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Your Ref : Paper 159

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For Law Commission,

Discussion Paper 159 - Compulsory Purchase

1. I respond to your consultation on Compulsory Purchase [CP] as a lay member of the public whose family are currently subject to one, or two CP Orders [CPO] – I am not sure absolutely sure which. The behaviour I and other fellows that are affected have been subjected to seems to me, and my gut feeling, to transcend human rights abuse – *I consider the behaviour to be de-humanising*. The Order/s I am subject to are the St James Quarter, Edinburgh (Number Two) Compulsory Purchase Order 2014 (2014 CPO[2]), and it's withdrawn predecessor (2014 CPO [1]), I will example it/them.

2. I therefore have a particularly jaundiced view of :
the subject;
the acquiring authority;
the Scottish Government; and indeed
parts of your Discussion Paper.

3. I have not used your 41 page response form, as I will only comment on areas that I feel competent to comment upon usefully, which cover that part of the process I have been subjected to over the last 24 weeks. I will try to adhere to the order of your Paper's questions. *It would be wrong not to thank your 'Jane' for her kindness in supplying me with a paper copy of your Discussion Paper – thank you.* I should also note that my discovery on 16 February 2015 of your Discussion Paper has been timely, as in reading it I have widened my limited understanding of the CP process, which I still find, after 23 weeks, very confused. I suspect any logical legal mind will consider my response to your Paper, as very muddled too : for that I apologise.

4. **Question 1**, yes, the legislation is far too complex, which seems to me to be, in itself, a breach of a subjects' human rights. That it is known and admitted to be too complex makes the continued use of it unconscionable.

5. Justification. It seems to me that the fundamental issue of CP is that of the public interest over the individual interest of those affected. Therefore I am confused why your Discussion Paper at Paragraph 1.19 excludes justification for compulsory purchase for reason of focus on procedure. It seems to me that justification is step one of the procedure. Without satisfaction of the initial test of justification CP becomes a shopping trolley for those whom seek to abuse the process, and the 'Schedule of Lands to be Purchased' a shopping list in what appears to be akin to a "trolley-dash". A form of legalised plunder, under the excuse of compensation.

6. In terms of your Discussion Paper's focus on procedure, I am also confused why your Paper at Paragraph 2.2, intends to deal with those aspects currently dealt with in primary legislation, when detailed procedure is normally contained in subordinate legislation. Though it is noted that Paragraph 2.3 admits that subordinate legislation governs implementation. It seems to me that Paragraph 2.3 plays with words, surely subordinate legislation lays out detailed procedure that governs the implementation of those procedures by the promoter. Your Paper expressed consciousness that the Scottish Ministers make subordinate legislation. That would usually be on the advice of their officials, albeit there is a little used procedure by which elected members can seek, within a limited time window, to annul subordinate legislation, as I understand it.

7. At Paragraph 2.10 your Discussion Paper states your view that wayleaves and airspace lie well outside the scope of the project. I do not understand this, in terms of the CPO/s I am subject to that involves airspace acquisition.

Example 1. 2014 CPO[1] & [2] included the purchase of airspace surrounding the building boundary, and in places outside the site boundary. The Statement of Reasons[SoR] explains the need of the airspace for oversailing. However the crane plan, implied by the Order Map and the SoR, was as I could

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understand it, totally unworkable. The Schedule's entry for Order Land number 43 also appeared defective. Further in the CPO process authorised in August 2009, that was stopped during the recession : the 2009 authority's interest fell within the boundary. There was no reason given or discernable for the change between 2009 and 2014. What however was much more troubling was that our tenement property was left off the Order Map, and the airspace being sought for compulsorily purchase was set at a level that included airspace within 8 of the tenement's flats; the common stair; and roof space. The only deduction I could come up with is that : the airspace : a) was not required to deliver the scheme, and b) was therefore being sought for some other reason. The reasons that I have so far deduced being : i) to threaten us as a feign to put us off another issue; or ii) to permanently dominate the surrounding airspace to prevent completion or a neighbour building an adjacent building removing their light or view; or iii) so that if the tenement was destroyed as a result of the developer's plan to excavate some 24 metres vertically downwards some 4 or 5 metres from our 18th century foundations the Developer would have some right over the future of the destroyed tenement's plot.

The consequences of such an Order being confirmed unaltered by the Minister would I suspect have blighted our property for years whilst the "conveyancing implications" were sorted out; and permanently blighted in terms of both repairs and ownership issues. Allegedly as a result of objections, the Acquiring Authority has put Order Land number 43 into some sort of limbo. These issues lead to some comments:

8. At **Questions 3** and **5** your Paper asks about new land rights, and **Question 2** about definition of Land. These questions have vexed me : in my Objection dated 6 November 2014, I stated:

> **8.36** What also confuses me as I read [as a layperson] s. 277 of the Act in what it says, and I repeat –
>
> " "land" includes land covered with water and any building as defined by this section and, in relation to the acquisition of land under Part VIII, includes any interest in land and *any servitude or right* in or over land;" [my italics].
>
> It seems to me that "*any servitude or right*", is just that, i.e. *any servitude or right*. And "*any servitude or right*" reads to me : new; existing; temporary; etc *servitude or right*. That another act may specify new interests, easements, rights, etc, such as for utilities, does not seem to me advocate that it has to be the case in all Acts. However CEC's undated "Response to Scottish Government Technical Check Queries" submitted to DLG&P ON 8 September 2014, states at Paragraph 6, the following:
>
> > 6. NEW RIGHTS AND TEMPORARY RIGHTS
> >
> > The Scottish Government also highlighted that the CPO powers under the 1997 Act do not enable the Council to acquire new or temporary rights. The CPO does not include the acquisition of new or temporary rights.
>
> Excerpt from "Response to Scottish Government Technical Check Queries" submitted 8 September 2014
>
> **8.37** I find this curious. Why, if this is the argument CEC are advancing, is the information in this 'response' not in the Statement of Reasons? *It seems that the right to the airspace inside, around and above a tenement block is a new right, "over land".* And I suspect taking the airspace out of part of tenement flats may break new legal ground in the law of the tenement. As is mentioned elsewhere [Paragraph 8.38.f]. I should also mention that Order Land number 31 seems to include airspace above, around and within the buildings at Multrees Walk. In these terms is will be of interest to see if the Keeper will accept such an application for Registration for part of the Airspace within tenemented flats and within leased offices, as is suggested by CEC's argument at Paragraph 2.4 of their 'Response', which states:
>
> > 2.4 There is plenty evidence of leases and other rights of airspace being registered in the Land Register. The following link to the Keeper's RoT manual where the final section of para 8.1.4 makes it clear that the Keeper does accept applications for registration of airspace alone (see sub-para (a)): http://www.ros.gov.uk/public/about_us/foi/manuals/plans/docs/plans22.htm.
>
> Excerpt from "Response to Scottish Government Technical Check Queries" submitted 8 September 2014
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> Indeed if there is intention to give acquired Order Land back, such is the stated case for John Lewis, then those Order Lands appear to be either temporary or in part temporary, albeit these temporary rights appear to be reserved for the Developer's and CEC's favoured third parties, under an agreement which appears to be secret, at least that is, secret from non-favoured third parties - from what I can deduce.

In terms of what I wrote on 6 November, I note that the Discussion Paper has not referred to the definition at s. 277 the 1997 Act. In terms of CP of land, and I mean 'any land/land right', it seems to me that the issue is back to the fundamental initial test of justification [see Paragraph 5 above] : is it really, really needed in the public interest. It seems to me is if any land/land right is needed, then the CPO should be allowed to purchase it.

9. Your Paper gives two examples of new rights : a right to prevent a neighbour from stealing daylight, and not planting trees on a wayleave : these seem to me to be very different.

a. It seems that planning procedures dictate the issue of whether a development can go ahead in terms of the effect upon a neighbour's daylight. Should the public interest of an Acquiring Authority in seeking to dominate the area sought to be acquired, by preventing a neighbour from taking daylight, be greater than the public's rights under normal planning procedures? What is the legal test to be – will the absence of a new

acquired right over neighbours' land stop the scheme from being delivered? Further, where for instance one has a partnership between an Acquiring Authority and a developer – how much is a developer allowed to push an Authority to get what it wants? A situation where the Developer can effectively blackmail an authority – give us 'what we want' or we will go elsewhere with our £850m. That is a level of financial pressure which will be significant to a local authority, and maybe to the Scottish Government. If 'what we want' is just one more 'wee bit of land' – not really needed for the scheme – is its CP justified under 'developer blackmail'? *And if that 'wee bit of land' just happens to be a disabled parking space – what then?*

b. In terms of tree planning along a wayleave, where trees can presumably disrupt such a wayleave by falling on cables and cutting off communities or make its usage more difficult in terms of maintenance. It would seem that such a new right could be seen as justified by any reasonable subject travelling on an omnibus.

As stated at Paragraph 8 above, it seems to me that – what the land/land right is : *is not the material issue* – the material issue is the justification for that land's need in the public interest.

10. 'Promoter Blackmail'. The Discussion Paper repeatedly mentions, as does Government Guidance, the issue of the making of an Order to persuade an owner to come to the table [i.e. paragraph 2.63 "shadow of compulsion"]. I also note in relation to airspace what is written at Paragraph 2.10 : "the conveyancing implications of the compulsory purchase of airspace". In these terms the Scottish Government whilst giving technical advice in a letter dated 6 August 2014 to the Acquiring Authority stated:

> plot 28A or Plot 28B shown on the maps. This plot (and others) seeks to acquire airspace. It is not 100% certain whether airspace can be separately owned (see Stair vol 1 from page 174 on the law of separate tenements written by Kenneth Reid). People do take different views on this and there is the potential that such views may be voiced in objection to any Order promoted. Ultimately is a matter for the Council to be satisfied that they are content with the approach they are taking but we wish to be assured that the issue has been considered in advance of the Order being made.

Scottish Government emailed letter dated 6 August 2014 [stair's reference confusing - taken from revision?]

The Acquiring Authority's undated response [of 8 September 2014] to the Scottish Government in regard to the Airspace of the Order being exampled included:

2.	**AIRSPACE**
2.1	The Scottish Government made reference to Kenneth Reid's text on the law of separate tenements and sought assurance that consideration has been given to whether airspace can be separately owned.
2.2	The section of Kenneth Reid's The Law of Separate Tenements which is relevant to the issue of whether airspace can be owned separately form the solum of the ground beneath the airspace is the section on the Physical Limits of the Estate Owned – in particular para 198. Professor Reid does not make a suggestion that airspace cannot be owned separately from the solum of the ground beneath it. What Professor Reid does is explain the a coelo usque ad centrum rule (landownership extends from the centre of the earth to the heavens), but he is not saying that airspace can only be owned along with the ground beneath it.
2.3	Professor Reid does say specifically that "Ownership a coelo usque ad centrum is subject to the qualification that minerals, tenement flats and certain other types of property may have been broken off into separate ownership". It is universally accepted, for example, that ownership of a tenement flat involves ownership of the airspace which it occupies quite separately from the ground beneath and that, if the tenement burns down, the flat owner still owns the airspace regardless of whether or not they have any rights in the ground.
2.4	There is plenty evidence of leases and other rights of airspace being registered in the Land Register. The following link to the Keeper's RoT manual where the final section of para 8.1.4 makes it clear that the Keeper does accept applications for registration of airspace alone (see sub-para (a)): http://www.ros.gov.uk/public/about_us/foi/manuals/plans/docs/plans22.htm.

The above documents, released under a Freedom of Information request, indicate some uncertainty in the issue of airspace, as does the phrase at paragraph 2.10 of your Discussion Paper quoted above. Given this apparent uncertainty, in this case about airspace, I am concerned with the issue of a CP promoter making a CPO seeking the purchase land in a manner that appears to be both uncertain and fundamentally unjust – ***for the purposes of a threat***. Such behaviour would seem to be to be contrary to the public interest, and a display of bad faith.

11. In these terms I am concerned with the issue of prior engagement about a CPO, and issue your Paper is completely silent upon. In the exampled Order : that a CPO was to be made was in clear public knowledge in

terms of the Acquiring Authority's publication of their agendas, reports and minutes. However it had not been picked up/published by the press [that I am aware of], or by anyone in our tenement [*except in 2007/8 when we were assured we would not be affected by such an Order*]. Furthermore Scottish Government Circular 6/2011 guidance at paragraphs 4 and 5, clearly advises early engagement. Indeed advice was given in the previous Scottish Development Department Circular 42/1976 [18 June] at Paragraph 3, though the advice appears worryingly inconsistent – akin to 'shock engagement':

> 3. In some cases, for example large urban sites in multiple ownership, it might be appropriate to seek compulsory powers before attempting to purchase by agreement. Those affected, in particular residential occupiers and small business users, should however be given the fullest and earliest possible explanation of the authority's proposals.

Though an agent has apologised for no prior engagement, that does not forgive it. In these terms I find some dissonance in the timings of the procedure, and in your Discussion Paper.

12. At paragraph 6.5 of your Paper you state: "We consider four questions ... the first is whether the [six week] time limit is too short." But curiously your Paper does not ask that specific question [that I can see]. There are several questions here, because it seems to me that there are a number of time limits within the procedure – the first being the, at the least, 21 days from the notice of the making of the Order to submit an Objection. *If "residential occupiers and small business users" have had no prior engagement, 21 days to submit an objection appears : punitive, brutal, even abusive*. A standing start to produce a coherent document in defence of fundamental human rights on probably a new legal subject by a layperson, maybe with limited means and ability, who may be away on holiday/business, must surely be avoided. The procedural time limits for the Public Local Inquiry, as per Annex E of Scottish Development Department Circular 17/1998, give some 4 weeks to submit Statement of Case [and two weeks for any rebuttal statements, etc]. Yet six weeks is given under Paragraph 15 of the First Schedule of the 1947 Act, when it can be deduced that the applicant has previously : made an objection; had opportunity to state his case any Public Local, albeit biased, Inquiry [or other hearing, oral or otherwise]; maybe had opportunity to attend any Public Local Inquiry [or other oral hearing]; had time space between the Inquiry and the Minister's decision, a copy of which will be served on him/her – then it seems to me that six weeks by that stage – when all the facts *should* be known and plenty time to mull them over, does not seem to be unjust. I should add that examination of the DPEA web site shows that the Reporters' reports to the Minister appears to be revealed at the same time as the Ministers' decisions. I do not know whether there is opportunity for objectors to comment on the Reporters' reports, prior to a decision? In the case of Public Inquiries generally, affected people very often get opportunities to comment on a report. I only mention this as this period might be better used, in what can be a very tight process.

13. What I am absolutely content about is that at least 21 days [we were given 26 whole days] for ordinary subjects, *with no prior engagement*, appears fundamentally unjust. There are two ways to go on this, either make prior engagement mandatory – i.e. a **must** do; or give longer; or preferably both.

14. Modification of an Order. A point not mentioned [that I have seen] in your Paper, as it may be subordinate, is the issue of modification to an Order, *prior to confirmation*, other than by the Minister at confirmation. I mentioned at Paragraph 7 above that the Local Authority had put Order Land number 43 into some sort of limbo. This is not all they have done:

> **Example 2.** 2014 CPO[1] was made on 8 September 2014, and in a letter dated 8 September 2014 submitted the Order to the Scottish Government [in contravention to Schedule 1, Part 1, Paragraph 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as the newspaper notices has not yet appeared two weeks running, and not all owners had received notification]. On 11 September 2014 I visited HQ CEC to inspect the Order papers, which I did very thoroughly. On 12 September 2014 I returned to inspect them again, and found that page 93 had been substituted with a new version bearing CEO CEC's signature. I was alarmed and contacted the Scottish Government, and subsequently submitted a Freedom of Information request. As a result I have deduced, on the documentary evidence, that the Scottish Government substituted page 93 of their 2014 CPO [1] documents too.

Whereas CEC have admitted altering the Order document, the Scottish Government have denied it. Given that I considered tampering with official documents was likely to be an offence, I have reported the incident to the Lord Advocate; the Eastern Procurator Fiscal, and Police Scotland. The issue of altering an order after it was made appears to be in contravention to the Fourth Schedule of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, at Paragraph 5 concerning "wilfully alters ... a document" being an offence.

15. In relation to this issue I have noted that the CPO Report for the Winchester City Council Silver Hill CPO 2011, at paragraph 1.2 stated under Procedural Matters:

> 1.3 A minor modification is proposed to the CPO to include the word 'schedule' on the plot schedule as this was omitted in drafting the document.

It seems to me that Winchester's open approach to correcting its document, via the Inspector's Report to the Minister presumably for his/her action, was more appropriate than Edinburgh's, and by deduction the Scottish Government's, sneaky approach. It seems to me that ***if*** changes are to be made to official documents, then there should be an open and appropriate method of executing such a change. It is my view in the public interest that such a procedure, if not already extant, should be put in place – or clarification that no changes should be made to a made Order, except by the Minister.

16. It is also likely, though it should not be if an Order has been thoroughly prepared, that sometimes the process finds that an order land listed in the Schedule is not needed. Especially if the Order has been issued as a threat, and subsequent negotiations mean some Order Lands are not needed. It seems, despite CEC's and Scottish Government's behaviour, that the Schedule of Land to be Purchased should not be altered to remove an order land. Whereas I suspect a dictum of – an official document must never be tampered with – is a powerful one – it is not unusual for formal documents, once made, to be altered in a clear, open and official process [i.e. signed, witnessed, and dated at both sides of any strikeout/addition]. In terms of the current limbo of Order Land number 43 for 2014CPO[2] : though I have been told in a letter purporting to be from the Acquiring Authority that "Accordingly plot 43, and your interest in it, is no longer required for the delivery of the Scheme", I consider I have reason not to trust the Authority, nor the Scottish Government, whilst that Order Land remains part of the Order. Whereas the current legislation is clear that no land is to be added to an Order by a Minister, albeit a Minister may modify it, I do wonder why, if an Acquiring Authority can presently withdraw an Order prior to confirmation, whether they could not also be allowed, under future legislation, to withdraw an Order Land from within an unconfirmed order, in an open process with those affected notified?

17. At **Question 12**, the issue of Statutory Objectors is raised, which troubles me. The Discussion Paper at Paragraph 5.23, in terms of the notices to those affected, states : "These persons who are directly affected by the proposed CPO are known as "statutory objectors".[29]" Where [29] is Rule 3(1) of the 1998 Rules. I am confused by what is written in the Paper. I have not found Rule 3(1), and the interpretation at Rule 3, for "Statutory Objector" is:

> "statutory objector" means an owner, lessee, or occupier of the land or any part thereof, who, being entitled to be served with notice of the making of the order, has duly objected to the making thereof in accordance with the provisions of the First Schedule to the Act and whose objection has not been withdrawn, or whose objection has not been disregarded under–
>
> (a) paragraph 4(4) of that Schedule; or
>
> (b) section 200(1) of the Town and Country Planning (Scotland) Act 1997(6);

My understanding of the Rules is that a statutory objector is an owner [lessee or occupier] whom is entitled to have notice served on them *whom has an extant Objection*. I am astonished that the Discussion Paper has misrepresented the concept, and very much hope that this will not become enshrined in the law of Scotland. In terms of **Question 12**, and the amendment of Paragraph 3(b) of the first Schedule of the 1947 Act [by 109(2) of Title Conditions (Scotland) Act 2003)]. I find burdens difficult to understand, but the amendment appears to require notice given only to those whom have a personal real burden, or those whose land is benefited. It seems to me that there are occasions where the owners of neighbouring land that gives benefit [to the land that is benefited] may also have a real interest in the CP, such as in the case of land that is of unknown ownership but in is in effect community land in nature. Further it is my view that those with interests, such as those with burdens, should be listed in an appropriate column in the Order's Schedule of Land/s to be Purchased

18. I find the way **Question 13** is put, is worrying, most especially the reference to one objector holding up progress. If there is only one plot of land being acquired, then there may be only one statutory objector [clearly land in multiple ownership may give rise to more than one objection]. Is a single objector to be prejudiced against, or is he/she to be the lucky 100%? The way the commission has put the question, that a "statutory objector can insist upon a hearing or Inquiry", is curious and alien to my understanding of the legislation. It is my understanding that it is not the statutory objector that insists on an Inquiry, that seems to me to be the role of the Minister enshrined in UK Law at paragraph 4(2) of the First Schedule of the 1947 Act, for some 65 years, prior to the signing of ECHR. Effectively, there seems to me no difference between one objector and two, three, or indeed any other number. The removal of an Inquiry stage, if that is necessary, would be like making authorities self-confirming – it would effectively mean that subjects would need to go straight to court. If the

issue of CP is in breach of fundamental human rights, on the justification it is the in the public interest, and then a subject rights are to be further eroded on the ground of that subject being a minority party in the overall CPO Land : I find this appalling. Furthermore, historically, some CPs have been done in stages, would acquiring authorities under such a percentage scheme be plotting their plots strategically to disenfranchise the small land owner, and indeed adjust the size of the plots for percentage purposes? *It seems to me that this issue hinges on the concept of reasonableness, on both sides*. In these terms if there is firm justification for a CPO; proper early engagement; openness; and good faith efforts to negotiate : then it could be argued that anyone left at an Inquiry is acting unreasonably. This is a two sided issue, on the basis of my experience.

19. In terms of **Questions 14** and **15**, I am confused. An email dated 11 December 2014 from Scottish Government stated: "... City of Edinburgh Council are keen for us to progress the case to DPEA in respect of the outstanding objections as soon as we can , to enable them to start the process for arranging a PLI." It would seem, reading your Paper, that the Scottish Government's comment indicates a prejudging of the Reporter's decision on how to hear the Objector/s cases. In terms of **Question 14**, and time limits, I am again confused. In the recent Buchanan Street Quarter, Glasgow case, it appears from the DPEA website, the CPO was made on 6 August 2014 and was referred to DPEA in just a few days after the end of the Objection period, on 4 September, in just four weeks. Whereas 2014 CPO[1] & [2] first made on 8 September 2014 [second on 9 October] was, I understand, referred yesterday 24 weeks after it was made. In the light of the tampering with the first Order, I have a very uneasy feeling as to why referring the matter to DPEA has taken so long. In saying this, I do not advocate time limits, *I advocate transparency*. In relation to CP, these is repeated comment about the need for quick progress – yet in the case of 2014 CPO [1] & [2], the delays from initial authorisation in August 2009 to date are, in my view, entirely in the hands of the Acquiring Authority whom appears to been acting strategically [i.e. very deliberately]. My gut answer to **Question 15** about DPEA determining objections is a very loud NO. However, I have [at Paragraph 20 below] suggested that someone independent should confirm a CPO. Confirming a CPO is different to determining Objections, is it? That said I do not know the statistics of how many times a Minister has ignored the advice of a Reporter. Is the Reporter a different [or a sufficiently different] entity to the DPEA for the more rigorous needs of the process?

20. At **Questions 17** you ask about self-confirmation of Orders. If there is any belief that promoters of schemes can act in bad faith, then they should not be put in a position of confirming their own CPO. Clearly I am of a view that Scottish Government and local authorities, quite alarmingly, seem to be far too cosy together, which inclines me to a view that there should be someone truly impartial involved in confirming CPOs.

21. At **Question 18** you mention current requirements for notices in reference to your Paragraph 5.42 reference to the first Schedule of the1947 Act, as amended. I find this area totally confusing. Paragraph 3A, concerning lamp posts, etc, only seems to relate to personal real burdens, benefited property and owner's associations, and the list of what shall done appears to be an 'or' list, ending up with at paragraph 3A(d) "by such means as the acquiring authority think fit", which appears to give the promoter absolute discretion. Paragraphs 3(a) and (b), just refer to the two newspaper adverts and written notice to Owners, lessees, and occupiers. I have not found in your Paper's reference to Section 19(4) of the 1947 Act in terms of unknown owners or untraced owners.

22. At **Questions 19** to **21**, there is a question of revocation of a confirmed order, and abandonment of scheme and the expenses of those affected. Authority of a Minister to resurrect an abandoned scheme, harks back to previous legislation, where a rest period of five years was given, after two CPO's, as I understand it [some repealed legislation is not available on internet]. The 'A' listed tenement at St James Square has been subject to adjacent development schemes almost non-stop since 1998, with the current CPO scheme unlikely to be complete until 2019, that will be 21 years of stress and intermittent distress. Further the property has been subject to, at the least 4 previous CPOs on adjacent property. The above mentioned guidance 42/76, advises at paragraphs 25 and 26, the following:

Abandonment of compulsory purchase powers

25. By virtue of sections 19 and 20 of, and Schedule 7 to the 1975 Act, authorities will be regarded, in certain circumstances, as having abandoned their compulsory purchase powers under section 15 of the 1975 Act and section 102 of the Town and Country Planning (Scotland) Act 1972, for a period of 5 years.

26. Before serving a notice of intention not to acquire authorities should therefore review their own land requirements (including their slum clearance and redevelopment programmes) for at least 5 years ahead. The Secretary of State will not, without special justification, be prepared to confirm a compulsory purchase order made under any other powers within the 5 year period for land in respect of which the authority are precluded by sections 19 and 20 of the 1975 Act from making an order under section 15 of that Act or section 102 of the Act of 1972.

It seems to me that the gist of the above advice is sound, and indeed given the very close relationship between the Scottish Government and [certainly] its local authorities, I believe any abandonment should have an absolute period of rest. I also wonder, and recollect seeing somewhere, a maximum of two CPOs without a period of respite. Having been subject to two CPO's, I empathise with this too. I am disturbed by the issue over expenses – I was able to afford to employ solicitors for an objection to 2014 CPO[1], but not for 2014 CPO[2], I live in fear of a 2015 CPO[3]. The cost of representing myself without reimbursement at any Public Local Inquiry, should the Minister convene one, worries me. I also note that in the recent CPO [CPO-CLK-002], that a hearing was held [rather than inquiry], and the CPO was not confirmed. The affected party sought to recover costs from the promoter, but the Minister had no power to make an award of expenses. This seems unjust. Indeed I question whether any party to a CPO should be able to recover expenses, unless there has been manifest unreasonableness on their part.

23. **Question 25**, relates to evidence of a project likely to proceed. It seems to me that this question hinges on the initial justification test – is the land really needed in the public interest. The likely hood of it preceding is surely part of the public interest balance justification. It seems that the issue of a project proceeding or not could be : funding; the will/strategy of the developer; and also may be political [or in terms of utilities other intervening events]. I suspect that any dilution of being able to sustain an objection on the fundamental test should be avoided. I am very concerned that I have been hampered in putting my Objections by a lack of transparency – most importantly the failure to disclose the partnership minute of agreement between the Developer and Authority. In these terms in the Winchester CPO case, a developer from the same stable [different fund] submitted plans for shops, affordable housing, bus station, car park etc under an agreement – and once the CPO was confirmed, the bus station and affordable houses were apparently dumped [or commuted]. In these terms the 2014 CPO [2], the developer's applications have provided what I consider to be *compelling evidence of the deliberate falsification of data* submitted to the Developer's partner, the Acquiring Authority. I do not understand how the Developer operates as there appears to be two strata of trustees, an unregulated fund, as well as parties involved that are regulated. If a developer's agents are deliberately falsifying information to an Acquiring Authority, is it reasonable to deduce that this apparent bad faith will not be isolated [acting in good faith will, one could deduce, be a condition in the secret partnership agreement, so how does such behaviour affect that agreement]? Will those Developers have falsified information provided to the Acquiring Authority in relation to their ability to deliver the Scheme? Indeed is the £61.4m public contribution calculated on false data supplied by the Developer? This leads on to **Question 29**, discussed below.

24. In terms of transparency the question is whether such an agreement between a developer and promoter should be disclosed to affected parties, I have asked for it, as exampled below:

> Example 3. In terms of 2014 CPO [1] & [2], the Statement of Reasons at Paragraph 2.9 states: "The disposal of the land to the Developer is subject to the Developer meeting certain terms and conditions which are set out in an agreement which has been entered in to between the parties to regulate such disposal and subsequent use of the land and rights." It seemed to me that such a document would be material to the Order and the understanding of the Order, so I requested to inspect the agreement in a letter dated 11 September 2014, two days after notice of the Order was served on me. The Authority chose not to acknowledge my request until I received a letter dated 30 September 2014 on 8 October 2014, in an un-date-franked envelope. Disclosure was denied for commercial sensitivity reasons. A subsequent request for review resulted in disclosure denied in the public interest, in a letter dated 19 December 2014 that arrived some time later.

Whereas I understand that Reporters have authority to call for documents in their investigation, I understand their powers are limited, in terms of some privileged information, as per Paragraph 3(b) of the Fourth Schedule of the 1947 Act. I wonder whether such un-disclosed documents could give rise to an appeal.

25. At Chapter 3 your Discussion Paper deals with human rights. At Chapter 6 you raise the issue of bad faith, but chose not to define it. At Paragraph 1 above, I hope I have set down my feelings clearly. I am confused – and therefore I return to my base premise – the initial test. On the one hand I understand that ownership and enjoyment of property is a fundamental Convention freedom, under Article 1 of the first Protocol; as is a right to a fair consideration of civil matters before an impartial tribunal under Article 6; as is a right to a private and family life under Article 8; and freedom of expression and receive information under Article 10 of the European Convention for Human Rights and the Protection of Fundamental Freedoms [ECHR].

26. On the other hand it is unarguable that on occasion the public interest will conflict with the individual. For example recently fundamental freedoms in the UK have been eroded in the public interest in terms of anti-terrorism legislation. The issue of public interest over individual interest is enshrined in the Convention. It therefore seems to me that if the Acquiring Authority is acting in the public interest, then in that public interest the Authority's actions should be transparent, and honest. This is not the way it seems, see Example 4:

> Example 4. Scottish Government Circular 6/2011 at Paragraphs 3 and 4 advises early engaging with those affected. In relation to 2014 CPO [1] & [2] albeit there has been a retrospective apology from an agent of the acquiring authority's partnership about the total failure to engage us, that does not forgive the omission – nor that almost every other affected party was actively engaged by the members of the promoter's partnership or their agents. What is of concern is that elected members were advised about the need to engage early, and they were told in reports the likes of "the Developer has established a specialist land assembly team, made up of Culverwell Property Consultants, Carter Jonas LLP and CBRE which is progressing negotiations with all parties." I have submitted a complaint dated 26 November 2014 to the Acquiring Authority about the authors of the various reports which appear to mislead the elected members, it was acknowledged on 28 November 2014, and I have not heard since.

It seems to me that if elected members of an acquiring authority, whom authorise the making of a CPO, are being mislead by their officials in relation to seeking the elected members' authority to make a CPO, then there is a question of whether the CPO has been made in bad faith.

27. In these terms your Discussion Paper's tread ending at Paragraphs 3.78 and 3.80, states the settled law in relation to ministerial decisions and the ability to seek judicial review. This is not unlike the issue of seeking judicial reviews against the outcomes UK Service complaints procedures, service complain procedures are [or were] allowed to be partial, as are internal disciplinary hearings, excepting where employment may be terminated. I understand the concept, I understand the logic – but I consider it fundamentally unjust. It seems to me, in my naivety, that CP is a process where parties should be co-operating to achieve a goal in the common good, acting in good faith. It seems to me to be contrary to that aim that the process should not be impartial. It is human nature to both : a) dig one's feet in when unfairly treated, and b) abuse the process if you are allowed to. In these terms the current process, as it has developed, seems contrary to both the natural justice and the objective of the law – which is to assemble a site – for the common good – as quickly as is needed, and as economically as possible. In these terms if the Acquiring Authority know the confirming process is accepted in law as partial : that is an invitation to ensure it's really, really partial. This will cause distress to those affected by the CPO, especially those that are unrepresented.

28. CP is an enforced purchase, in the public interest. Yet the process appears punitive. Your Paper admits the process to be difficult to understand, except to CP practitioners, including at Paragraph 1.43, and indeed paragraph 2.16 of your Paper on your 8th Programme, there are admissions of the chaotic nature of Compulsory Purchase, and the distress and waste of resources it causes. I suspect a lay person has little chance. The progress of a CPO appears interminable. The procedures, as published by the Scottish Government in its guidance, are difficult to comprehend, and omit information. In the exampled case the Acquiring Authority and the Developer have a secret agreement. The Developer has also a relationship with the Scottish Government. There is a funding agreement for some £61.4m between the three parties. 2014 CPO[1] was tampered with by CEC, and, as deduced on the evidence, it was tampered with by the Minister's officials too. The two Scottish Government Departments that deal with the administration and Public Local Inquiry appear not independent of the Minister. I understand that the Reporter whom investigates the Order and reports to the Minister is appointed by the Minister. Statutory Objectors have to pay their own costs, not just for 2014 CPO[1] but for 2014 CPO[2] too. As I understand the Inquiry process under the so called expedited procedure, Statements of Case require to be submitted to everyone involved in the first four weeks, and then documents and precognitions in the subsequent two or so weeks, that is going to be hugely expensive to the individual. These statutory objectors have to pay for, or write themselves. Furthermore the Minister has discretion under paragraph 4 of the fourth Schedule of the Acquisition of Land (Authorised Procedure) (Scotland) Act 1947, as to who he makes pay for the Inquiry, albeit that Scottish Government Guidance suggests that it will be based upon reasonableness. Though the Reporter has powers to seek witnesses attend and gather material evidence, it is not known whether this will be called for in an unbiased manner, and indeed whether it will be published with case papers on line by DPEA, and made available to the parties involved, such as Statutory Objectors. The DPEA publishes some case papers on line, in being what appears to be an open process, with their "Case File publication protocol".

29. Bad Faith. I have mentioned bad faith already. In terms of 'bad faith' that your Discussion Paper does not seek to define, but seemingly seeks to remove as a challenge at **Question 29** . What I cannot get my head around, in terms of *Smith* and Lord Radcliffe's determination is :

a) that CP can be disconnected from "good faith"; and

b) Lord Radcliffe's assertion that "But, My Lords, no one can suppose that an order bears upon its face the evidence of bad faith".

In answer to Lord Radcliffe – "Can one not?" If there is a presumption in law that – all things are presumed to be done in due form [as per the maxim – *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*] : just how much evidence is needed to disprove it? As stated in Example 1: where Order maps referred to in an Order omit a building; omit the site boundary; omits what ordinance level the maps are outside the Centre; has an implied crane programme that is effectively unworkable; and the airspace sought to be acquired [as written within the Schedule that is also referred to in the Order] is materially within and around an 'A' listed tenement – then I would reasonably suppose that bad faith can, in fact, be written large upon the face of an Order. In these terms it might be a lesson not to make assumptions about human nature and its capacity to abuse. And in these terms it may be a lesson to ensure that Scottish subjects retain the ability to make a stand against the Government acting in bad faith. In terms of this particular example, but not on the face of the Order, the technical advice dated 13 August 2014 from the Scottish Government to the promoter's legal official, specifically mentioned "Outwith St James Centre – Datum Levels uncertain." It therefore seems that the Acquiring Authority's legal officers were given notice of part of the issue – and apparently did nothing to correct the matter, an apparent lack of diligence, that seems compatible with bad faith. *I am very concerned that objections on the basis of bad faith, on the behalf of those preparing the order, may be made not competent*. I also wonder firstly if the description of "those preparing the Order" is rather an ill-defined description, that may exclude those that made the Order; witnessed the making of the Order; advised on the preparation of the Order; etc. Secondly removing bad faith, as a ground, is virtually an invitation to a promoter to act in bad faith. This would be a very retrograde step. There is already a presumption in law that all things are presumed to be done in due form : that is enough of a hurdle.

30. In terms of **Question 30**, certainly there is no harm in ensuring the legislation sets out a subjects' rights. In terms of **Question 32**, the Paper does not define what it means by a "general challenge", as stated previously in terms of time limits, by the time of the six week limit comes into force, the case will be well known, and any challenge should be well understood and able to be submitted timeously. I do not understand why there should be a difference between one type of challenge and another, as long as the process is the same. Unless of course, in answer to **Question 33**, the promoter or the Government have concealed information from the process, that later comes to light, upon which a challenge can reasonably be founded. In terms of **Question 34**, it seems to me that on occasion some applicants whom are prejudiced, have the means and/or will to take a matter to court, and the outcome can mean others are positively affected. If however, in a challenge to a CPO, only the applicant/s wrongs are redressed, this will not be in the common interest of others affected. It seems to me that if a CPO/part CPO is successfully challenged, then that should be the end of the CPO/part CPO.

31. Finally your Paper at Chapter 2 explains special procedures in relation some lands, such as Ancient Monuments. Whereas I understand that consideration of the CP of an 'A' Listed building [or part of its curtilage/environment] is part public interest, and part planning. My concerns in this letter relates to a fully used 'A' listed building, and in these terms I am wondering whether, it terms of new CP legislation, whether listed buildings [that are not in need of repair] can be given some additional protection in terms of falling victim to Developer pressed schemes. These buildings are part of our heritage, and in particular for Edinburgh, as a World Heritage Site, there is public concern as to what is happening to some of these listed buildings.

Thank you again for Jane's help in giving me a paper copy of your Discussion Paper.