

Subject: DLA comments on discussion paper

Our planning director Michael Greig has been dealing with the Law Society's discussion paper responses for Chapters 5 and Chapter 19, so please could those responses be considered as reflecting DLA's views on the points raised in those chapters

In addition, Michael has expressed the undernoted views in relation to the first two chapters:-

Para 2.10 - It is a mistake to exclude the conveyancing practicalities of airspace acquisition. The vast majority of CPOs are for road projects. A recurring issue with those is how to deal with acquisition of rights for bridges - is it a servitude or acquisition of airspace. If CPO law is being reformed it makes sense to tackle the main practical issues which are faced. This is one of them. The problem is partly the definition of "land" referred to on page 19. This only seems to allow for the acquisition of rights in airspace, not the acquisition of the airspace itself.

Questions 3 to 4 - General CPO powers need to give the maximum flexibility in terms of the interests or rights which can be acquired. This also needs to reflect the reality of CPOs. With a servitude required in relation to a linear project such as a road, the concept of a dominant proprietor is artificial. Private bills have removed the requirement for a dominant proprietor. Perhaps this should be provided for more generally.

Question 5 - A general power to take temporary possession would be very helpful. There are models in various private bills. The issue of compensation for temporary possession needs to be considered. The current legislation is ambiguous on whether a CAAD is competent for temporary possession and perhaps this point should be clarified.

Chapter 3 - We do not agree with interpretation placed on case law on article 6. *[Please see our comments on Chapter 5 via the Law Society's response.]* We think any reduction in the right to be heard for a CPO objection risks a successful article 6 challenge.

Question 107 - There is an issue in principle about whether it is appropriate for a body such as Transport Scotland as promoter to be able to appeal to Scottish Ministers (i.e. themselves) about the decision in a CAAD.