the statutory objectors consent to the written representations procedure, the Minister will write to the acquiring authority and the objectors setting a starting date for the written procedure.

3.59 The Minister will ask the acquiring authority to make any additional representations they wish to him not later than 14 working days after the start date, or to indicate that they wish to treat their statement of reasons as their representations.

3.60 The Minister will then send the statutory objectors copies of any additional representation the acquiring authority have made. He will ask them to make any additional representations they wish not later than 15 working days from the date of his letter, or to indicate they do not wish to make further representations.

3.61 The Minister will then send any such representation from the statutory objectors to the acquiring authority, asking them to make any final comments no later than 10 working days from the date of his letter.

3.62 The Minister will then appoint an Inspector, who will consider the written representations, undertake a site visit if appropriate, and make a recommendation in respect of the order.

3.63 The Minister can disregard any representations received outside the deadlines set.

Decision

3.64 After considering the Inspector's Report following either an inquiry or the use of the written representations procedure, the Minister will decide to confirm, modify or reject the CPO.

3.65 The Minister may make a decision which is contrary to the Inspector's recommendations, although this is not very common.

3.66 When the Minister has reached his decision he will in writing notify the acquiring authority, the statutory objectors and any other person who appeared at the inquiry or made written representations and asked to be notified. The decision letter will set out the reasons for the decision. Any party who wishes to have a copy of the Inspector's report can require the Minister to provide one (if it was not enclosed with the decision letter).

Costs

3.67 **Anyone who receives a personal notice of a CPO may, if his income and capital are within certain financial limits, be able to get financial help towards the costs of employing a solicitor to help him prepare his case.** Further information on this is set out in the leaflet "The Community Legal Service" which is available from your local Citizens Advice Bureau or the Legal Services Commission. However, financial help cannot be given towards legal representation at the inquiry. The availability of subsidised legal assistance depends upon your circumstances and in some cases the advice may be free. Contact details for the Citizens Advice Bureau and the Legal Services Commission are provided in the Useful Contacts section.

3.68 A statutory objector who is successful following an inquiry or the written representations procedure will be awarded costs unless there are exceptional reasons for not doing so. A successful statutory objector is one whose objection was sustained, such that the CPO was not confirmed or the objector's land was excluded from the CPO. You may be partially successful, i.e. part of your land may be excluded from the CPO.

3.69 The award would cover reasonable costs including professional fees incurred in pursuing the objection and attending the inquiry or in following the written representations procedure. If you are partly successful, you will usually receive a partial award of costs.

3.70 Successful objectors are invited to submit their claims for costs to the Minister when they receive written notification of his decision.

Confirmation of the CPO

3.71 As soon as possible after the decision letter is issued, the acquiring authority must publicise the decision in one or more local newspapers.

3.72 A copy of the notice and a copy of the confirmed CPO must be fixed on or near the site and also be served on:

- all owners, lessees, tenants and occupiers of the land; and
- any other person who may have the right to claim compensation either because:
  - (a) they own rights in the land being acquired and these will be intefered with; or
  - (b) the value of their land will/may be reduced as a result of works carried out on the land being compulsorily acquired (even though none of their land is being compulsorily acquired).

Challenge to Confirmation of CPO

3.73 **The validity of a CPO can be challenged in proceedings in the High Court under the Acquisition of Land Act 1981 brought within six weeks following the first newspaper publication of the notice of confirmation of the CPO. There is therefore a need to act very quickly if you think there are grounds for challenge and you should take legal advice immediately.**

3.74 In general terms, a challenge can be on one or more of three grounds:

- That the powers granted are "ultra vires". This means they go beyond the powers permitted by the Act of Parliament under which they are being sought.
- That the procedural rules have not been followed correctly.
- That the Minister or the Inspector has not acted properly in reaching a decision – for example that there was no evidence to support the decision, or that irrelevant considerations were taken into account or relevant ones ignored.

3.75 If the challenge is successful, the High Court may quash the CPO or any part of it.

Other challenges to decisions on CPOs

3.76 If, for example, the Minister decides not to confirm a CPO, this may not be the end of the matter. The acquiring authority might apply to the court for a Judicial Review, usually on grounds similar to those in third bullet point of paragraph 3.75 above. Applications for Judicial Review must be made as soon as possible and in any event within three months of the decision challenged.

3.77 **There may also be circumstances when a decision (other than to confirm the CPO) reached during the compulsory purchase process, may be subject to Judicial Review in the basis that it has been incorrectly made. If you think that such a decision has been made in your case, you should seek legal advice immediately.**

Possession

3.78 Following the confirmation of a CPO there are a number of methods available to acquiring authorities to purchase land as follows:

- By agreement;
- Following a Notice to Treat/Notice of Entry;
- By a General Vesting Declaration (GVD);
- By procedures for acquiring "short tenancies";
- In response to a Blight Notice.

3.79 Each of these is considered below:

By Agreement

3.80 The fact that an acquiring authority has obtained a confirmed CPO does not exclude a purchase by agreement. Indeed, the acquiring authority will usually have attempted to acquire land by agreement prior to making the CPO.

3.81 Once the CPO has been confirmed, the acquiring authority may continue in their negotiations to acquire the land by agreement without the need to implement their powers. The authority will, of course, do so in the knowledge that if negotiations prove unsuccessful, they can secure ownership of the land by going down a compulsory purchase route.

3.82 The price paid by the acquiring authority in these circumstances will normally be in accordance with the "Compensation Code". In other words, it will be equivalent to the compensation which would have been payable had the land been compulsorily acquired. This means that in addition to the value of the land, the price may include an amount in respect of severance, injurious affection and disturbance as appropriate.

3.83 The basis and calculation of compensation in accordance with the Compensation Code is detailed in Booklets 2, 3 and 4 on compensation.

3.84 Land may be acquired for a capital sum or in exchange for other land.

Notice to Treat Followed by Notice of Entry

3.85 Acquiring authorities may acquire land by service of a document known as a notice to treat followed by notice of entry.

3.86 The notice to treat must be served within three years of the confirmation of the CPO, and it will state that the acquiring authority is willing to negotiate for possession of the land.

3.87 A notice to treat must:

- Specify the land to which it relates;
- Request particulars of the addressee's interests and rights in the land;
- State that the acquiring authority is willing to treat (negotiate) for the purchase of the land and to pay compensation;
- Ask for the addressee's claim in respect of the land within a specific period (usually 21 days).

Action Following Receipt of a Notice to Treat

3.88 If you receive a Notice to Treat, you are required to respond to the questions it raises and to submit a notice of claim for compensation to the acquiring authority.

3.89 There is no specific format for the notice of claim other than that it must be in writing. In practice, the acquiring authority will usually serve a "claim form" with the notice to treat which will contain boxes to be completed and returned.

3.90 The acquiring authority may require you to produce evidence of your interest in land, for example a copy of the title deeds or lease.

3.91 **The acquiring authority will specify a time limit for submitting a notice of claim, which must be not less than 21 days from the serving of the notice to treat. In practice, a longer time period is often specified. You should aim to complete as much of the claim as you can and return it within the specified time period. You are able to revise your claim once it has been submitted. You should contact your professional adviser as soon as you receive a notice to treat. He or she will be able to help you complete your notice of claim.**

3.92 The authority may withdraw the notice to treat within six weeks after receiving a claim, but it may have to pay compensation for losses sustained.

Consequences of Not Submitting a Notice of Claim

3.93 If a notice of claim is not submitted within the specified time period, the acquiring authority is entitled to:

- Refer the question of compensation to the Lands Tribunal;
- Withdraw the notice to treat and abandon the proposal to purchase.

3.94 **In practice, the acquiring authority is unlikely to pursue either course of action, but you are advised to comply with the timetable for submitting the notice of claim. This is because failure to do so may prejudice your position on costs if the case is ultimately submitted to the Lands Tribunal.**

3.95 **In addition, if the notice to treat refers to only part of your land and you are keen to try to force the acquiring authority to purchase the whole of your land holding (which is possible in certain circumstances), your rights may be prejudiced if you do not comply with the timetable.**

Other Effects of Receipt of Notice to Treat

Restriction on Works

3.96 Once you have received a notice to treat you may not be compensated in respect of any new interests created (or any old interests determined) after that date, if this action was taken with a view to obtaining or increasing compensation. An example of a new interest would be the grant of a new lease.

3.97 Any building work, alterations or improvements made which the Lands Tribunal considers not reasonably necessary and to have been undertaken with a view to increasing compensation will be disregarded in the settlement of compensation. However, you are entitled to continue to deal with your land in the normal way, i.e. to sell it, let it or undertake repairs or alterations, so long as this is not done with a view to increasing the compensation payable.

Possession – Notice of Entry

3.98 Following service of the notice to treat, the acquiring authority can take possession of the land following service of a notice of entry.

3.99 The notice of entry must specify a date (which must be not less than 14 days away) when the acquiring authority proposes to enter and take possession of the property (they are not obliged to enter on the specified date and frequently do so later). The date that the acquiring authority enters and takes possession of the land (following service of notice of entry) must be within three years from the date of the service of the notice to treat.

3.100 It is important to note that once the acquiring authority has entered the land via the notice to treat/notice of entry route, they have still not actually acquired the title. The acquiring authority, having entered the land may undertake activities in connection with the purpose for which it is being acquired, but the title will not actually pass to the acquiring authority until it has been conveyed. This will occur once compensation has been settled, either by agreement or by the Lands Tribunal.

3.101 The date of entry is, in most cases, the date for valuing the land – see Booklets 2, 3 and 4 on compensation.

General Vesting Declaration (GVD)

3.102 As an alternative to the notice to treat/notice of entry route, the acquiring authority may acquire land by making a GVD. The main difference with this method is that not only does the GVD give the acquiring authority the right to enter and take possession of the land but it vests (conveys) the title to the property in the acquiring authority.

3.103 If your interest is to be acquired in this way, you will first receive (either in the statutory notice of confirmation of the CPO (paragraph 3.71) or in a subsequent notice within 3 years) a "form of Statement of Effect of a General Vesting Declaration". As well as being served on all parties with an interest in the land, this preliminary notice must also be published in a local newspaper.

3.104 Not less than two months after this notice the acquiring authority may execute the GVD. You will be served with a second notice, stating that the GVD has been executed and specifying a date, which must be at least 28 days away, when the land will vest in the acquiring authority. This date is referred to as the vesting date. On the vesting date, the land vests in the acquiring authority, i.e. title passes to the acquiring authority. At this time, the acquiring authority has the right to enter and take possession of the land.

3.105 The vesting date becomes the date for the assessment of compensation. The matter of compensation is dealt with separately in Booklets 2, 3 and 4 on compensation.

Short Tenancies

3.106 A short tenancy is defined as an interest of no greater than for a year or from year to year. The acquiring authority may seek to acquire such an interest under the notice to treat/notice of entry route or under Landlord and Tenant powers, each of which are explained further below. This kind of interest cannot be acquired by the GVD method.

Landlord and Tenant Powers

3.107 The acquiring authority may terminate the lease under the terms of the tenancy by acquiring the freehold or any superior interest (such as a headlease) and serving notice to quit under the terms of the lease.

3.108 In this case, there will have been no compulsory acquisition of the leasehold interest and consequently there will usually be no entitlement to compensation under the compulsory purchase legislation. (There may be an entitlement to compensation under the appropriate Landlord and Tenant legislation).

Notice of Entry

3.109 The acquiring authority may serve a 14 day minimum notice of entry on a tenant having an interest no greater than a tenant for a year, or from year to year, provided a notice to treat has been served in respect of some other interest in the land, for example, if a notice to treat has been served on the freehold interest.

3.110 You will be entitled to compensation "for the value of your unexpired term or interest in the land, and for any just allowance which ought to be made to you by an incoming tenant, and for any loss or injury you may sustain" (section 20, Compulsory Purchase Act 1965).

In Response to a Blight Notice

3.111 The blight notice procedure is a process by which you may bring forward the acquisition of your property if it has become "blighted" as defined in planning law.

3.112 Where the value of a property has been reduced by certain categories of planning or other development proposals, anyone with a qualifying interest, may be entitled to serve a "blight notice" on the body responsible for this, requiring them to buy the property at its untainted value. In short, the threatened or prospective compulsory purchase is brought forward thereby removing the uncertainty which might otherwise make the property unmarketable save at a significantly reduced price.

3.113 The guidance in this booklet is concerned with the procedures for compulsory purchase rather than the broader subject of public development. Accordingly, the consideration of the procedures relating to blight notices is restricted to the circumstances where blight arises as a result of the inclusion of a property in a CPO.

3.114 It should be recognised that inclusion within a CPO is only one of many circumstances in which a blight notice may be served. A full list of the circumstances in which a blight notice may be served is set out in Schedule 13 to the Town and Country Planning Act 1990. Only the ones relating to compulsory purchase are considered in this booklet, but there may be opportunities to serve a blight notice earlier under one of the other categories of blight.

3.115 **If you are concerned about blight arising from other circumstances you should ask your professional advisor.**

Qualifying Interests

3.116 In order to qualify to serve a blight notice, you must be one of the following:

- A resident owner-occupier of a private dwelling.
- An owner-occupier of any business property where the annual (rateable) value does not exceed the prescribed limit at the date of service of blight notice – £29,200, based on 2005 rateable value;
- An owner-occupier of an agricultural unit with at least six months occupation of the whole or part;
- Certain mortgagees and personal representatives.

3.117 An owner-occupier is defined as a freeholder or lessee with at least three years unexpired term who has either occupied for at least six months or been in occupation for six months in the last 12 and the property has been unoccupied since vacated.

3.118 An investment property owner is not entitled to serve a blight notice.

Content and Service of Blight Notice

3.119 A blight notice must be in writing and must state the interest in the land (for example freehold or leasehold) and the statutory ground for serving a blight notice.

Acquiring Authority's Response to a Blight Notice

3.120 The acquiring authority has two months to accept or reject the blight notice. If they take no action, the notice takes effect automatically. If the blight notice is accepted or takes effect following expiry of the two months, a notice to treat is deemed to have been served at the date of acceptance or expiry. The procedure for taking matters forward is then as set out above under the section on notice to treat (paragraph 3.85).

3.121 If the acquiring authority does not wish to purchase the property under the blight provisions they may serve a counter notice within the two month period objecting on one or more of the following grounds:

- No part of the land is in a relevant category of blight;
- The acquiring authority does not propose to acquire any of the land;
- The acquiring authority only proposes to acquire part;
- On the date of the notice, the claimant is ineligible;
- The interest of the claimant does not qualify.

3.122 **If you do not agree with the acquiring authority's counter notice, you may refer the matter to the Lands Tribunal within a period of two months and it will determine the matter.**

Compensation

3.123 There is generally a right to compensation following the taking of possession of the land. This is explained in the other booklets in the series.

4. Next Steps

4.1 For details on your rights to compensation and how it is assessed you should read the booklet which deals with the type of property which you own or occupy.

4.2 Details of the rights to compensation and how it is calculated are provided in the booklets on compensation which are as follows:

Booklet 2 – Compensation to Business Owners and Occupiers
Booklet 3 – Compensation to Agricultural Owners and Occupiers
Booklet 4 – Compensation to Residential Owners and Occupiers

4.3 In addition Booklet 5 – "Mitigation Works" sets out the circumstances in which an acquiring authority will undertake works to mitigate the adverse effects of its development on your property. An acquiring authority can only be compelled to do mitigation works if your property is residential. However, it may agree to undertake works in other circumstances. Both sets of circumstances are covered in Booklet 5.

Appendix 1 – Terms Used In Compulsory Purchase

Set out below is a list of terms and definitions commonly referred to when dealing with compulsory purchase matters.

Compensation Code

A collective term for the principles, derived from Acts of Parliament and case law, relating to compensation for compulsory acquisition.

Entry

See "Taking of Entry".

General Vesting Declaration (GVD)

A legal procedure used in connection with compulsory purchase whereby an acquiring authority, having obtained a CPO, is able to obtain possession and ownership of the land. This is a procedure for the speedy acquisition of land and normal conveyancing practice does not have to be adopted.

Goodwill

The price which a purchaser of a business is prepared to pay, above the value of the premises and stock, for the probability that customers will continue to resort to the old place of business, or continue to deal with the firm of the same name: it is the benefit or advantage which a business has in its connection with its customers.

Investment Property

Generally, any property purchased with the primary intention of retaining it and enjoying the total return, i.e. income and/or capital growth, over the life of the interest acquired.

Land

Land includes buildings and structures. Existing interests and rights in land, such as freehold or leasehold together with any existing rights can be compulsorily acquired either as a whole or in part.

Lands Tribunal

A tribunal for England and Wales set up under the Lands Tribunal Act 1949 and proceeding in accordance with rules made by the Lord Chancellor. Its jurisdiction, amongst others, includes adjudication on disputed compensation for the compulsory acquisition of land. The tribunal comprises the President (who must be a barrister or have held judicial office) and members who are all either legally qualified or experienced in valuation.

Marriage Value

Latent value which is or would be released by the merger of two or more interests in land. For example, two adjoining parcels may be worth more as one property than the aggregate of their separate values. Similarly, two interests in the same property (such as the freehold and the leasehold) may have a greater value when merged than the sum of their individual values.

Mitigation of Loss

The duty of a claimant seeking compensation to take any reasonable steps open to him to reduce or avoid loss. For example, a claimant could mitigate loss by seeking a number of quotes from reputable contractors and instructing the cheapest.

New Rights

Compulsory purchase can be used by most acquiring authorities to create and acquire new rights over land. An example would be the creation of a right of way or a right of support.

Noise Payment

A noise payment is available to moveable homes within 300 metres of a new or altered road who have been seriously affected by increased noise levels as a result. It is payable at the discretion of the Highway Authority.

Notice of Entry

A notice served on the owner and occupier(s) of a property by an authority possessing compulsory purchase powers requiring possession to be given by a date prescribed in the notice. A minimum of 14 days notice must be given.

Notice to Treat

A notice served on owners, lessees and mortgagees by an authority with compulsory purchase powers to acquire land. The notice gives particulars of the property to be acquired, demands details of the recipients interest in the land and his claim for compensation and states that the authority are willing to treat for the purchase of the land.

Public Development

A new or altered highway, aerodrome or other public works.

Ransom Value

The ability to obtain a high price for a small area which is key to the site being developed. For example, where your land could unlock the development potential of an adjoining site by providing the only possible access to it.

Relevant Date

In the context of a Public Inquiry it is the date of the letter which the Confirming Minister sends to the acquiring authority and the objectors confirming that an Inquiry is to be held. This date is used to establish timetables for the Inquiry procedure.

Statement of Case

A statement prepared by the acquiring authority which sets out full particulars of the case to be put forward at the inquiry and justifies the reasons for making the CPO.

Statement of Reasons

Sets out the authority's reasons for seeking to acquire the land, and will accompany the CPO.

Statutory objector

A person whose objection to an order is a "remaining objection" in the terms of section 13A of the Acquisition of Land Act 1981.

Taking of Entry

This is the act of an acquiring authority physically entering and taking possession of a property following service of Notice to Treat and Notice of Entry.

Appendix 2 – Useful Contacts

Set out below is a list of contact details of bodies and organisations who may be able to offer their advice if you are affected by compulsory purchase.

British Property Federation (BPF)

7th Floor
1 Warwick Row
London SW1E 5ER
Tel: 020 7828 0111
Web Site: www.bpf.org.uk
E-mail: info@bpf.org.uk

Community Legal Service (CLS)

Tel 0845 345 4345
Web Site: www.clsdirect.org.uk

Council for the Preservation of Rural England (CPRE)

128 Southwark Street
London SE1 0SW
Web Site: www.cpre.org.uk
E-mail: info@cpre.org.uk

Country Land and Business Association (CLA)

16 Belgrave Square
London SW1X 8PQ
Tel: 020 7235 0511
Web Site: www.cla.org.uk
E-mail: mail@cla.org.uk

Office of the Deputy Prime Minister (ODPM)

Eland House
Bressenden Place
London SW1E 5DU
Tel: 020 7944 3000
Web Site: www.odpm.gsi.gov.uk
E-mail: cpocrown@odpm.gsi.gov.uk

Law Society

113 Chancery Lane
London WC2A 1PL
Law Society Information Services: 0870 606 6575
Web Site: www.lawsociety.org.uk

National Assembly for Wales

Cathays Park
Cardiff CF10 3NQ
Tel: 029 20 825111
Web Site: www.wales.gov.uk

National Association of Citizens Advice Bureaux (NACAB)

You should check your local telephone directory or call directory enquiries to find out details of your local branch office. Details of local offices can be obtained from the web site below.
Web Site: www.nacab.org.uk
E-mail: adviceguide@nacab.org.uk

National Farmers Union (NFU)

Agriculture House
164 Shaftesbury Avenue
London WC2H 8HL
Tel: 020 7331 7200
Web Site: www.nfu.org.uk
E-mail: NFU@nfu.org.uk

Royal Institution of Chartered Surveyors (RICS)

RICS Contact Centre
Surveyor Court
Westwood Way
Coventry CV4 8JE
Compulsory Purchase Helpline: 0870 333 1600
Web Site: www.rics.org
E-mail: contactrics@rics.org

Royal Town Planning Institute (RTPI)

41 Botolph Lane
London EC3R 8DL
Tel: 020 7929 9494
Web Site: www.rtpi.org.uk

Town and Country Planning Association (TCPA)

17 Carlton House Terrace
London SW1Y 5AS
Tel: 020 7930 8903
Web Site: www.tpca.org.uk
E-mail: tpca@tcpa.org.uk

Valuation Office Agency (VOA)

Head Office
New Court
Carey Street
London WC2A 2JE
Tel: 020 7506 1700
Web Site: www.voa.gov.uk
E-mail: customerservices@voa.gsi.gov.uk

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