

COMPULSORY PURCHASE IN THE TIME OF CORONAVIRUS

Simon Randle, Vivienne Sedgley and Katharine Elliot
4-5 Gray's Inn Square

On 13 May 2020, the Ministry of Housing, Communities and Local Government published [guidance](#) on compulsory purchase matters, with a further update provided on 27 May 2020.

The guidance is aimed at acquiring authorities. However, it is equally important for those on the other side to know the changing expectations. The most notable change is in respect of forthcoming Compulsory Purchase Orders ('CPOs'). This article provides a summary of and commentary on the latest guidance.

Forthcoming CPOs

Following a change in the arrangements for accepting CPOs for confirmation, acquiring authorities are advised to contact MHCLG's Planning Casework Unit ('PCU') if they are expecting to submit a CPO within the next **six months** in order to discuss handling arrangements.

This appears to be a return to the previous approach whereby assistance would be offered prior to publication, but no information is given to explain precisely why that has now been introduced (although it presumably arises at least in part from changes to the PCU's working practices in line with the current government social distancing measures), what it is intended to cover or how it can be used. This may reflect the inherent uncertainty as to what will happen in this sector for the remainder of 2020 as the COVID-19 situation continues to evolve and suggests there may be some further thinking and flexibility on behalf of MHCLG in this regard.

In the authors' experience, contacting the MHCLG's PCU previously resulted in a simple request for all information to be submitted electronically, which may be the intention behind this new guidance. The change is therefore perhaps not as significant as it first appears. It does, however, impose an ongoing duty on the authority to liaise with the PCU as early as possible in relation to forthcoming CPOs.

CPOs recently submitted

If a CPO was submitted on or after **16 March 2020** and an acknowledgement of receipt has not been received from MHCLG's PCU, the acquiring authority is invited to contact PCU@communities.gov.uk.

This acknowledges the possible delays in communication stemming from the recent lockdown.

Service of documents

Service under s.6(1) Acquisition of Land Act 1981 ('ALA 1981') requires hard copy documentation. Service is required by "*delivering it to [the relevant person], or by leaving it at his proper address, or by post [...] by registered letter, or by the recorded delivery service.*"

The guidance recognises that due to current social distancing measures Royal Mail is not currently capturing customer signatures upon delivery of an item by recorded delivery. However, it is logging the name of the person who accepted the item. The guidance asserts that this will comply with

the s.6(1) requirements, presumably because the recorded name is currently the equivalent of the usual signature and is therefore sufficient evidence of completed recorded delivery.

The updated guidance now provides that, while due care should be taken to ensure that documents are served in accordance with s.6 ALA 1981 where relevant, acquiring authorities may additionally wish to seek alternative addresses, including email addresses, where qualifying persons may have difficulty receiving hard copy notices at their primary addresses (e.g. where businesses are closed).

Time periods for response

Under s.5A(5) ALA 1981, a person who has received a notice requiring information about interests in land from an acquiring authority must be allowed at least 14 days from service to comply with the request. Under ss.11-12 ALA 1981, at least 21 days must be allowed for objections to be made to a CPO following notice being given by the acquiring authority.

The guidance encourages acquiring authorities to consider whether it would be appropriate to increase these time periods for compliance given that some people may experience delays in doing so due to the impact of COVID-19 (e.g. because they are self-isolating and unable to reach a postbox).

Many acquiring authorities are already alive to such issues and no doubt those with an interest in affected land will welcome this guidance. It is noteworthy, however, that no guidance is given as to what a reasonable extension of the time periods might be, leaving it up to individual authorities to decide based on local circumstances. Given the need to show that those with an interest in land and members of the public have been given sufficient opportunity to engage in the CPO process, authorities should consider documenting the reasons for their decision to implement an extension or otherwise.

Another interesting omission in the current guidance is that, unlike in the case of publicity requirements for planning applications (see our article, dated 18 May 2020, on Planning & Coronavirus: <https://www.4-5.co.uk/publications/view/planning-and-coronavirus-an-update>), there is as yet no suggestion that authorities should consider taking additional steps to publicise CPOs under s.11 ALA 1981 beyond local newspapers. It may be that this development will be announced in due course.

Making documents available for inspection

Under ALA 1981, acquiring authorities must, as part of their notification requirements for a CPO after it is made (s.11), and again after it is confirmed (s.15), name a place within the local area where a copy of the order and map can be inspected.

The guidance states that publication of the order and map online by the acquiring authority will fulfil these requirements. However, to ensure that effective notice that a CPO has been made is provided, and to mitigate any risk of prejudicing those who may not have ready access to the internet, acquiring authorities should ensure that their notices also provide contact details for individuals to request a hard copy of the order and map.

In the event of social distancing restrictions being eased sufficiently to enable local offices to be open to the public, acquiring authorities should once again allow for inspection of documents in person.

The guidance states that the similar requirements in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004, and the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 and Compulsory Purchase (Inquiries Procedure Rules) 2007 may be approached in the same way.

Returning documents

MHCLG's PCU will not always be able to return CPO documents to acquiring authorities electronically. Where hard copy documentation must be returned, the guidance states that the acquiring authority will be asked where documentation should be sent.

This is likely to be welcomed by authorities struggling to receive and re-distribute documentation delivered to their offices during the lockdown. It seems likely to speed up the process by allowing the documentation to be sent to the most convenient location.

Remitted decisions

A CPO may be confirmed by an acquiring authority rather than the confirming authority, where the confirming authority has given a notice under s.14A ALA 1981.

In such cases, notices should be sent both by email and post. Where possible decisions will be sent electronically, with hard copy documents following as soon as practically possible although there may be a delay. Acquiring authorities are invited to address any queries about this to PCU@communities.gov.uk.

This acknowledges the changes to PCU working practices due to COVID-19 as well as the potential consequent delays.

Dealing with claimants

Finally, the guidance encourages acquiring authorities to act responsibly in relation to both business and residential claimants, particularly in terms of vesting orders and compensation, when implementing CPOs during the current circumstances. The following factors are given particular prominence:

- The Government's wider guidance cautioning against evictions. This is currently reinforced by the general stay imposed on all possession proceedings in the courts (see Civil Procedure Rules, PD 51Z, para 2), due to end on 25 June 2020. It is not yet clear whether this will be extended.

- The obligation to pay prompt compensation under s.52 Land Compensation Act 1973, reinforced by the MHCLG's departmental [guidance](#) (para.85). The guidance reminds acquiring authorities that delays in making advanced payments may have a more detrimental impact than usual on claimants who are experiencing/anticipating additional cash flow burdens as a result of COVID-19.

This reiterates points that will already be well known to authorities, but acknowledges the financial and health difficulties currently facing individuals. However, this cautionary approach to implementing CPOs potentially conflicts with the recently announced [plan](#) to re-start the housing market and push ahead with development (see our article, dated 18 May 2020, on Planning & Coronavirus).

Simon Randle

Vivienne Sedgley

Katharine Elliot

29 May 2020

This article is provided free of charge for information purposes only. Every reasonable effort is made to ensure the information is accurate and up to date, but no responsibility for its accuracy, or for any consequences of relying on it, is assumed by the authors or by Chambers as a whole. The information and commentary do not, and are not intended to, amount to legal advice to any person. You are strongly advised to obtain case specific advice from a lawyer; please contact the clerking team at 4-5 Gray's Inn Square (clerks@4-5.co.uk) who will be glad to assist.