



## RESPONSE FORM

### DISCUSSION PAPER ON COMPULSORY PURCHASE

We hope that by using this form it will be easier for you to respond to the proposals or questions set out in the Discussion Paper. Respondents who wish to address only some of the questions and proposals may do so. The form reproduces the proposals/questions as summarised at the end of the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

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In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only a few of the proposals, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

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**Name:**

Carol Johnston, Chief Solicitor

**Organisation:**

West Lothian Council

**Address:**

West Lothian Civic Centre

**Email address:**

# Summary of Questions and Proposals

## PART 1: INTRODUCTORY AND GENERAL

### Chapter 1 Introduction

1. The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.

(Paragraph 1.14)

#### Comments on Proposal 1

Agreed. It would be most useful if the new statute could be in plain English.

### Chapter 2 General issues

2. For the purposes of compulsory purchase, is the current definition of “land”, set out in the 2010 Act, satisfactory?

(Paragraph 2.56)

#### Comments on Proposal 2

“Land” includes buildings and other structures, land covered with water, and any right or interest in or over land. The first part of the definition of land is clear and unambiguous. The words “any right or interest in or over land” should be clarified.

3. Should the general power to acquire land compulsorily include power to create new rights or interests in or over land?

(Paragraph 2.70)

#### Comments on Proposal 3

Agreed. Those rights or interests should be clearly set out and should be limited to rights required as a consequence of the Compulsory Purchase Order. If a general power to create new rights was granted it would create challenges as to what can be created.

4. What comments do consultees have on the relationship between the compulsory acquisition of new rights or interests in or over land and general property law?

(Paragraph 2.70)

#### **Comments on Proposal 4**

The creation of new rights and interests would create challenges if there was a general power to create new rights and interests. If a list of rights and interests that could be acquired by CPO were made and that would assist. A caveat to creating new rights and interests is that there may be unintended consequences which follow the creation of new rights and interests. Any such new rights and interests would need to be carefully considered before being adopted into law.

Clarity should be provided on what rights to compensation would be available to owners and others adversely affected by the creation of new rights.

5. Would a general power to take temporary possession, as described in paragraphs 2.71 to 2.73, be useful for acquiring authorities, and, if so, what features should it have?

(Paragraph 2.73)

#### **Comments on Proposal 5**

Such a general power would appear to have its attractions and would be welcomed in practical terms for purposes such as accommodation works. The legislation would need to be carefully worded so that it is only the temporary use and possession that the acquiring authority can make of the land.

Landowners will want to be satisfied that there is clarity in the provisions and that there are penalties imposed on an acquiring authority who breaches the temporary arrangements.

This would fit in with the requirements of Article 1 of the First Protocol of the Human Rights Act 1998.

### **Chapter 3 Human rights**

6. The right to compensation as a result of compulsory purchase in Scots law should be expressly provided for in the proposed new statute.

(Paragraph 3.51)

#### **Comments on Proposal 6**

Agreed. This would provide clarity.

7. Do consultees agree with our view that the current statutory provisions applicable to compulsory purchase in Scotland are compatible with the Convention?

(Paragraph 3.87)

**Comments on Proposal 7**

No.

There is a reference to interference with human rights and that any such interference needs to be the least intrusive. The council considers that the requirement needs to be higher than that. The party affected by the CPO order should, so far as is practicable, be kept in a position where they are no worse off than they were before the exercise of the power. That should include rehoming and payment of financial compensation at a level that allows the party subject to the CPO to not be disadvantaged by the CPO process.

**PART 2: OBTAINING AND IMPLEMENTING A CPO; THE MINING CODE**

**Chapter 5 Procedure for obtaining a CPO**

8. Compulsory purchase by local authorities under local Acts should be carried out by means of the standard procedure.

(Paragraph 5.5)

**Comments on Proposal 8**

Agreed.

9. Is there any reason why the procedures to be set out in the proposed new statute should not be used for compulsory acquisition under any of the enactments listed in Appendix B?

(Paragraph 5.18)

**Comments on Proposal 9**

No.

10. Is there any relevant legislation missing from that list?

(Paragraph 5.18)

**Comments on Proposal 10**

The council is not aware of any relevant legislation missing from the list.

11. Do the powers to survey land, contained in section 83 of the 1845 Act, operate satisfactorily in practice? If not, what alterations should be made?

(Paragraph 5.20)

**Comments on Proposal 11**

The legislation does not set out the form of notice or how it should be served. The new Act should set out the form of notice and the information that should be provided in such a notice. It should also reflect the wording of Section 26 of the 2010 Act which refers to service of documents.

The party seeking to exercise a right to survey should be obliged to provide information on what they are proposing. The landowner has no right, in terms of Section 83 to object to or challenge the notice or the proposed action. The new Act should make provision for a landowner affected by such a notice to challenge the notice within a tight timeframe. The grounds for challenge should be set out in the legislation.

Any exercise of rights to survey should carry with it a requirement to pay adequate compensation for losses incurred by owners or others affected by it.

12. Is the current list of statutory objectors satisfactory and, if not, what changes should be made, and why?

(Paragraph 5.24)

**Comments on Proposal 12**

Heritable creditors should be included in the list of statutory objectors. The proposed CPO could adversely affect the value of the land that is secured to them.

13. Should there be any further restrictions on the circumstances in which a statutory objector can insist upon a hearing or inquiry?

(Paragraph 5.25)

**Comments on Proposal 13**

No.

14. Should the proposed new statute provide that Scottish Ministers must refer cases to the DPEA within a specified time limit and, if so, within what time limit?

(Paragraph 5.26)

**Comments on Proposal 14**

Agreed. Six months would be appropriate.

15. Should the DPEA have discretion over the process for determining objections to a CPO similar to that which they have in relation to planning matters?

(Paragraph 5.30)

**Comments on Proposal 15**

The issues in a planning appeal are not necessarily the same issues that will arise in a CPO appeal. Accordingly, reporters would need to be trained in the issues that arise in a CPO appeal.

With appropriate training leaving the DPEA to determine the process is appropriate.

The DPEA process for dealing with CPO appeals should require the reporter to come to a conclusion as to how the case should be dealt with. The process of evidence gathering should be based on the current planning appeals processes.

16. The timescales for the process of securing CPOs should continue to be set out in subordinate legislation.

(Paragraph 5.32)

**Comments on Proposal 16**

Agreed.

17. Should all CPOs made by local authorities and statutory undertakers require to be confirmed by Scottish Ministers and, if not, in what circumstances should acquiring authorities be able to confirm their own CPOs?

(Paragraph 5.41)

**Comments on Proposal 17**

An acquiring authority should be able to confirm their own CPO on the same basis as that permitted in England and Wales ie that the confirming authority is satisfied that the notification requirements have been complied with, that no objection has been made to the CPO, or that any objection has been withdrawn, and that the CPO can be confirmed without modification.

18. Are the current requirements for advertisement and notification of the making or confirming of a CPO satisfactory and, if not, what changes should be made, and why?

(Paragraph 5.42)

**Comments on Proposal 18**

Bringing in provision for electronic communication of a notice would be appropriate, in addition to, but not instead of traditional methods of communication. Email is not a robust method of communication.

19. An acquiring authority should be able to revoke a CPO.

(Paragraph 5.46)

**Comments on Proposal 19**

Agreed.

20. Should any conditions be attached to a revocation, so that the acquiring authority cannot initiate the same proposal within a certain period, or without specific consent of the Scottish Ministers?

(Paragraph 5.46)

**Comments on Proposal 20**

Agreed. Removal of the ability to bring forward another CPO within 5 years of the revocation of a CPO should give a landowner some peace of mind. 5 years appears to be a reasonable balance between the rights of the landowner and the needs of the acquiring authority.

21. Any person directly affected by the revocation of a CPO should be able to recover reasonable out-of-pocket expenses.

(Paragraph 5.47)

**Comments on Proposal 21**

Agreed. However, there may be other losses in addition such as property blight.

22. Acquiring authorities should be required to register CPOs and revocations of CPOs.

(Paragraph 5.50)

**Comments on Proposal 22**

Agreed.

23. Should there be a new Register of CPOs, or should an entry be made in the Land Register?

(Paragraph 5.50)

**Comments on Proposal 23**

Both.

24. Is the current three year validity period of a confirmed CPO reasonable?

(Paragraph 5.59)

**Comments on Proposal 24**

Agreed that the current three year validity period is reasonable.

25. Should there be a precondition that a CPO will only be confirmed where there is clear evidence that the project is reasonably likely to proceed?

(Paragraph 5.59)

**Comments on Proposal 25**

Agreed. However, consideration requires to be given as to what level of evidence would be required and this should be set out in the new statute.

26. Where the acquiring authority offer to replace a public right of way which will be affected by a proposed development, should the right to insist upon an inquiry be removed?

(Paragraph 5.64)

**Comments on Proposal 26**

Only if the replacement right of way is substantially similar to or better than the one being stopped up. There should be no substantial detriment to the users of the right of way.

27. Where there is to be an inquiry into the loss of a public right of way, should any such inquiry be combined with any inquiry into the making of the related CPO?



(Paragraph 5.64)

**Comments on Proposal 27**

Agreed.

28. Are there any other aspects of the process for making or confirming a CPO upon which consultees wish to comment?

(Paragraph 5.65)

**Comments on Proposal 28**

No.

**Chapter 6 Challenging a (confirmed) CPO**

29. Should the proposed new statute make it clear that objections to a CPO, on the basis of allegations of bad faith on the part of those preparing the Order, are not competent under whatever provision will replace paragraph 15 of Schedule 1 to the 1947 Act?

(Paragraph 6.38)

**Comments on Proposal 29**

Agreed.

30. Should the proposed new statute make it clear that applicants claiming that there has been bad faith in the preparation of a CPO have a right to claim damages from those allegedly responsible?

(Paragraph 6.38)

**Comments on Proposal 30**

In the case of local authorities, any decision to pursue a Compulsory Purchase Order should be approved at Committee and be a decision of the Council rather than individual Officers. Any claims should therefore be against the local authority.

31. Do paragraphs 15 and 16 of Schedule 1 to the 1947 Act operate satisfactorily?

(Paragraph 6.39)

**Comments on Proposal 31**

The council is not aware of any issues with these provisions.

32. Should any challenge to a CPO, on the ground that it is incompatible with the property owner's rights under the Convention, be required to be made during the six-week period for general challenges to a CPO?

(Paragraph 6.44)

**Comments on Proposal 32**

Agreed.

33. Are there circumstances in which such a challenge should be permitted to be made at a later stage?

(Paragraph 6.45)

**Comments on Proposal 33**

No. The council cannot envisage circumstances in which such a challenge could not be formulated at the time the CPO is confirmed.

34. Where an applicant has been substantially prejudiced by a procedural failure, should the court have a discretion to grant some remedy less than the quashing of the CPO, either in whole or in part?

(Paragraph 6.48)

**Comments on Proposal 34**

Agreed. In some circumstances a re-hearing of the inquiry may be appropriate.

35. Should the time period of validity of a confirmed CPO be expressly extended, pending the resolution of any court challenge to the CPO?

(Paragraph 6.51)

**Comments on Proposal 35**

Agreed.

## Chapter 7 Implementation of a CPO

36. Any restatement of the law relating to compulsory acquisition should include provision along the lines of sections 6 to 9 of the 1845 Act.

(Paragraph 7.9)

### Comments on Proposal 36

Agreed.

37. Should the proposed new statute list all the interests in respect of which a notice to treat should be served?

(Paragraph 7.15)

### Comments on Proposal 37

Agreed. This would provide clarity and certainty.

38. It should be made clear that a person claiming to be the holder of an interest in land, and who has not been served with a notice to treat, has the right to raise proceedings to determine (a) that the interest attracts compensation and (b) the amount of that compensation.

(Paragraph 7.19)

### Comments on Proposal 38

Agreed. This would protect anyone not served with a notice to treat.

39. Should there be a time limit within which such proceedings must be raised?

(Paragraph 7.19)

### Comments on Proposal 39

Agreed. 6 months from becoming aware of the CPO appears appropriate.

40. Should a notice to treat be accompanied by information as to how compensation may be claimed?

(Paragraph 7.25)

**Comments on Proposal 40**

Agreed. This would provide clarity for members of the public.

41. Does paragraph 7 of Schedule 2 to the 1947 Act operate satisfactorily in practice?

(Paragraph 7.29)

**Comments on Proposal 41**

The council is unable to confirm whether this provision operates satisfactorily in practice as the council has used the General Vesting Declaration procedure rather than the notice to treat procedure.

42. When fixing interests in land, should any action taken or alterations made before service of a notice to treat, be considered differently from any action taken or alterations made after such service?

(Paragraph 7.29)

**Comments on Proposal 42**

Compensation should be payable in relation to any alterations made before service of a notice to treat.

43. Does the three-year time limit on the validity of the notice to treat work satisfactorily in practice?

(Paragraph 7.40)

**Comments on Proposal 43**

The council is unable to confirm whether the three year time limit on the validity of the notice to treat works satisfactorily in practice as the council has used the General Vesting Declaration procedure.

44. Should it be competent for an acquiring authority to withdraw a notice to treat and, if so, within what period?

(Paragraph 7.51)

**Comments on Proposal 44**

Agreed that this should be competent. Withdrawal of a notice to treat within six weeks of

delivery of a notice of claim by the holder of a relevant interest appears to be reasonable.

45. Should there be any circumstances which would entitle an acquiring authority to withdraw a notice to treat after they have entered on to the land?

(Paragraph 7.51)

**Comments on Proposal 45**

It would appear reasonable to allow an acquiring authority to withdraw a notice to treat after they have entered onto the land where the acquiring authority fully compensates the land owner for the period during which the authority has entered onto the land and for any damage caused by the acquiring authority.

46. Should the period after which entry can proceed, following a notice of entry, be extended to, say, 28 days?

(Paragraph 7.67)

**Comments on Proposal 46**

Agreed.

47. Alternatively, should it be competent for a landowner to serve a counter-notice within a set time limit following service of a notice of entry, whether or not the acquiring authority have entered on to the land?

(Paragraph 7.67)

**Comments on Proposal 47**

Not applicable.

48. For how long should a notice of entry remain valid?

(Paragraph 7.73)

**Comments on Proposal 48**

Six months.

49. Should the acquiring authority be required to serve notice of their intention to make a GVD on holders of a short tenancy or a long tenancy with less than one year to run?

(Paragraph 7.78)

**Comments on Proposal 49**

Agreed.

50. Where a GVD applies to part only of a house, factory, park or garden, do the current provisions adequately safeguard the interests of the acquiring authority and the landowner and, if not, what alterations should be made?

(Paragraph 7.86)

**Comments on Proposal 50**

The council has not encountered this situation in practice. However, the council agrees that the current provisions appear to be a reasonable balance between the landowner's and acquiring authority's interests.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

**Comments on Proposal 51**

Agreed that a GVD should be available in all circumstances.

52. Are the time limits for implementing a GVD satisfactory?

(Paragraph 7.89)

**Comments on Proposal 52**

Agreed that the time limits are satisfactory.

53. Compensation should be assessed as at the date when the property vests in the acquiring authority, and interest should run on the compensation from that date.

(Paragraph 7.97)

**Comments on Proposal 53**

Agreed.

54. Where the acquiring authority enter on to the land before it has vested in them, compensation should be assessed as at, and interest on compensation should run from, the date of entry.

(Paragraph 7.98)

**Comments on Proposal 54**

Agreed. This is reasonable.

55. In a situation falling within section 12(5) of the 1963 Act, the date upon which compensation should be assessed, and the date from which interest on the compensation should run, should be the date upon which reinstatement of the building on another site could reasonably be expected to begin.

(Paragraph 7.99)

**Comments on Proposal 55**

Agreed.

56. Should the proposed new statute confer upon the LTS a discretion to fix the valuation date at a date different from any of those mentioned above, where it appears to the LTS to be in the interests of justice?

(Paragraph 7.101)

**Comments on Proposal 56**

Agreed. This would provide flexibility.

57. Where an acquiring authority are in genuine doubt as to whether or not they own a particular part of a parcel of land which they intend to acquire, where title is in the Register of Sasines, they should be able to:
- (a) use a GVD in relation to the whole of the land, and
  - (b) register the GVD in the Land Register.

(Paragraph 7.106)

**Comments on Proposal 57**

Agreed. This would provide clarity.

58. The provisions of sections 84 to 86 of the 1845 Act should be repealed and not replaced.

(Paragraph 7.114)

**Comments on Proposal 58**

Agreed. These provisions are not required. The GVD procedure currently available allows authorities to enter land without paying compensation.

59. What, if any, alterations should be made to the time limits for the various steps involved in the implementation of a CPO?

(Paragraph 7.115)

**Comments on Proposal 59**

The council has not experienced any issues with the time limits involved in implementation of a CPO and therefore does not propose any alterations.

60. Would a new method of implementation of a CPO, along the lines described in paragraph 7.119, be preferable to continuing with the current two methods of implementation?

(Paragraph 7.120)

**Comments on Proposal 60**

Agreed. A single method of implementation would provide clarity.

61. If so, what features should it have in addition to, or in place of, those mentioned above?

(Paragraph 7.120)

**Comments on Proposal 61**

The council does not propose any additional features.



## Chapter 8 Conveyancing procedures

62. Where there has been a confirmed CPO the land can be transferred to the acquiring authority by means of an ordinary disposition registered in the Land Register.

(Paragraph 8.39)

### Comments on Proposal 62

Agreed.

63. Do consultees agree that, if the GVD procedure is retained, the current rules on transfer of the land should continue, namely that:

- (a) title to the land will vest in the acquiring authority at the end of the period specified in the GVD allowing the authority to take entry to the land, and
- (b) registration in the Land Register will be required for the acquiring authority to obtain the real right of ownership?

(Paragraph 8.40)

### Comments on Proposal 63

Agreed.

64. The existing methods of transferring the land following a notice to treat should be replaced with a unitary method, to be known provisionally as a Compulsory Purchase Notice of Title. This would be executed by the acquiring authority.

(Paragraph 8.42)

### Comments on Proposal 64

Agreed. This would simplify the process.

65. Do consultees agree that, if the notice to treat and GVD procedures are replaced by a unitary procedure, there should be a single statutory method of transferring the land to the acquiring authority?

(Paragraph 8.43)

### Comments on Proposal 65

Agreed. This would simplify matters.

66. The acquiring authority should always obtain a valid title where they have used a method of transfer specified in the new legislation.

(Paragraph 8.45)

**Comments on Proposal 66**

Agreed. This would provide certainty.

67. Should the Keeper be required to add a note on the Land Register stating that the title has been acquired by compulsory purchase?

(Paragraph 8.46)

**Comments on Proposal 67**

Agreed. This would provide clarity for members of the public.

68. The acquiring authority may serve a notice to treat on any tenant and extinguish the tenant's right under the lease in return for compensation.

(Paragraph 8.54)

**Comments on Proposal 68**

Agreed.

69. The acquiring authority may serve a notice to treat on any liferenter and bring the liferent to an end in return for compensation.

(Paragraph 8.57)

**Comments on Proposal 69**

Agreed.

70. It should be made clear that, on the acquiring authority becoming owner of the land, any subsisting securities would be extinguished.

(Paragraph 8.65)

### **Comments on Proposal 70**

Agreed. This would provide certainty.

71. Do the 1997 Act section 194 and the 2003 Act sections 106 and 107 require reform or consolidation?

(Paragraph 8.75)

### **Comments on Proposal 71**

The Discussion Paper highlights that there may be doubt as to what is required to satisfy section 107 (as to whether the authority merely has to have compulsory purchase powers or whether it must show that it could have obtained a confirmed compulsory purchase order in the specific circumstances). This should be clarified.

72. It should be competent to acquire new rights subordinate to ownership by means of a CPNT or GVD or equivalent.

(Paragraph 8.81)

### **Comments on Proposal 72**

Agreed.

## **Chapter 9 The Mining Code**

73. Should provision along the lines of the Code be included in the proposed new statute and, if so, should any additions or deletions be made?

(Paragraph 9.26)

### **Comments on Proposal 73**

Agreed that provisions along the lines of the Code should be included in the proposed new statute. The council's suggestion would be that the wording is in plain English.

## **PART 3: COMPENSATION**

### **Chapter 11 Valuation of land to be acquired – basic position**

74. The concept of “value to the seller” should continue to reflect any factors which might limit the price which the seller might expect to receive on a voluntary sale.

(Paragraph 11.30)

**Comments on Proposal 74**

Agreed.

75. Should depreciation of the value of the acquired land, caused by its severance from the retained land, be taken into account when assessing its value?

(Paragraph 11.34)

**Comments on Proposal 75**

No.

76. Does the current law take account of negative equity satisfactorily and, if not, what changes should be made?

(Paragraph 11.42)

**Comments on Proposal 76**

Agreed that the current law does take account of negative equity satisfactorily.

77. Provision along the lines of rules 2, 4 and 5 should be included in the proposed new statute.

(Paragraph 11.53)

**Comments on Proposal 77**

Agreed. This appears to be fair and reasonable.

78. Should a test along the lines of the “devoted to a purpose” test be retained?

(Paragraph 11.55)

**Comments on Proposal 78**

Agreed that this test should be retained.

79. In cases of equivalent reinstatement, should there be an onus on the claimant to show that compensation assessed on the basis of market value (and disturbance, where appropriate) would be insufficient for the activity to be resumed on another site?

(Paragraph 11.58)

**Comments on Proposal 79**

Agreed.

80. Should the LTS be entitled to impose conditions on the payment of equivalent reinstatement compensation in order to ensure that such compensation is properly used for the reinstatement in question?

(Paragraph 11.66)

**Comments on Proposal 80**

Agreed. The purpose of compensation is to put the individual into the position they were in before the loss or damage occurred.

**Chapter 12 Valuation of land to be acquired – rule 3 and the “no-scheme” world**

81. How should the “scheme” be defined?

(Paragraph 12.78)

**Comments on Proposal 81**

A wide definition of scheme would be preferred.

82. Should an increase in the value of the land being acquired as a result of the scheme be taken into account for the purpose of assessing compensation?

(Paragraph 12.78)

**Comments on Proposal 82**

No. This would involve looking into the future. It is not appropriate to include a potential increase in value should a scheme go ahead.

83. To what extent should an increase in the value of the land being acquired, as a result of the effect of the scheme on other land being acquired, be disregarded?

(Paragraph 12.78)

**Comments on Proposal 83**

It should be disregarded entirely.

84. Should any such disregard be limited by reference to the time elapsed since the adoption of the scheme or, if not, on what alternative basis should or might it be limited?

(Paragraph 12.78)

**Comments on Proposal 84**

In the event that the scheme is to be adopted in such a short period of time that it would not be reasonable to disregard its effect on the valuation of the land that could be considered, but it would be difficult to make provision for this. However, any disregard should be applied to limit compensation on the basis of speculative or theoretical elements of value.

**Chapter 13 Valuation of land to be acquired – establishing development value**

85. Should the statutory planning assumptions apply to land other than the land which is compulsorily acquired?

(Paragraph 13.14)

**Comments on Proposal 85**

No. The statutory planning assumptions should only apply to land which is compulsorily acquired.

86. Any existing planning permission should continue to be taken into account in assessing the value of the land to be acquired.

(Paragraph 13.19)

**Comments on Proposal 86**

Agreed. This appears to be reasonable.

87. What should be the relevant date for determining whether there is existing planning permission over land to be compulsorily acquired?

(Paragraph 13.22)

**Comments on Proposal 87**

This should be the same as the relevant valuation date.

88. Should there continue to be a statutory assumption that planning permission would have been granted for the acquiring authority's proposals if it were not for the compulsory purchase?

(Paragraph 13.30)

**Comments on Proposal 88**

No. This could lead to complication in assessing value.

89. If so, should this continue to be limited (a) to planning permission which might reasonably be expected to be granted to the public and, (b) by the *Pointe Gourde* principle?

(Paragraph 13.30)

**Comments on Proposal 89**

N/A.

90. The statutory assumption of planning permission for development in terms of paragraph 1 of Schedule 11 to the 1997 Act should be repealed.

(Paragraph 13.34)

**Comments on Proposal 90**

Agreed. Otherwise a windfall could be received by a claimant due to value attributable to rebuilding and alteration rights.

91. Should the statutory assumption of planning permission for development in terms of paragraph 2 of Schedule 11 to the 1997 Act be repealed?

(Paragraph 13.36)

**Comments on Proposal 91**

Agreed. Otherwise windfall compensation is payable where one dwellinghouse is being developed for use as two or more dwellinghouses.

92. In terms of special assumptions in respect of certain land comprised in development plans, what should be the relevant date for referring to the applicable development plan?

(Paragraph 13.40)

**Comments on Proposal 92**

The relevant valuation date.

93. The underlying “scheme” should be deemed to be cancelled, for the purposes of considering statutory planning assumptions, at the time when the CPO is first published.

(Paragraph 13.59)

**Comments on Proposal 93**

Agreed. Waiting until the relevant valuation date appears to be too late.

94. The scope of the underlying “scheme” to be deemed to be cancelled for the purposes of considering statutory planning assumptions, should be the entire scheme and not simply the intention to acquire the relevant land.

(Paragraph 13.61)

**Comments on Proposal 94**

Agreed.

95. Provision along the lines of section 14 of the 1961 Act, as amended, should be included in the proposed new statute.

(Paragraph 13.68)

**Comments on Proposal 95**

Agreed. This would simplify matters.

96. Should the provisions of Part V of the 1963 Act, relating to compensation where there is permission for additional development after the compulsory acquisition, be repealed and not re-enacted?



(Paragraph 13.76)

**Comments on Proposal 96**

Agreed. It is unfair to allow a valuation to stretch on beyond the relevant valuation date up to 10 years. It would be very difficult to budget for projects if compensation could still be payable up to 10 years after the valuation date.

97. If not, should the period for considering subsequent planning permission remain as 10 years?

(Paragraph 13.76)

**Comments on Proposal 97**

No reduce to 3 years.

**Chapter 14 Valuation of land to be acquired - CAADs**

98. Should there be a time limit for applying for a CAAD following the making of the CPO and, if so, what should that limit be?

(Paragraph 14.6)

**Comments on Proposal 98**

Agreed. The time limit should be 3 - 6 months following the making of the CPO.

99. Do CAADs currently provide sufficient information and, if not, what further information should they provide?

(Paragraph 14.12)

**Comments on Proposal 99**

As comprehensive as possible and include details on what level of development would have been permitted.

100. Provision along the lines of section 30(2) of the 1963 Act should be included in the proposed new statute and should apply to statutory planning assumptions as well as to CAADs.

(Paragraph 14.19)

**Comments on Proposal 100**

Agreed. This would fix the date for determination of CAADs as early as possible in the process.

101. When an acquiring authority are considering a CAAD, the proposal to acquire the relevant land, and the underlying scheme, should be assumed to be cancelled at the time when the CPO is first published, with no assumption to be made about what may or may not have happened before that date.

(Paragraph 14.30)

**Comments on Proposal 101**

Agreed. This would provide consistency.

102. The cancellation assumptions in relation to CAADs should be set out expressly in the proposed new statute.

(Paragraph 14.30)

**Comments on Proposal 102**

Agreed. This would be a consistent approach.

103. The same cancellation assumptions should apply to consideration of all potential planning consents, including CAADs.

(Paragraph 14.30)

**Comments on Proposal 103**

Agreed. This would be a consistent approach.

104. Should the relevant date for determining a CAAD be linked to the date for cancellation of the scheme for the valuation of planning assumptions?

(Paragraph 14.31)

**Comments on Proposal 104**

Agreed. This would provide certainty and consistency.

105. Should the parties continue to be entitled to insist upon a public inquiry when appealing against a CAAD decision?

(Paragraph 14.33)

**Comments on Proposal 105**

There should be scope for matters to be dealt with by hearing session as opposed to formal inquiry session as this can be the most efficient way to proceed and would accord with other planning appeal processes.

106. Should there be any change in the current (one month) time limit for appealing against a CAAD?

(Paragraph 14.36)

**Comments on Proposal 106**

It should be changed to 3 months.

107. Should an appeal against a CAAD be made to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

**Comments on Proposal 107**

Agreed. The LTS would be impartial.

108. If so, should the inquiry procedure before a DPEA reporter be retained, with the reporter reporting to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

**Comments on Proposal 108**

Agreed. The first level inquiry by a DPEA reporter should be retained.

109. Should planning permission, which could reasonably have been expected to be granted as at the relevant valuation date, be assumed to have been granted?

(Paragraph 14.64)

**Comments on Proposal 109**

Agreed. The wording “reasonably” have been expected to be granted is preferable to wording simply stating “would have been granted”.

110. Where none of the statutory assumptions apply should such planning permission be reflected, for the purposes of valuation, in hope value only?

(Paragraph 14.64)

**Comments on Proposal 110**

Agreed. Claimants could submit a CAAD if concerned about unfair assessment of compensation.

111. In any event, should the same criteria be applied in relation to all relevant planning assumptions?

(Paragraph 14.64)

**Comments on Proposal 111**

Agreed, where possible. This would provide a consistent approach.

**Chapter 15 Consequential loss – retained land**

112. The statutory definition of retained land should continue to be based on the effect of the acquisition on that land and not merely on the physical proximity of the retained land to the acquired land.

(Paragraph 15.18)

**Comments on Proposal 112**

Agreed. It is a matter of what is equitable.

113. The proposed new statute should provide that the assessment of compensation for severance or injurious affection should be carried out on a “before and after” basis.

(Paragraph 15.25)

**Comments on Proposal 113**

Agreed that this is the appropriate basis.

114. Claims for injurious affection should be assessed as at the date of severance.

(Paragraph 15.37)

**Comments on Proposal 114**

Agreed. Valuation should be carried out as at the date of severance.

115. Compensation for injurious affection, properly so called, should be limited to damage caused to the market value of the retained land.

(Paragraph 15.44)

**Comments on Proposal 115**

Agreed. This keeps the process simple and costs for loss of business can be claimed under a different head of claim i.e. disturbance. This will prevent double counting.

116. The proposed new statute should confer a discretion on an acquiring authority to carry out accommodation works.

(Paragraph 15.49)

**Comments on Proposal 116**

Agreed. This could reduce the compensation payable by an acquiring authority. There may be issues in agreeing the extent of the accommodation works but it has been suggested as a discretionary right rather than an obligation.

117. Is the current rule, that set-off for betterment applies to land which is “contiguous with or adjacent to the relevant land”, satisfactory?

(Paragraph 15.59)

**Comments on Proposal 117**

No. Betterment should apply regardless of whether the land is contiguous or adjacent as land which is not contiguous or adjacent may also benefit from the public works.

118. The provisions which require any betterment to the retained land to be set off against any compensation paid to the landowner in respect of the acquired land should be repealed and not re-enacted.

(Paragraph 15.70)

**Comments on Proposal 118**

No. The acquiring authority should be able to set off compensation against betterment.

**Chapter 16 Consequential loss - disturbance**

119. The assessment of compensation for disturbance should be carried out separately from the assessment of the market value of the property.

(Paragraph 16.30)

**Comments on Proposal 119**

No. It should be connected to the market value although not form part of the compensation for the purchase of the land. Some of the costs incurred as a result of disturbance should be connected to the value of the property i.e. legal costs.

120. There should be an express statutory provision for disturbance compensation.

(Paragraph 16.34)

**Comments on Proposal 120**

Agreed. This would provide clarity.

121. Should the principle of causation in relation to disturbance compensation be set out in the proposed new statute?

(Paragraph 16.38)

**Comments on Proposal 121**

Agreed. This would provide clarity.

122. The proposed new statute should make it clear that compensation for disturbance is payable from the date of publication of notice of the making of the CPO.

(Paragraph 16.44)

**Comments on Proposal 122**

Agreed. This would provide clarity.

123. The proposed new statute should make it clear that compensation is payable in respect of costs incurred in relation to a compulsory acquisition which does not ultimately proceed.

(Paragraph 16.45)

**Comments on Proposal 123**

Agreed. A landowner may be disadvantaged should they, for example, seek legal advice and the CPO does not proceed.

124. If compensation for disturbance is to be payable from before the confirmation of the CPO, should it include losses caused as a result of lost development potential?

(Paragraph 16.47)

**Comments on Proposal 124**

Agreed, if it can be clearly shown that the loss of development potential was directly attributable to the proposed CPO.

125. Should the proposed new statute enable investment owners to claim a wider range of disturbance compensation?

(Paragraph 16.50)

**Comments on Proposal 125**

Agreed. However, these will need to be considered carefully in order to avoid investment owners manipulating the statute in order to claim greater compensation.

126. Do the current rules of compensation for disturbance work satisfactorily where there are issues of corporate structuring involved?

(Paragraph 16.57)

**Comments on Proposal 126**

On a practical level, the council agrees that the current rules work satisfactorily. As the Discussion Paper highlights, ownership and possession of property may be divided between

more than one company in a corporate group. The rule that disturbance payment is restricted to loss caused to an occupier in possession may mean that the company most adversely affected by a CPO is unable to recover disturbance compensation. As noted in the Discussion Paper, in some circumstances, courts may be willing to look at the reality behind the corporate structure. It would be useful to have express provision in order to make it clear that it is possible to look at the reality behind the corporate structure.

127. Should the proposed new statute remove the impecuniosity rule as it has been established at common law?

(Paragraph 16.69)

**Comments on Proposal 127**

In order for disturbance claims to be treated fairly and reasonably this rule should be removed.

128. Should claimants' personal circumstances be taken into account when considering the assessment of disturbance compensation?

(Paragraph 16.77)

**Comments on Proposal 128**

Agreed on the proviso that it is clearly set out and defined in statute and that it is compensation based on the effect of the compulsory purchase on a person in particular circumstances.

129. Claimants should be under a duty to mitigate loss in terms of compensation for disturbance from the date of publication of notice of the making of the CPO.

(Paragraph 16.78)

**Comments on Proposal 129**

Agreed. This is reasonable.

130. It should be made clear that relocation compensation may be available even where this exceeds the total value of the business.

(Paragraph 16.88)

**Comments on Proposal 130**



No. Extinguishment costs should be paid if these are less than the relocation costs.

131. Should the rules regarding disturbance compensation for the displacement of a business be set out in the proposed new statute and, if so, what, if any, modifications should be made to them?

(Paragraph 16.92)

**Comments on Proposal 131**

Agreed. The council does not propose modifications.

132. Should the valuation date for disturbance compensation be different from the valuation date in relation to the compulsorily acquired land, in particular where GVD procedure is used?

(Paragraph 16.99)

**Comments on Proposal 132**

Agreed. Business loss resulting from the relocation of the business made necessary by the CPO may not be fully determined until the business has moved and sufficient time has elapsed to allow the loss to be quantified.

133. Should it be made clear, in the proposed new statute, that a claim for disturbance compensation on the basis of relocation of a business will only be determined when sufficient time has elapsed following the relocation to enable the extent of the loss to be quantified?

(Paragraph 16.99)

**Comments on Proposal 133**

Agreed. This is reasonable.

134. Section 38 of the 1963 Act should be repealed and not re-enacted.

(Paragraph 16.101)

**Comments on Proposal 134**

Agreed, as it would now appear to be obsolete.

135. Should disturbance payments along the lines of those currently provided for by sections 34 and 35 of the 1973 Act be retained?

(Paragraph 16.104)

**Comments on Proposal 135**

Agreed. This appears to be reasonable.

136. Should the LTS have jurisdiction in relation to any question arising with regard to disturbance payments, whether mandatory or discretionary?

(Paragraph 16.104)

**Comments on Proposal 136**

Agreed. This would allow compensation to be dealt with in the one place.

**Chapter 17 Non-financial loss**

137. Should the minimum period of residence necessary in order to qualify for a mandatory home loss payment be increased and, if so, by how much?

(Paragraph 17.14)

**Comments on Proposal 137**

The council would suggest an increase to 3 years to bring it in line with the current period of validity of a confirmed CPO.

138. Should the current system, of calculating home loss payments as a prescribed percentage of market value, be retained?

(Paragraph 17.21)

**Comments on Proposal 138**

Agreed.

139. If so, should primary legislation provide for the periodic review of the relevant maxima and minima or for an automatic increase (or reduction) to reflect inflation?

(Paragraph 17.21)

**Comments on Proposal 139**

Agreed. It should reflect inflation.

140. As an alternative, should a system, either of a flat rate payment, or of a payment individually assessed in each case, be introduced?

(Paragraph 17.21)

**Comments on Proposal 140**

No.

141. Should the provisions relating to farm loss payments be amended so as to be more flexible and less onerous on the agricultural landowner?

(Paragraph 17.28)

**Comments on Proposal 141**

Agreed, in order to be more equitable for loss of farm land.

142. The proposed new statute should provide for two supplementary loss payments, one for home loss, and one for farm loss, which would, in each case, compensate for all aspects of non-financial loss arising from compulsory purchase.

(Paragraph 17.33)

**Comments on Proposal 142**

Agreed. This would provide transparency and consistency.

**PART 4: RESOLUTION OF DISPUTES; THE CRICHEL DOWN RULES;  
MISCELLANEOUS MATTERS**

**Chapter 18 Process for determining compensation**

143. Sections in the 1845 Act relating to the process of dispute resolution should be repealed and not re-enacted.

(Paragraph 18.4)

**Comments on Proposal 143**

Agreed. As a result of the Lands Tribunal for Scotland many of these provisions are no longer required. This should be dealt with in the new statute.

144. What evidence can consultees provide of shortcomings in the current LTS procedures for determining disputed compensation claims, and what changes should be made?

(Paragraph 18.17)

**Comments on Proposal 144**

The council has not been involved in LTS procedures in relation to determining disputed compensation claims. However, it would be useful if the procedure was as quick as possible with the use of case management.

145. Where land is compulsorily purchased which is subject to a tenancy of under one year, disputes about compensation relating to the tenancy should be referred to the LTS rather than the sheriff court.

(Paragraph 18.19)

**Comments on Proposal 145**

Agreed. This would provide consistency.

146. Should it be made clear, in the proposed new statute, that a six-year time limit to claim compensation runs from the date of vesting (or from the date when the claimant first knew, or could reasonably have been expected to have known, of the date of vesting)?

(Paragraph 18.22)

**Comments on Proposal 146**

Agreed. This would provide clarity.

147. Should it be made clear, in the proposed new statute, that the same time limit operates for any claim of disputed compensation, regardless of whether it follows a notice to treat or a GVD?

(Paragraph 18.22)

**Comments on Proposal 147**

Agreed. This would provide consistency.

148. What, if any, changes should be made to the time limit to claim compensation?

(Paragraph 18.23)

**Comments on Proposal 148**

The six year time limit appears to be reasonable.

149. Should the LTS be given discretion to extend the time limit in some circumstances?

(Paragraph 18.23)

**Comments on Proposal 149**

Agreed. This would allow some flexibility.

150. Should the current rules on expenses be amended to allow the LTS a wider discretion to award claimants all of their reasonable expenses in some situations, even if they are ultimately awarded a smaller sum than had been offered?

(Paragraph 18.26)

**Comments on Proposal 150**

Agreed. Otherwise the process could operate harshly against claimants.

151. Should provision be introduced to allow the LTS to make an order at an early stage, to limit the expenses of a claimant in appropriate cases?

(Paragraph 18.27)

**Comments on Proposal 151**

Agreed. This may help to resolve inequality of arms issues and any sense of injustice felt by claimants in having to take part in a dispute not of their choosing.

152. There should be a prescribed form to claim an advance payment.

(Paragraph 18.29)

**Comments on Proposal 152**

Agreed. This would provide clarity.

153. Are there circumstances in which an acquiring authority should be required to make an advance payment before taking possession?

(Paragraph 18.31)

**Comments on Proposal 153**

Agreed. An example is where businesses or home owners incur relocation expenses before the acquiring authority takes possession.

154. Should it be competent for the LTS to provide an enforceable valuation figure for an advance payment?

(Paragraph 18.33)

**Comments on Proposal 154**

Agreed. This would provide clarity.

155. At what rate should interest be paid on advance payments, and should the acquiring authority be liable for an increased rate if payment is delayed?

(Paragraph 18.34)

**Comments on Proposal 155**

The council proposes that the interest rate should be 4% above Bank of Scotland base rate. It is reasonable that the authority should be liable for an increased rate if payment is delayed.

156. It should be competent, where all the parties agree, for an advance payment to be made to the landowner where the land is subject to a security.

(Paragraph 18.36)

**Comments on Proposal 156**

Agreed. This appears to be reasonable.

157. Should the LTS have discretion to:

- (a) provide for interest from a date earlier than its award, and
- (b) increase the rate of interest where it finds that there has been unreasonable conduct by an acquiring authority?

(Paragraph 18.38)

**Comments on Proposal 157**

Agreed. This appears to be reasonable.

158. What are the advantages and disadvantages in resolving disputes in compulsory purchase cases by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

**Comments on Proposal 158**

The council has not been involved in disputes in compulsory purchase cases by either method. Accordingly, the council is unable to highlight any advantages/disadvantages other than those already set out in the Discussion Paper.

159. Can consultees provide evidence of costs incurred in relation to resolving disputes by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

**Comments on Proposal 159**

The council has not incurred such costs and is unable to provide evidence of costs.

**Chapter 19 Crichton Down Rules**

160. Should the Rules for giving former owners of compulsorily acquired land a right of pre-emption, where the land is no longer required for the purpose for which it was purchased, be placed on a statutory footing?

(Paragraph 19.5)

**Comments on Proposal 160**

Agreed. This would provide clarity.

161. Should the Rules apply to all land acquired by, or under threat of, compulsion?

(Paragraph 19.9)

**Comments on Proposal 161**

Agreed. This would provide consistency.

162. Should the obligation to offer back land continue to be limited to cases where the land has undergone no material change since the date of acquisition?

(Paragraph 19.11)

**Comments on Proposal 162**

Agreed. This appears to be reasonable.

163. Are the current provisions setting out the interests which qualify for an offer to buy back land satisfactory?

(Paragraph 19.12)

**Comments on Proposal 163**

Agreed that the current provisions are satisfactory.

164. Should the same time limit apply in relation to the obligation to offer back land, regardless of the type of land acquired, and how long should that time limit be?

(Paragraph 19.15)

**Comments on Proposal 164**

Agreed.

The obligation to offer back should last for 25 years after the date of acquisition.



165. Should a time limit be introduced for land purchased between 1 January 1935 and 30 October 1992?

(Paragraph 19.15)

**Comments on Proposal 165**

The council's proposal is that the obligation to offer back should last for 25 years after the date of acquisition in all cases.

166. Should the seven exceptions to the obligation to offer back, currently provided for in the Rules, be retained and are there other exceptions which should be included?

(Paragraph 19.16)

**Comments on Proposal 166**

The current exceptions should be retained. The council does not propose any other exceptions.

167. Should the special procedure in paragraph 23 of, and Annex 1 to, the Rules, relating to the obliteration of boundaries in agricultural land, be retained?

(Paragraph 19.17)

**Comments on Proposal 167**

Agreed. This appears reasonable.

168. Do time limits in the current Rules to carry out the process to offer back land operate satisfactorily?

(Paragraph 19.21)

**Comments on Proposal 168**

The proposal set out in the Discussion Paper that an overall time limit of up to eight months should be allowed for the process appears reasonable.

169. Should clawback provisions in terms of the development value of surplus land be time limited and, if so, to what extent?

(Paragraph 19.24)

**Comments on Proposal 169**

Agreed. 10 years appears appropriate.

170. The LTS should have a general jurisdiction to resolve disputes which arise in relation to the disposal of surplus land.

(Paragraph 19.26)

**Comments on Proposal 170**

Agreed. The LTS has experience of dealing with a wide range of compulsory purchase issues.

**Chapter 20 Miscellaneous issues**

171. Should section 89 of the 1845 Act be repealed and not re-enacted?

(Paragraph 20.4)

**Comments on Proposal 171**

Agreed. The provision is redundant. An action for recovery of heritable property using the summary cause procedure could be used. This could be clarified in the new statute.

172. The law on the taking of enforcement action should be amended so as to make it clear that a third party under a back-to-back agreement is entitled to enforce possession by virtue of the CPO.

(Paragraph 20.5)

**Comments on Proposal 172**

Agreed. This would provide clarity.

173. Does section 114 of the 1845 Act work satisfactorily?

(Paragraph 20.10)

**Comments on Proposal 173**

It should be brought into line with compensation for other interests.

174. Where a short tenancy is compulsorily acquired, should account be taken, for the purposes of assessing compensation, of the likelihood that it will be continued or renewed?

(Paragraph 20.18)

**Comments on Proposal 174**

If such a likelihood is contained in the tenancy agreement then it should be taken into account.

175. Provision along the lines of sections 99 to 106 of the 1845 Act should be included in the proposed new statute.

(Paragraph 20.23)

**Comments on Proposal 175**

Agreed. These provisions are clear and should be included in the proposed new statute.

176. Should the proposed new statute provide that any tax liability which the landowner incurs as a result of the compulsory acquisition may be recoverable under the head of disturbance?

(Paragraph 20.27)

**Comments on Proposal 176**

Agreed. It would be unfair if tax costs arising from the CPO could not be recovered.

177. Are there any other aspects of the current compulsory purchase system, not mentioned in this Paper, to which consultees would wish to draw our attention?

(Paragraph 20.29)

**Comments on Proposal 177**

No.

**General Comments**

One new comprehensive statute in plain English would reduce the time spent by professionals in dealing with compulsory purchase and would also assist members of the

public in understanding the process.

Thank you for taking the time to respond to this Discussion Paper. Your comments are appreciated and will be taken into consideration when preparing a report containing our final recommendations.