



Confirming a Compulsory Purchase Order

Procedural Guidance for Scottish Government and its Agencies

July 2018

i) Compulsory Purchase Order Policy and Vision

The Scottish Government considers powers to purchase land compulsorily to be an important tool for local authorities and other public bodies (collectively referred to as Acquiring Authorities) to use to acquire land needed to enable projects that are in the public interest to proceed, where this would otherwise not be possible. In particular Ministers consider compulsory purchase powers to be important for helping to deliver housing, development and regeneration that create high quality places where people want to live, work and invest. Such projects deliver social, economic and environmental improvement for the public benefit and, used properly, these powers can aid effective and efficient regeneration, the revitalisation of communities, and the promotion of inclusive economic growth. Authorities are therefore encouraged to consider using their powers pro-actively when necessary and appropriate to ensure real gains are brought to communities without delay.

The Scottish Government vision for compulsory purchase is for:

“A clear, accessible, consistent, effective and efficient system of legislation and policy which allows for the compulsory acquisition and purchase of legal interests in land and property for the public benefit. The provisions relating to any compensation should be fair and transparent and allow for timeous settlement.”

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PART 1 – Policy and Matters Arising

1. Scope

1.1 This document provides a step by step guide for Scottish Government and Agencies, including Transport Scotland on the process for consideration by Scottish Ministers of Compulsory Purchase Orders (CPO) where the confirmation is governed by the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as amended and the Compulsory Purchase of Land (Scotland) Regulations 2003.

1.2 This guidance seeks to cover the consideration of the majority of Compulsory Purchase Orders submitted to the Scottish Ministers by an Acquiring Authority as defined in the Scottish Government guidance for Acquiring Authorities entitled “Can I use Compulsory Purchase” (See <https://beta.gov.scot/publications/guidance-acquiring-authorities-use-compulsory-purchase/>). It does not provide guidance on CPOs promoted by Scottish Ministers (for example, by Transport Scotland) as these are not technically submitted to Scottish Ministers for consideration, and are therefore subject to separate (but broadly similar) procedures.

1.3 This document supersedes any previous guidance for SG and Transport Scotland Staff on the processing of CPOs.

1) CPO Enabling Legislation

A list of enabling Acts under which the compulsory acquisition of land may be authorised can be found in Annex B of Circular 6/2011 (See <http://www.gov.scot/Publications/2011/10/21133522/0>)

1.4 Where this document refers to “the Directorate” – this should be read as the team with portfolio responsibility of a particular policy, and which has responsibility for the determination of Compulsory Purchase cases on behalf of Scottish Ministers.

1.5 Where this document refers to a ‘Lead Officer’, this is the Policy Officer with lead responsibility for considering and making recommendations on CPO cases. This should normally be either a B or C Band officer (subject to local business area arrangements).

2. The role of Scottish Ministers in Compulsory Purchase

2.1 Scottish Ministers’ role in the order determining process is to decide whether any Compulsory Purchase Order submitted to them should be:

- Confirmed (to authorise the compulsory purchase of the land or property);
- Confirmed with modifications (this is typically used to remove plots from an order which have been acquired voluntarily by the Acquiring Authority), or;
- Not confirm (i.e. reject the Compulsory Purchase Order).

2.2 In deciding whether or not to confirm a Compulsory Purchase Order, Scottish Ministers consider the inclusive and sustainable growth (public benefit) of the Order, against the private legal rights of the owner, including those directly affected by the proposal, and, where applicable, any of their other statutory duties. This is illustrated as follows:

Public Benefit This may be economic – for example it may create jobs, encourage investment or promote sustainable economic growth. In other cases the public benefit might be environmental or social, such as providing a public service, improving the amenity of an area, providing infrastructure to facilitate redevelopment or regeneration or bringing a derelict property back into use.

Versus:

The Private legal rights of the owner Protocol 1, Article 1 of the European Convention on Human Rights (ECHR) provides for the right to the peaceful enjoyment of one’s possessions. Depriving an individual or business of their rights.

and

Scottish Ministers statutory Duties This may include, but is not limited to, Scottish Ministers functions to manage Crown Land; the protection and management of listed buildings, and management of land with a special designation e.g. a SSSI

3. Providing Assistance to Acquiring Authorities

3.1 Ministers have asked that Scottish Government officials provide as much assistance as possible to Acquiring Authorities and members of the public to help understand the CPO process and utilisation. Efforts should therefore be made to provide as much support to Acquiring Authorities as necessary. The exceptions are as follows:

- legal advice; and
- Commenting on merits/benefits of any proposal.

Use of CPO enquiries

3.2 Speculative or preliminary enquiries on CPO utilisation, or CPO powers should be directed to the CPO Policy Unit, in the first instance, details can be found on the gov.scot website¹.

Enquiries relating to process, evidence, and identifying land owners.

3.3 Enquiries relating to any aspect relating to the process of confirming a CPO should be dealt with by the appropriate Directorate.

3.4 Common questions may include, for example, enquiries relating to timescales, evidence to support a CPO, and advice on absent landowners ().

3.5 In these situations, the Directorate may find it helpful to refer the authority to:

- “What should I do before developing a Compulsory Purchase Order?” (see <https://beta.gov.scot/publications/guidance-acquiring-authorities-before-developing-compulsory-purchase-order/>), which sets out necessary pre-actions associated with a CPO; and
- “How do I prepare and submit a Compulsory Purchase Order? (See <https://beta.gov.scot/publications/guidance-acquiring-authorities-prepare-compulsory-purchase-order/>) which provides advice on drafting a CPO and supporting documents.

Enquiries relating to appropriate powers

3.6 The Directorate may occasionally be contacted for advice on appropriate CPO powers for a project.

3.7 The following is a general steer on CPO powers:

- It is ultimately for the Acquiring Authority to ensure it has sufficient powers, sanctioned in enabling legislation, to deliver a particular project or purpose;
- The Acquiring Authority should use the most specific power available for the purpose for which it intends to acquire the land or property;
- For some purposes there may be no specific power available, or the Acquiring Authority might seek to acquire the land for more than one purpose. In this situation, a general power such as Section 71 of the Local Government (Scotland) Act 1973 may be utilised; however

- A more general power **should not** be used where a more specific and appropriate power is available to the Acquiring Authority.

3.8 In some instances an Acquiring Authority may have a choice of CPO powers available to them.

3.9 Planning Powers can be used to assemble land in respect of proposals set out in the authorities Development Plan or other strategic planning documents. This includes the assembly of land for regeneration, infrastructure developments, improvement, and any other schemes where a range of activities means that no other single power would be appropriate. Proposals should accord with planning policy set out in an approved Development Plan or the National Planning Framework or be referred to in non-statutory planning guidance or an adopted Master-plan.

3.10 Housing powers are used to assemble land for housing but may include other development necessary to support the housing development (the primary reason for the CPO). Other necessary development could include access roads, shops, recreation grounds etc.

3.11 Scottish Ministers are unlikely to refuse to confirm a Compulsory Purchase Order solely on the grounds that the Acquiring Authority could have made the order under another power but it will strengthen the case for the purchase where a clear justification for the power used can be made.

3.12 The Directorate may wish to refer the authority to Section 4 of “Can I use Compulsory Purchase” (See <https://beta.gov.scot/publications/guidance-acquiring-authorities-use-compulsory-purchase/>) which provides information on powers.

4. Timescales for considering Compulsory Purchase Orders

4.1 Whilst there are currently no statutory timescales for the Directorate to consider a CPO, Ministers have requested that submitted CPOs are considered timeously and efficiently.

4.2 An indicative timetable for the consideration by Ministers of CPOs is set out at Table 1. However, the overall aim is to reach a determination within 14 months (subject to any Inquiry timescales/unforeseen delays such as missing documentation or due to complexity of the case).

¹ <https://beta.gov.scot/publications/compulsory-purchase-orders-contact-information/>

Table 1: Indicative timescales of CPOs

Activity	Indicative timescale
Technical Checks	30 days
Consideration of validity of submitted order and objection consideration/handling.	3 months comprised of: a) 21 day (min) Statutory Objection Period; b) 14 days* for Acquiring Authority to respond to Objections; c) 14 days* for objector to respond if they are content with Authorities response to them; d) 28 days preparation for cases referred to DPEA.
DPEA led Inquiry ⁺	9 Months
Confirming Team processing of the DPEA Inquiry Report	14 days where possible
Determination of CPO	30 days
Issue of decision	7 days from determination

* Unless extended by Directorate due to complexity or likelihood of objections being withdrawn

+ Unless extended and subject to Reporter and Objector availability

i) CPO Timescales

Timescales commence when all required information has been submitted to the Scottish Government by an authority. The Directorate should record instances where there are delays receiving papers.

4.3 As the indicative targets are in the public domain and are set out in the Core Principles Ministers, through PQs etc, may be asked to set out Scottish Government compliance with the timetable. The Directorate should therefore ensure that the CPO register (see objective link below) is kept up to date.



CPO Case Tracking and Analysis 2012 -.obr

5. Core Principles

5.1 The Scottish Government has identified the following core principles that all relevant Directorates will follow.

5.2 The approach, tools and techniques used to address each principle should be proportionate to the scale and nature of the project. Our aim is to make the process as simple, transparent and fair as possible, and without unnecessary delay.

General Principles

We will:

- Act fairly and impartially when considering CPOs that are referred to Scottish Ministers;
- Assign clear roles and responsibilities to staff considering CPOs and ensure that levels of delegated authority are clearly defined;
- Ensure that the CPO process is fully transparent and that all parties involved are kept informed and are aware of timescales to minimise any uncertainty;
- Ensure that all Scottish Government actions are undertaken timeously;
- Ensure that all communication is clear and fit for purpose;

Scottish Ministers will only confirm a CPO if the proposer has fully demonstrated that they:

- Have considered all other options; and
- Can evidence that they have engaged, or attempted to engage with those affected by the proposed development, unless the proposal is critical to national infrastructure, and
- Can clearly evidence the public interest in the proposal and any social, economic and environment benefits and that they outweigh the rights of the land owners' affected.

Procedural Commitments

Pre- Compulsory Purchase Order

We will:

- Offer early advice and guidance to promoters of CPOs to help them anticipate and identify any hurdles to the CPO process;
- Offer a technical assessment of any Draft CPO and aim to provide feedback on any Draft Order within 30 days of receipt. The aim of these checks is to reduce subsequent delays and the period of uncertainty for people affected.

We will:

- Process CPOs which have been submitted as soon as we are satisfied that the CPO and all accompanying documentation complies with statutory obligations;
- Consider any objections to a CPO when received. Where these are not valid, we will advise the objector of our views and explain our reasoning and offer them an opportunity to respond;
- As a minimum where possible, we will send details of **all** objections to the Acquiring Authority within 14 days once the objection period ends;
- As part of our deliberations, in the first instance, we shall allow the Acquiring Authority an opportunity to respond to any objections raised within 14 days. We shall then offer the objector 14 days to consider the Acquiring Authority response and to confirm whether they wish to maintain their objection;
- Refer CPOs with any outstanding objections to the DPEA for consideration no later than 14 days from the deadline given to outstanding objectors to respond;
- Where possible, seek confirmation from the DPEA on how they intend to consider the objections and likely timescales within 14 days of the case being referred to them;
- Consider recommendations from an Inquiry Reporter and make a decision on the case, where possible, within 30 days from receipt of the DPEA report; and
- Issue the decision and key documents within 7 days of Scottish Ministers confirming, confirming with modification or, not confirming a CPO.

PART 2: Processing CPOs

6. Technical Check

6.1 A technical check is an optional service open to all Acquiring Authorities and is often the first time Directorates will be aware of an intention to pursue a CPO.

6.2 Scottish Ministers strongly encourage Acquiring Authorities to utilise the free technical check but failure to do so does not mean that a CPO will not be accepted.

i) Timing for submitting a technical check

A technical check should ideally be submitted to the Scottish Government shortly after the draft Compulsory Purchase Order, associated Statement of Reasons, and draft advert have been prepared but prior to it being signed off by the Acquiring Authority.

6.3 The technical check allows Scottish Government to carry out a broad ranging review of the technicalities of the draft CPO and supporting documents with a view to identifying potential legal and procedural issues which may adversely impact on any submitted CPO.

6.4 The technical check **does not** look at the merits of a draft CPO or its justification. The technical check is limited mainly to consideration of the CPO with reference to the relevant Acts, regulations and procedural matters.

6.5 The Scottish Government has committed to provide comments on the CPO and associated documents within 30 days of receipt, provided all the information it requires has been supplied. SGLD will advise should the timing of its response adversely impact on 30 days' timescale for responding.

6.6 Where a significant delay (beyond the 30 day period) is likely, the Directorate should contact the authority and explain the delay, and underlying reason for it.

Processing a technical check

6.7 On receipt of technical check request, the Directorate should ensure that all the information in Table 2 (columns A and B) has been submitted in electronic format and then acknowledge receipt of the request.

6.8 The Directorate should then consider the information set out in Table 2, column A, and assess and offer an initial assessment as follows:

- Has the Authority justified which powers it intends to use to compulsorily purchase all of the land or interests in the land or property needed to enable the project to proceed?;
- Is the proposed project included in a relevant plan or strategy, such as a Local Development Plan, housing plan, or community plan? If not has it been explained why not?
- What engagement has there been with land owners to find an alternative resolution? If there hasn't been any, has this been explained?
- Is the necessary finance available to fully compensate landowners (including not just the land acquisition cost, but compensation for severance, injurious affection, disturbance and reasonable professional fees where applicable)?

Table 2: Required Technical Check Info

A	B
Details of how the proposal will be financed	The draft Compulsory Purchase Order
Details of whether the proposal sits within the local development plan, relevant local strategy, investment plan or equivalent.	Schedules attached to the Compulsory Purchase Order
Details of who will take forward the development, and what contracts are in place.	Any Map(s)
The number of parties who are likely to be affected by the CPO, either directly, or indirectly*.	A statement as to the purpose for which the land is being acquired (also referred to as the statement of reasons)
The level of engagement the Acquiring Authority has had with landowners about the proposals.	All draft adverts and Public Notices
(If applicable) any indication of potential planning position the local authority will take.	Any points of clarification or queries about any technical points relating to the Compulsory Purchase Order.

*Acquiring Authorities are also asked, if possible, to provide details of any initial position land owners (or those affected) have taken during their engagement with them. This can greatly assist the Scottish Government in resource planning for potential Public Inquiry if the objections are maintained once the Order has been passed to Scottish Ministers for confirmation.

6.9 The Directorate should note any issues/ information gaps from their assessment which may have a bearing on the Compulsory Purchase Order. Examples are the North Arrow or reference to CPO boundary omitted on a map.

6.10 Information at Table 2, Column B and the Directorate assessment should then be sent to SGLD as soon as practicably possible following the date of receipt of the technical check.

6.11 Depending on number of parties who are likely to be affected by the CPO and any initial position land owners (or those affected) have taken during their engagement – the Directorate may need to alert the Planning and Environmental Appeals Division (DPEA) to the possibility of a requirement for a Public Inquiry – providing them with as many particulars to the case as possible.

6.12 SGLD will then provide comments to the Directorate on the draft Compulsory Purchase Order.

6.13 Where an authority cannot/does not provide all the information set out in Table 2, Column A, then provided all the information in Column B has been submitted, this should be sent to SGLD. In these circumstances, the technical check will be limited to the legal aspects of the case, and not any procedural concerns.

i) Legal Disclaimer

Any advice given by Ministers about technical points is without prejudice to Ministers' role in later considering the Compulsory Purchase Order for confirmation. With regard to legal issues raised, then any correspondence should make clear that "responsibility for considering such issues is ultimately for the Acquiring Authority making the order".

6.14 Draft text of a response to a technical check is set out at Appendix A. The Directorate should send the response to the Acquiring Authority as soon as possible and wherever possible, within one month from receiving the technical check request.

6.15 The response should include any procedural observations made by the Directorate which could give cause to the CPO being rejected at a later stage.

6.16 On completion of the technical check, the Acquiring Authority is then expected to make any necessary corrections and take any additional steps identified before resolving and formally submitting the CPO to the Scottish Government for confirmation.

7. Processing Submitted Compulsory Purchase Orders

General Matters

7.1 In processing CPOs, the aims of the Directorate should be to:

- Process objections, comments and responses within agreed timescales;
- Check elements of the order for validity;
- Come to a view as to the necessity of the case being referred to DPEA if there are any outstanding **statutory** objections;
- Consider the case for the Compulsory Purchase Order, including any report from DPEA, and make a determination/ recommendation (depending on the delegated authority) on whether to confirm/modify or not confirm the Compulsory Purchase Order.

7.2 The aims of SGLD are to advise on the:

- Legal validity of the order plus legislative and procedural requirements relating to the determination; and
- Procedural requirements relating to Ministers' determination of the Compulsory Purchase Order.

7.3 The overall aim is to ensure that the time period between receipts of the CPO is kept to a minimum and it is processed as quickly as possible.

Receipting a Compulsory Purchase Order

7.4 Depending on whether or not an Acquiring Authority has availed itself of the technical check service, this may be the first opportunity for the Directorate and SGLD to consider the proposed CPO.

7.5 As soon as the Acquiring Authority resolves (that is agrees to finalise the draft Compulsory Purchase Order for submission), it should contact the relevant Directorate to advise them of this decision, before advertising the making of the CPO in the local press. While this is not a statutory requirement, it ensures that the Directorate and DPEA are ready to receive any objections and plan resources accordingly.

7.6 When submitting an order, an Acquiring Authority should:

- Include appropriate information and evidence to satisfy Ministers that it has followed the correct procedures. These procedural requirements are contained in the amended 1947 Act and the Compulsory Purchase of Land (Scotland) Regulations 2003;
- Send sufficient information to allow Ministers to weigh the public benefit of the proposed

scheme against the private rights of those whose interests are being compulsorily acquired; and

- Send Ministers all documents, evidence and information that it considers relevant.

- Determine, with SGLD, whether the Compulsory Purchase Order itself is valid; and
- Consider and process any objections received.

Determination of validity of the Compulsory Purchase Order

7.7 On receipt of a CPO, the Directorate should check that the Acquiring Authority has provided all documents.

- Referred to in the Acquiring Authority's submission; and
- Required by Ministers to consider the CPO (see checklist at Annex A)

7.8 If any of the required documents have not been submitted, the Directorate should immediately contact the Acquiring Authority to request the necessary information. Until all the necessary information is received the CPO will not be considered valid and ready for processing.

i) Calculating the date Scottish Ministers receive a Compulsory Purchase Order

The date of the 'final' acknowledgement (the point where we have received all the necessary papers needed to consider the CPO) is the date of receipt of the Compulsory Purchase Order.

7.9 The Directorate should update the CPO tracker to reflect receipt of the complete Compulsory Purchase Order.

7.10 The original copies of the Compulsory Purchase Order and accompanying material should be kept in a **locked safe place** while it is being processed. It should not normally be returned to the Acquiring Authority during the consideration process. **Only once a determination has been made are papers returned after being docketed if confirmed.**

7.11 In the unlikely event that the original Compulsory Purchase Order is to be returned to the Acquiring Authority with accompanying comments by Scottish Ministers, then the Directorate should consider how to reduce the risk of its loss.

7.12 The receipt of a Compulsory Purchase Order should be acknowledged by the Directorate. Where it is necessary to request the Acquiring Authority to provide missing information the receipt of the relevant documents should also be acknowledged.

7.13 At this point, Ministers should have the appropriate information to make a judgement as to the essential validity of the CPO to proceed.

7.14 Once the receipt of the CPO and supporting documentation has been received, the Directorate should:

i) Special Category Land/Crown Land

Where the Acquiring Authority is seeking to acquire "special category land" as listed in section 1(2) of the 1947 Act, or where the involves Crown Land, then different procedures, and additional considerations may apply. The Acquiring Authority should advise if the land is "special category land" or Crown Managed. SGLD should be advised immediately if the land to be acquired sits in this category and will provide advice on the procedures to be followed.

7.15 The check of the Compulsory Purchase Order's validity is designed to ensure that, as far as possible, Ministers are content that the Acquiring Authority has complied with the requirements of all relevant legislation, policy and process.

7.16 This is an important stage as any failure in compliance may give grounds for legal challenge in the Court of Session.

7.17 The Directorate should first provide SGLD with electronic copies of all papers for consideration and any observations.

7.18 SGLD will then advise on:

- The formal validity of the order and whether the power being used by the acquiring authority is appropriate for the intended purpose;
- Checking the description of the land or property; and
- Any special Parliamentary procedure, such as where the CPO involves Special Category of Land, or where the land is owned by the Crown.

7.19 **If at any point during SGLD's consideration the Directorate comes across evidence, or is given cause to question any aspect of the Compulsory Purchase Order's validity, then this should be raised immediately with SGLD.**

7.20 Once SGLD have considered the papers they will advise if:

The Compulsory Purchase Order is “*intra vires*” (within scope of the law) and therefore subject to further consideration by the Directorate – **See paragraph 7.27**

Or

Modification of the Compulsory Purchase Order will be necessary, whereby Ministers would exercise their powers under the 1947 Act to modify the Order if and when it is confirmed, and if the matter is a minor one and does not prejudice anyone’s rights – **See paragraph 7.21**

Or

The Compulsory Purchase Order is invalid or “*ultra vires*” (out with the scope of Scottish Ministers or the Acquiring Authorities power) and is not Confirmed – **See paragraph 7.24**

7.21 Where the Directorate is advised that modification of the CPO is required, SGLD will provide advice on the extent of the modification, and in some cases a re-drafted Compulsory Purchase Order.

7.22 Typically, modifications relate to removing typographical errors, the description, or exclusion of, land not deemed necessary to the scheme following negotiations or revisions. Any modification will take place only if the Compulsory Purchase Order is confirmed.

7.23 The Directorate will then need to move forward to consider the CPO further (See Section 8)

Ultra Vires/Invalid CPO's

7.24 If following advice from SGLD, it is considered that the CPO is invalid or *ultra vires* then the Directorate should send a reasoned decision to the Acquiring Authority refusing to confirm.

7.25 Before doing so, the Directorate should advise the Acquiring Authority informally in advance of the formal decision letter being issued and offer an opportunity to comment. The advice from SGLD will form the basis of Ministers’ reasoning.

7.26 A copy of the final decision letter not confirming an Order should be sent to all persons who would have been entitled to be served an individual notice of the making of the Order plus any non-statutory objectors. This will end the formal consideration process. **The CPO tracker should be updated to reflect Scottish Ministers decision to “not confirm” the Order.**

i) Likelihood of an Order being ultra vires

If an Acquiring Authority has taken advantage of the technical check service – this reduces the likelihood of an Order being *ultra vires*.

8. Objections to Orders

8.1 Once an Order has been advertised and submitted by the Acquiring Authority, there then follows a statutory period of 21 days² from the date of the advert where all interested parties can make objections.

8.2 The Directorate should look to handle all objections timeously and seek to ensure that there is as little undue delay as possible before coming to a decision as to if and when an Inquiry will be required.

Objection Period

8.3 The 21 day objection period is the **minimum** period required in law. Acquiring Authorities may, although they are under no obligation to do so, choose to extend the objection period beyond the minimum 21 days statutory consultation period, to ensure that everyone has an opportunity to be heard. This may be particularly relevant where the case project scale and size may attract significant public interest, or where the CPO is advertised during holiday periods.

Types of Objectors

8.4 **Anyone can object to the making of a Compulsory Purchase Order in writing.** However

- Land Owners;
- Occupiers;
- Tenants who have held a lease for one month or more;
- Benefited proprietors (typically a person who owns the land which benefits from the right to enforce a real burden or a servitude – eg, the land owner of a business establishment);
- Holders of personal real burdens; and
- Owners' Associations

Are considered to be **Statutory Objectors**. All others are considered to be non-Statutory Objectors. The local authority will normally identify the Statutory Objectors in a schedule enclosed with the Order.

Objections Checklist for the Directorate

8.5 The following checklist may be helpful for the Directorate considering objections received:

² This may be extended See para 8.3

- a. Has the objection been lodged within the statutory timeframe (not less than 21 days from the first publication of the notice in a local newspaper)? - this may not be a deciding factor as Ministers would normally be very reluctant to dismiss an objection on timescale issues as a late objection may raise valid issues which have to be taken into account in the decision making process³.
- b. Is the objection from a statutory or non-statutory objector? (See 8.8)
- c. Does it provide specific and clear grounds for objection? – If it is not clear, then the Directorate should look to clarify matters with the SGLD before accepting this.
- d. Does the objection relate solely to issues of compensation? (See 8.6)
- e. If the order is made under section 189 of the Town and Country Planning (Scotland) Act 1997, does the objection relate to provisions or matters established in the development plan? If so, the objector should be advised that Ministers consider it can be disregarded (see Appendix 5 for template)
- f. Does the objector claim that an alternative site meets the acquiring authority's needs? – If so the Directorate should seek clarification from the objector of the site's location and the name / address of the owner. The Directorate should confirm the details (see Appendix 6 for draft text of letter. The site owner's details will be required by DPEA as the site owner must be given the opportunity to attend or be represented at any Inquiry session.

Objections about Compensation

8.6 Where the grounds of an objection relate **solely** to compensation then Ministers are not required to hold an Inquiry as compensation disputes are a matter for the Lands Tribunal. Appendix 4 provides a template for responding to such objections.

8.7 Where it is difficult to ascertain whether an objection relates solely to compensation, the Directorate should seek the view of SGLD on the objection validity and appropriate course of action.

Non Statutory Objections

8.8 There is no legal requirement for Scottish Ministers to consider non- Statutory Objections. However, these will need to be acknowledged using Appendix A and forwarded to the Acquiring Authority to consider at the end of the objection period (See para 8.10).

Handling Statutory Objections

8.9 Statutory Objections to the Order should be acknowledged as soon as possible following receipt using text set out in Appendix 2.

8.10 A copy of all valid Statutory Objections should be sent to the Acquiring Authority **as soon as they are** received. This is to allow the Acquiring Authority to begin to consider how it might address these.

End of the Objection period

8.11 At the end of the statutory notification period, the Directorate should ensure the Acquiring Authority has copies of all remaining non-statutory and invalid (objections on compensation) within 14 days. These should be clearly marked as non-statutory and/or invalid and accompanied by a covering note explaining why, where relevant, these are considered invalid.

8.12 The Directorate should also request by email, that the Acquiring Authority respond to all Statutory Objections made about the CPO within 14 days from the end of the objection period.

8.13 If an Acquiring Authority is not able to respond within 14 days, it should advise the Scottish Government immediately and give reasons for this, requesting an extension. Any agreed extension should be put in writing to the Authority, advising of them of any revised deadline for responding to objector(s).⁴

8.14 The Acquiring Authority should make it clear whether it intends contacting the Statutory Objectors and whether, in their opinion, they think it is likely to reach agreement with them and thus secure the withdrawal of every objection.

8.15 **Where it is likely that objections will be maintained, the Directorate should advise DPEA that there will be a high probability of a Public Local Inquiry (referring back to any previous exchanges at the technical check stage etc).**

8.16 In some cases the Acquiring Authority may be able to alter its plans or provide assurances in writing to the objectors that may address their concerns and result in all objectors agreeing to withdraw their objection. If this is the case the Scottish Government Directorate should be informed immediately.

8.17 Statutory Objectors will be required to confirm the withdrawal of their objection in writing or by e-mail.

8.18 In other cases the Acquiring Authority might consider that there is no realistic prospect of every objector withdrawing their objection and if this is the

³ Taking into account potential mail disruption & delay or public holidays etc

⁴ The Directorate should adopt a flexible approach, but at the same time, not allow processing of the case to be delayed unnecessarily.

case the Acquiring Authority should tell the Scottish Government Directorate as soon as possible.

8.19 On receipt of the Acquiring Authority's comments on the objections the Directorate should copy these to the relevant Statutory Objectors using template as set out in Appendix 3. The Directorate should seek the Statutory Objectors views as to whether the Acquiring Authority's response has sufficiently addressed their concerns, and asking them to confirm whether or not they intend to maintain their objection.

Where Objector Raises New issues

8.20 If the responses then raise new issues they should be forwarded again (one final time – see 8.24) to the Acquiring Authority, and comments invited within 14 days. Again, these comments should be forwarded to the objector.

8.21 Statutory Objectors should then be given 14 days thereafter to respond. If no response is received within this timeframe, then their objection should be treated as being maintained.

Withdrawn Objections

8.22 If the Acquiring Authority becomes aware that an objector has withdrawn their objection it should inform the Scottish Government Directorate /DPEA immediately providing copies of any exchanges confirming this. In the absence of any written evidence, the Directorate should contact the objector directly to ascertain the status of their objection.

When to refer a case to DPEA

8.23 If any objections made by a Statutory Objector are not withdrawn, Ministers may not confirm the order unless a Public Local Inquiry (either in the form of written submissions, Hearing, or full Inquiry) has been held to consider these⁵.

8.24 In rare situations where an Objector raises yet further valid objections (where the Acquiring Authority has responded twice previously to separate concerns), then the Directorate should automatically refer the matter to DPEA so that the full scope of the objector(s) concerns can be heard.

⁵ The DPEA current position is that a formal Inquiry has to be held otherwise the reporter/Scottish Ministers have no jurisdiction to consider or make an award on any claim for expenses. In some instances they may consider some of the issues at a hearing or by written submissions, but to deal with the expenses issue they cannot avoid at least part of the examination taking the form of an Inquiry.

i) When to hold an Inquiry

The presumption is in favour of an Inquiry where an objection from a statutory objector is received and not subsequently withdrawn.

8.25 The Scottish Government Directorate should arrange for the case to be transferred to DPEA for the case to be heard, no longer than 2 weeks from the deadline given to outstanding objectors to respond, (See Section 9).

Unopposed Orders

8.26 Unopposed Orders are where no statutory objections were received or where any objections had been withdrawn or disregarded as *they relate solely to compensation* or, if an order under planning legislation, to provisions in the development plan. Scottish Ministers will make a decision on whether or not to confirm the CPO based on the available information (see Section 10 of this note).

9. Referring orders to DPEA

9.1 If a Hearing or Inquiry is necessary it will be arranged as soon as possible. However, the Acquiring Authority should be prepared to continue to negotiate with objectors about their concerns.

9.2 A draft Minute of Appointment for an unnamed reporter and referral form should also be completed and supplied to DPEA at this stage (Appendix 10). When the draft has been cleared and a reporter selected by DPEA, it will be returned to the Directorate for preparation in final form, signature by a Head of Division / Deputy Director (dependent on local arrangements) and resubmission to DPEA.

i) The date of the appointment minute will act as the indicative starting date of DPEA's consideration of the Order.

9.3 The Directorate should provide the following information electronically to DPEA:

- Copies of the order and map;
- The statement of reasons submitted with the order;
- Any objections not withdrawn or withdrawn conditionally, plus acquiring authority comments on such objections;
- Contact details for objectors (either a memo or completed IRU form –see Appendix 10);
- Any other relevant correspondence – such as information on the substance of an objection; and

- Any view of the Directorate on the process to be followed - but this should not include what could be considered as the Directorate's view on the order's merits;
- Copy of all legal advice from SGLD.
- The final third party list (those who participated in the Inquiry).

i) Inquiry, Hearing or Written Submissions

It will be for Reporters and DPEA to consider whether an Inquiry, Hearing or written submissions are most appropriate in the circumstances. However, if the Directorate considers that there are reasons why a particular route should be followed, then DPEA should be advised of any views and reasons for this. DPEA already has published guidance, to aid reporters' choices about which procedure to follow. Whilst this relates to appeals, the issues are broadly similar. See [Reporter Guidance Note 8 - Further procedure](#).

9.4 The CPO tracker should be updated to reflect the Case being transferred to DPEA.

9.5 DPEA will arrange the date and place for the Inquiry, where appropriate, in consultation with the acquiring authority and objectors.

9.6 Once the date of the Inquiry session or hearing session is fixed, DPEA will change it only for exceptional reasons. DPEA will not usually agree to cancel or postpone the Inquiry or hearing etc unless all objections are withdrawn or the Acquiring Authority says it no longer wants to pursue the Order.

9.7 While the case is held by DPEA, the Directorate should advise them immediately where they become aware:

- That an objection has been withdrawn; or
- New or additional information has become available which could have a bearing on the Inquiry, including changes to local authority staff responsible for the CPO.

Receipt of the Reporter's Recommendation

9.8 The CPO tracker should be updated upon receipt of the Report.

9.9 DPEA will forward the reporter's final report to the Directorate. On receipt, the following should be checked:

- That the report received is confirmed as being the final version and that it contains clear and consistent findings;
- That the report provides a clear recommendation for the order to be rejected, confirmed or confirmed with modifications;
- Whether the reporter is recommending an award of expenses (this may be submitted as a separate report); and

PART 3 - DETERMINATION

10. Consideration of the Compulsory Purchase Order

10.1 Where no Statutory Objections remain, or following an Inquiry, it will fall to the Directorate to consider the merits of the scheme. This is done by balancing:

- The justification for the scheme; against
- The private rights of the owner and those affected; and
- Any other Statutory Duty on Scottish Ministers;
- Taking into account and whether the proposals are proportionate; and
- (If applicable) the Reporter's conclusions and recommendations from any Inquiry
- Any other consents, approvals or considerations that need to be taken into account.

The Directorate should then decide, based on the balance of the evidence available, whether to recommend:

- Confirmation of the Order (with or without modifications); or
- Not Confirm the Order

10.2 However, the Lead Officer must be able to justify this decision based on the full range of evidence available to them.

11. Determination of Orders

11.1 As compulsory purchase of land removes the legal rights of landowners, the formal decision should be taken only by Scottish Ministers, or by those within a Directorate that Scottish Ministers have expressly granted delegated authority for decisions on their behalf to.

!) Important

Where the Directorate is asked to make determinations on CPO cases it should ensure that they have delegated authority from Scottish Ministers to do so. **Failure to comply may give grounds for an appeal to the Court of Session on a point of law.**

11.2 Whilst decisions typically rest with the Directorate acting on behalf of Ministers due to longstanding protocols, there may be circumstances where Ministers should be either asked to make the decision; or made aware of the decision in advance of issuing the decision letter, these include where:

- The Lead Officer's decision differs from that outlined in the Reporter's recommendations;
- An issue of national significance has been raised, such as impact on the economy, or impact on buildings of national importance;
- The decision is likely to be significantly controversial; or
- The Order affects land in the relevant Scottish Minister's constituency or has been the subject of correspondence with an MSP specifically on the CPO case.

11.3 The involvement of Ministers in these cases is for the Directorate to consider in light of the circumstances of the case.

11.4 Where the decision could lead to a public controversy, the Lead Officer should discuss any media handling with the relevant Communications Team.

Issuing a decision

i) Ministerial consideration timescales

The date from when the Reporter's recommendation is forwarded to the Directorate is the indicative start date of Ministers' consideration of their decision.

11.5 A decision letter should be prepared as soon as possible using template found at Appendix 7 (confirmed Orders without an Inquiry) or Appendix 8 (decision following an Inquiry). SGLD should then be asked for any final comments on the letter.

11.6 If the Order is to be confirmed then draft docquets (official stamps) should be prepared which are to be attached to the letter (See appendix 9 for draft docquets)

11.7 Both the decision letter and docquets should (subject to local business arrangements) be signed at Deputy Director Level (subject to local arrangements).

11.8 The original decision letter, Order, Schedule, Map and attached docquets, should then be securely sent to the Acquiring Authority. A copy of the Decision letter and any Inquiry report should be also be sent electronically to the Acquiring Authority.

11.9 Where no Inquiry has been held, held a copy of the decision letter should be sent to:

- All parties who would have been entitled to have been served a personal notice of the CPO, and;
- Official Publications Unit, National Library of Scotland, 33 Salisbury Place, Edinburgh, EH9 1SL

11.10 Where an Inquiry has been held a copy of the decision letter should be sent to:

- The parties who were involved in, or provided evidence to the Inquiry. This should include a copy of the reporter's report where there has been an Inquiry;
- The Reporter via DPEA;
- All parties who would have been entitled to have been served a personal notice of the Order but have not already received notice due to their non-involvement in any Inquiry;
- Any owners of any alternative site who had been invited to participate in the Inquiry; and
- Official Publications Unit, National Library of Scotland, 33 Salisbury Place, Edinburgh, EH9 1SL

11.11 The decision letter and copy of the report will normally be placed on the DPEA website:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/decisions-appeals/Appeals/cases>).

i) Full determination timescales

Where the process is likely to extend significantly beyond a 14 month indicative consideration period, it would be good practice to advise the Acquiring Authority of any likely significant delay and the underlying reason for it.

PART 4 – Post Decision

12. Post Confirmation

12.1 A copy of the docquetted order, accompanying schedule and map should be securely retained. Electronic versions should be retained on the appropriate file.

12.2 The decision letter asks the acquiring authority to forward a copy of the newspaper extracts containing notice of the confirmation of the order along with a certificate of service of the required notices. Whilst there is no requirement for the acquiring authority to provide Ministers with these details, the decision letter asks for them to be forwarded by the Acquiring Authority.

12.3 Should the details not be forwarded within one month of the date of the decision notice, then the directorate should contact the Acquiring Authority seeking clarification of the position.

i) Challenge to validity of the Order

Once a CPO has been confirmed, there follows a 6 week period where the lawfulness of the Scottish Ministers decision may be challenged in the Court of Session. IF the Directorate becomes aware of such a challenge, they should alert SGLD immediately.

13. Resources

Legislation

a) The Acquisition of Land (Authorised Procedure) (Scotland) Act 1947



Amended 1947
Act.pdf

b) Compulsory Purchase of Land (Scotland) Regulations 2003 –
<http://www.legislation.gov.uk/ssi/2003/446/contents/made>

c) Circular 17/1998 –
<http://www.scotland.gov.uk/Publications/1998/10/circular-17-1998-root/circular-17-1998>

d) Circular 6/2011 -
<http://www.scotland.gov.uk/Publications/2011/10/21133522/0>

e) Guide to those affected -
<http://www.scotland.gov.uk/Publications/2011/10/24114350/0>

f) Scottish Government compulsory purchase page -
<https://beta.gov.scot/publications/compulsory-purchase-orders-introduction/>

Annexes

Annex A: INFORMATION REQUIREMENTS FOR ACQUIRING AUTHORITIES

When submitting the order to Scottish Ministers for confirmation, the authority should include appropriate information and evidence to satisfy Ministers that it has followed the correct procedures. The authority should also send enough information to enable Ministers to understand and assess the justification for authorising compulsory acquisition of the land and to weigh the public benefit in the authority's proposals against the interests of the people affected. The authority should send Ministers all documents, evidence and information that it considers relevant.

In particular, the authority should include the following:

- Two signed, sealed (if necessary) and dated copies (or certified true copies) of the order and Map(s). These must:
 - Have a heading of the map(s) identical that used in the body of the order. The authority should include the words 'this is the map referred to in [order title]' on the map(s).
 - Clearly identify the land. Where it uses colouring, the long-standing convention is that land to be acquired is shown pink and land over which a new right would be created is shown blue.
 - Be a sufficiently large scale, Ordnance Survey based map. Where the Order includes of a number of small plots, it should use insets on a larger scale. If it needs to use more than one map, it should bind the maps together and show on a key or master 'location plan' how the various sheets are related.
 - Ensure that where there is more than one order map, the text of the order appropriately refers to all of the maps.
 - Use a location plan only for the purpose of enabling speedy identification of the whereabouts of the area to which the order relates.

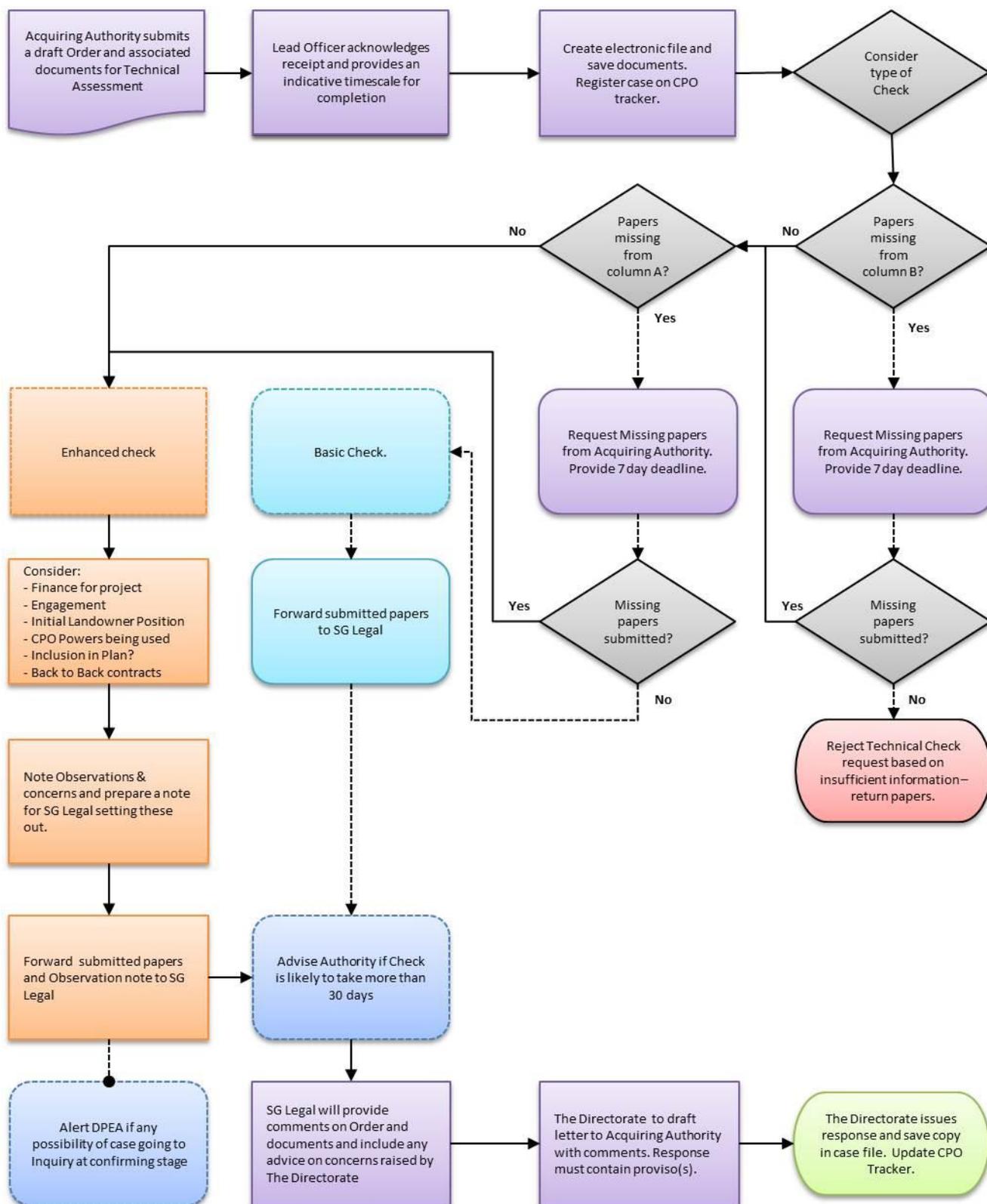
The authority's statement of reasons, and where appropriate any documents that it refers to

- Certified copies of both newspaper advertisements of the making of the order, and information about the publication dates.
- Certified copy of the notice of the making of the Compulsory Purchase Order
- General Certificate in support of order submission
- Protected assets and special category land certificate

Further details on the requirements are set out in the relevant annexes to Circular 6/2011 (See <http://www.gov.scot/Publications/2011/10/21133522/0>).

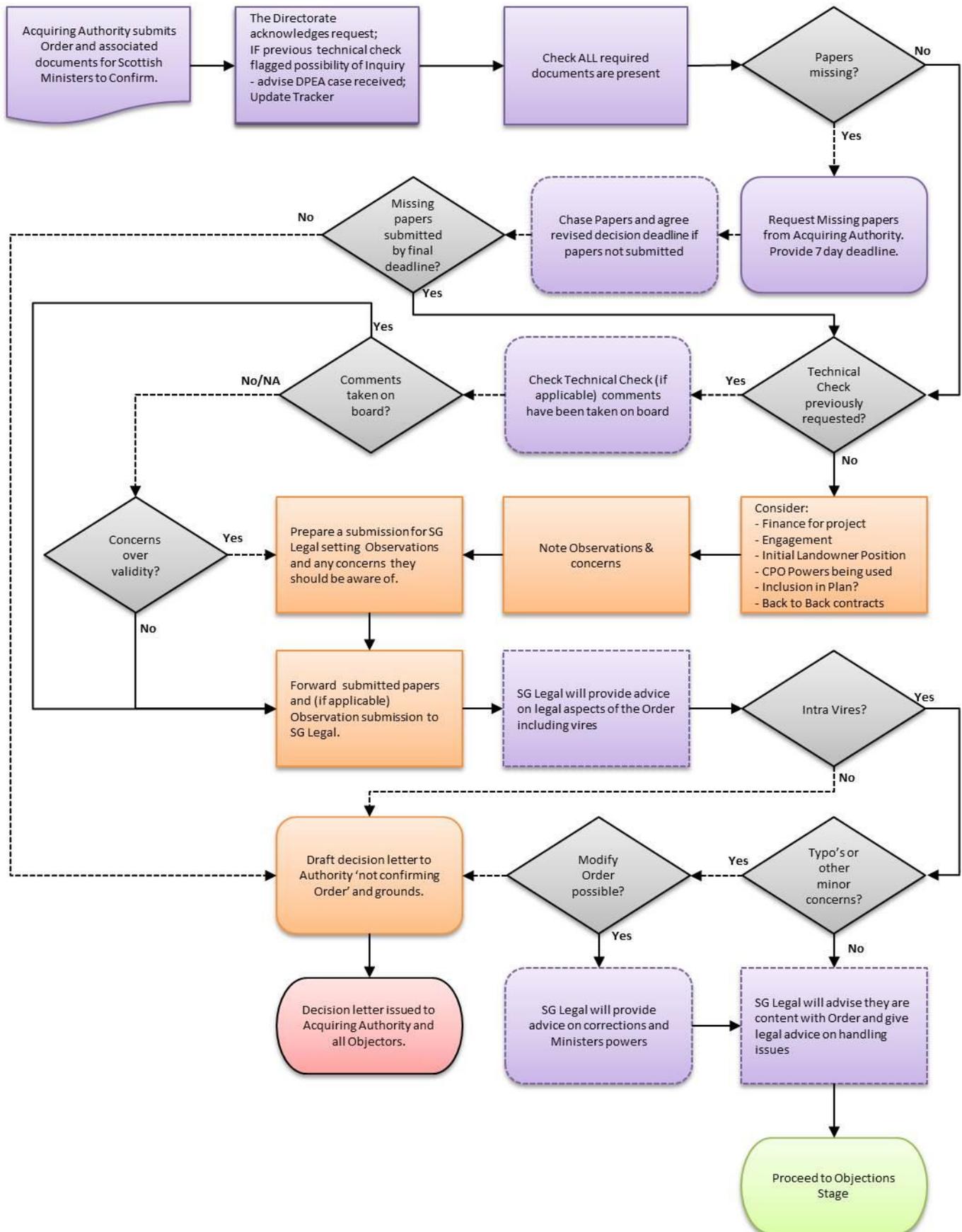
Annex B: FLOW DIAGRAM OF TECHNICAL CHECK PHASE

(Please see section 6 of Desk Instructions for detailed instructions)



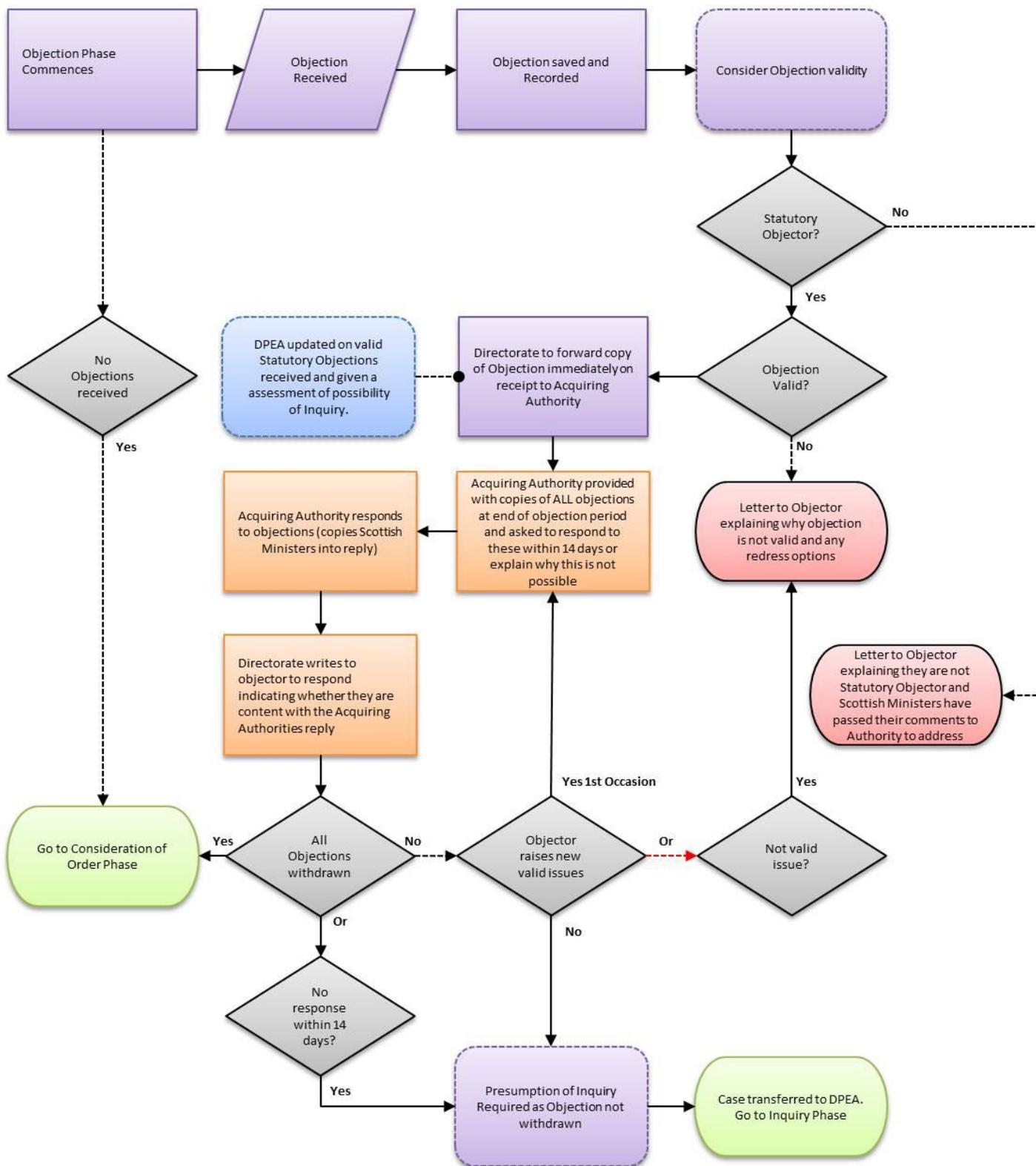
Annex C: FLOW DIAGRAM OF PROCESSING SUBMITTED ORDERS PHASE

(Please refer to section 7 of Desk Instructions for detailed instructions)



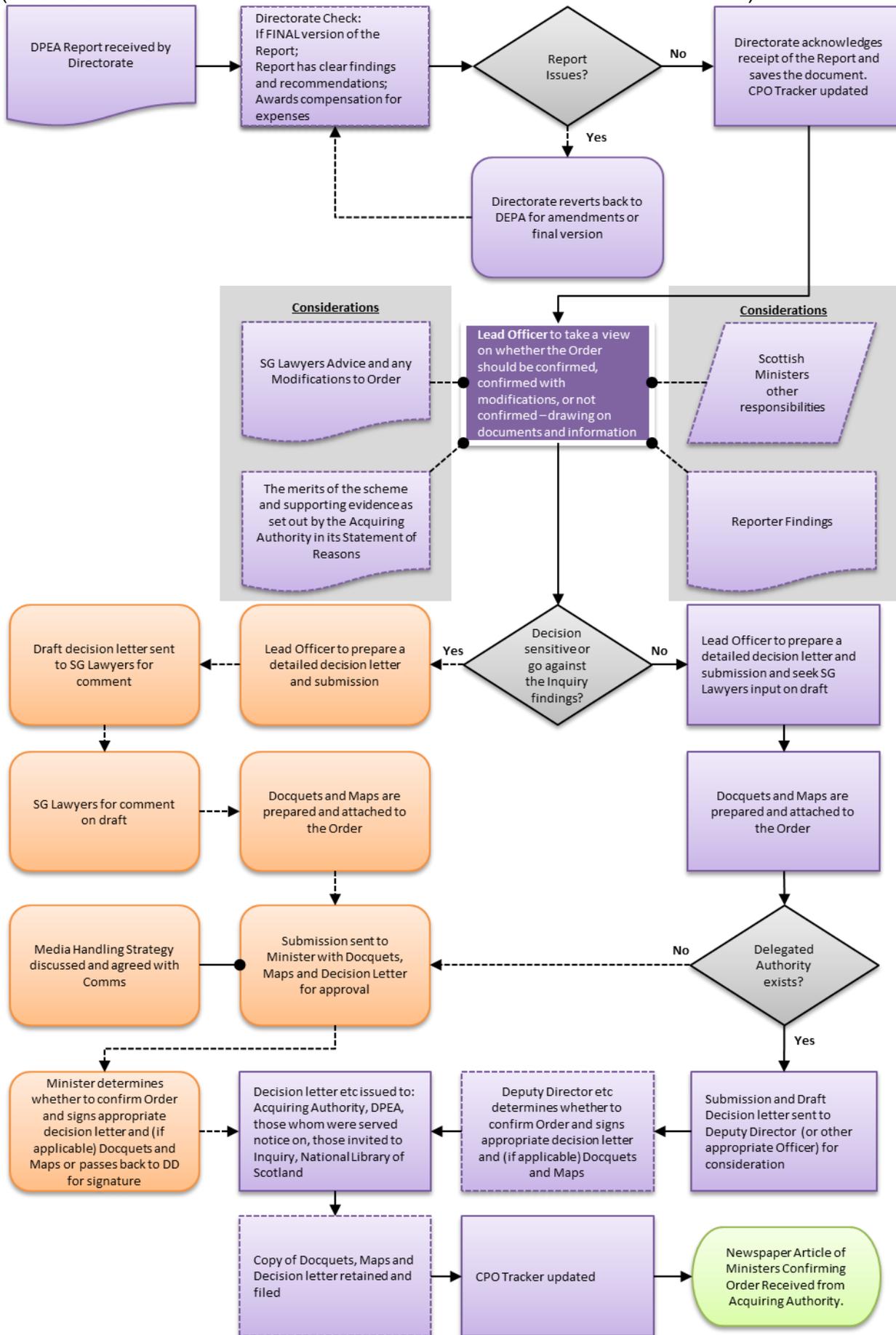
ANNEX D: FLOW DIAGRAM OF CONSIDERING OBJECTIONS PHASE

(Please see section 8 of Desk Instructions for detailed instructions)



ANNEX E: FLOW DIAGRAM OF DECISION PHASE

(Please see sections 9 & 10 of Desk Instructions for detailed instructions)



Appendices

Appendix 1:

Template For Responding To Technical Assessment Requests

Dear

**[ENABLING LEGISLATION AS SUGGESTED BY ACQUIRING AUTHORITY]
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947
CIRCULAR 6/2011: COMPULSORY PURCHASE ORDERS
[TITLE OF DRAFT ORDER]**

I refer to your letter of [DATE] submitting the above mentioned draft Compulsory Purchase Order to the Scottish Ministers for a technical assessment.

Having considered the contents of the draft order with reference to the above acts, associated secondary legislation and circular 6/2011, Scottish Ministers would make the following comments:

[Summary of comments from SGLD – this **should not** be a direct copy and paste of their views]

In addition I have noted:

[any procedural concerns outlined by the Directorate]

In providing comments on the draft order, the above comments are made without prejudice to:

- Scottish Ministers' role as confirming authority in relation to any subsequent order; and
- the fulfilment of Scottish Ministers' statutory functions in connection with any of the order lands and any subsequent development.

These comments relate to issues we have identified from the provided documents which may impact on the validity of the proposed Order, or lead to unnecessary delays in Scottish Ministers reaching their determination. These comments are not definitive, and do not mean that other issues will not be detected at later stage.

If you require any further information, do not hesitate to contact me at the above address.

Yours sincerely

[LEAD OFFICER]

Appendix 2:

Template To Acknowledge An Objector On An Order

[ENABLING LEGISLATION]

ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947

[TITLE OF ORDER]

1. I refer to your letter of [DATE] submitted in response to the above compulsory purchase order.
2. Your comments will be forwarded to [ACQUIRING AUTHORITY] for its comments who will be given [14 / other number as deemed appropriate] days to respond. You will be forwarded a copy of any response submitted to Scottish Ministers by [ACQUIRING AUTHORITY] on the matters you have raised.
3. Where an objection to an order is lodged with Scottish Ministers but not subsequently withdrawn, Ministers will instruct the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) to undertake an Inquiry. The purpose of the Inquiry is to consider the order in light of comments made by objectors and any other relevant matters. The outcome is a report to Scottish Ministers setting out the reporter's consideration of the matters and a recommendation as to whether the order should be refused, confirmed or confirmed with modifications by Ministers.
4. Should you wish at any time to withdraw your objection to the above order, I would be obliged if you would contact me at the above address as soon as possible.
5. If you require any further advice, do not hesitate to contact me at the above address.

Yours sincerely

Appendix 3:

Letter To An Objector Containing Acquiring Authority Response

Dear

**[ENABLING LEGISLATION]
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947
[TITLE OF ORDER]**

1. I refer to my letter of [DATE] regarding the above compulsory purchase order
2. Your comments were forwarded to [ACQUIRING AUTHORITY] for its comments which has submitted the enclosed response to the matters you have raised.
3. In light of the comments made by [ACQUIRING AUTHORITY], I would be obliged if you could advise within 14 days whether you wish to maintain or withdraw your objection to the above order. Should you wish to maintain your objection or I do not hear from you within the 14 day period, Ministers will instruct the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) to undertake an Inquiry. The purpose of the Inquiry is to consider the order in light of comments made by objectors and any other relevant matters. The outcome is a report to Scottish Ministers setting out the reporter's consideration of the matters and a recommendation as to whether the order should be refused, confirmed or confirmed with modifications by Ministers.
4. Unless I hear from you that you wish to withdraw your objection, DPEA will contact you directly concerning the arrangements for the Inquiry.
5. Should you wish at any time to withdraw your objection to the above order, I would be obliged if you would contact me at the above address as soon as possible.
6. If you require any further advice or information, do not hesitate to contact me at the above address.

Yours sincerely

Appendix 4:

Letter to Objector where Objection Relates Solely To Compensation

[ENABLING LEGISLATION]

ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947

[TITLE OF ORDER]

I refer to your letter of [DATE] objecting [on behalf of.....]* to the above Compulsory Purchase Order made by [ACQUIRING AUTHORITY] and submitted to the Scottish Ministers for confirmation.

These objections appear to relate only to the amount of compensation which you/your client* expect(s) to receive for the acquisition of your/his* interest in the land. I shall be grateful if you would confirm whether or not this is the substance of the objection. If it is and you are unable to agree the amount with the authority acquiring your/your clients* interest in the land you can refer the matter to the:

The Lands Tribunal for Scotland
George House
126 George Street
Edinburgh
EH2 4HH
Tel: 0131 271 4350
E-mail: mailbox@lands-tribunal-scotland.org.uk
<http://www.lands-tribunal-scotland.org.uk>

Which will determine the amount in accordance with the Land Compensation (Scotland) Acts 1963 and 1973.

Any dispute regarding the level of compensation payable may be determined by the Lands Tribunal for Scotland and is not a matter for the Scottish Ministers. As this means of arriving at the figure of compensation is available, I have to advise you that Scottish Ministers may disregard any objection which is concerned exclusively with the amount of compensation.

A further letter will be sent to you as soon as a decision on the order has been taken.

This letter is being copied to [ACQUIRING AUTHORITY].

If you require any further information, do not hesitate to contact me at the above address.

Yours sincerely

* where the objector is being represented

Appendix 5:

Letter to Objector where Objection Relates To Provisions In The Development Plan (Planning Act Orders Only)

[TITLE OF ORDER]

I refer to your letter of [DATE] containing [on behalf of.....]* objections to the above Compulsory Purchase Order made by [ACQUIRING AUTHORITY] and submitted to the Scottish Ministers for confirmation.

These objections appear to the Scottish Ministers to amount in substance to objections to the provisions of the development plan for the area in which the order land is situated. Under section 200(1) of the Town and Country Planning (Scotland) Act 1997, Scottish Ministers may therefore disregard your/your clients* objections in deciding whether to confirm the order.

This letter is being copied to [ACQUIRING AUTHORITY].

If you require any further information, do not hesitate to contact me at the above address.

Yours sincerely

* where the objector is being represented

Appendix 6:

Letter To An Owner Of Alternative Land

[TITLE OF ORDER]

1. [AUTHORITY] has submitted to the Scottish Ministers for consideration, the above Compulsory Purchase Order in respect of the land described in the attached Appendix I, which it wishes to use for [INSERT PURPOSE].
2. Whilst none of your land is covered by the Order, objections lodged against it have suggested that the land described in Appendix II would provide a suitable alternative site. I understand that this land may be owned by you.
3. The purpose of this letter is to advise you that this suggestion has been made and to give you an opportunity of making your views known either by:
 - submitting such written representations as you may care to make; or
 - by attending or being represented at the Inquiry being held [INSERT DETAILS OF THE INQUIRY] (1).
4. It would be helpful if you would confirm your ownership and forward any written representations as soon as possible to me at the address above [and if you would advise whether you will attend or be represented at the above Inquiry. I should however mention that there will be no award of expenses in your favour should you decide to attend or be represented at the Inquiry.
- [5. A copy of this letter is being sent to each of the parties to the Inquiry.] (1)

(1) To be used where an Inquiry has been fixed.

Appendix 7:

Decision Letter Where The Order Is Confirmed Without An Inquiry

(Note: Substitute references in this letter to other Acts of Regulations as necessary).

[ENABLING LEGISLATION]

ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947

[TITLE OF ORDER]

1. I refer to your letter of [DATE] submitting the above mentioned Compulsory Purchase Order (the Order) to the Scottish Ministers for confirmation.
2. The Scottish Ministers have given careful consideration to the merits of the Order, to which [(X) non-statutory objections were lodged / no objections were lodged with them / the objections lodged with them have been withdrawn / the objections lodged with them have been disregarded in terms of paragraph 4(4)(a) of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947].

The Scottish Ministers' Decision

3. In determining to confirm the Order, the Scottish Ministers have taken into account the following:

[BRIEFLY OUTLINE THE MAIN REASONS BEHIND THE CONFIRMATION]

4. The Scottish Ministers have considered carefully all the evidence presented to them and consider that acquisition of the interests listed in the Order by compulsory means is proportionate and in the public interest. Taking these considerations into account, the Scottish Ministers are satisfied that [TITLE OF ORDER] should be confirmed. This letter constitutes the Scottish Ministers' decision in that regard.
5. Accordingly, the original Order, with docquet of confirmation thereon together with the map referred to in the said Order, docquetted and signed on behalf of the Scottish Ministers, is enclosed.

Subsequent Procedures

6. In accordance with paragraph 6 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (the 1947 Act), notice of confirmation of the Order should be published as soon as may be in the prescribed form (Form No 4 in the Schedule to the Compulsory Purchase of Land (Scotland) Regulations 2003 (SSI 2003/446) in one or more newspapers circulating in the locality in which the land comprised in the Order is situated. A like notice and a copy of the Order as confirmed must be served on all persons on whom notice under paragraph 3 of the First Schedule to the 1947 Act was served. [ACQUIRING AUTHORITY] will require to take what action it considers necessary regarding the service of the notices in accordance with paragraph 19(4) of the First Schedule to the 1947 Act, as amended by paragraph 6 of Schedule 2 to the Local Government (Miscellaneous Provisions)(Scotland) Act 1981.

7. The Order will become operative on the date on which notice of the confirmation is first published, but any person aggrieved may, within 6 weeks of that date make application to the Court of Session in terms of paragraph 15 of the First Schedule to the 1947 Act, as extended by Section 60 of the Land Compensation (Scotland) Act 1973.

8. Extracts of newspapers containing notice of the confirmation of the Order should be forwarded to the Scottish Ministers for retention along with a certificate of the service of required notices.

9. I should be grateful if you would acknowledge receipt of this letter.

Yours sincerely

Appendix 8:

Decision Letter Where The Order Is Being Confirmed Following An Inquiry

[ENABLING LEGISLATION]

ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947

[TITLE OF ORDER]

I refer to your letter of [DATE] submitting the above mentioned Compulsory Purchase Order to the Scottish Ministers for confirmation.

[see note 1]

A list of those parties who appeared at the Inquiry is given in the Appendix to the report. A site description and factual background to the Order is contained in Chapter [X] of the report.

Evidence at the Inquiry

The Reporter summarises the terms of objection and case for [ACQUIRING AUTHORITY] in Chapter [X] of the report.

Consideration by the Reporter

The Reporter's reasoning, conclusions and recommendations that the Order be confirmed are given in Chapter [X] of the report.

The Scottish Ministers' Decision

The Scottish Ministers have considered carefully all the evidence presented at the Inquiry, the Reporter's reasoning, conclusions and recommendation thereon.

[OUTLINE KEY CONSIDERATIONS]

They accept the Reporter's reasoning and conclusions and adopt them for the purposes of their own decision, and accept the Reporter's recommendation that [TITLE OF ORDER] be confirmed. Therefore, having considered carefully all the evidence presented to them, Scottish Ministers consider that acquisition of the interests listed in the Order by compulsory means is proportionate and in the public interest

Accordingly, the Scottish Ministers hereby confirm the [TITLE OF ORDER] without modification. This letter constitutes their decision to that effect. The original Order with docquet of information together with the map referred to in the said Order, docqueted and signed on behalf of the Scottish Ministers, is hereby enclosed.

Subsequent Procedures

In accordance with paragraph 6 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, notice of confirmation of the Order should be published as soon as may be in the prescribed form (Form No 4 of the Schedule 1 to the Compulsory Purchase of Land (Scotland) Regulations 2003 (SSI 2003/446) in one or more newspapers circulating in the locality in which the land comprised in the Order is situated.

A like notice and a copy of the Order as confirmed must be served on all persons on whom notice under paragraph 3 of the First Schedule to the Act of 1947 Act was served. [Acquiring authority] will require to take what action they consider necessary regarding the service of the notices in accordance with paragraph 19(4) of the First Schedule to the 1947 Act, as amended by paragraph 6 of Schedule 2 to the Local Government (Miscellaneous Provisions)(Scotland) Act 1981.

The Order will become operative on the date on which notice of the confirmation is first published, but any person aggrieved may, within 6 weeks of that date make application to the Court of Session in terms of paragraph 15 of the First Schedule to the Act of 1947, as extended by Section 60 of the Land Compensation (Scotland) Act 1973.

Extracts of newspapers containing notice of the confirmation of the Order should be forwarded to the Department for retention along with a certificate of the service of required notices.

[see note 2]

A copy of this letter and of the Inquiry report has been sent to all outstanding objectors.

I should be grateful if you would acknowledge receipt of this letter.

Yours sincerely

Notes

1. Provide information on the Inquiry. For example see the following paragraph which can be amended as suitable. "Two objections were lodged with Scottish Ministers and following public advertisement, one was subsequently withdrawn. [Name of Reporter] was appointed to hold an Inquiry into the objections(s). The Inquiry was held on [date] at [address of Inquiry]. A copy of [Name of Reporter]'s report is enclosed for information.

2. To be inserted where expenses are to be awarded:

"Scottish Ministers have decided that [ACQUIRING AUTHORITY] should meet the reasonable expenses of the objector, [insert name], and he/she is being advised accordingly. Parties should endeavour to reach agreement on the amount of these expenses wherever possible and it is considered that where an objector was not legally represented the expenses incurred by him/her should include a sum to reflect the amount of work done and time spent by him/her in the preparation and conduct of his/her own case. Where the parties fail to reach agreement they should make a joint submission to the Auditor of the Court of Session requesting taxation of the expenses. The account of expenses submitted to the Auditor should be prepared and taxed on the Sheriff Court Scale (Party/Party basis) as prescribed by the relevant Act of Sederunt where the objector was legally represented, and in accordance with the guidelines contained in the relevant Act of Sederunt dealing with Expenses of Party Litigants (currently [INSERT SI number]) where the objector conducted his/her own case."*

*or Court of Session Scale, where appropriate (e.g. in the case of major inquiries on matters of general importance involving the appearance of senior and junior counsel on both sides).

Appendix 9

Draft Docquets

1. Docquets for the Order

The Scottish Ministers, in exercise of the powers conferred by paragraph 4 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and of all other powers enabling them to do so, confirm [TITLE OF ORDER].

Signed for the Scottish Ministers on [INSERT DATE]

By [NAME OF OFFICER AND DESIGNATION]
.....

2. Doquet for the Schedule

This is the schedule referred to in the [TITLE OF ORDER] confirmed by the Scottish Ministers.

Signed for the Scottish Ministers on [INSERT DATE]

By [NAME OF OFFICER AND DESIGNATION]
.....

3. Doquet for the Map

This is the map referred to in the [TITLE OF ORDER] confirmed by the Scottish Ministers.

Signed for the Scottish Ministers on [INSERT DATE]

By [NAME OF OFFICER AND DESIGNATION]
.....

Appendix 10:

Draft minute of appointment of a reporter (IRU FORM)

Minute of Appointment

Minute of Appointment of [NAME OF REPORTER] in terms of paragraph 1 of Schedule 4 to the Acquisition of Land (Authorisation Procedure (Scotland) Act 1947.

In pursuance of paragraph 1 of Schedule 4 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 the Scottish Ministers hereby appoint [NAME OF REPORTER] to hold an Inquiry in connection with the [TITLE OF ORDER] against which Order objections have been lodged and have not been withdrawn, and to report to him on the said Inquiry.

Given this [DAY] day of [MONTH] [YEAR].

[NAME OF OFFICIAL AND DESIGNATION]

**DIRECTORATE FOR PLANNING AND ENVIRONMENTAL APPEALS
REQUEST FOR A SITE INSPECTION, HEARING OR PUBLIC INQUIRY**

(To be completed by Directorate)

1. SUBJECT MATTER OF CASE (including site address)
--

2. LOCAL (OR STATUTORY AUTHORITY)	
Name:	Contact:
Address:	Telephone:
	E-mail:

3. APPLICANT / AGENT (Note 1)	
Name:	Contact:
Address:	Telephone:
	E-mail:

4. REQUEST FOR (Please tick ONE box)		
Site Inspection <input type="checkbox"/>	Hearing <input type="checkbox"/>	Public Local Inquiry <input type="checkbox"/>
If the case relates to a compulsory purchase order, DPEA will decide on the method of determination. However, if you wish to make any views known as to whether it should be an Inquiry or hearing session then please indicate in the section below		

5. NAME OF DEPARTMENTAL WITNESS	
Name:	Contact:
Address:	Telephone:
	E-mail:

6. ANY SPECIAL FEATURES OR ISSUES (Note 2)
--

Signed :-	Date :-
Address :-	
Tel no :-	
E-mail :-	

Notes

(1) List on a separate sheet any other main parties (e.g. objectors etc) in alphabetical order including details of any agents involved. Please note if there are a large number of objectors, DPEA can supply a spreadsheet compatible with its database for use. If potentially needed, contact the relevant DPEA manager.

(2) Also use this section to give a note of any deadlines or dates for holding the hearing or Inquiry or submission of the report.

This form should be sent to the address below enclosing:

- the divisional file or copy of all the appropriate papers, in both hard copy and electronic format. Electronic copies on disc or links / access to the appropriate eRDM file meets this requirement. Contact with the relevant DPEA manager if this matter raises issues is welcomed,
- copies of any relevant legislation, and
- a draft minute of appointment of a Reporter.

This form should be sent to

Directorate for Planning and Environmental Appeals
4 The Courtyard, Callendar Business Park
Callendar Road, Falkirk FK1 1XR

Tel: 0300 244 6668

E-mail: dpea@scotland.gsi.gov.uk

CPO Policy Team
Victoria Quay
Edinburgh
EH6 6QQ

