

Acquisition of land and rights: The source of the powers

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Who can use Compulsory Purchase Powers?

- Secretary of State
- Local Authorities
- Mayor of London
- Homes England
- New Town Development Corporations
- Urban Development Corporations
- Statutory Undertakers
- Airport Operators



- ‘Compulsory Purchase Statutory Code’ does not exist
- Relevant Acts of Parliament:
 - Land Compensation Act 1961
 - Compulsory Purchase Act 1965
 - Land Compensation Act 1973
 - Acquisition of Land Act 1981
 - Compulsory Purchase (Vesting Declarations) Act 1981
 - Housing and Planning Act 2016
 - Neighbourhood Planning Act 2017
- Department for Communities and Local Government Guidance (updated July 2019)
<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>



- Development Consent Orders (DCOs) under the Planning Act 2008 for Nationally Significant Infrastructure Projects

National Infrastructure Planning

<http://infrastructure.planninginspectorate.gov.uk/>

- Hybrid Acts of Parliament such as the Crossrail Act 2008 & High Speed Rail (London - West Midlands) Act 2017 - promoted by central Government but for specific schemes on specific land
- Transport and Works Act Orders under the Transport and Works Act 1992 (the TWA)

<https://www.gov.uk/government/collections/twa-inspector-reports-and-decision-letters>

- General Powers – Local Government Act 1972
- Always use a specific power where possible for the purpose of the CPO (see paragraph 11 of the Guidance)
- Examples of Legislation containing specific powers:
 - Town and Country Planning Act 1990
 - Greater London Authority Act 1999
 - Housing Act 1985
 - Highways Act 1980
 - Gas Act 1986 & Electricity Act 1989
 - Education Act 1996
- Implementation - Acquisition of Land Act 1981

- Key Provisions of the Town and Country Planning Act 1990
 - Section 226 (1) – acquisition of land for development, redevelopment or improvement in the interest of the proper planning of the local area
 - Section 226 (1A) – use of powers must be likely to promote or improve the economic, social or environmental well-being of the local area
 - Section 226 (3)(a) – the acquisition of land needed for executing works to facilitate development
 - Section 226 (3)(b) – acquisition of land needed for exchange land

- Example provisions of the Highways Act 1980:
 - Section 239 – construction of a new highway / improvement of an existing highway
 - Section 240 – side roads
 - Section 245 – provision of a highway depot
 - Section 246 – mitigate the adverse effects of the existence or use of the highway
 - Section 248 – acquisition of land in advance of requirements
 - Section 250 – acquisition of new rights



What can be acquired?

- Land
- Existing rights
- New rights
- Temporary Possession



Are there restrictions?

- Strata of Land
- Special Kinds of Land
 - land acquired by a statutory undertaker
 - local authority owned land
 - land held by the National Trust
 - land forming part of a common or open space
- Overriding existing rights



- Section 203 of the Housing and Planning Act 2016 - came into effect on 13 July 2016 to extend and replace powers set out in s 237 of the Town and Country Planning Act 1990.

- Both provisions have been used for the same process:
 - development programme is at risk due to the inability to agree the release of certain rights;
 - developers request the local authority to intervene and using its powers to appropriate all (or part) of the development site and trigger section 203;
 - the local authority transfers the site back to the developer with the benefit of section 203 (making sure any requirements to secure best consideration are met);
 - infringing rights are not released but development can proceed despite that interfering with those rights. Beneficiaries of the rights are prevented from obtaining an injunction to prevent development from taking place, but are entitled to compensation for losses suffered as a result of the infringement.

- In order to use powers to override easements the acquiring authority must be able to show that:
 - Planning consent is in place for the building or maintenance works and use of the land.
 - The acquiring authority has the enabling powers it needs in legislation to acquire the land compulsorily for the purpose of the building or maintenance work.
 - The development relates to the land through which it was acquired.
 - Land acquired / appropriated for planning purposes on or after 13 July 2016.
 - Not available for a “protected right” which means:
 - a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
 - a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);
 - Does not limit existing rights in relation to the National Trust.

- ‘Enabling Power’ required in order to acquire new rights.

- Examples of powers and authorities include:
 - Local Government (Miscellaneous Provisions) Act 1976, section 13 (local authorities)
 - Highways Act 1980, section 250 (all highway authorities)
 - Water Industry Act 1991, section 155(2) (water and sewerage undertakers)
 - Electricity Act 1989, schedule 3 (electricity undertakings)

- The acquiring authority should take into account any special requirements which may apply to the use of any particular power.

- Certain powers of temporary already available under:
 - Special Acts (e.g. HS2)
 - Transport and Works Act Orders
 - DCOs

- Otherwise acquiring authorities must obtain land on a permanent basis or negotiate a commercial agreement.

- Section 18 Neighbourhood Planning Act 2017 will introduce temporary rights but is not yet in force.

- **Section 18** – Where acquiring authority has compulsory purchase powers it will be permitted to take temporary possession of land, by agreement or by compulsion, for the purposes it could use its permanent CPO powers.
- **Section 19(2)** – Acquiring authority still needs a CPO or other instrument allowing it to acquire the land although this will be able to include provision for temporary acquisition. The same scope for challenge to invoke special parliamentary procedures will apply.



How long is temporary?

- **Section 19(7)** – Acquiring authority will need to identify the location of the temporary land, the purpose of occupation and the total period of time the temporary possession is needed for.
- **Section 20** – advanced notice (3 months) will be required and still need to make diligent enquiry of all persons who may have an interest in land and be entitled to the notice.



- Acquiring authority will be permitted to use land as though acquired permanently with a couple of exceptions:
 - Limited by the purpose for which temporary possession was required and as set out in the CPO or other authorising instrument.
 - Some limitations on interference with rights of statutory undertakers and other protected parties.
- **Section 29** – In due course regulations will be issued to cover reinstatement obligations and referral of reinstatement disputes to an independent person / body.