Transport Orders

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Relevant Legislation, Guidance and Case Law

Legislation	• Highways Act 1980 • Acquisition of Land Act 1981 • Town and Country Planning Act 1990 • Road Traffic Regulation Act 1984 • Active Travel (Wales) Act 2013 • The Compulsory Purchase (Inquiries Procedure) Rules 2007 (SI 2007 No. 3617) • The Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 (SI 2010 No. 3015) • The Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004 (SI 2004 No. 2730) • The Highways (Inquiries Procedure) Rules 1994 (SI 1994 No. 3263) • The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996 No. 2489) • The Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990 (SI 1990 No. 1656)
National policy and guidance	• Planning Policy Wales • Llwybr Newydd: The Wales Transport Strategy 2021 • National Transport Delivery Plan 2022-2027 • Welsh Government Circular 003/2019, Compulsory Purchase in Wales and "The Crichel Down Rules (Wales Version, 2019)". • Welsh Government Compulsory Purchase Order Manual March 2021 • Public inquiries into road proposals – What you need to know (guidance for the general public) – 2007 (WAG)
Judgments	• Vasiliou v SoS for Transport and another [1991] 2 All ER 77 • Bushell & Anor v SoS for Environment [1980] 2 All ER 608

	• Smith & Others v SoS for Transport and Barnsley MBC [1997 JPL 416]

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Introduction

1. This chapter concerns: public local inquiries into schemes and orders made under Parts II and XII of the Highways Act 1980 and, in relation to Compulsory Purchase Orders, the provisions of the Acquisition of Land Act 1981; Toll Orders made under the New Roads and Street Works Act 1991 or under Local Act powers; orders made under Part X of the Town and Country Planning Act 1990; and Traffic Regulation Orders made under the Road Traffic Regulation Act 1984. Reference is also made to the written representation procedure that may be used for Compulsory Purchase Orders.

2. Much of the advice which follows applies equally to all the types of order covered by the chapter, but because of the specific differences which are necessary in the treatment of the various types of order, they are dealt with in separate sections of the chapter.

3. The chapter does not cover inquiries relating to planning applications or to rights of way work (including public path orders and definitive map orders), the Harbours Act 1964 or the Cycle Tracks Act 1984.

Orders made under the Highways Act 1980 (including CPOs)

4. Under the Highways Act 1980, the Welsh Government has a dual role for motorways and trunk roads (also referred to as the strategic road network) as both promoter of orders and as the decision-maker.

5. The Welsh Ministers are also responsible for decisions concerning the confirmation of orders made by local authorities under the Highways Act 1980, or other relevant Acts, in relation to roads which are not motorways or trunk roads.

The origins of Highways Act Orders

6. Orders are prepared by Government departments on behalf of the WM or by local authorities. Those prepared by Government departments are published in draft and not made until all the statutory processes have been completed. Local highway authorities authorise the making of orders by council resolutions. The orders are then sealed by the local authority, but do not take effect unless and until **confirmed** by the WM. It is important to establish that the appropriate procedure has been followed and that a local authority order is not submitted in draft form. Each order depends on a section or sections of the Highways Act 1980 and (in relation to Compulsory Purchase Orders) the Acquisition of Land Act 1981. In some cases, these sections specify criteria against which the order needs to be considered. Inquiries normally become necessary because of unresolved objections to a published order. These Acts (including Schedules to them) and regulations made under the Acts set out the procedures for making or confirming orders and, where appropriate, the circumstances in which a public inquiry is to be held.

The statutory basis for inquiries into Highways Act Orders

7. Schedule 1 to the Highways Act 1980 and Section 5 of (and in certain circumstances Schedule 3 to) the Acquisition of Land Act 1981 give the WM power to hold inquiries in relation to matters arising under those Acts. Section 13A(3) of the Acquisition of Land Act (in regard to local authority orders) and Paragraph 4A(3) of Schedule 1 to that Act (as amended by the Planning and Compulsory Purchase Act 2004) (in regard to the WM's draft orders) prescribe the circumstances where an inquiry or hearing is required.

8. The purposes for which orders or schemes are prepared under the various powers contained in the Highways Act include the following:

- Section 10 – to direct that any highway, or any highway proposed to be constructed by Government, should become or should cease to be a trunk road;
- Section 14 – to stop up, divert, improve, alter or construct a side road to a trunk road or classified road;
- Section 16 – to authorise the provision of a special road (such as a motorway);
- Section 18 – to stop up, divert, improve, alter or construct a side road to a special road;
- Section 106 – to construct a highway by means of a bridge over or a tunnel under any navigable waters;
- Section 108 – to divert any navigable watercourse where it is necessary or desirable to do so in connection with the construction, improvement or alteration of a highway, the provision of any new means of access from a highway or the provision of a maintenance compound (or a service area in relation to a special road);
- Section 124 – to stop up a private means of access to a highway;
- Sections 239 to 246 – to acquire land compulsorily (or, under section 250, to acquire rights over land) for highway purposes.
- Section 248 – limited circumstances where land may be acquired, notwithstanding that it is not required immediately.

9. Inquiries into orders covered in this Guide are often expressed as being inquiries into objections or to hear representations and objections. However, the task of the Inspector is to inquire into the order in the light of the objections. The promoting authority must explain its proposals and say why they are considered to fall within the provisions or tests contained within the Acts that authorise the making or confirmation of the order, and why they are considered to be expedient. This provides both the background against which the various objections can be considered and the basis on which a recommendation can be made on the orders.

10. For example, in the case of inquiries into CPOs, an Inspector is required not only to deal with the objections to the order, but must also be satisfied that:

- there is a compelling case in the public interest for the Order to be made;

- this justifies interfering with the human rights of those with an interest in the land affected;
- the acquiring authority has a clear idea of how it is intending to use the land it seeks to acquire;
- the acquiring authority can show that all necessary resources (including funding) to carry out its plans are likely to be available within a reasonable timescale; and
- the scheme is unlikely to be blocked by any impediment to implementation (e.g. planning permission or any other permit needed).

11. These requirements are contained in Wales Government Circular 003/2019, Compulsory Purchase in Wales and "The Crichel Down Rules (Wales Version, 2019)". The rules and tests to which the Circular refers are included for the convenience of local authorities and other statutory bodies, to whom they are applicable. Strictly speaking, the Circular does not apply to draft CPOs promoted on behalf of the WG. However, the same tests need to be met in relation to such CPOs because they are derived from statute, case law and human rights legislation, and therefore consideration should still be given to whether the tests are met.

12. The Circular provides information about the process, the considerations and the implementation of a wide range of CPOs, including those required in connection with highways. Section G of Part 2 deals specifically with CPOs for highway purposes.

13. Particular consideration needs to be given to certain special kinds of land (see Section J of Part 2 of the Welsh Government's Circular 003/2019) afforded additional protection against compulsory acquisition, and it is important to establish at an early stage whether any such land is affected by the proposed CPO. For example, is there any land within the CPO to which Section 19 of the Acquisition of Land Act (a common, open space, fuel or field allotment) applies? Such land may be compulsorily purchased when authorised by Special Parliamentary Procedure or when the WM are satisfied either that other land, equally beneficial, would be given in exchange for such land or that the giving of exchange land is unnecessary. The procedures for applying for a Section 19 Certificate are also set out in Section J of Part 2 of the CPO Circular, and it is important for the Inspector to establish whether such a Certificate has been granted.

14. When considering the amount of land incorporated in the order, the Inspector should give due regard not only to the area of land, but also to the estate or interest proposed to be taken in it. For example, it may well be argued that an order providing for the acquisition of title to the land is excessive because all that is required is for a right over the land to be created under Section 250 of the Highways Act and for that right to be acquired under the CPO.

15. On occasion the circumstances identified in Section 13A(2) of (or Paragraph 4A(2) of Schedule 1 to) the Acquisition of Land Act 1981 may arise (i.e. in particular, there is no detrimental effect on a statutory undertaker, and all remaining objectors agree), and the Written Representations Procedure may be used. The Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004 apply in such cases and are straightforward.

Inquiries procedure

16. All inquiries concerned with orders and schemes proposed to be made under the Highways Act 1980 are subject to inquiries procedure rules. The current rules of procedure under this Act are The Highways (Inquiries Procedure) Rules 1994 (SI 1994 No 3263). Inquiries considering highways Compulsory Purchase Orders made under the Highways Act 1980 and the Acquisition of Land Act 1981 are subject to further rules, namely the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 (SI 2010 No. 3015).

17. The various sets of Rules make fairly standard arrangements for the service of statements of case, the organisation of pre-inquiry meetings, service of statements of evidence and summaries, procedure at the inquiry, site inspections and procedure after the inquiry, though the Inspector needs to be aware of minor inconsistencies, such as time limits, and to ensure firm guidance is provided to the participants.

18. It should also be born in mind that these various procedures differ from the corresponding Town and Country Planning inquiries procedures in matters such as:

- time limits for the submission of statements of evidence;
- there is no provision for a statement of matters to be issued by the WMs;
- there is no provision for exchanging comments on the statements of case;
- there is no reference to the preparation of a statement of common ground (though that does not mean that this cannot be encouraged by the Inspector);
- there is no requirement for the Inspector to list the main issues at the outset of the inquiry (though there is nothing to prevent the Inspector from doing so); and
- there is no express requirement for closings to be provided in writing (though there is nothing to stop the Inspector asking for this).

19. Sometimes the complex of Orders and matters before an inquiry means that a variety of different procedural rules applies. For example, a significant planning appeal under Section 78 or 77 of the Town and Country Planning Act may involve added Road Orders, or there may be an associated Transport and Works Act Order. Where this occurs, there may be conflict between the different provisions of the different sets of Rules. In that situation, it is normal to secure agreement (or for the Inspector to decide) which Rules will apply, depending on which element of the case is most dominant.

Preparing for an inquiry

20. Inquiries into orders under the Highways Act 1980 can sometimes run for many days. The promoting authority is responsible for the inquiry arrangements, such as the venue and the setting out of the inquiry room, unless otherwise agreed with the

Planning Inspectorate. For longer inquiries the Inspector may have a Programme Officer and/or it may be appropriate to hold a PIM (or issue a pre-inquiry note covering the same topics) to arrange procedural matters for the inquiry. This type of casework often involves more involvement by the Inspector at the pre-inquiry stage than typical Town and Country Planning work.

21. Depending on the nature of the inquiry, it may be appropriate to encourage the main parties to prepare an agreed statement of common ground, and for particularly large and complex inquiries "joint data groups" can help to assemble and agree baseline data. If prepared early, such statements can avoid the preparation of statements of evidence on matters that are not in dispute. However, for most cases such arrangements are unnecessary.

22. If a Programme Officer is employed for an inquiry, he/she should be present at the PIM to enable them start work on programming and inquiry arrangements. In essence the Programme Officer's role is, on behalf of the Inspector and with his/her approval, to:

- establish appropriate filing systems;
- set up and maintain the Inquiry library and the Inquiry website, if there is one;
- set up and use the Inquiry database;
- liaise with all parties to the Inquiry;
- prepare and manage the Inquiry programme;
- organise the PIM;
- receive and record all documents submitted to the Inquiry;
- chase up any late documents within the set deadlines;
- manage the use of the Inquiry venue;
- notify respondents of the close of the Inquiry; and
- arrange hand-over of any relevant issues to the Promoter following the close of the Inquiry.

Matters outside the scope of the inquiry

23. The Inspector should always bear in mind what he/she has been appointed to hold an inquiry into and therefore upon what he/she is required to make recommendations. The Inspector should be careful to confine his/her consideration to matters within the scope of the inquiry and resist broadening that consideration into matters that are not directly involved in the orders.

Policy, design standards, etc.

24. The merits and foundations of policies, methodologies, design standards and economic assumptions adopted by the Government are not matters for argument at an individual inquiry. That principle has been established by the Courts, viz. of the House of Lords in the case of *Bushell and Another v SoS for Environment [1980] 2 All ER 608*.

25. Objectors may express disagreement with Government policy, or contend that, for example, Government assumptions on the future level of traffic or the cost of travel are based on outdated information, but the Inspector should not allow such arguments to be made in any detail. If an objector is determined to pursue objections to general policy beyond reasonable limits he/she should be advised to submit the views in writing.

26. Inspectors have to distinguish between those objections which challenge Government policy and those which question the need for the specific proposal. Argument as to whether or not a particular proposal conforms with, or is needed for the implementation of, Government policy is a matter for the inquiry and should be given careful attention by the Inspector. Similarly, arguments about Government methodologies and design standards are out of place at the inquiry, but it is not unreasonable to expect witnesses to be able to defend the way in which they have been applied in the particular case.

Compensation and hardship

27. If anyone wishes to object to a CPO on the grounds of hardship and/or inadequate compensation (as distinct from land use), it should be remembered that whilst hardship which cannot be met by compensation is always a relevant consideration, the Acquisition of Land Act 1981 (section 13(4) and Schedule 1 Paragraph 4(4)) provides that the WM may disregard objections which relate to matters which can be dealt with by the Lands Tribunal, by whom compensation is assessed. Since the assessment of compensation is not a matter for the WM, the Inspector should neither hear evidence about the calculation of compensation nor seek the disclosure of expected levels of compensation. Authorities are nevertheless normally expected to be able to give the estimated costs of a scheme as a whole, and should do so to a specific valuation date, which should be mentioned in the Inspector's report.

Reopening decided issues

28. Objectors should not be allowed to seek to use the inquiry to reopen issues which have already been decided by a proper planning process Thus, in the case of an inquiry into supplementary or variation orders, the Inspector should never permit the reopening of matters upon which a decision has already been made after a previous inquiry. For example, an inquiry into objections to a supplementary proposal to build an interchange on a new road, the line of which has already been fixed after a previous inquiry, does not provide an opportunity for the question of the line of the new road to be re-opened. Any representation made in writing in such regard should simply be accepted and attached to the Inspector's report.

29. If a Line Order has been approved, and the inquiry concerns a consequential CPO, an objection challenging the need for the road or based on changing the line would not be heard. A CPO where planning permission for the road has been granted after the precise route has been included in an adopted Development Plan would similarly not give rise to reconsideration of the need for the road.

30. If the Development Plan does not fix a specific route, but merely safeguards a swathe of land, however, there would be scope for objections to the precise line put forward within the safeguarded area of land; but not for objections concerning the need for the road. There could clearly also be objections to any proposal to a proposed alignment which falls outside the safeguarded area.

31. The development control provisions of the Town and Country Planning Act 1990 apply to the Crown. However, schemes put forward by the WG or a highways authority in exercise of functions under the Highways Act 1980 are permitted development by reason of Classes A or B of Part 13 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

The tests for making or confirmation of the order

32. An Inspector must take account of all arguments relevant to the particular order before him/her. However, the Inspector will be concerned mainly with any tests for the making or confirmation of the order set out in the authorising legislation, with the justification for the order, and the likely environmental, social and economic effects of the particular proposals in the context of balancing the case for the promoter with those of the objectors. The main tests which apply to each type of order dealt with in this chapter are set out in Appendix A.

33. It is for the Inspector to decide how much argument to hear about what and what, in his/her opinion, is unrelated to the vital issues. If the admission of evidence or argument is challenged and the Inspector is in any doubt about it, the best course is to admit the evidence or argument in question. The Inspector should say that the matter will be reported to the WM, together with the Inspector's own opinion, so that the WM can decide whether or not to take it into account when reaching a decision.

Consideration of suggested modifications and alternative proposals

34. In relation to modifications, the promoters themselves as well as objectors often seek detailed modifications to the order as submitted (including corrections). These should be introduced at the earliest opportunity and presented in writing as a formal draft modification, so that everybody concerned can see and understand exactly what is being proposed.

35. Schedule 1 Part 1 and Part II to the Highways Act 1980 gives the WM the power to modify a road or trunk road order before it is made or confirmed, but if the WM wishes to do so, paragraph 8(3) (for orders) and paragraph 15(3) (for schemes) of that Schedule provide that, where it is proposed to exercise this power in such a way as to make a substantial change to the order, any person likely to be affected by the proposed modifications must first be given the opportunity to make representations.

36. The re-routing of the whole or a substantial part of a scheme would go beyond what could reasonably be considered as a modification for the purposes of paragraph 8(3) or paragraph 15(3). This is ultimately for the WM to decide, but it could result in the need for the publication of entirely new orders by the promoter where substantial modifications are involved.

37. Either way, the Inspector will need to obtain all the necessary information about any suggested modification or alternative proposal so that when the WM comes to make the decision all the relevant factors are known.

38. Whilst a CPO can be modified by the deletion of part of the land it covers or by the acquisition of a lesser interest in the land than previously proposed to be acquired (as referred to in paragraph 2.11 above), the order cannot be modified to authorise the purchase of further land or a greater interest in land unless all persons interested in the plot of land concerned give their consent (see Schedule 1, Paragraph 5 of the Acquisition of Land Act 1981 for orders published by the WM and Section 14 of that Act for local authority orders). If it is requested at the inquiry that land should be added to the CPO, the unequivocal written agreement of all persons with an interest in the land must be provided for the Inspector and copies should be enclosed with the Inspector's report.

39. Where there are objections to an order and an alternative scheme is being put forward, there are powers in Section 258(2) of (re CPOs), and Schedule 1 Paragraph 19 to (re certain other orders and schemes), the Highways Act 1980 that allow the WM to give notice to objectors that any person who intends to submit at a local inquiry that the proposed highway should follow an alternative route (or be altered in a different way) shall submit sufficient information about the proposed alternative to enable it to be identified. Providing a person has supplied the necessary information within the specified period, the objector should be regarded as having complied with the notice.

40. If an objector has failed to comply with such a notice, under the provisions of s258(3) or Paragraph 19(2) of Schedule 1 to the Highways Act 1980 (as the case may be), the Inspector and the WM may disregard that objection in so far as it relates to any proposed alternative route or new highway. Nevertheless, in deciding on a course of action, the Inspector should be guided by the principle that he or she should hear anything relevant which is going to enable the right decision to be reached. On the other hand, the late submission of the details of the alternative proposal could leave insufficient time for the promoters and others to give them their due consideration. Even more importantly, it could leave insufficient time for adequate notice of the alternative proposal to be given to those who would be affected by it.

41. Under the Inquiries Procedure Rules, it is not incumbent upon the promoters or anyone else to notify those who would be affected by suggested alternatives to proposed routes. However, in the interests of natural justice it is considered that such people should be notified if there appears to be real substance in the alternative proposals being put forward.

42. If an Inspector is faced with a late submission about an alternative to the proposal, he or she should first consider whether it has substance, and only reject it immediately if it patently has not. The Inspector should ask if the persons who would be affected have been notified and, if not, should ask the promoters and any other interested parties at the inquiry for their views on the matter. The Inspector will then have to use his or her judgement as to what is the best course of action to take, bearing in mind the considerations outlined in paragraph 2.37 above.

43. If the Inspector decides that the case for the alternative proposal should be heard despite its lateness, it might be possible during a long inquiry to postpone the hearing of the case for that alternative until such time as the people who would be affected by it have been notified and given time to prepare any counter-objections. Alternatively, the Inspector might find it necessary to adjourn the inquiry for a time to enable those affected to be given notice and time to prepare.

44. It is not the role of the Inspector to make a recommendation in favour of an alternative proposal. However, the Inspector must understand any alternatives proposed sufficiently well to be able to decide whether they appear to be worth further investigation. An important factor in such decisions will be whether or not the alternative would overcome or sufficiently mitigate some deficiency in the Order proposal that would otherwise render it incapable of passing the statutory tests. Should the Inspector come to the conclusion that an alternative proposal before the inquiry warrants further investigation as compared with the order proposal, it would clearly not be logical to recommend the making or confirmation of the orders.

45. When an alternative route is considered at an inquiry, the promoters should produce an evaluation of the merits and practicability of the alternative proposed, whether it would meet the aims and objectives set for the original scheme, taking into account its comparative impacts on the environment and adjoining owners, and comparative costs (including the costs of delay). An alternative would no doubt require detailed design work, followed in all probability by the preparation of new orders and the holding of a new inquiry. The assessed cost of delay is therefore often very substantial. In *Smith & Others v SoS for Transport and Barnsley MBC [1997] JPL 416)* the Court of Appeal held that delay and its costs could be a material consideration to be weighed along with all others in considering whether an alternative should be further considered, but that except in special circumstances it should not be regarded as an overriding and decisive factor. Decisions should be based upon what is appropriate in the public interest, and therefore all relevant factors should be taken into account.

46. Anyone affected by an order may put to the Inspector the nature and extent of the accommodation works which the affected person would expect to be carried out if a road proposal were to be implemented. He or she should be allowed to do so, because what is said could have a bearing on whether what is proposed in the order before the inquiry should proceed, with or without modification. However, the detail of the extent of the accommodation works is one of the factors taken into account in the calculation of the compensation payable when a proposal is approved. The precise details of the accommodation works are matters for the promoter of the order and the landowner concerned, and they should not therefore be included in the Inspector's conclusions or recommendations. The Inspector should take care to avoid conclusions and recommendations in his/her report which would appear to usurp the functions of the Lands Tribunal.

The inquiry

47. For the most part, inquiries into the orders covered by this chapter follow the same pattern as other public local inquiries. This chapter therefore addresses only points of

difference from other public inquiries arising from special considerations attaching to these orders.

Programming the inquiry

48. For larger inquiries, a Programme Officer will be appointed and it will be his or her responsibility, under the guidance of the Inspector, to draw up a provisional programme for the inquiry. As the inquiry proceeds, the Programme Officer should maintain a more detailed day-by-day and week-by-week rolling programme in consultation with the parties concerned and under the general direction of the Inspector.

49. The use of specific inquiry websites is becoming more common for larger cases. These are often maintained and updated by the Programme Officer, or possibly by the promoter. Such websites can provide daily updated information on the progress of the inquiry and its forward programme. They can also provide access to electronic versions of proofs of evidence, Core Documents and other useful documents. If a transcript of the inquiry is being prepared, this can also be made available on the website. It has to be remembered, however, that not all people will be able to access such a website, so the more traditional ways of providing this information should still be retained. These include the posting of notices and the deposit of evidence and Core Documents at the inquiry venue and/or Council or promoters offices, and by maintaining an inquiry library at the inquiry venue.

50. As a general rule, public bodies either supporting or objecting to the proposals should if possible be programmed to be heard before individual supporters or objectors, so that the latter know where such public bodies stand in relation to the proposals before they (the individuals) are called upon to present their own cases.

51. Most parties cannot spare the time to attend the whole of a long inquiry, and many attend only during the presentation of the promoter's and their own cases. Whilst there is no obligation on an Inspector to keep them informed, it is good practice to ask the Programme Officer to contact parties whose interests are likely to be seriously affected by evidence which might otherwise be given in their absence.

Objections not previously notified

52. Anyone objecting to the proposal who failed to give notice of their objection within the statutory period or anyone else who comes along wishing to make representations at the inquiry will normally be programmed to speak after the statutory objectors have been heard, provided they have something relevant and not unduly repetitive to say.

Opening the inquiry

53. The Inspector's opening announcements at the inquiry should contain the usual basic elements, expanded as necessary for the idiosyncrasies of this sort of case, for example:

- that the inquiry is necessary because objections to the scheme and/or order have been received and not withdrawn;
- that the Inspector cannot deal with the assessment of compensation which will become a matter for negotiation between parties or, if agreement cannot be reached, for determination by the Lands Tribunal – if, but only if, the scheme and/or order is eventually made/confirmed;
- an outline of the procedure to be adopted, which can be varied to suit the complexity and scale of the event;
- an explanation of the role of any Programme Officer, and a reminder that it is the responsibility of the parties to keep in touch with the Programme Officer;
- a request to the promoting authority for their confirmation that all the appropriate statutory formalities have been observed.

Absence of objectors or other parties

54. Apart from the promoters, who must of course attend to describe their proposals and explain their purpose, it is not necessary for any particular party to appear at the inquiry in order to make their views known, since all written objections and other representations are taken into account with the Inspector's report to the WM. The failure of certain of the objectors and/or other parties to appear at the inquiry is thus no reason for not proceeding with the inquiry.

55. In the rare instances in which there is only one objector, who neither appears nor is represented at the inquiry, the Inspector should immediately adjourn the inquiry for long enough to enable enquiries to be made about the objector's whereabouts. If the objector attends, the inquiry can proceed in the usual way. If not, the promoters should be invited to state their case and to reply to the written objection. Any other people present who wish to be heard, should be heard and the inquiry should then be closed.

56. In the case of a CPO or similar inquiry where the Inspector is told that the sole outstanding objection has been withdrawn, the inquiry should still be opened in the usual way, bearing in mind that the inquiry is into the order itself and not merely the objection.

Withdrawn objections, conditionally withdrawn objections and counter objections

57. It is not the job of the Inspector to include information in his/her report to the WM which is peripheral or irrelevant to the issues in dispute. For example, if an objection is withdrawn before an inquiry opens or during the course of the inquiry, then it would be sufficient to report the fact that it was withdrawn. Usually, no further probing or questioning by the parties should be allowed; nor should the Inspector seek to reintroduce matters covered in the withdrawn objections.

58. Participants may state at the inquiry that they would be willing to withdraw their objection if particular provisions were made in (say) a Works Agreement. The Inspector might accept this and recommend confirmation of the orders. However, if the objection is not formally withdrawn, this can leave the WM with a problem. The Inspector should therefore seek to obtain confirmation of the conclusion of a Works

Agreement and a formal withdrawal of the objection. This is particularly the case if there is an outstanding objection from a statutory undertaker. Where such an objection is not formally withdrawn, the order may be subject to Special Parliamentary Procedure, with complex and time-consuming consequences. It is therefore important that Inspectors should obtain all possible information about such objections. This may, exceptionally, justify adjourning the inquiry for a short period whilst the statutory undertaker is contacted, so that a full explanation of the objection and its consequences may be sought.

59. Whether or not the matter is resolved at the inquiry, the Inspector must deal with all objections unless the objector has given a written statement withdrawing the objection clearly and unconditionally. Objections should not be considered to be withdrawn until the Inspector receives written confirmation. The recommendation in the Inspector's report should not be based on the assumption that any objection will be withdrawn. The substance of all outstanding objections must be covered explicitly in the Inspector's report and conclusions.

60. If, after investigation, there is an outstanding 'holding' or 'technical' objection by a statutory undertaker, the Inspector's report should state clearly how much weight should be attached to the objection and why, making explicit whether the land involved is crucial to the scheme. The report can then take this conclusion into account in the final recommendation.

61. There may also be counter-objectors who, whilst supporting the scheme as originally proposed, would object to the provisions set out in any proposed agreement or modification which would satisfy the original objector. It may be difficult to gather evidence on this point, particularly where the suggestion of an agreement or modification only arises during the course of an inquiry, and the supporters of the scheme may be unaware of the potential implications if they are not in attendance. However, the Inspector should, as far as is reasonably practical, ensure that no-one's interests would be prejudiced by any suggested agreement or modification. If there is a potential conflict of interests, this should be taken into account in the conclusions section of the report and brought to the attention of the WM.

The normal sequence of events

62. For any case presented by an advocate the normal sequence of events is followed, i.e. an opening statement by the advocate; the evidence-in-chief, cross examination and re-examination of each witness; and a closing statement by the advocate. The closing statement may be made immediately or not until other parties' cases have been heard.
63. When an unrepresented person appears, he or she usually acts as both advocate and witness, but the same principles apply. To avoid confusion between his or her two roles, the person should be asked to give evidence and answer questions from the witness table. Other participation, e.g. asking questions of other witnesses, or closing submissions, if separately made, should be carried out from their normal location/table.

Order of presentation of cases

64. Subject to compliance with any requirement of a specific set of Procedure Rules, in order that everyone with an interest in the matter understands what is involved right from the start, the case for the promoters should normally be presented first, and whenever possible this should be directly followed by the cases of those who support it. The cases of the objectors should follow, and these in turn should be followed by those of the counter-objectors. The promoters have the right to a final reply. Typical sequences of events for simpler and for more complex inquiries are set out in Appendices B and C to this chapter.

65. The simpler procedure is appropriate for most cases. The procedure for more complex inquiries is to be used where there is a significant number of witnesses for the promoter and/or when there is a significant number of supporters or objectors who wish to be heard at the inquiry. Normally, in that situation, many parties will only attend the inquiry to hear the case of the promoters and to present their own support or objection. Discussion on the most appropriate procedure to follow could take place at the PIM, and Inspectors may ask parties if they intend to attend the whole of the inquiry to inform this decision. If it appears likely that parties wish to attend throughout the inquiry, it may be helpful to opt for the simple procedure, since no advantage would be gained (in terms of facilitating non-attendance at the inquiry) by using the more complex procedure.

66. Sometimes, it is convenient in a long inquiry to hear all the evidence from all parties on a particular topic on one day or in one week of the inquiry. This can be particularly helpful where an expert Assessor is sitting to assist in connection with a single topic or a limited range of topics. In that situation, topic-based sessions can reduce the proportion of the inquiry for which the Assessor's attendance is required. The basic procedure can be readily adapted to allow this approach to be followed.

Questions of clarification

67. The more complex procedure provides an opportunity for questions of clarification to be put to witnesses for the promoters at the time at which they give their evidence in chief. Sometimes there is a fine line between questions of clarification and the cross examination of witnesses, and usually it is simpler to deal with them at the same time, i.e. during cross examination. Alternatively, if evidence is expected to be complex, participants might be invited to submit questions of clarification separately and in advance. This could be arranged at a PIM. Alternatively, the Inspector might prepare a list of such questions or, if appropriate, encourage objectors and the promoting authority to confer outside the inquiry on matters which are not of general interest to the inquiry.

Supporters' and Objectors' Questions

68. Except in relation to any aspect of the promoter's case with which they have made it plain that they do not agree, supporters do not have the right to cross-examine the promoter's witnesses, though questions of clarification may sometimes be allowed.

Similarly, the promoter does not have the right to cross-examine supporters except for clarification or on any point of disagreement. Supporters may cross-examine objectors.

69. At the discretion of the Inspector, objectors may cross-examine supporters, but normally should do so only on matters on which the supporters have given evidence or made submissions; they should not normally be permitted to question them on matters to which they have made no reference. The only exception to this is where the supporter is a local authority or a statutory undertaker and the objector needs information from them to reinforce their own case.

70. Supporters or objectors represented by an advocate may be re-examined by their advocate following cross-examination by objectors/supporters. Unrepresented individual supporters/objectors should be given the chance to correct any false impression which might have been generated by answers given to questions put in cross examination.

Statutory, non-statutory and counter objectors

71. Statutory objectors in the context of Highway Inquiries are those objectors who have a vested interest in land or property which would be affected by the proposals. They should normally appear after the promoter and any supporting witnesses, and they have the right to cross-examine the promoter's witnesses on their evidence in chief.

72. Non-statutory objectors, i.e. those people who have objected within the time for objections but who are not statutory objectors, normally follow, and should, at the discretion of the Inspector, be given the same opportunity to question the promoter's witnesses as statutory objectors.

73. The objectors are liable to be cross-examined in turn, not only by the promoter and supporters, but also by counter-objectors to any alternative proposals they (the objectors) might put forward. Such questioning should be confined to the matters on which the objectors have given evidence, and normal rules of re-examination apply.

74. Occasionally, counter-objections are made, and counter-objectors should normally appear after the objectors whose alternative proposal they are opposing, but they will usually question the objectors during the presentation of the latter's cases. Counter-objectors may also question the promoter, although their questions to them should clearly be limited to the matters specific to the counter-objector. As for other witnesses, counter-objectors are subject to the usual rules of cross-examination and re-examination. Occasionally, a person may be both a counter-objector and an objector in their own right and so may appear twice during the inquiry.

75. At the conclusion of each objector's case, the objector may wish to make a closing submission. This can be made immediately, or, if the Inspector agrees, at a later time, when a considered closing can be made supported by a written copy.

76. The promoter may reply to the various objectors' cases in a consolidated reply at the end of the inquiry or may make a response to each individual objector immediately following the hearing of that objector's case.

Written representations

77. Written representations received prior to or during an inquiry become inquiry documents and form part of the material to be taken into account by the Inspector and the decision maker, unless these deal with matters that can be disregarded, such as objections to orders already made, submissions made outside the prescribed time deadlines, or matters of compensation.

78. It follows that the existence of all written representations must be disclosed at the inquiry, and the promoting authority will be expected to address all relevant matters in them so that the decision maker is informed of each side of every argument.

Round table sessions

79. A round table session is often helpful to allow the promoter of a CPO to take the Inspector through the CPO plot by plot to explain the reason for the proposed acquisition of each of the plots of land or the interests in them included in the CPO. In a similar manner, a round table session may be helpful to allow the promoter of side roads orders to take the Inspector through the relevant orders in a step by step basis, to explain why certain existing roads are needed to be stopped up or otherwise modified; what alternative arrangements are to be made to accommodate the affected movements; and why the promoter considers such arrangements would offer a reasonably convenient alternative.

80. For longer and more complex inquiries it may be helpful for other parts of the proceedings to be taken as a round table session, though usually with only the technical witnesses making contributions in response to a discussion led by the Inspector. Such sessions may be useful as a means of clarifying technical points or of reaching a common understanding of how technical evidence has been prepared. Whilst probably not an appropriate means of reconciling different approaches, it may help in understanding why different views are being deduced from the same or similar evidence. It might be helpful if the Programme Officer took notes of the points made, leaving the Inspector free to direct the discussions. A note of the round-table session should be quickly prepared (over-night if possible) and published as an inquiry document. Opposing advocates could then make witnesses available for cross-examination on their evidence in full inquiry session on subsequent days.

81. Whilst participation in round-table discussions may be limited to selected participants, sessions should be open for all to attend and observe.

Applications for Costs

82. Applications for costs may be made at Transport Order inquiries. The mechanism for dealing with costs applications depends on the nature of the inquiry and the type of order which is being considered. The usual guidance on costs applications applies, i.e. Development Management Manual Section 12 Annex: Award of Costs.

Applications for costs in relation to local authority road proposals

83. While parties are normally expected to meet their own expenses at public inquiries, where applications for costs relate to a CPO published by a local highway authority, the general power contained in Section 250(5) of the Local Government Act 1972, to make an award of costs to and against the parties at an inquiry, is applied by Section 5(3) of the Acquisition of Land Act 1981. The Development Management Manual (DMM) Annex provides guidance on costs in respect of compulsory purchase and analogous orders.

84. Awards of costs may be of 2 types: costs awarded to successful objectors whose land should not have been included in the order; and costs awarded due to unreasonable behaviour (regardless of success or otherwise). In regard to the former, costs will be awarded in favour of a successful remaining objector unless there are exceptional reasons for not making an award. The award will be made by the confirming authority (usually the WM) against the authority which made the order. The conditions to be met for an award of costs on the grounds of success are described in the DMM Annex. Similar provisions apply if an objector is partly successful or if an inquiry is cancelled because the acquiring authority have decided not to proceed.

85. At the inquiry an objector will not, of course, know whether he or she has been successful. When notifying successful objectors of the decision on the order under the appropriate rules or regulations, the confirming authority will generally tell them that they may be entitled to claim costs and invite them to submit an application for an award of costs on the basis of their successful objection. The details of the level of costs are then a matter for negotiation between the respective parties.

86. However, if a CPO objector insists on making an application for costs in the expectation that his or her objection will succeed, the Inspector should not refuse to hear it and should simply record it in the main body of his or her report without coming to any conclusion or making any recommendation on the application.

87. With regard to the second type of costs awards, the DMM Annex also provides guidance as to where an award of costs may be made to an unsuccessful remaining objector or to an order-making authority because of unreasonable behaviour by the other party (most likely in relation to procedural matters). Inspectors may also initiate an award of costs if they consider a party has behaved unreasonably and an application is not made.

88. The DMM Annex advises that an award of costs cannot be made both on grounds of success and unreasonable behaviour; however, an award to a successful objector may be reduced if they have acted unreasonably and caused unnecessary expense in the proceedings (for example, where their conduct leads to an adjournment which ought not to have been necessary).

89. If an application for costs is heard, an opportunity should also be provided for the other party to reply and for the applicant to have the final comment. The Inspector should report the application, and any response by other parties, to the WM together with his or her conclusions and recommendation.

90. Section 5 of the Acquisition of Land Act 1981 and Section 250(5) of the Local Government Act 1972, which provide the costs jurisdiction at public inquiries into non-ministerial CPOs, do not apply to CPOs drafted by the WM. There is therefore no statutory requirement to pay costs to a successful objector to a CPO drafted by the WM. However, costs may be awarded on a discretionary basis. Objectors to a published scheme or order with an interest in land affected (such as owners, lessees or occupiers) will normally have their reasonable costs of preparing and presenting their cases reimbursed in full or in part if the decision taken following the local inquiry is not to make the published scheme or order, or to modify the proposals so as to diminish or remove its effect on the land in which the objector has an interest. Similarly, there is no provision to award costs against the WM in relation to a draft CPO on grounds of unreasonable behaviour.

91. In relation to other (non-CPO) orders drafted by the WM under the provisions of the Highways Act, the costs provisions of the Local Government Act 1972 are applied by Section 302 of the Highways Act 1980 (with some limited exceptions). However, such orders do not appear in the list of analogous orders in Section 4 of the DMM Annex dealing with the award of costs in public inquiries, and the practice is not to normally entertain such applications. Inspectors should therefore make no announcement about costs applications when conducting such an inquiry.

92. If an objector indicates he or she wishes to make an application for costs at a trunk road inquiry, Inspectors should say that no application need be made at the inquiry and that the Transport Orders branch of the Welsh Government, on behalf of the WM, will invite applications for costs from objectors who are successful in objecting to the compulsory acquisition of their interest in land. However, where an objector insists on making a claim (including a claim based on unreasonable behaviour), the Inspector should record the case in the main body of his or her report without coming to any conclusion or making any recommendation on the case. The Inspector should not write a separate costs report for orders drafted by the WM.

Site inspections

93. Unaccompanied site visits can be made by the Inspector at any time before or during the public inquiry. Accompanied site visits can be carried out while the inquiry is adjourned or shortly after the Inquiry is closed. It/they should take place in the presence of at least one representative each of the promoting authority and the objectors. If no representative from the objectors can attend the accompanied site visit, the Inspector can undertake such a visit in the presence of representatives of the promoter and the independent Programme Officer (if one is being used), though if this course of action is to be followed, the Inspector should announce the intention to carry out the accompanied site visit in this manner at the inquiry.

94. If objections are raised which cannot be overcome, the Inspector should seek the necessary permissions to enter onto private land, and should carry out the site visit on an unaccompanied basis. In such circumstances it is essential for a detailed site visit itinerary to have been prepared by the parties, supplemented as necessary by the

Inspector, so that all parties know where the Inspector will be going and what he or she will be seeing at the site visit.

The Inspector's report

95. The Inspector's report to the WM (or local authority – see Sections 4 and 5 below) should generally follow the usual format for content and structure. However, Transport Order cases often include provisions not encountered in planning casework, and this section provides guidance on how such matters should be covered, based on a typical report structure.

``` *Introduction or Preamble*

96. The introduction or preamble should include:

- a brief statement on the purpose and scale of the proposal;
- the number of objections outstanding at the start of the inquiry and the number since withdrawn; and the number of objectors who appeared or were represented at the inquiry;
- a brief summary (general headings) of the main grounds for objection;
- the date of any PIM or a reference to the fact that a Pre Inquiry Note (PIN) was issued;
- a brief statement about any requests for adjournment and the decision given;
- a record that the promoter of the published orders confirmed that they had complied with all the statutory formalities;
- a record of any environmental assessment carried out and any Environmental Statement submitted together with any additional environmental information submitted before or during the course of the inquiry;
- the dates on which formal site inspections took place;
- a brief statement about any legal submissions made;
- the number of alternative routes or sites (if any) put forward by objectors, and the number of counter-objections made to each;
- a reference to any application for costs, or (as appropriate) to any suggestion that a party intends to make an application for costs;
- the name and qualifications of any Assessor involved, together with a note on their particular role; and
- any other matters the Inspector wishes to bring to the attention of the WM (or local authority).

*Description of the site and its surroundings*

97. As well as the description of the site itself and its surroundings, a brief description should be provided of any alternative routes or sites put forward by objectors. Whilst usually described here, if the alternative route is a substantial one which justifies its
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own part in the report, it would be more appropriate for the route description to be contained in that part.

98. References to any plans which might help the decision maker to identify the various features mentioned in a site description should be included. On-site agreements about measurements, physical features, etc, which may have been in dispute at the inquiry, should be recorded so that they can be referred to in the conclusions, if necessary. Where any maps or plans are out of date, it is helpful to mention this.

The case for the promoter

99. The case for the promoting authority should include the following elements:

- a statement of Government policy relevant to the proposal being promoted;
- a brief description of the proposal itself and of the need for it;
- the reason for the chosen route or location;
- where applicable, reference to the details of the Environmental Statement, together with comments from statutory consultees and any representations made by members of the public and others on the Environmental Statement; and,
- specific indication of how the relevant statutory tests are satisfied.

100. Note that the case for the promoter may be amended during the inquiry, as objections are considered in detail and negotiations with objectors continue. This may result in some minor changes to the promoter's position, especially if modifications are proposed to address the concerns of some objectors. Where a general rebuttal to these objections has been made, the promoter's changed (final) position can be reported within this section of the report.

101. However, where a significant number of objections need to be addressed, it can be helpful to simply record the promoter's initial position within this section, and then have a further section dealing with the response of the promoter to the various objections after all the other cases have been reported. The reporting of specific rebuttals to each individual objection should follow the reporting of that objection.

The cases of the supporters

102. These should follow the case for the promoter. They may be either grouped together or reported singly, depending upon their extent and content. The cases for public authorities, statutory undertakers and national organisations should normally be reported separately.

The cases of the objectors

103. These should follow those of the supporters and, like the latter, may be either grouped together or reported separately depending upon their extent and content. Again, the cases for public authorities, statutory undertakers and national organisations should normally be reported separately.

104. It is often possible to group individual objections together very effectively under a number of different subject headings. However, unrelated objections (which are usually concerned with the effect of the proposal on individual properties) should be reported separately. Statutory objectors should be reported before other objectors, and written submissions should be left to the end and only reported if they raise issues not already covered.

The cases of the counter-objectors

105. The cases of the counter-objectors should for clarity be reported in the most convenient place. This is normally just after the reporting of those cases containing the proposal to which they are opposed.

The response of the promoter

106. This section of the report should be used to record the promoter's response to each individual objection, both those presented orally at the inquiry (which should be dealt with first) and those submitted as written representations. Where similar topics are covered by more than one objector, the points of objection can be grouped and dealt with on a topic basis. This section of the report should also record and provide details of any modifications to the orders which the promoter proposes. It can also usefully be used to give an overall summary of the promoter's final case if it is different from that described earlier.

Conclusions

107. The Inspector's conclusions should be presented in the usual way but should also address each order separately (if there are more than one), any alternatives proposed and whether they warrant further investigation (NB It is not up to the Inspector to recommend any alternative be adopted). If the legislation sets out specific tests to be applied, the conclusions should address each test, with specific reference to the exact wording of each test (see Appendix A for guidance on the tests for the various types of orders). Conclusions should also be reached on each objection and counter-objection.

Recommendations

108. The Inspector's recommendation should accurately include the title of the Order as used on the Order itself and use the following form of words depending on which one of the following three courses of action is being recommended:

- that the (specify) Order be made as drafted (or in the case of a local authority order, be confirmed without modification);
- that the (specify) Order be modified by … and that the Order so modified be made (or, in the case of a local authority order, be confirmed); or,
- that the (specify) Order be not made (or, in the case of a local authority order, be not confirmed).

109. Proposed modifications to orders (or draft orders) can be long and detailed (e.g. corrections and/or updates to the details of numerous plots of land). In this case, rather than embed them in the recommendation, it is better to refer to where the details can be found, e.g. particular paragraphs of the report or an appendix to the report.

110. An Inspector should never attempt to make a conditional recommendation, because the WM are not empowered to attach conditions to Highway Orders (or most other types of orders). If an Inspector concludes that an Order should not be made unless and until some negotiation or action has been completed, or before some matter has been dealt with, or some problem investigated and it is not appropriate for the inquiry to be adjourned until that issue has been resolved, the Inspector should say so in the conclusions. The Inspector should then recommend that the Order be not made or confirmed unless the matter in question has been cleared up.

Toll Orders

111. A Toll Order may be made to impose a charge on a new road or on a new section of road. Such a road could (but need not necessarily) be carried on a bridge or through a tunnel. Subsequently, a Toll Order may be made to vary, extend or revoke the original Order for the road. Such orders can be made under the New Roads and Street Works Act 1991, in which case the provisions concerning inquiries are contained in Section 25 of the Act (which applies section 302 of the Highways Act 1980) and in paragraph 6 of Schedule 2 to the Act (which is brought into effect by section 6). But tolling powers for certain specific bridges and tunnels are contained in special or local Acts of Parliament, sometimes of considerable antiquity, and these contain their own provisions detailing how and on what basis applications for revision of the existing tolling arrangements should be dealt with.

112. A Toll Order made under the New Roads and Street Works Act 1991 may be considered alongside Highways Act Orders for a new special road (i.e. a motorway). Such an order might be made by a local highway authority and submitted for confirmation to the WM although most special roads are promoted by the Welsh Government as the highway authority. Such a Toll Order can only be recommended for approval if the proposed new road is similarly recommended for approval.

113. A Toll Order should state whether the charging of tolls will be by a concessionaire or by the highway authority, the toll period and the maximum tolls which may be charged for different types of traffic.

114. The 1991 Act does not provide any criterion for the making or confirmation of Toll Orders under the Act. It is sufficient if the WM is satisfied that it is appropriate to confirm the order.

115. In the same way, in relation to Toll Orders made under special or local Act powers, unless there are specific tests contained in the Act under which the tolling power was granted, the test is whether the WM is satisfied that it is appropriate to confirm the

order having considered the case presented by the promoter alongside all the objections and representations.

116. There are no procedural rules for Toll Order inquiries, so the usual rules of natural justice apply. If the order is dealt with at the same inquiry as an order to which the Highways (Inquiries Procedure) Rules 1994 apply, it is normal to apply the same Rules in relation to the Toll Order.

117. Inquiries into Toll Orders can vary substantially in the length of time for which they run, but such an order is unlikely to generate the need for a Programme Officer or a PIM unless the inquiry at which it is to be considered is linked with other orders made under the Highways Act. Nevertheless, a pre-inquiry note may be useful so as to help parties prepare and submit their evidence in a timely way.

118. The guidance relating to inquiries and reports contained in Part 2 above of this chapter applies equally, as appropriate, to Toll Orders. In relation to costs, section 25 of the 1991 Act applies to section 302 of the Highways Act 1980, which in turn refers to section 250 of the Local Government Act 1972 that allows a Minister to direct a party to pay inquiry costs where a local inquiry has been caused. However, there is no reference to Toll Orders in the list of analogous orders in Section 4 of the DMM Annex dealing with the award of costs in public inquiries, and the practice is not to normally entertain such applications. Inspectors should therefore make no announcement about costs applications when conducting such an inquiry. Nevertheless, if there is an attempt to make an application, the Inspector should not refuse to hear it and should simply record it in the main body of his or her report without coming to any conclusion or making any recommendation on the application.

Orders made under Part X of the TCPA 1990

119. Section 247 of the Town and Country Planning Act 1990 gives the WM power to make an order authorising the stopping up or diversion of any highway in order to enable development to be carried out (among other things) in accordance with a valid planning permission (or permitted development rights).

120. In these cases it is not the place of the WM to reconsider whether or not planning permission should have been granted, or to interfere in any way with the planning permission. The WMs' role is limited to considering the impact that closure of this highway (or part of highway) would have on its users and to make a decision which determines where the ultimate public interest may lie. That decision is likely to involve balancing the public interest benefits of the planning permission's implementation and any harm likely to arise from the closure of the highway (or part of highway).

121. To stop up or divert a highway in these circumstances, it is necessary to obtain an Order under section 247, for which the landowner or developer usually applies. Application is made to the Welsh Government and, if objections are received, a local public inquiry is needed to hear them.

122. Under the 1990 Act, related order making powers are contained in Section 248 (in relation to highways crossing or entering the route of a proposed new highway), Section 249 (in relation to extinguishing rights to use vehicles on highways) and Section 251 (in relation to extinguishing public rights of way over land held for planning purposes).

The basic tests

123. In the case of orders made under each of the different sections within Part X, there is a basic requirement to be satisfied; but then there is an overall discretion for the WM to exercise in deciding whether or not the Order is to be made.

Section 247 orders – necessary to enable development to be carried out

124. At the inquiry it will be necessary to establish in relation to a Section 247 order that the development authorised by the planning permission referred to in the order makes the closure or diversion of the highway necessary (where that is the ground relied upon). For it to be desirable or convenient is not sufficient. An outline permission with siting and design reserved is therefore unlikely to justify the order. On the other hand, if detailed permission exists, it is not open to objectors to argue that the development could be carried out in a different manner, which would make closure or diversion unnecessary. It is not possible to reopen consideration of the planning application.

125. If the development has already commenced, the Inspector will need to satisfy himself or herself that the remaining part of the development cannot be carried out (or the part constructed cannot be brought into use) without the benefit of the order. If this is not the case, the recommendation should be that the order be not made. The promoter would then have to rely on other provisions, such as those in Section 116 of the Highways Act 1980, and bring forward a new application.

126. In a similar manner, if the development in question has actually been completed, or substantially completed, then there is no authority in Section 247 to stop up the highway in those circumstances. As above, in instances such as these, the promoter would have to rely on other provisions, such as Section 116 or Section 118 of the Highways Act 1980 to seek to have the highway stopped up.

Section 248 orders – expedient in the interests of road safety or the movement of traffic

127. Under these orders, the WMs may authorise the stopping up or diversion of highways where they cross or enter the route of a proposed new or improved highway. The basic tests for these orders are:

- either planning permission must have been granted for the construction or improvement of a highway (“the main highway”) or the WMs must propose to carry out such work; and
- another highway must cross or enter the route or be otherwise affected by the construction or improvement of the main highway; and

- it must be expedient to stop up or divert that other highway either in the interests of the safety of users of the main highway or to facilitate the movement of traffic on the main highway (NB in this case the test is one of expediency rather than necessity).

Section 249 orders – pedestrianisation to improve amenity

128. These orders provide for a highway which is not a trunk road or a road classified as a principal road to be pedestrianised where a local planning authority resolve that to do so would improve the amenity of part of their area. The local planning authority must then apply to the WM for an order under Section 249 extinguishing vehicular rights over the highway concerned. The status of the road will be a question of fact; whether pedestrianisation would improve amenity would need to be determined on the basis of the evidence provided.

Section 251 orders – land held for planning purposes

129. Under these orders, the WM may extinguish rights of way over land acquired or appropriated for planning purposes and held for the time being by a local authority for the same purposes for which it was acquired or appropriated, to allow the later use of that land for a planning proposal. There is no necessity for a specific planning permission to have been granted at the time of consideration of the order, and application for such orders is often taken forward concurrently at an inquiry with a planning CPO seeking to acquire land for a planning proposal. The WM must be satisfied that either an alternative right of way has been or will be provided, or that the provision of an alternative right of way is not required.

The arguments for making such orders if the basic test is met

130. If the basic test in relation to any Part X order is met, that is not the end of the matter. In each case the WM has discretion whether or not to make the order.

131. The leading case on this issue is *Vasiliou v SoS for Transport and another [1991] 2 All ER 77*, in which the Court of Appeal held that the SoS (and therefore the Inspector) should take into account any significant disadvantage arising from the order, particularly any financial disadvantage. In the Vasiliou case, the Court held that Mr Vasiliou's personal financial loss (arising from stopping up the right of way preventing customers gaining access to a restaurant operated by him) was not, as such, relevant to the planning authority's earlier decision in granting planning permission as it had not been advanced as an exceptional circumstance for consideration (as opposed to the resulting impact on the locality due to loss of trade, which was a matter to be considered at the planning stage). Approving the stopping up order would, however, have had that effect on Mr Vasiliou, and no compensation would be payable because there is no provision for compensation in the Act for the particular type of order in question. The Court also held that when exercising his discretionary power in deciding whether or not to approve an Order of this type the "Minister ….ought to take into account, the adverse effect his order would have on those entitled to the rights which would be extinguished by his order. The more especially is this so because the statute

makes no provision for the payment of compensation to those whose rights are being extinguished."

132. Following on from the question of loss of access to premises, the Inspector should also consider any wider significant disadvantages to present users of the highway and to the general public. This might (for example) be as a result of an unacceptably long diversion for through traffic, or increased noise and disturbance for residents on a diversion route.

133. Where the highway is to be physically diverted, the convenience of any alternative route to be provided will also be a matter that needs to be taken into account. This diversion route can include, in part, an existing highway, which may or may not be proposed to be improved. However, if the diversion route is wholly on an existing highway, the order should be for "stopping up" and not for a "diversion".

134. Where the diversion route would run over land not in the ownership of the applicant for the order, the Inspector should require the promoter to produce the consent of the landowner concerned in writing. Alternatively, there may be a CPO for the land required for the diversion route and/or improvement to existing highways, either made or in draft (there is provision for this in Section 254 of the Act). If the order is not already confirmed, it may come before the inquiry as a concurrent order.

135. In relation to some orders (for example under Section 247), there may be suggestions that road safety could be compromised by stopping up the highway. If the highway authority is represented at the inquiry, they should be asked for their view. If not, an effort should be made to establish whether the highway authority commented either on the original planning application or on the draft order. It is then for the Inspector to consider what weight to give to this aspect, taking into account what was seen on the site visit and relevant evidence given at the inquiry.

Procedure at the inquiry

136. There are no Inquiries Procedure Rules for inquiries into orders under Part X of the Town and Country Planning Act 1990. However, it is common practice to adopt the Highways (Inquiries Procedure) Rules 1994 (or, if there is a concurrent CPO, the Inquiry Procedure Rules for CPOs). However, where most or all parties are not legally represented it may be appropriate to run the event more akin to a hearing with a roundtable discussion of the issues rather than formal presentation of cases and cross-examination.

137. The usual rules for an award of costs apply to Part X orders. Parties are expected to meet their own expenses but may claim any extra costs resulting from unreasonable behaviour by the other party. If an application is made at the inquiry, the Inspector should report separately on this matter to the WM.

Traffic Regulation (and similar) Orders

138. Under the Road Traffic Regulation Act 1984 (RTRA 1984), traffic authorities can make Traffic Regulation Orders (TROs) to regulate, restrict or prohibit the use of a road or any part of the width of a road by vehicular traffic or pedestrians. A TRO may take effect at all times or during specified periods, and certain classes of traffic may be exempted from a TRO. Under s121A(3) of the RTRA 1984, the county council is the traffic authority for all roads in the county for which the Welsh Government is not the traffic authority, with powers to make TROs on the roads for which they are responsible. The WM has similar powers for trunk roads.

139. TROs under section 1 and similar orders under section 6 can be made for the following purposes:

- avoiding or preventing the likelihood of danger to persons or traffic (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism – section 22C of the RTRA 1984);
- preventing damage to the road or to buildings nearby (including preventing or reducing damage connected with terrorism – section 22C of the RTRA 1984);
- facilitating the passage of traffic (including pedestrians);
- preventing use by unsuitable traffic;
- preserving the character of a road especially suitable for use by persons on foot or horseback;
- preserving or improving amenities of the area through which the road runs;
- for any of the purposes specified in paragraphs (a) to (c) of section 87(1) of the Environment Act 1995 in relation to air quality;
- to conserve or enhance the natural beauty of listed special areas in the countryside such as National Parks (for a full list see section 22(1) of the RTRA 1984) – and for these cases, the purposes include allowing for improved access to recreational opportunities or to provide for the study of nature (see section 22(2)) or;
- conserving or enhancing the natural beauty of the area (for exclusions to this, including s22(1) cases above, see s22A of the RTRA 1984).

140. Traffic orders made by the WM are subject to the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990. Permanent traffic orders made by local authorities are subject to the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. Where there are objections, a public inquiry may be held by the WM or the local authority as appropriate), who will appoint an Inspector on the recommendation of the Planning Inspectorate.

141. The procedure at the inquiry is at the discretion of the Inspector, and it is often the case that the Highways (Inquiries Procedure) Rules 1994 provide a suitable framework. Normally, the Inspector reports to the local authority, but in certain circumstances (set out in detail in paragraphs 13, 14 and 14A of Schedule 9 to the RTRA 1984) the order can only be confirmed with the consent of the WM. These

circumstances include the situation where the order would prohibit or restrict access to premises for more than 8 hours in any 24 hours.

142. The Inspector's report in these local authority cases will be addressed to the local authority. If considered appropriate on the basis of the evidence heard, the Inspector can recommend modifications to the order proposed by the local authority. If the order is one which can only be confirmed by the WM, the report will still be made to the local authority, which will then make an application for consent to the WM (or strategic highways company where relevant) if it still wishes to proceed.

143. Traffic Regulation Orders can be quite complicated and need to be read very carefully to ensure they would actually do what they are intended to do. It is not unknown for there to be significant errors in TROs prepared by local authorities.

144. The normal guidance applies to inquiries and reports for these Orders, though the complex inquiry procedure is rarely appropriate, the scope for consideration of alternative proposals is limited, and there is no provision for awards of costs.

Appendix A: The tests for making or confirmation of orders dealt with in this chapter

Orders under the Highways Act 1980 ("the Act")

A.1 The promoters need to make it clear in every case which authorising sections of the appropriate legislation they rely on for the justification for their orders, and how the statutory test in the legislation, or contained in the authorising section, would be met. Thus, under Section 10 of the Act, it should be made clear whether the order is promoted for the purpose of extending or improving or reorganising the trunk road system. It is also necessary under Section 10 for the promoter of a trunk road scheme to show that the requirements of local and national planning, including the needs of agriculture, have been taken into consideration, and that their proposals are expedient for the purposes intended.

A.2 For an order under Section 14 of the Act, the WM must be satisfied under the provision in section 14(6) of the Act that another reasonably convenient route is available or will be provided before the highway is stopped up.

A.3 Before approving a scheme for a special road under Section 16 of the Act, the WM must before making or confirming the Scheme give due consideration to the requirements of local and national planning, including the needs of agriculture as required under the provisions in section 16(8).

A.4 For supplementary orders relating to special roads under Section 18 of the Act, the WM must be satisfied in respect of those matters identified in section 18(6) of the Act.

A.5 For an order under Section 106 the Act (for the construction of a bridge over or tunnel under navigable waters), as part of a scheme made by a local highway authority to be confirmed by the WM under section 106(3), or in other circumstances as described in Sections 10, 14, 16 and 18 of the Act, the WM must under the provisions in section 107(1) take into consideration the reasonable requirements of navigation over the waters affected by the order or scheme. The order or scheme must also include plans and specifications to indicate the position and dimensions of a proposed bridge, including its spans, headways and waterways, and, in the case of a swing bridge, provisions for regulating its operation; or, in relation to a proposed tunnel, plans and specifications to indicate its position and dimensions, including its depth below the bed of the navigable waters.

A.6 An order made under Section 108 of the Act may authorise a highway authority to divert part of a navigable watercourse, where this is necessary or desirable in connection with the construction, improvement or alteration of a highway (including, in the case of connection with construction of a

highway, a highway on a bridge or in a tunnel), the provision of a new means of access from any premises to a highway, or the provision of a maintenance compound or (if the authority is a special road authority) a service area. Under section 109, where a watercourse is diverted under Section 108, any new length of watercourse created must be navigable in a reasonably convenient manner by vessels of a kind which immediately before the coming into operation of the order were accustomed to use the part of the original watercourse to be replaced.

A.7 For an order under Section 124 of the Act (to stop up private means of access from a highway to a premises) to be made or confirmed by the WM (or by the highway authority themselves) under the provisions in section 124(2), it must be shown that continued use of the access is likely to cause danger to or to interfere unreasonably with traffic on the highway (s124(1)), and either that no access to the premises from the highway in question is reasonably required or that another reasonably convenient means of access to the premises is available or will be provided (s124(3)).

A.8 Section 125 of the Act, among other things, authorises the stopping up of a private means of access to premises adjoining or adjacent to land subject to the order or a previous order in conjunction with orders under section 14 or 18 of the Act (or section 248 of the Town and Country Planning Act 1990), provided that either no access to the premises is reasonably required, or that another reasonably convenient means of access to the premises is or will be available (s125(3)).

A.9 Sections 238 to 246 and 248 of the Act provide powers to acquire land (and new rights over land) compulsorily (or by agreement) for a wide variety of specific purposes in connection with the provision of highways and facilities used in connection with them. This includes compulsory acquisition of exchange land to replace any common, open space or fuel or field allotment affected by a CPO. Section 250 deals with the compulsory acquisition of rights over land.

A.10 In each case, the WM needs to be satisfied (as a matter of Government policy, expressed in Welsh Government Circular 003/2019, Compulsory Purchase in Wales and "The Crichel Down Rules (Wales Version 2019)") that, in relation to compulsory acquisition:

- all the land affected by the order is required for the scheme;
- the acquisition would not be premature (although note that in some cases section 248 allows acquisition in advance of requirements); and
- a compelling case in the public interest has been made out for the acquisition.

A.11 The WM also needs to be satisfied that: the case for compulsory acquisition of the land covered by the order justifies interfering with the human rights of those with an interest in the land affected; the acquiring

authority have a clear idea of how the land covered by the order would be used; all necessary resources (including funding) to carry out the plans are likely to be available within a reasonable timescale; and the scheme is unlikely to be blocked by any impediment to implementation. Where an Exchange Land Certificate is before the Inquiry, the tests in Section 19 and Schedule 3 of the Acquisition of Land Act 1981 should be applied as appropriate, with reference as necessary to Section J (Special kinds of land) of Part 2 of Welsh Government Circular 003/2019.

Toll Orders

A.12 A Toll Order under Section 6 of the New Roads and Street Works Act 1991 can only be made in relation to a special road proposed to be provided by a highway authority. The Act does not specify any criterion for the making or confirmation of a Toll Order under Section 6. It is sufficient if the WM is satisfied that it is appropriate to confirm the order. The same applies to variation orders.

A.13 Under Section 8 of the Act of 1991, any Toll Order shall specify the maximum tolls which may be charged, by a concessionaire, only if the road to which the order refers consists of or includes a major crossing to which there is no reasonably convenient alternative. Subject to any regulations which may be made, 'a major crossing' means a crossing of navigable waters more than 100 metres wide, and 'a reasonably convenient alternative' means another crossing (other than a ferry) which is free of toll and within five miles of the crossing in question. Subject to that point (and some clarification of how one takes relevant measurements), the Act again does not specify any criterion for the making or confirmation of a Toll Order. It is sufficient if the WM is satisfied that it is appropriate to confirm the order. Again, the same applies to variation orders.

A.14 Orders to vary tolls authorised by local Acts must comply with any tests contained in such Acts.

Orders under Section 248 Town and Country Planning Act 1990

A.15 The tests to be satisfied are as follows:

- Planning permission shall have been granted for the construction or improvement of a highway ("the main highway") or the WM proposes to carry out such work (s248(1)(a));

- Another highway crosses or enters the route of the main highway or is or will be otherwise affected by the construction or improvement of the main highway (s248(1)(b)); and

- It shall be expedient to stop up or divert that other highway either in the interests of the safety of users of the main highway or to facilitate the movement of traffic on the main highway (s248(2)or s248(2A) as the case may be).

Orders under Section 249 Town and Country Planning Act 1990

A.16 The tests to be satisfied are:

- Confirm that the highway which is to be pedestrianised is not a trunk road or a road classified as a principal road (s249(1)(b)); and

- Has the local planning authority by resolution adopted a proposal whereby the proposed pedestrianisation would improve the amenity of part of the local planning authority's area (s249(1)(a)).

Orders under Section 251 Town and Country Planning Act 1990

A.17 The tests to be satisfied are:

- Has the land over which the public right of way runs been acquired or appropriated for planning purposes and is it held by a local authority for the purposes for which it was acquired or appropriated; and
- Has or will an alternative right of way be provided, or is no alternative right of way required (s251(1)).

Traffic Regulation (and similar) Orders: The Road Traffic Regulation Act 1984

A.18 The Order must be made for a qualifying purpose. Through section 1 of the Road Traffic Regulation Act 1984 these are:

- Avoiding or preventing the likelihood of danger to persons or traffic (including avoiding or reducing, or reducing the likelihood of, danger connected with terrorism – section 22C of the RTRA 1984);
- preventing damage to the road or to buildings nearby (including preventing or reducing damage connected with terrorism – section 22C of the RTRA 1984);
- facilitating the passage of traffic (including pedestrians);
- preventing use by unsuitable traffic;
- preserving the character of a road especially suitable for use by persons on foot or horseback;
- preserving or improving amenities of the area through which the road runs;
- for any of the purposes specified in paragraphs (a) to (c) of section 87(1) of the Environment Act 1995 in relation to air quality;

Under section 22(2) of the Act these are:

- to conserve or enhance the natural beauty of listed special areas in the countryside such as National Parks (for a full list see section 22(1) of the RTRA 1984) – and for these cases, the purposes include allowing

for improved access to recreational opportunities or to provide for the study of nature (see section 22(2)) or;

- conserving or enhancing the natural beauty of the area (for exclusions to this, including s22(1) cases above, see s22A of the RTRA 1984).

If such a restriction is to be imposed, such an order must also specify a form of restriction which is authorised by the Act – such as a vehicle restriction, a direction of travel restriction, a waiting restriction or other prohibition, restriction or regulation identified in section 2 of the Act

A.19 Subject to these provisions, the WM must be satisfied that it is appropriate to confirm the order

A.20 The Road Traffic Regulation Act (Section 40) also provides powers to acquire land (or existing interests in or rights over land) compulsorily for the provision of off street parking. Orders promoted under these provisions must be supported by evidence to demonstrate that the parking provided would relieve or prevent congestion of traffic.

Where the resulting parking space would also provide access from the highway or road to adjoining or abutting premises, it is necessary for the evidence to show that it would be possible to ensure that vehicles using the parking space to gain access to the premises in question would, while in the parking space, proceed in the same direction as other vehicles using the parking space are, or are to be, required to proceed (s34(1)).

Overall requirement

A.21 In every case, subject to the specific provisions for each type of order, the WM needs to be satisfied when making or confirming a relevant traffic order that it is appropriate to do so balancing any public or private disadvantages against the public benefits.

Appendix B: Procedure at (simpler) inquiries

B.1 After the Inspector's opening announcements the proceedings will normally follow the sequence:

i) an opening statement by the advocate for the Promoting Authority;
ii) the promoting authority's presentation of the evidence-in-chief by their witness;
iii) the cross-examination of the promoting authority's witness by objectors;
iv) the re-examination of the promoting authority's witness by their advocate;
v) the presentation of the objector's evidence and representations;
vi) the cross-examination of the objector (or his or her witness if represented) by the promoting authority's advocate;
vii) the reply to the cross-examination (or re-examination if the objector is represented by an advocate) and a final statement by the objector;
[NOTE: stages (ii) to (iv) and stages (v) to (vii) would be followed for each individual witness and objector.]
viii) the closing statement by the promoting authority's advocate
ix) arrangements for accompanied site inspection; and
x) the Inspector's closure of the inquiry.

B.2 If the Inspector considers that it would be in the interests of the inquiry or necessary to accommodate individuals or unusual circumstances, the procedure may be varied. For example, it may be convenient to defer some final statements to the end of the inquiry if the relevant parties wish, normally hearing them in the reverse order of appearance. As an alternative to the case-based sequence described above (that is to say, with each party presenting the whole of their case in turn) it may sometimes be preferable to have a topic-based sequence, where separate topics or issues are identified and each party presents the part of their case relating to each topic in turn.

Appendix C: Procedure at (more complex) inquiries

C.1 After the Inspector's opening announcements, the proceedings will normally follow the following sequence:

i) an opening statement by the advocate for the promoting authority;
ii) the promoting authority's witnesses' presentation of their evidence in chief, one after the other – i.e. the whole of the promoter's case;
iii) questions of clarification by objectors to the promoting authority's witnesses;
iv) questions to the promoting authority's witnesses by their advocate about their response to iii);

In the case of supporters, after step iv and before step v the proceedings would follow the sequence:

a) the supporter's presentation of his or her case;
b) cross-examination of the supporter by objectors;
c) re-examination of the supporter by his or her advocate;
d) final address by the supporter's advocate.

Steps a) to d) are then repeated for each individual supporter.

v) cross-examination on evidence in chief of the promoting authority's witnesses by the first objector as a preliminary to vii);
vi) re-examination of the promoting authority's witnesses by their advocate;
vii) the first objector's presentation of his or her case (and introduction of alternative proposals);
viii) the cross-examination of the first objector by the advocate for the promoting authority;
ix) rebuttal evidence presented by the promoting authority's witnesses;
x) cross-examination of the promoting authority's rebuttal evidence by the first objector;
xi) re-examination of the promoting authority's witnesses by their advocate;
xii) first objector's presentation of final address;
xiii) The response of the promoting authority's advocate to the first objector's case;

NOTE: Steps v) to xiii) are then repeated for each individual objector, with provision being made for interested parties to have the opportunity to speak.

Counter-objectors to alternative proposals would normally be permitted to cross-examine the relevant objector after step viii and would then appear at the inquiry after step xi and before step xii. These proceedings would follow the sequence:

a) the counter-objector's presentation of his or her case;
b) cross-examination of the counter-objector by the relevant objector;
c) re-examination of the counter-objector by his or her advocate;
d) the counter-objector's presentation of his or her final address.

xiv) closing address by the promoting authority's advocate;
xv) final arrangements for accompanied site inspections;
xvi) the Inspector's closure of the inquiry.

C.2 In practice, steps i. iii and iv are sometimes omitted and incorporated in v and vi. If the Inspector considers that it would be in the interests of the inquiry or necessary to accommodate individuals or unusual circumstances, the procedure may be varied. Some of the more normal variations are listed below:

a) objectors have a few questions of clarification for the Promoting Authorities witnesses, or wish to reserve such questions for cross examination – stages iii and iv are then omitted as separate stages and incorporated within stages v and vi;
b) cross examination on evidence in chief and rebuttal evidence are combined – in that event, stage ix comes before stage v; stage v is incorporated with stage x; and stage vi is incorporated with stage xi;
c) some or all final statements are deferred to the end of the inquiry. If all are deferred in this way, it is normal to hear them in the reverse order of appearance;
d) the promoting authority does not close after each individual objection but closes comprehensively at stage xiv.