

Compulsory Sale Order

Position Statement

Summary of Compulsory Sale Order

- Compulsory Sale Orders (CSOs) will provide new statutory powers to local authorities that would enable them to require that specified land which has been vacant or derelict (VDL) for an undue period of time should be sold by public auction to the highest bidder.
- As these powers would be discretionary, it would be for local authorities to decide on a case-by-case whether or not to exercise them.

Policy Intention

- To enable Scotland's local authorities to bring vacant and derelict assets (land and property) into "productive use" – assets that blight communities and can become centres of crime and anti-social behavior.
- This is a tool for regeneration that will act as a last resort, filling the policy gap between compulsory purchase orders (CPOs) and Community Right to Buy.
- The emphasis of CSOs is to address areas of market failure – with an objective centred on productive use, not community benefit.

RICS Position

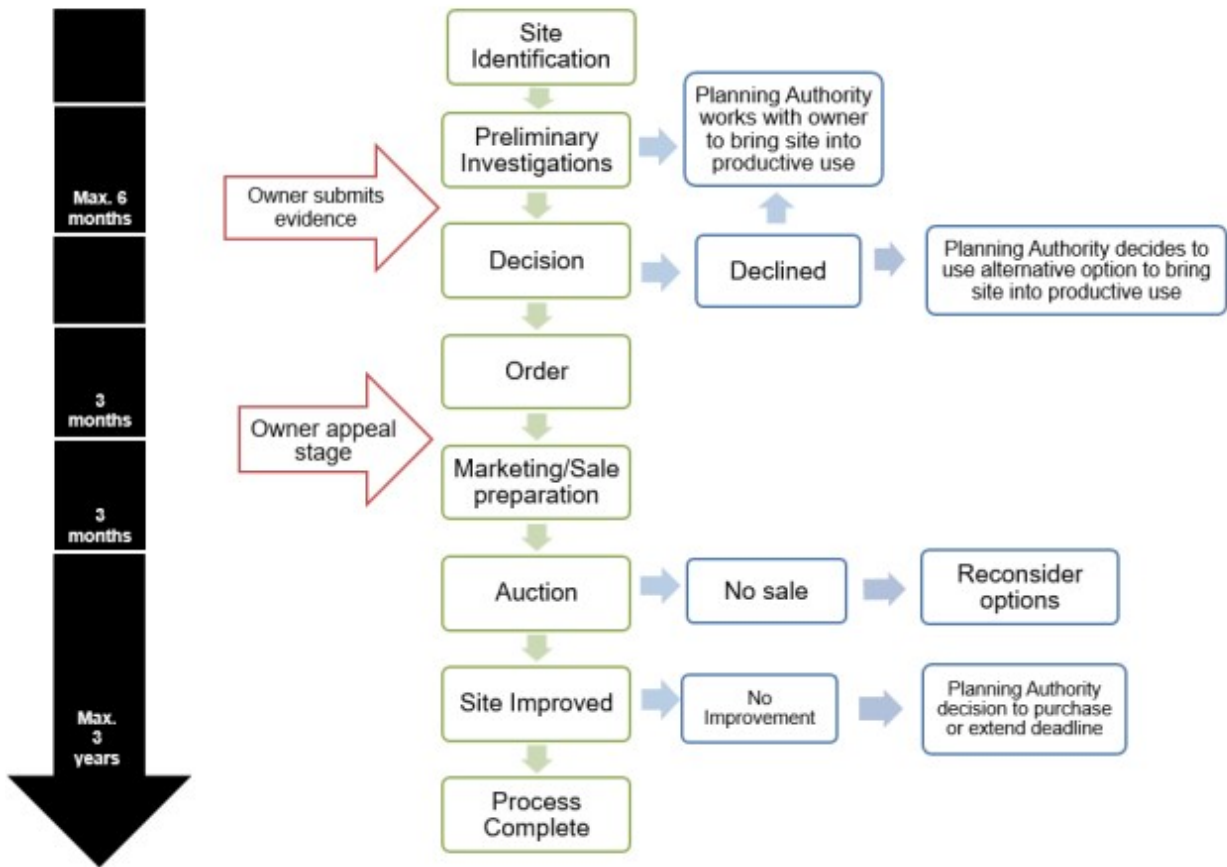
- Vacant and derelict land and property make a marginal, if any, contribution to communities, the environment or wider economy.
- RICS therefore welcomes any discussions that consider, assess and evaluate the benefit of alternative approaches to ensuring Scotland's land and property assets are used effectively and efficiently.
- The CSO proposal from Scottish Land Commission (SLC) provides a very detailed and compelling case for the introduction of CSOs; it also suggests that they should "*be regarded as a last resort to be used where all other attempts to bring a site back into productive use have failed*".
- If this viewpoint is adhered to, the notion of CSOs is sound, as they should, if implemented effectively, form part of the regeneration "toolbox" that will result in vacant or derelict assets being brought into effective use quicker than at present – potentially reversing market failure in a locality.
- Indeed, sentiment received from developers and consultants suggests that it is responsibility of the Government to take the lead and enable activity in areas of market failure. Market failure, itself, arising from a host of ill-informed decisions; with a key driver behind vacant and derelict assets often being unrealistic estimations of value by owners.

- If introduced, this policy should start a dialogue with asset owners with high-value expectations, and could bring forward the reuse of vacant and derelict land; to the betterment of communities in Scotland.
- It is important to recognise, however, that whilst there are many examples of where CSO introduction would work (outlined in the proposal document); equally, there are many examples of where it would not.
- Government Ministers should consider how Scotland would be perceived *looking in*: would CSOs attract land and property investors and developers, or it would divert them? On the former, they may see CSOs as an instrument that will encourage investment; conversely, they may construe CSOs as a stalking horse.
- Ultimately, there is a need to continue to respect private property rights and there will often be good reasons why an owner holds onto an asset; thus, there requires to be appropriate processes and safeguards in place to ensure that such a forced sale is indeed legitimate and the right course of action. The proposal has provisions around this, but more detail is required before introduction.
- Equally, it does not always follow that there will be a purchaser for the land, especially if the land carries burdens, such as contamination issues, major demolition or high servicing costs. Whilst this proposal has safeguards in place for a “non-sale”, it must be recognised that local markets will vary, and every case will be different. Furthermore, unless there is a central funding source, many communities won’t have resource to fulfil the asset’s potential. If development wasn’t viable whilst vacant; consideration must be given why it would be viable under new ownership; regardless of any monetary support from Government.
- Finally, very few properties in Scotland are sold via auction - private treaty is much more common, and those that are tend to be lower-value assets (including repossessions) where all other sale alternatives have failed, and are undertaken by UK, rather than Scottish, auction houses.

Position Summary

- There are many obstacles to be overcome in order to create a reasonable and balanced public policy that can deliver productive spaces, or reused empty homes, in sufficient numbers.
- It is within areas of market failure that there are no mechanisms for what market value is due to a lack of comparable data. This will prove a complex area to navigate – regardless of whether the asset will be assessed at existing use or potential value.
- It is imperative that clear guidance is provided, and the use of suitably qualified land and property professionals are at the heart of the different stages of the CSO process – this will ensure ethical practice, transparency, and consistency across Scotland.
- The SLC proposal provides detail on the different stages of the process, and RICS has provided commentary on each.

Compulsory Sale Order Process



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- The SLC proposal document is both detailed and compelling. Overleaf, in making comments on specific issues with the process stages, we have aimed to provide views that will assist the enhancement of the proposal, or suggest further deliberation.

¹ Source: Scottish Land Commission "[Compulsory Sales Orders: A Proposal from the Scottish Land Commission](#)" - 13th August 2018

CSO Process in Detail

i. Eligibility and Site Identification

- This stage lies very much within the realm of the planning system, but the additional responsibility could increase the resource burden that is already stretching planning authorities across Scotland. In addition, there could be implications regarding planning authority officers' requisite knowledge and experience in assessing sites.
- Similarly, many vacant and derelict assets may be owned by a Local Authority, which raises questions over how they propose detailing and assessing their own estates.
- It would be useful for the site constraints to be identified at this early stage in the process, as it could be contamination issues, or lack of service connections (for example), that are stopping these assets from being redeveloped rather than an owner with unrealistic value expectations. The forced sale of such assets would just pass the issues onto another owner and not resolve the constraints to allow for redevelopment.
- CSOs could form part of a Simplified Planning Zone (SPZ) for regenerating an area – there could also be a role for charrettes and Local Place Plans in identifying of sites by communities. However, advice or guidance from a professional to the community on the potential for a CSO would be required.
- That aside, if local authorities took a more active role in planning the area and promoting a place for regeneration this should generate some confidence in the market.
- There is a role for RICS' proposed Housing Land Agency (HLA) to work with local authorities to identify assets that could be subject to CSOs – and contributing to other stages of the CSO process.

ii. Preliminary Investigations (including owners right to be heard)

- The notion of “notice of preliminary investigations” is prudent and necessary, as is the owner's opportunity to submit evidence to the investigation, and the proposed content of the notice.
- The SLC proposal states “*it is proposed that planning authorities should be required to seek to make contact with the owner as soon as possible after a problematic site has been identified*” – this is an absolutely necessity.
- Indeed, a CSO should not be taken forward without the owner's notification; but there may be instances where the owner cannot be notified or identified. If this is the case, it may be fair for the CSO process to begin once all attempts to make contact have been exhausted. Even then, a prescriptive list of notification approaches should be developed, and detailed evidence of approaches used by the planning authority should be required.

- Guidance on what constitutes “efforts” to bring the site back into productive use, or the “extenuating circumstances” that prevented improvement would be beneficial to the CSO regime if it is introduced.
- The time-scale for investigations - to a maximum of six months – seems reasonable; but again, this could prove problematic for some planning authorities facing restricted budgets.

iii. Evidence (including the planning statement)

- The current list of planning statement requirements is adequate.
- In Scotland, council tax on properties which have been ‘unoccupied and substantially unfurnished’ for over a year can be billed for an ‘empty homes premium’ – unless it has been marketed for sale. It would be appropriate to follow this timescale for empty properties with regard to CSOs.

iv. The Order (Instigation of Formal Proceedings)

- The proposal provides details of what should be included in the Order, how it should be served, and laid within legislation – all of which are adequate; as are the suggested contents of the Order.

v. Right to Appeal

- Owners should have the right to appeal, but that could potentially lead to a slowing down of the process. Likewise, at present there is much discussion around the Planning (Scotland) Bill’s possible introduction of third party (or equal) rights of appeal. Would these include CSOs?
- Given the high level of engagement required with the asset-owner within the CSO process proposal, would an appeal process be necessary?
- That aside, appeals should be in principle i.e. not depriving the owner of assets, nor slowing down development; but the proposal to separate the issuing authority and appeal body is practical.

vi. Marketing

- The proposal suggests the management of the sale is undertaken by an independent valuer. We assume this valuer would have the necessary credentials and abide by ethical practice standards.
- The suggestion of “strict guidance” for marketing conduct will also ensure a professionalised framework.

vii. the Auction

- Auctions often see participation from cash buyers as debt funding might not be available – partly because of a lack of evidence, and partly because market failure. This does, however, lead to higher risk and lower value.
- Additionally, evidence from valuation surveyors is that banks are more focused on empirical evidence for development funding (ground conditions, contamination etc.).

viii. Post-Auction

- If an asset is only sold from one party to another with no consequent development action being taken, then this would make the Order meaningless. The CSO proposal has provisions around this, but more detail is required – particularly as the planning process varies greatly in terms of timeframe and consistency across local planning departments.
- A set period for development seems reasonable, but this will require guidance; further engagement and discussion at the pre-auction stage; and a recognition that each case will vary.
- In the event of a non-sale, it is proposed that there is a three-year period before a further CSO can be initiated. There should be grounds to review this under certain, prescribed circumstances. Whether previous investigations and planning statements can be reused will also need to be discussed.
- Again, in suggesting that the new owner must provide access to the planning authority to undertake a post-sale inspection to assess whether the site has been brought back into “productive use” will add a resource burden on the authority.

ix. Resources

- Throughout this assessment of the CSO proposal, each stage of the process will have potential resource implications for planning authorities. Furthermore, the development and distribution of guidance, as well as, training will also add have financial implications.
- Similarly, there are inconsistencies across Scotland’s planning departments in service delivery; a well referenced skills shortage; and an impending retirement “cliff edge”. We would implore the Government to address these issues before introducing CSOs.
- This element also raises concerns around funding for community groups or public.
- The Scottish Government has a number of funding streams that could be extended to include CSOs, such as the Regeneration Capital Grant Fund (RCGF) or the Vacant and Derelict Land Fund. However, this could lead to community expectation of capital investment and higher demand on the national budget.