



SCOTTISH LAND COMMISSION
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Compulsory Sales Orders

A Proposal from the Scottish Land Commission

13th August 2018



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1. INTRODUCTION

In 2012 the Scottish Government established an independent review group to examine how land reform could benefit communities in urban and rural Scotland. When the group reported back to the Government in 2014 it made several recommendations specifically intended to support “urban renewal”. One of these recommendations was that the Government should bring forward powers to enable planning authorities to require land that has been vacant or derelict for an undue period of time to be sold by public auction to the highest bidder. This new mechanism was called a “compulsory sales order” (CSO).

The Scottish Government has committed to bring forward compulsory sales orders during the course of the next parliament to “*tackle the blight of abandoned buildings and small plots of land in town centres*”.

In March 2018 the Scottish Land Commission began working with the Scottish Government and other interested stakeholders to develop detailed proposals for how a new CSO mechanism could work in practice. The outputs from this work are summarised in this report, which is intended to provide the Scottish Government with a robust framework for developing a new CSO power.

In preparing the proposal a number of questions were identified that are likely to require further consideration prior to the new power being implemented. These questions have been highlighted throughout this report with a view to supporting any future work that the Scottish Government may undertake on this issue.

The remainder of this report is structured as follows:

- the remainder of this section describes how the proposals were developed and identifies the individuals/organisations who contributed to the process;
- section 2 provides an outline of the CSO power and what it is intended to achieve;
- section 3 describes how a new CSO power could work;
- section 4 contains case studies of actual buildings and sites around Scotland to illustrate the type of circumstances in which a CSO power might be used;
- section 5 answers to some frequently asked questions about the proposal; and
- section 6 contains a glossary and list of abbreviations.

1.1. Approach

The starting point for this project was to prepare a short discussion paper, which broadly outlined how CSOs could work and identified the key issues that would require further consideration. The content of this paper was based closely on a briefing document¹ prepared by Professor David Adams, the Chair of Property and Urban Studies at the University of Glasgow and one of the Scottish Land Commissioners.

The proposal also takes into account and draws on the Scottish Land Rights and Responsibilities Statement (2017), the Land Reform (Scotland) Act (2016), the Land Reform Review Group’s report *The Land of Scotland and the Common Good* (2014), the Community Empowerment (Scotland) Act (2015), the National Planning Framework 3 and

¹ Adams D (August 2015), Explaining Compulsory Sales Orders, Urban Land Reform Briefing Paper No. 1, Policy Scotland available at <https://policyscotland.gla.ac.uk/wp-content/uploads/2015/08/ULRBP-1-Compulsory-Sale-Orders.pdf>

current guidance notes on Compulsory Purchase Orders (CPO) produced by the Scottish Government in 2018.

An expert advisory group was then convened to guide delivery of the project. The role of this group was to consider the issues identified and help refine the proposals. A list of the individuals and organisations represented on the group is provided in Table 1.

Table 1 – Membership of Expert Advisory Group

Name	Organisation
Andy Milne	Scottish Urban Regeneration Forum
Archie Rintoul	Royal Institution of Chartered Surveyors
David Cowan	Scottish Government
Deryck Irving	Central Scotland Green Network
Douglas Bowers	Valuation Office Agency
Elaine Scott	City of Edinburgh Council
Malcolm Fraser	Architect
Neil Langhorn	Scottish Government
Richard Heggie	Urban Animation
Shaheena Din	Shelter- Scottish Homes Empty Partnership
Stuart Mearns	Heads of Planning Scotland
Professor Tom Allen	University of Durham

The expert advisory group met three times between April and June 2018 to discuss and refine the proposals.

Between meetings the Scottish Land Commission consulted with a range of interested parties who were able to provide particular insight into one or more of the issues under discussion. A list of the individuals/organisations consulted is provided below.

Table 2 – List of Consultees

Organisation/Individual	
Dr Frankie McCarthy, University of Glasgow	
Professor Kenneth Gibb, University of Glasgow	
Matt Baker, The Stove Network and Midsteeples Quarter	
Society of Local Authority Lawyers & Administrators in Scotland	
Scottish Property Federation	
Walker Morris	
Development Trusts Association Scotland	Fife Council
Glasgow City Council	North Ayrshire Council
Perth and Kinross Council	Royal Institution of Chartered Surveyors
Royal Town Planning Institute Scotland	Scottish Futures Trust
South Seeds	Turcan Connell

1.1.1. Human Rights Implications

If implemented the proposal contained in this paper would give planning authorities the ability to directly limit individual property rights. As such it was extremely important to ensure that the details of the proposal are consistent with human rights law and in particular the European Convention on Human Rights (ECHR). For this reason advice was sought from Professor Tom Allen of the Durham Law School, an expert on international property law and property as a human right.

As well as providing input as part of the expert advisory group, Professor Allen also reviewed a draft of the CSO proposal for compatibility with ECHR. Modifications were then made to the draft proposal as a result of this advice, which are reflected in the detail of the proposal contained in this paper.

Although, given the early stage of development of the proposals, Professor Allen's conclusions were necessarily tentative he was able to provide reassurance that the broad principles of the CSO proposal described in this paper are compatible with Convention standards.

1.2. Acknowledgements

The Scottish Land Commission is very grateful to all of the individuals who contributed to this exercise, whether as members of the expert advisory group or as consultees, without whom it would not have been possible to produce this proposal. Particular thanks is due to Professor Tom Allen for his invaluable contribution on the human rights implications of this proposal.

The input and advice provided by all of these individuals is reflected in the remainder of this document. Any errors or omissions are entirely those of the Scottish Land Commission.

2. POLICY INTENTION

The intention of this proposal is to provide a mechanism to enable local authorities to bring problematic vacant sites and buildings back into productive use² and help tackle the problem of long-term vacancy and dereliction that blights many Scottish communities.

2.1. The Problem

There are currently around 11,600 hectares of vacant and/or derelict land in Scotland³ and the figures have not changed substantially since the late 1990s, making this an entrenched problem. In addition to this there are also believed to be more than 37,000 long-term empty homes in Scotland⁴.

Vacant and derelict land and buildings present real challenges for communities across Scotland, often acting as magnets for crime and anti-social behaviour. This not only damages quality of life for existing residents but can also act as a deterrent for inward investment, making it more difficult to bring about long-term regeneration and renewal. Such sites can also prevent – or make it more difficult – for communities to meet important needs, such as for affordable housing, or to realise aspirations for amenities such as urban green space or cultural facilities. The fact that there is a clear relationship between land vacancy and dereliction and deprivation, means that Scotland's most disadvantaged communities are those most affected by this problem.

2.2. Need for Additional Powers

Communities and local authorities already have at their disposal various policy instruments that could be used to further regeneration. CPOs for example can be used by local authorities and some other public agencies to purchase land without the owner's agreement if there is a strong enough public interest case for doing so. Similarly, under powers brought in under the Community Empowerment (Scotland) Act 2015, communities will soon have the right to purchase abandoned, neglected or detrimental land.

While both of these instruments provide a potential route for bringing vacant and derelict land back into productive use both also require the authority or community in question to have a clear plan in place as to how the land or building in question would be used – but this is not always the case. In many cases public authorities and communities do not have a specific end use in mind for problematic sites but simply wish to see them used for some productive purpose. In such cases the community or public agency in question may have a strong desire to see the site used in a manner that benefits the community, but may not have the capacity, resources or inclination to take on responsibility for the site themselves. In such cases a CSO would provide a valuable alternative to existing mechanisms and help fill an important gap in the existing policy landscape.

Question: Is there a need to create a straight forward tool to enable planning authorities to bring unused sites back into productive use?

² Productive use is defined in a broad sense to incorporate not just uses that generate commercial value but also uses that generate social or cultural value, such as urban greenspace or recreational amenities.

³ Scottish Vacant and Derelict Land Survey 2017, Scottish Government

⁴ Scottish Empty Homes Partnership (June 2018), Annual Report 2017-18.

2.3. Rationale for Intervention

There is strong research evidence⁵ that shows that a change in ownership that transfers a property from a passive to an active owner is often a necessary pre-condition for bringing vacant and derelict sites back into productive use. The CSO power described in this paper has been designed to provide a mechanism that would enable sites to be transferred from passive to active ownership.

The rationale for CSOs is also grounded firmly in economic theory. One of the reasons why some sites remain vacant for extended periods is that the owner has unrealistic expectations about the value of the site. This mismatch between the price the market would be willing to pay and the price that the owner may be willing to accept can lead to sites remaining unused indefinitely as the owner waits for the market to improve in the expectation that prices will improve. This difficulty is exacerbated in urban areas where vacant land changes hands relatively infrequently and there is little comparative data available on which to base a realistic valuation.

By using an auction process, which would give all interested parties the opportunity to submit a bid reflecting their independent valuation of the site, CSOs would provide a mechanism for revealing the true market price of any given parcel of land, directly addressing this market failure.

Question: CSOs are designed to address situations where sites are left unused for an undue period because the owner has unrealistic expectations about value and there is little comparable data upon which to base a valuation. Is this rationale sound?

2.4. Contribution to Wider Policy Objectives

The intention of this proposal is to provide a mechanism to enable local authorities to bring problematic vacant sites and buildings back into productive use and help tackle the problem of long-term urban land vacancy and dereliction that blights many Scottish communities. In so doing CSOs could make an important contribution to achieving the [National Outcome](#) of sustainable and resilient communities. CSOs would also provide a mechanism to help ensure that the principles articulated in the [Scottish Land Rights and Responsibility Statement](#) are adhered to, in particular Principle four, which states that:

The holders of land rights should exercise these rights in ways that take account of their responsibilities to meet high standards of landownership, management and use. Acting as the stewards of Scotland's land resource for future generations they contribute to sustainable growth and a modern, successful country.

The real strength of CSOs however lies not in its potential as a punitive instrument but rather in the role it could play in facilitating constructive dialogue with owners of problematic sites. By providing a formal framework for engagement it is anticipated that the CSO process could provide an effective stimulus to regeneration even in cases where the power is not implemented. CSOs should therefore be regarded as a last resort to be used where all other attempts to bring a site back into productive use have failed and the success of the instrument should not be measured in the number of times it is used but rather in the long-term trend in urban vacancy and dereliction in Scotland.

⁵ Adams et al. (1992), Market activity and industrial development, Urban Studies, vol. 32, no. 3, 1995 471-489.

2.5. The Progressive Realisation of Human Rights

The European Convention of Human Rights (ECHR) enshrines the right to peaceful possession of property. By providing planning authorities with a legal mechanism to force the sale of land or property against the wishes of the owner this proposal represents a fundamental challenge to this right. This challenge is legitimate because the individual property rights enshrined in the ECHR are not absolute. ECHR expressly states that the right to property may be legitimately interfered with in pursuit of the public interest. Ensuring that the proposal contained in this paper strikes a proper balance between individual property rights and the public interest has therefore been of primary concern.

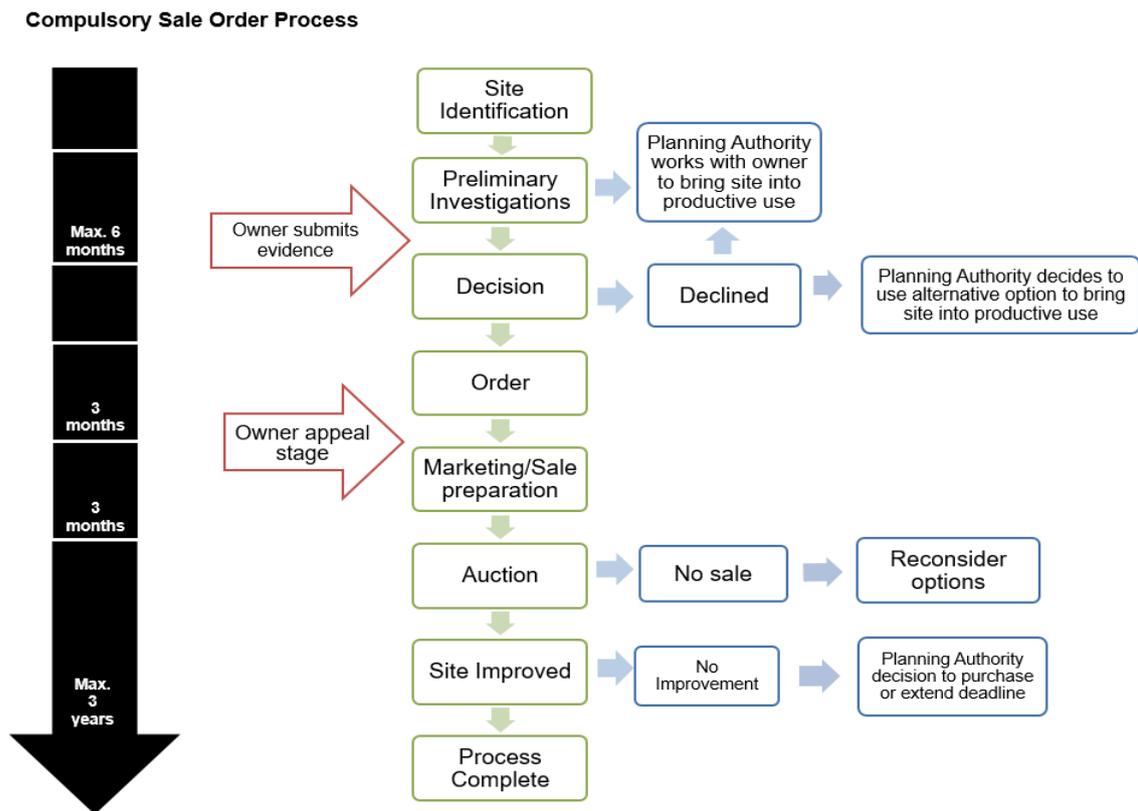
What is often overlooked in such discussions however is that human rights extend beyond individual property rights. Under the terms of the UN International Covenant on Economic Social and Cultural Rights, individuals also have a variety of broader economic, social and cultural rights including rights to food, housing and an adequate standard of living. By providing a tool that could be used to help achieve the progressive realisation of such rights the CSO proposal set out in this paper provides an opportunity for Scotland to better fulfil its obligations under international human rights law.

3. COMPULSORY SALES ORDER PROPOSAL

When land or property is retained indefinitely and is not used for any productive purpose then it is unlikely to be serving the public interest and may be actively harming the surrounding community. In such circumstances it is proposed that planning authorities⁶ should be given the power to trigger a CSO, which would require the site to be sold by public auction or unconditional tender to the highest bidder.

Figure 1 below summarises how this process could work in practice and the remainder of this section describes how this process could work in further detail.

Figure 1: Summary of Proposed CSO Process



Source: Scottish Land Commission

3.1. Eligibility and Site Identification

3.1.1. Types of Site

It is proposed that CSOs should be applicable to buildings or land that are either derelict, have been vacant for an undue period of time or both, and where their being in this condition is having a detrimental impact on the surrounding community. The Land Commission will be undertaking further research during 2018/19 on the consequences of vacant and derelict land. This is expected to provide further clarity on the different types of detrimental impact that vacant and derelict land can have on communities, but for the purposes of this proposal “detrimental impact” is intended to have a broad definition, incorporating social, economic or physical harm to a community.

⁶ Including 32 local authorities and two national park authorities.

It is intended that CSOs would be particularly appropriate to relatively small sites and less relevant for large or particularly complex development sites. What constitutes a large or small site will vary depending on the location but in general the type of sites intended are small gap sites, derelict commercial buildings and empty homes rather than larger areas with the potential for major commercial development.

The CSO power has been designed as a tool to help stimulate regeneration. As such the power is intended to be used on sites within existing settlements rather than on greenfield sites and is likely to be most relevant to built-up, urban areas. This is not however intended to preclude the use of CSOs in more rural settings and section 4 includes an example of an abandoned hotel site in a village where a CSO may be appropriate.

The prospect of CSO action could represent a significant risk for commercial property investors. So as to avoid the unintended consequence of discouraging investment it will be important that the types of property to which the CSO power could be applied is tightly defined within the relevant legislation. As a starting point it is proposed that CSOs could be applied to sites that:

- are relatively small (i.e. do not have major development potential);
- are not used for any productive purpose;
- are causing demonstrable harm to the surrounding community;
- are located within or on the immediate periphery of existing settlements; and
- have previously been developed (i.e. brownfield rather than greenfield sites).

Question: What type of sites should the CSO power apply to and how should these be defined so as to provide clarity to investors and avoid any unintended consequences?

3.1.2. Sites Owned by Public Bodies

Statistics published by the Scottish Government⁷ show that almost three quarters of vacant and derelict urban land (and almost 80% of derelict land) is in private ownership. The problem of urban vacancy and dereliction therefore appears to primarily be associated with private land ownership. Nevertheless, if bringing such sites back into productive use is seen as an important public policy objective, it would be reasonable to expect public agencies to demonstrate leadership by acting to bring sites that they own back into productive use as a matter of priority.

While it is to be hoped that public agencies would generally take steps to do this of their own volition, there may be a whole range of practical and financial reasons why this may not always or necessarily be the case. In such circumstances there may be justification for a CSO to be applied to a publicly owned sites.

Question: Should CSOs be applicable to publicly owned sites and if so, is it appropriate for this decision to be made by a local authority?

⁷ Scottish Government (June 2018), Scottish vacant and derelict land survey 2017

3.1.3. Site Identification

As there are already a number of existing registers that contain details of sites that may be appropriate for a CSO action it is not proposed that planning authorities should be required to establish a new statutory register of potential CSO target sites. Instead it is suggested that sites should be brought to the attention of the authority primarily by individual council officers and councillors, many of whom have very detailed local knowledge and would be well placed to help identify problematic sites.

The existing registers that are expected to be relevant for CSO purposes include:

- the Vacant and Derelict Land Survey;
- the Buildings at Risk Register; and
- locally maintained registers of empty homes.

Question: Are these sources adequate for identifying sites that may be appropriate for a CSO action? If not, are changes required to these registers or are there other sources that might be more appropriate?

It is anticipated that most sites being considered for CSO action would be included in one of these lists; however, as these lists have been compiled for a variety of different purposes not all of the sites included will be appropriate for a CSO action. Equally, not all sites that might be appropriate for CSO action will necessarily be on a register.

For example, the Scottish Vacant and Derelict Land Survey only includes sites of more than 0.1 hectares but there are many sites in Scotland where a CSO could be relevant that are under 0.1 hectares. One option for overcoming this would be to extend the coverage of the Vacant and Derelict Land Survey to include sites of less than 0.1 hectares but this would introduce an additional burden on planning authorities at a time when resources are already heavily stretched. To overcome this it is therefore proposed that if a vacant/derelict site comes to an authority's attention that is not on the Vacant and Derelict Land Survey because it is less than 0.1 hectares, but otherwise meets the criteria for inclusion in the Survey, then it should be eligible for a CSO.

In most cases it is envisaged that sites that would be appropriate for a CSO would be identified (or meet the criteria for inclusion) on one of the registers listed above; however, there may be situations where a site or property is not identified on one of the registers but is causing harm to the surrounding community. It is proposed that it should still be possible to implement a CSO on such sites, providing there is a strong public interest justification for doing so.

3.1.4. Public Interest Justification

A CSO would involve the state directly interfering with an individual's property rights by forcibly bringing about a change in ownership for a particular property. For this to be justified, the public interest served by the action must clearly outweigh the cost to the individual. Planning authorities should therefore be required to build a very strong case in favour of a CSO before initiating the action.

The amount of evidence available about a site's condition, history and context will be pivotal in creating a strong case for the use of a CSO. It is proposed that planning authorities should be expected to draw on a wide variety of different sources in making their case, including:

- reports of nuisance. For example official complaints to public bodies about issues such as anti-social behaviour or physical condition;
- previous enforcement action. For example statutory repair notices or planning enforcement actions; and/or
- evidence of locally orchestrated public campaigns relating to the site that are supported by representative community groups.

Many of the sites that would be eligible for CSOs are likely to be in a poor physical condition, but this will not always or necessarily be the case. It is perfectly possible for vacant sites that are not visibly neglected to be causing harm by preventing communities from realising their full potential. Evidencing this kind of harm is however significantly more challenging than evidencing physical harm.

To address this it is proposed that planning authorities should be empowered to use a human rights framework to help demonstrate the public interest in such cases. This would involve demonstrating how a CSO would enable the affected community to realise important economic, social and cultural rights – such as the right to food, housing and an adequate standard of living. It is anticipated that further guidance would be required on this issue.

Question: What other sources of evidence might it be appropriate for a planning authority to consider when compiling a case for initiating a CSO? Is it helpful to frame the public interest case in terms of economic, social and cultural rights?

3.1.5. Role of Communities in Identifying Sites

In identifying potential sites for CSOs planning authorities would be expected to take due cognisance of local aspirations by considering sites identified through locally based plans, prepared in collaboration with community groups. This could include Local Place Plans as proposed in the Planning (Scotland) Bill.

To facilitate community involvement in this process it is proposed that communities should be given the opportunity to ask the planning authority to investigate a site for a CSO. Should a planning authority decide to reject a community body's request then it should be required to provide an explanation for this decision, which should include an explanation of why the authority believes a CSO would not be an appropriate tool to use and what alternative steps the authority is taking to bring the site into productive use.

It will be important that this process is not unduly onerous for any of the parties involved. To ensure that the resources devoted to the process remain proportionate to the scale of the site in question it is proposed that detailed guidance should be prepared that would set out how and by whom a request could be made, what format this should take and what manner of response would be required from the authority in question.

Regardless of how a site is identified, it is proposed that the decision about whether or not to initiate a CSO would remain with the relevant planning authority. It would be at the discretion of the relevant planning authority whether or not to exercise the power and this discretion would be exercised on a case-by-case basis.

Question: Should communities be given the opportunity to ask for a site to be investigated and if so, what steps should be taken to ensure that communities have sufficient opportunity to help identify problematic sites but that this does not create an undue burden on planning authorities?

3.2. Preliminary Investigations

CSOs are intended to be a mechanism for stimulating regeneration and bringing unused sites and property back into productive use rather than a punitive instrument. As such the preliminary investigations undertaken by a planning authority would be very important because they would provide an opportunity to bring about a mutually acceptable resolution before proceedings commence.

For this reason it is proposed that planning authorities should be required to make contact with the owner as soon as possible after a problematic site has been identified that it believes may be an appropriate subject for a CSO. At this stage it is suggested that the planning authority should be required to issue the owner of the property and any other relevant interested parties with a “notice of preliminary investigations”.

3.2.1. Establishing Ownership

It may not always be possible to identify the legal owner of a site. It is proposed that this should not be a barrier to undertaking further investigations or to initiating proceedings but further guidance would be required to set out the process to be followed in such circumstances. It is envisaged that this process could mirror that already used for CPOs.

3.2.2. Notice of Preliminary Investigations

The purpose of this initial notice would be to advise interested parties that their site or property has been identified as problematic and that investigations are underway to compile evidence that may be used to support CSO proceedings in the future.

It is intended that the primary purpose of this notice should be to help initiate dialogue between the property owner, any other parties with a legitimate interest in the property/site and the planning authority. The principle focus of this dialogue should be on what actions might be required to bring the property back into productive use. As such it would be necessary for the planning authority to provide a clear indication at an early stage about the types of uses that it would consider acceptable productive uses for the site in question.

Before issuing the notice the planning authority should also seek to identify all rights and interests in the land or property that the CSO may apply to. It is proposed that the planning authority would then be required to issue the notice to the owner and any other parties with a legitimate interest in the site. This is expected to include any creditors party to a standard security over the property, lessees, occupiers, the holder of any personal burden and the owner’s association operating on the development in question. The planning authority would be required to notify all relevant parties that the site is problematic and that preliminary investigations are underway.

In the notice of preliminary investigations it is proposed that planning authorities would be required to offer the owner of the site (and any other parties with a legitimate interest) an opportunity to submit evidence to the investigation, which would be taken into account before a decision was made to commence formal proceedings.

It is proposed that the notice should also:

- explain how property came to the attention of the planning authority;
- describe the authority's principal concerns about the site;
- identify a named contact within the authority with responsibility for the preliminary investigations with whom the owner should be encouraged to liaise;
- provide an indicative time-scale for the completion of investigations, including a deadline by which any evidence that the owner wishes to submit must be received;
- provide information about how the CSO process works;
- contain advice on where to seek advice and support for bringing the site back into productive use; and
- indicate what type of productive uses the planning authority would find acceptable.

Sites for potential CSO action are expected to vary considerably in complexity and as such the time required to complete investigations is likely to vary from site to site. For this reason it is proposed that the time-scale for investigations should be for the planning authority concerned to determine, up to a maximum of six months.

It is not proposed that the owner of a site being investigated for CSO purposes would be prevented from selling the site during the course of investigations. Indeed in many scenarios this would be a desirable outcome. To ensure transparency however it is proposed that once a notice of preliminary investigations has been issued this should be attached to the title for the property so that any prospective purchaser would be aware of the possibility of action before completing a sale.

3.2.3. Proportionality

It is very important that the CSO procedure is fair and strikes a reasonable balance between the rights of property owners to the peaceful enjoyment of their possessions, and the wider public interest. To ensure that this balance is struck it is important that any public authority considering initiating a CSO give due consideration to any reasonable alternatives that may exist to bring the property back into productive use. Due consideration of these options will be an important and necessary step for establishing that the action of the authority is proportionate and that no measure short of a CSO would be sufficient to bring the property back into productive use.

3.2.4. The Owner's Right to be Heard

To maintain public confidence in the fairness of the CSO procedure it is important that property owners are given sufficient opportunity at an early stage in proceedings to make representations to the planning authority to:

- demonstrate why it is not possible for them to bring the site back into productive use (e.g. evidence of serious contamination that makes development unviable);
- highlight any efforts that they are making to bring it back into productive use; and/or
- draw attention to any other extenuating circumstances that may be preventing them from doing so (e.g. ill-health of the owner or the owner's immediate family).

In each case it is proposed that owners should be expected to provide evidence to substantiate any representations made.

Planning authorities would then be expected to fully consider any evidence submitted by the owner and to take steps to work with the owner to bring about a mutually acceptable resolution before taking a decision about whether to instigate formal proceedings.

It is not intended that the submission of representations by the property owner relating to extenuating circumstances would *necessarily* lead to the termination of CSO investigations or the cancelation of an auction/tender sale. It is however acknowledged there are likely to be occasions where an authority might decide it would be more sensible to temporarily suspend proceedings.

It is proposed that planning authorities should have discretion on how to respond to any evidence put forward by the owner but it is anticipated that further guidance would be required to support authorities in making these decisions.

3.3. Compiling the Evidence

Prior to commencing formal proceedings it is proposed that the planning authority would be required to submit the evidence it has compiled to formal scrutiny by submitting a report to the appropriate committee (in some cases this may be the planning committee and in others it may be full Council depending on the structure of the authority concerned). This evidence would be required to clearly demonstrate a public interest case as to why a compulsory sale may be necessary and would be required to include:

- a detailed site description;
- evidence to demonstrate that the site is having a detrimental impact on the local community;
- a planning statement (as outlined below);
- details of any evidence submitted by or on behalf of the owner and an explanation of why this evidence was not considered sufficient to stop proceedings; and
- an explanation of why any measure short of a CSO is unlikely to be successful in bringing the property back into use.

The purpose of the planning statement would be to provide an indication to prospective purchasers of the range of potential uses for the site that the planning authority would find acceptable. Further guidance would be required that would set out exactly what would be required in the planning statement but in principle planning authorities should be encouraged to provide all relevant information that can be made publicly available and that as a minimum this should include:

- a range of designated uses as set out in the Planning Authority's Local Development Plan;
- detail existing planning consent and refusals according to the planning register;
- a list of potentially acceptable productive uses;
- the results of a desk-top survey designed to provide preliminary information about likely ground conditions; and
- details of any known constraints to developing the site.

<p>Question: What information would be reasonable to expect the planning authority to include as part of the planning statement?</p>

Should the planning authority decide to commence formal CSO proceedings then they would be expected to provide the owner (and any other parties with a legitimate interest) with a copy of all evidence to be submitted in support of their case prior to the meeting at which the decision to grant a CSO is to be taken. The owner should also be invited to attend this meeting and given the opportunity to make representations in support of their position. So as to encourage early engagement between property owners and the planning authority (which may avert the need to progress a CSO) it is suggested that any such representations should be restricted to an explanation or elaboration of evidence already submitted at the preliminary investigation stage rather than new evidence.

3.4. Instigation of Formal Proceedings

Should a decision be taken to commence formal CSO proceedings then the planning authority would be required to issue the owner of the site in question with a formal Order. The details of exactly what should be included in the Order and how it should be served would be set out in the relevant legislation but it is anticipated that it would:

- include appropriate reference to the relevant legislation;
- summarise the reasons for the decision;
- provide the owner with clear information about next steps and the time-scales for proceedings; and
- advise the owner of the procedure and time-scale for objecting should they wish to challenge the Order.

It is proposed that once the Order has been issued it should be attached to the property title, making it binding for any subsequent owner.

3.5. Right to Object

The importance of providing property owners (and other parties with a legitimate interest in the property/site) with a mechanism for objecting to the granting of a CSO was discussed extensively during the preparation of this proposal. Some of those consulted were in favour of designing a process that mirrors the scheme of delegation already in place for determining planning decisions, which allows some decisions to be taken at an officer level. Under this process, only appeals relating to “major development” determined by elected members would go to the Planning and Environmental Appeals Division (DPEA) while appeals relating to smaller scale “local development” determined by officers are made to the relevant Local Review Body.

While it is anticipated that many of the sites to which a CSO may apply would be relatively small in scale, the act of compelling an owner to sell their property is very significant and would require the decision maker to make careful judgements about the public interest. As such it is considered appropriate for this decision to be taken by elected representatives.

To maintain confidence in the process it will be important for there to be clear separation between the authority issuing the Order and the body to which any objection is made. As it is proposed that the decision to issue a CSO should be taken by elected representatives, it is therefore proposed that objections should be made to the Planning and Environmental Appeals Division (DPEA) so the decision can be made by Scottish Ministers.

Question: Would it be appropriate for CSO objections to be considered by the DPEA or are there circumstances where it might be appropriate for objections to be made at a more local level? If mechanisms for local appeals are implemented, how could appropriate separation between decision makers be maintained?

3.6. Marketing

It is proposed that the planning authority responsible for granting a CSO would facilitate the auction (or sale by unconditional tender) unless satisfactory arrangements for holding the auction were proposed by the owner. To encourage participation it is proposed that sealed tenders would also be accepted providing these were unconditional.

To ensure that the conditions of the auction/sale do not breach the human rights of the owner it is important that the sale is undertaken in a manner that would enable the maximum possible value to be realised for the site. To achieve this it is proposed that the planning authority would be required to seek advice on the management of the sale from an independent valuer. It is also anticipated that strict guidance governing the appropriate conduct of marketing would also be required.

3.7. The Auction/Sale

Such guidance would need to set out the requirements for the auction or unconditional tender process but it is anticipated that, as a minimum, authorities would be encouraged to make use of existing auction sales to maximise exposure to the market. The party responsible for organising the auction would also be obliged to take reasonable steps to advertise the sale. Guidance for the auction/sale and marketing would need to be clear and accessible for both for the landowner and the general public.

The auction (or sale by unconditional tender) would be open for anyone to bid. This could potentially include planning authorities and as such there would be a need for strict safeguards to ensure appropriate separation between those responsible for bidding on a site and those responsible for managing the auction.

After the auction the Articles of Roup containing the conditions of sale would be signed and the title transferred from the owner to the highest bidder. This would be the point of disposition at which ownership would be changed. At this point it is proposed that any outstanding security against the property should be discharged.

3.7.1. Auction Fees

It is proposed that planning authorities should be empowered to recoup the costs associated with organising the auction and undertaking the initial desk-based survey from the auction proceeds. If the proceeds from a sale are not sufficient to cover the costs of the sale it is proposed that the planning authority concerned would be expected to cover the costs. To provide certainty to all stakeholders involved it is proposed that the costs that could be recovered should be tightly defined in relevant regulations and that the level of such fees should be capped.

3.7.2. Other Conditions of Sale

To ensure that CSOs do result in sites being returned to productive use it is proposed that planning authorities should be able to attach conditions of sale to sites that are subject to CSOs.

It is suggested that these conditions should include a requirement for the new owner to complete the development and bring the site into a productive use within a fixed period of time as set by the planning authority. To facilitate this it is proposed that the new owner would have a set period of time in which to submit a planning application and that the planning authority should be expected to determine this within a reasonable time-frame. Guidance as to what would be considered productive use would be provided as part of the planning statement prepared prior to issuing the CSO. To ensure that the original owner and the new owner receive equal treatment it will be important that the productive uses available to the new owner are consistent with those available to the original landowner.

It is also proposed that these conditions should include an obligation on the new owner to provide access to the planning authority at an appropriate point after the sale to undertake a post-sale inspection to verify that the site has been brought back into productive use.

3.8. Post-Auction

It is proposed that the new owner should be given a set period time in which to complete the development of the site. The appropriate period of time will vary for different types of site and would be subject to guidance.

Appropriate arrangements would also need to be put in place to ensure that the new owner's ability to meet any deadlines set by the planning authority are not unfairly compromised by delays in the planning system that arise through no fault of the owner.

3.8.1. Improvement

It is proposed that the planning authority responsible for issuing the CSO should be responsible for monitoring implementation. After the set period of time the planning authority would be expected to inspect the site and make a judgement as to whether it had been brought back into productive use. Providing the inspection is satisfactory the authority would then be expected to issue a completion certificate. Once the completion certificate has been issued then the process would be complete and the CSO should be removed from the property title. It is proposed that the costs of this post-sale monitoring should be met by planning authorities.

3.8.2. No Improvement

It is proposed that an explicit statutory condition should be attached to the sale which would give the planning authority the right to purchase the site if the new owner fails to comply with the conditions of sale and does not bring the site into a productive use within a specified time period. It is suggested that the price the planning authority should be required to pay in such circumstances should be based on a current valuation by a suitably qualified, independent valuer with knowledge and experience of valuing similar sites.

Where planning permission and site investigations take longer than expected due to unforeseen reasons, it is proposed that the planning authority should have the power to extend the development deadline providing the new owner can prove sufficient efforts have been made to bring the site into productive use.

3.8.3. Non-Sale

It is proposed that if no bids are made at a CSO auction, then the planning authority concerned should be given the option to acquire the site via compulsory purchase. It is further proposed that if the site remains unsold then there should be a period of three years before a further CSO could be initiated.

3.9. Resources

It is recognised that implementing CSO procedures could have significant resource implications for planning authorities. Given the current constraints on public sector finances this could make it challenging for some authorities to take full advantage of the potential opportunities presented by the new power if steps are not taken to address this.

Much could be done to alleviate the financial burden on planning authorities by ensuring that the CSO process is as straight-forward as possible and that the time and effort required to support an Order is proportionate to the scale of the problems caused by the site in question. To this end it is envisaged that detailed guidance would be required to support planning authorities to implement their new powers. The Scottish Government may also wish to consider providing a central resource to support to authorities considering progressing a CSO.

It is proposed that authorities should be empowered to recoup the costs associated with arranging the auction and undertaking the desk-based survey from the proceeds of the sale; however in some cases sale proceeds may not be sufficient to cover these costs. To help ensure that this does not prevent planning authorities from making use of CSO powers the Scottish Government may wish to consider options for making funding available to support planning authorities to initiate CSO actions.

<p>Question: What measures could be taken to ensure that planning authorities have sufficient resources to implement CSOs? Is there likely to be a need for centralised support?</p>

4. ILLUSTRATIVE EXAMPLES

This section provides further detail on the types of sites where it is envisaged CSOs would – and would not – be appropriate. The examples described are all real life examples from different communities around Scotland. The list is intended to be illustrative rather than exhaustive and may not cover every possible scenario to which a CSO may or may not be expected to apply.

4.1. Empty Homes

In the year to March 2018 there were nearly 35,000 homelessness applications recorded in Scotland⁸. In the same year there were more than 37,000 long-term empty homes in Scotland⁹. During the course of preparing this proposal it has become apparent that there is a particularly strong appetite to use CSOs to help address this problem. Survey evidence published by the Scottish Empty Homes Partnership for example suggests that there are currently 102 empty homes across Scotland that might be appropriate targets for CSO action.

Twenty local authorities in Scotland already maintain a register of empty homes. It is proposed that homes included in one of these registers could potentially be subject of CSO action. As discussed in section 3.1.3, inclusion in one of these registers would be a necessary but not sufficient condition for initiating a CSO so the planning authority would also be expected to demonstrate a clear public interest case for taking action against a particular property.

In order to demonstrate that the public interest would be served by such an action, the planning authority would also be required to provide evidence that the property was causing harm to the community. In this scenario the evidence would therefore need to show that there was significant unmet housing need in the local area and that by keeping the property empty the owner was exacerbating this need. It would also be necessary for the authority to demonstrate that taking action would help to meet this need. This could be achieved by specifying that productive use means residential development in the planning statement prepared during the preliminary investigation phase. overleaf describes one example of an empty home in a community in the south west of Scotland where a CSO might be appropriate.

⁸ National Statistics (June 2018), Homelessness in Scotland 2016/17.

⁹ Scottish Empty Homes Partnership (June 2018), Annual Report 2017-18.

Figure 1 – An Empty Home

In the early 2000s a resident of a small market town in south west Scotland purchased a flat in the centre of the village to live in. Encouraged by growing confidence in the property market the same individual subsequently decided to purchase the neighbouring flat and the commercial premises on the ground floor of the block, making him the sole owner of the entire property.

Within a few years the owner's personal circumstances changed and he moved away from Scotland, leaving the property empty. When the property market crashed in 2008/9 property in this area of the country was badly affected, making it unattractive for the owner to sell and removing any incentive to invest in maintenance or repair. Since the owner moved out the physical condition of the property has deteriorated significantly and it is now in an extremely poor state of repair. A recent valuation estimated the current market value of the property at <10% of the total amount that the owner invested in the property prior to the 2008/9 crash.

The property has now been empty for close to 15 years and the local authority is very keen to bring it back into productive use to help address a chronic shortage of affordable housing in the area. The authority have offered to purchase the property for a price significantly above the current market value but the owner is unwilling to sell because the price offered is still considerably below what he originally invested in the property. It is extremely unlikely that local property prices will increase to a level that would enable the owner to recover his costs in the foreseeable future so there is currently no prospect of the property being brought voluntarily to market.

The authority does not have the budget to acquire the property itself through compulsory purchase legislation and does not have a development partner with whom it could enter into a partnership arrangement. This means that there is currently no mechanism that the authority can use to bring the property back into productive use.

Source: Consultation with officer in relevant local authority

4.1.1. Holiday Homes

During the preparation of this proposal concern has been expressed that a CSO could be used to force people to sell second homes. This is not the intention. While there are legitimate concerns about the effect that holiday homes have on the supply of affordable housing in some areas, CSOs have not been designed to address this issue.

In order to be eligible for a CSO a property would need to be identified by the relevant planning authority as an empty home for council tax purposes. Under current rules this would mean residential properties that have been unoccupied for more than 12 months or more than two years if marketed for sale or rent. Properties that meet the Scottish Government's definition of a second home (i.e. properties that are furnished and occupied for at least 25 days per year) would not be eligible.

4.2. Vacant and Derelict Land

It is also intended that CSOs could apply to vacant and derelict land. In order to do this, the planning authority would be required to demonstrate that any CSO action taken on an area of vacant and derelict land would be in the interest of the public. It is currently estimated that 29% of Scotland's population live within 500 metres of a derelict site and over three-quarters of all of Scotland's derelict sites are found within a settlement so it may already be evident that taking action on the land would have a positive impact on the local community.¹⁰ However, it is crucial to provide additional evidence that the land in its current state is causing harm to the community and that a CSO would address this.

In this scenario the additional evidence required would therefore need to show not only that the land in question was vacant or derelict but also that its being in this condition was causing demonstrable harm to the local community. Relevant evidence would include

¹⁰ Scottish Vacant and Derelict Land Survey 2017, Scottish Government

reports of nuisance (such as anti-social behaviour or vermin) previous enforcement action or local campaigns about the site that are linked to representative community groups.

This would demonstrate that keeping the site in such a condition is problematic and detrimental to the neighbouring community. The planning authority would have to demonstrate that taking action would help to bring the land back into productive use. This could be accomplished by stating in the planning statement prepared during the preliminary investigation phase that productive use for such a site would mean greenspace or commercial development.

Consultation undertaken to support the development of this proposal suggests that there are no shortage of vacant and derelict sites throughout Scotland where a CSO might be an appropriate mechanism. Figure 2 – Neglected Land below describes one such example.

Figure 2 – Neglected Land

In a suburban area in the north east of Scotland there is a 0.5 ha site that has been used by its present owner as a dumping ground for nearly two decades. The site contains a listed building but the extensive grounds currently host a range of waste white goods, other domestic fixtures and fittings, scrap metal, and several scrap vehicles. The building has been partially destroyed by fire, and there have been a number of smaller blazes amongst the rubbish in recent years. The site is also subject to vandalism and anti-social behaviour.

The local authority has served a number of amenity notices on the owner, although some have been ignored and the Council has had to take direct action to clear the site, at a cost of several thousand pounds.

Local residents are distressed by the physical state of the site and the anti-social behaviour it attracts, both of which are having a negative effect on their standard of living. The site is therefore causing demonstrable harm to the community.

Although there have been moves by the community in the past to persuade the owner to sell or develop the site, these have been to no avail. Repeated attempts at enforcement action by the local authority have been similarly unsuccessful.

As the current owner has shown no interest in voluntarily disposing of the site and has proven to be unwilling to comply with legitimate demands to improve the physical condition of the site there is currently no realistic prospect of this site being brought back into productive use.

Source: local knowledge and contact with Scottish Land Commission staff

In many parts of Scotland there are small plots of land, often right in the heart of towns and cities, that have lain abandoned and neglected for years – sometimes decades. Often very little is known about such sites and the barriers that may exist to bringing them back into productive use.

While there may be a strong desire within the community to see such sites brought into productive use, there is often no particular aspiration for community ownership. In such cases a CSO could be an appropriate mechanism for reaching an acceptable resolution.

In some cases there may be sound reasons why such sites have not been developed but in the absence of any mechanism to identify what these barriers are it is unlikely that they will be brought forward for development. By providing a tool that planning authorities could use to bring inactive owners to the table it is hoped that CSOs could provide an effective mechanism for identifying and then addressing these barriers. An example of one such site is provided overleaf.

Figure 3 – An Abandoned Gap Site

There is an area of land in a suburban settlement that has been abandoned and neglected for several years. Planning permission was granted a few years ago however nothing has been done with the site. The site is badly neglected, covered with litter and contains overgrown trees, which are blocking out the light for nearby residents. This is having a negative impact on the wellbeing of the community and compromising the quality of life of nearby residents.

There is no particular aspiration within the community to take ownership of the site but there is a strong desire for action to be taken to improve its physical appearance. A CSO could therefore be an effective tool for improving the site and bringing it back into productive use in the interest of the public.

In this case the preliminary investigations could help identify what the current barriers are that are preventing the site from being brought back into productive use. It is possible that this alone could help to bring about a mutually acceptable resolution but if that was not possible then ultimately a CSO could result in a transfer of ownership to a more active and responsible owner.

Source: Information provided by a local elected representative

4.2.1. Community Benefit Projects

During the preparation of this proposal various stakeholders highlighted examples of actual or potential community benefit projects that could potentially have been facilitated by a CSO. These types of projects typically involved small, neglected gap sites located in well populated residential areas that had been identified by members of the community as having the potential to provide urban green space, allotments, a community garden or some other community amenity.

In some of these cases the price expectations of the owner have been a major barrier to realising community aspirations. In these situations a CSO could be a helpful tool for establishing the true market value of the site, which could be very low, and enabling them to be brought back into productive use. It is however important to note that the primary objective of the CSO proposal is to provide a stimulus for regeneration rather than to facilitate community ownership (although this may be an outcome in some situations). For this reason it is anticipated that in situations where there is sufficient data available to establish the market value of a site, the new right to buy abandoned, neglected or detrimental land might be a more appropriate mechanism for realising community aspirations.

4.2.2. Housing Land

In some parts of the country there are concerns that “land banking” may be a constraint on the delivery of housing. The Scottish Land Commission will be investigating this issue through our programme of work. While it is important that these concerns are addressed, the CSO proposal described in this document has not been designed with the intention of releasing land for large-scale housing development.

CSOs have been designed primarily to provide a mechanism for bringing relatively small sites that are located within existing residential settlements and are causing harm to the local community back into productive use.

As specified in section 3.1.1, it is proposed that CSOs would be appropriate for relatively small brownfield sites, located in, or on the periphery of, existing settlements. Conversely it is not anticipated that CSOs would be an appropriate tool for bringing larger, more complex sites forward for development, particularly if these are located on greenfield sites. There are alternative mechanisms and approaches available, including CPOs, joint ventures and public interest led development that are likely to be more appropriate in such circumstances.

4.3. Commercial Buildings

The consultation undertaken to support the development of this proposal suggests that there is also a strong interest in using CSO powers to bring vacant and derelict commercial properties back into productive use. Several stakeholders identified vacant and derelict commercial buildings that are currently lying derelict and abandoned and blighting communities in various parts of Scotland.

Such buildings often act as magnets for anti-social behaviour and are frequently infested by vermin both of which are likely to cause disturbance, annoyance and potentially risk of physical harm to those living and working nearby. Added to this, such buildings can also deter potential investors, making it more difficult for communities to realise aspirations for sustainable development. In such cases there is therefore likely to be a strong public interest case for bringing such buildings back into productive use.

A CSO may be an appropriate mechanism for achieving this objective in situations where there is likely to be market demand for the site but the owner is reluctant to bring it to market. For a CSO to be appropriate in any given situation then it would be necessary for the relevant planning authority to demonstrate that the site in its present condition was causing harm to the community.

Evidence of harm could take the form of reports of nuisance, such as anti-social behaviour or vermin, previous enforcement action such as statutory repair notices or planning enforcement actions or local campaigns about the site that are linked to representative community groups. Alternatively, evidence of harm could relate to the opportunity cost of the site remaining in its present condition and the effect that this has on the communities ability to realise economic, social and cultural rights.

It would also be necessary for the planning authority concerned to demonstrate that a CSO would be an effective means of addressing the harm caused by the building and that there were no viable alternatives available.

During the preparation of this report a number of commercial properties were highlighted that could be appropriate for CSO action. An example of one of these is provided below:

Figure 4 – An Abandoned Shopping centre

In a residential neighbourhood in a deprived community near Glasgow there is a small 1960s shopping arcade. The site was originally designed to provide a local hub for community activities and previously incorporated a number of retail units alongside a community centre and a theatre. Following a serious fire more than 20 years ago the site was abandoned.

The site was purchased by its present owner more than 15 years ago with the intention of using it for housing development but no activity has taken place. The site is now in serious state of dereliction and has become an eyesore for the local community and the focus for anti-social behaviour. The condition of the property is therefore a source of on-going annoyance and distress for those living and working nearby. The present owner owns other properties in the local area and uses this site to dump waste from these sites, adding to the blight.

The community has previously approached the landowner with a view to purchasing the building but negotiations did not progress because the community's valuation of the site was substantially lower than that of the land owner. Discussions at the time suggest that the owner's valuation was based on the belief that the site had potential for residential development but the local authority have confirmed that planning permission for residential development is unlikely to be granted. The owner's expectations regarding price therefore appear to be unrealistic.

As the site is located in a deprived urban area where there is very little comparable transactions data upon which to base a realistic valuation. In this scenario a CSO would provide a mechanism for bringing the site to market, revealing its true market value and enabling a new, more active owner, to return it to productive use.

Source: Consultation with local authority

Consultations undertaken during the course of preparing this proposal have also identified a particular issue with abandoned hotels in different parts of Scotland. By their very nature these sites are typically large, prominent buildings located at the very centre of towns and villages, making them a particular concern for local communities. An example of one such site is provided below.

Figure 5 - A Derelict Hotel

In a village in rural Perthshire there is a former hotel in the town centre that has been abandoned for several years. Having been neglected for an extended period, the building has become an eyesore and is now posing a danger to the public. Building standards notices have been issued to the owner but as the owner is a company it has been difficult to establish contact and no remedial action has been taken.

Although recent right to buy legislation would provide a potential route for bringing this site back into productive use, restoring the site would be complex and technically challenging and there is not currently any appetite within the community to take on the project. Similarly, resource constraints mean that, unless and until the physical condition of the building deteriorates to such an extent that it becomes a serious danger to public health, it is unlikely that the local authority would pursue a compulsory purchase action. There is therefore currently no realistic prospect of the site being brought back into productive use.

Source: Consultation with local authority

4.4. Partial Sites

In some circumstances it may be appropriate for a CSO to be applied to a partial site. This scenario could arise where only part of a building is being used for a productive purpose but the remainder of the building is unused. If by remaining unused it can be demonstrated that the building is causing harm to the community then it may be appropriate for the relevant planning authority to initiate a CSO to bring it back into productive use.

It is for example a relatively common phenomenon for the upper floors above retail units in town and city centres to be left vacant. Making better use of such spaces, for example by converting them into residential or office space, would help to bring much needed footfall and spending power, which could help to breathe new life into struggling town centres. There is however currently no mechanism that local authorities can use to bring these (partial) properties back into productive use. CSOs could help to remedy this.

There are numerous examples of partial sites in towns and cities across Scotland where a CSO might be an appropriate mechanism. One such site is located right in the centre of a busy market town in south west Scotland and is described overleaf.

Figure 6 – Part-Occupied Retail Unit

In a large town in south west Scotland there is a prominent commercial building located on one side of the main market square. The building has a distinctive architectural style with attractive frontages onto the main shopping street and provides a natural focal point within the town square. Despite this the ground floor of the building has been unoccupied for around 15 years.

Like many similar towns in Scotland, the town where this building is located struggles to compete with larger retail centres and out of town retail centres for trade and local businesses face an ongoing battle to attract and retain pedestrian footfall. Maintaining a vibrant and active town centre is therefore an important priority. Many of the existing local businesses try to contribute to this by maintaining attractive frontages and providing on-street seating for their customers. The local council has also invested heavily in public realm improvements and has succeeded in creating an inviting environment where people are happy to congregate.

In contrast to the other retail units in the town square, the vacant building described above shows no signs of life: doors and windows are firmly closed and the owner has made no visible attempts to make the frontage attractive or welcoming. The building in its present state is therefore actively preventing the town – and the resident community - from achieving its full economic potential.

There is a strong aspiration within the local community, which is shared by the local authority, to return the lower floor of the building to productive use, which in this scenario would most likely be defined as retail, entertainment or some kind of community use. At present however there is no mechanism that the local authority can use to achieve this. A CSO could potentially help in these circumstances – not necessarily by forcing a sale – but by providing the local authority with some leverage over the owner to encourage them to take action themselves.

Source: Consultation with local authority and local residents

5. FREQUENTLY ASKED QUESTIONS

This section provides answers to some frequently asked questions relating to the CSO proposal.

5.1. Why has an auction been proposed?

An auction is an efficient mechanism for revealing the true market price of a site at any given point in time. Using an auction would allow a market transaction to take place that automatically reflects the extent of structural change within the area, without undergoing a valuation or estimate of the price. It would provide a more reliable measure for valuing vacant and derelict urban sites that are difficult to value due to a lack of comparative transactions data.

5.2. Could a CSO auction include a reserve price?

No. To enable the auction process to function efficiently it is important that a reserve price is not set. Not allowing a reserve price would maximise the chances that the site is sold by enabling anyone to bid, even if this considered a nominal price. The highest bid reflects the price that the market is willing to pay and thus offers a reliable measure for valuing vacant and derelict sites that would otherwise be very difficult to value.

5.3. What is the role of the guidance?

It is proposed that the guidance would be necessary to support and guide planning authorities throughout the process. It is recommended that the Scottish Government works closely with appropriate professional organisations and public sector bodies to develop clear, accessible guidance in regards to the CSO process.

5.4. What if a planning authority ignores a community's request for a CSO?

It is not proposed that communities should be given a right to request that a planning authority initiates a CSO but it is proposed that they should be able to ask the planning authority to investigate the site for a CSO. It is also proposed that planning authorities should take into account locally based plans when identifying sites. Communities are therefore encouraged to be engaged in early planning processes.

If, after receiving a request to investigate a particular site, a planning authority decides not to pursue action it is proposed that the planning authority should be required to provide a response to explain why this decision has been taken. It is anticipated that in this response the authority in question would be required to explain either why the site is not eligible for CSO and/or what alternative steps are being taking to bring the site back into a productive use.

5.5. Could a site be sold during the site during the preliminary investigations?

Yes. There would be nothing to stop an owner from selling a site after preliminary investigations had started but this would not prevent the preliminary investigations from being undertaken.

As long as the site remains in the condition it is in, the investigation will continue and a decision will be made whether or not to issue a CSO. Any transfer of ownership would still require a new owner to bring the site back into productive use as set out by the planning statement. This acts as a safeguard to prevent the site going through different ownerships without any change to the actual condition of the site. It would act as a disincentive for those intending to hold onto a site for an undue period of time at the expense of surrounding community's wellbeing.

5.6. Could an owner still sell a site after an Order has been issued?

Yes, but the CSO would remain attached to the title and any new owner would be bound by its conditions.

5.7. Could CSOs be used to acquire land/buildings for the community?

Yes – but this is not the primary objective of the proposal. The overarching objective of the CSO proposal is to provide a mechanism for returning land/buildings that have been vacant or derelict for an undue period back to productive use.

Under these proposals communities would be entitled to submit a bid at a CSO auction but there would be no presumption that this would be accepted. Ultimately the property would be sold to the highest bidder.

For this reason, in situations where there is a community aspiration to acquire a site and sufficient transaction data to establish a realistic market value for the property, the new Community Right to Buy Abandoned, Neglected or Detrimental Land is likely to be a more appropriate mechanism.

6. GLOSSARY AND ABBREVIATIONS

6.1. List of Abbreviations

CPO	Compulsory Purchase Order
CSO	Compulsory Sale Order
DPEA	Planning and Environmental Appeals Division
ECHR	European Convention of Human Rights
LRRG	Land Reform Review Group
LDP	Local Development Plans

6.2. Glossary

Appeal	An appeal would take place to give the appellant an opportunity to dispute the decision made by the Planning Authority. The appeal would go to Scottish Ministers for final review and decision.
Articles of Roup	After an auction, the articles of roup contain the conditions of contract on offer.
Community body	As described in the Land Reform Scotland Act (2016)
Creditor	A creditor has a standard security over an interest in the land or building.
Derelict	Derelict land (and buildings) is land which has been so damaged by development, that it is incapable of development for beneficial use without rehabilitation. It refers to land that is not used for the purpose for which it is held or a use acceptable in the local development plan. Land also qualifies as derelict if it has an un-remediated previous use which could constrain future development. ¹¹
Detrimental impact	Detrimental impact in this proposal refers to sites (both land and buildings) that have a negative impact on local people, businesses and community groups. Characteristics of such sites that they may lead to economic, social or physical harm.
Planning Authority	There are 32 local authorities and two national park authorities. This proposal will use 'planning authority' for the sake of consistency and ease.
Productive use	Bringing the site into a use that creates economic, social and/or physical value. It is a land use that the planning authority deems appropriate as set out in the Local Development Plan. This would be set out in the planning statement.
Public Interest	As described in the Land Reform (Scotland) Act (2003), (2016), and Community Empowerment (Scotland) Act (2015)
Setting	Used in a Scottish Planning Policy. The Setting is more than the immediate surroundings of a site or building, and may be related to the function or use of a place, or how it was intended to fit into the landscape of townscape, the view from it or how it is seen from areas round about, or areas that are important to the protection of the place, site or building.

¹¹ Scottish Vacant and Derelict Land Survey 2016 <http://www.gov.scot/Publications/2017/04/3409/downloads>

Sustainable Development	Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. (Brundtland Report 1987)
Vacant	Vacant land is land which is unused for the purposes for which it is held and is viewed as an appropriate site for development or positive green uses. This land must either have had prior development on it or preparatory work has taken place in anticipation of future development. ¹²

¹²Scottish Vacant and Derelict Land Survey 2016 <http://www.gov.scot/Publications/2017/04/3409/downloads>