

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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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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.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. The current statutory framework is cumbersome, out of date and long overdue for modernisation.

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

Yes

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

Yes. The ability to acquire servitudes, wayleaves or impose new real burdens would be desirable, as would the ability to specify rights of access for potentially severed land remaining in the ownership of affected parties to head off any protracted negotiations on accommodation works or arguments about severance (see comments at 177 below)

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

It is suggested that only new servitudes and, possibly, real burdens would be applicable in this context. In order for the creation of new servitudes and/or real burdens to be effective, it is suggested that as much detail of the nature, rights and obligation of these would need to be intimated at the outset.

The other rights, eg leases, securities do not fit well with the compulsory nature of the acquisition, although that is not to say that these could not be negotiated separately between the parties.

It would be helpful to expressly indicate that any new rights have the same effect as existing terms of general property law

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

Yes.

To give some indication of the duration of the possession would seem appropriate, if not by reference to a specific date then on the occurrence of certain events.

It may also be appropriate to specify the proposed condition which the temporary land should be in at the point at which it is handed back to the owner.

It may also be possible that the owner would prefer that the acquiring authority acquire the land outright as its temporary loss may be tantamount to severance or blight.

Reference to the terms of the Opencast Coal Mining Acts may be a useful guide.

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

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

Yes

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

None that we can think of.

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

(Paragraph 5.18)

Comments on Proposal 10

No. In our view the list is comprehensive

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

We are not aware of the provisions of S83 being routinely used; rather the matter of entry for survey is seen as yet another area of potential negotiation or conflict between the parties and can significantly delay negotiations and/or the CPO. The reform should specifically state to include such rights to undertake survey being an automatic entitlement of promoting authority but put it in more modern context, . This could be incorporated into an explicit statement to that effect in any new style CPO or statutory notice and would go some way to paving the way for a request to enter the land for survey.

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

The list seems sensible, although we would highlight the position of Security holders, where we think their position could bear some clarification. It seems to be the case that they have a notifiable interest for the purposes of a Notice to Treat but not necessarily at the inception of the CPO itself, although it is understood that many CPO promoters will intimate the Order on them anyway as a failsafe.

The need for 2 initial notices is also questioned, as is the necessity for these notices to be advertised in a local newspaper. The cost of such notices can be considerable. We understand that provision has developed over recent years for the intimation of public notices via an online portal. Whilst we appreciate that the issue of intimation of statutory notice by these methods may be beyond the scope of this discussion paper, we feel the use of online notification is worthy of investigation, especially in smaller project CPOs.

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

The current procedure allow statutory objectors to lodge any objection, which are often more to do with valuation or have little merit, but which will trigger a Hearing or PLI. They can then withdraw the objections shortly before the Inquiry or Hearing but in the interim the CPO can have been delayed for up to a year ,which can have significant impact upon the costs of the project to the Promoter and who will also have incurred significant costs for preparing for the PLI or Hearing .

Once a PLI or Hearing has been set, then a preliminary hearing should be held at earliest date to determine if objections are valuation issues, in which case they should be deferred

until after the CPO has been confirmed and if other objections have real merit.

It is conceded that often there is blurred distinction between those objections which are purely within the remit of the LTS and those which go to the heart of the justification for the CPO itself, the latter often being potentially being used to mask issues of valuation or compensation.

Perhaps more discretion could be made available to the confirming authority to take a view on these blurred objections which might focus the minds of objectors and acquiring authorities.

There may also be merit in assessing whether a weighting could be given to a prospective objectors actual level of occupation or percentage ownership of the overall CPO land in assessing the extent to which those objections are given full consideration.

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

Yes. We would suggest a time limit of a maximum of 2 months, unless one of a list of identified reasons for not complying is founded on.

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

Yes

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

On balance, the fixing of time limits within subordinate legislation is accepted although we are not aware of any time limits around the confirmation process (as opposed to the advertising and initiation processes) being anything other than indicative in the CPO guidance.

A clear statement of all the time limits attaching to the various stages in the process would be helpful, possibly as part of an overall procedure manual.

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

In general the role of the Confirming authority for contentious CPOs should continue, for the reasons outlined in the discussion paper.

For those CPOs which attract no objections (eg where a property has been abandoned or where the owner of the land is unaware that the land forms part of their property) then there is obvious merit in investigating whether these orders could be subject to some streamlined procedure such as “self confirmation”. The extent to which the erstwhile confirming authority actually has to be involved in this process should be explored and perhaps such “self confirmed” orders could be subject to automatic confirmation if no party subsequently objects within a 3 week period from when the confirmed Order is published .

Further, the introduction of some form of “Expropriation Board” as an alternative point of confirmation, with limited but defined powers could assist the confirmation process.

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

See comments in response to question 12 above

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

It would seem reasonable to suggest some time limit, after revocation, within which an acquiring authority was prohibited from initiating the same CPO, albeit the availability of consent from Sc Mins may be an appropriate safeguard

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

This seems fair and reasonable

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

(Paragraph 5.50)

Comments on Proposal 22

In principle the registration of CPOs seems appropriate but this area needs some careful consideration.

Often CPOs are promoted over multiple property interests and once confirmed the parties proceed by way of a voluntary conveyance, in the interests of timing, project budget planning and in order to save the on cost of advertising separate GVD notices. Requiring the registration of confirmed CPOs would remove this flexibility.

That said if it is the case that the CPO is registered then revocation should be possible and capable of registration.

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

See comments above. The Land Register would seem capable of accommodating any new

registered CPOs

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

(Paragraph 5.59)

Comments on Proposal 24

On balance, yes but there should be provision that you go back to Ministers to ask for it to be extended.

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

No. For some of the reasons intimated in the discussion document, many projects can be several years in the gestation and contingent on funding sources and national policy developments (eg the National Planning Framework projects) Often land assembly is a sensible step in the forward planning of a project where many different agencies may be involved and, whilst able to part fund the compensation for land assembly from their own resources, are dependent on overall capital project funding from other sources.

The flip side is that if these projects were to wait until funding was secured or committed before starting CPO this would introduce a potential delay at a crucial stage of the project.

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

Yes

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

If possible yes.

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

Yes

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

Yes

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

(Paragraph 6.39)

Comments on Proposal 31

Yes

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

Yes but they should expand in detail as to why it is not ECHR compliant rather than just trigger an inquiry on basis that it's an alleged breach and guidance on this would be welcome. This is becoming a standard objection rather a detailed or reasoned one.

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

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

Yes

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

Yes

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

Yes

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

Yes

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

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

(Paragraph 7.19)

Comments on Proposal 39

A time limit would seem appropriate although this would have to be weighed against the category of the interest overlooked and how reasonable it would have been for the acquiring authority to have known of that interest

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

(Paragraph 7.25)

Comments on Proposal 40

Yes

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

(Paragraph 7.29)

Comments on Proposal 41

Yes, as far as we are aware

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

No actions taken or alterations made after the service of a notice to treat should be taken into consideration

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

Yes

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

Subject to comments below at para 45, it should be competent to withdraw a notice to treat within 6 weeks of delivery of a notice of claim by the holder of a relevant interest or of the determination of compensation by the LTS, whichever is the later. The fact that entry may have been taken is an issue which the LTS may take into consideration in its assessment of any compensation claim

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

Yes but only where the land can be restored to the owner in substantially the same condition.

It may be that circumstances have changed in a way which the acquiring authority could not have expected to be aware of (such as the obtaining of a CAAD in circumstances outlined at para 7.42 of the discussion paper)

Any objection to that “late” withdrawal of the Notice to Treat may be referable to the LTS

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

On balance yes. It is difficult to envisage any situation where the urgency is so great that it cannot be delayed by an extra 14 days

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

A 21 day time limit for service of a counter notice is suggested

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

(Paragraph 7.73)

Comments on Proposal 48

This is an area for discussion but somewhere in the region of six months would seem reasonable. Reference is made to para 7.72 of the discussion paper and the practice in Australia.

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

Although in practice this is likely to make very little practical difference for diligent acquiring authorities we would not favour introducing this as a requirement, given that some of these potential qualifying interests may be ad hoc and difficult to ascertain. The current limitation of this duty is adequately explained in Rowan Robinson and Farquharson-Black's book section 3-27

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

We are not aware of any difficulty in applying the current provisions

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

Comments on Proposal 51

Yes

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

(Paragraph 7.89)

Comments on Proposal 52

No, they should be shortened to 4 weeks.

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

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

Yes

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

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

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

Time limits for implementation should be shortened

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

Yes

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

It would be helpful to have an overarching ability for the both acquiring authority and affected party to agree a vesting date notwithstanding the provisions of the statutory notice

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

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

Yes

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

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

Yes

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. The provisions on heritable securities in the context of CPO are confusing and lend themselves to clarification.

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

We are not aware of any compelling case for reform, although a restatement of the provisions of the relevant statutory provisions in the proposed new act would be helpful.

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

Yes. We cannot think of any additions or deletions which should be made.

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 comment

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

It is important to remember that negative equity can arise out of the operation of the market and not as a result of the CPO scheme itself. Although unfortunate for the affected owner, it does not seem appropriate that the public purse should plug the gap for either the owner or the security holder, although home loss, disturbance and rehousing options should be explored thoroughly.

The provisions relating to security holders' compensation rights as they relate to their existing relationship with the owner(borrower) should be clarified for the benefit of all parties concerned.

It should be clarified that any existing heritable security over a CPO property should be extinguished and that any arrangements to address the negative equity portion of the outstanding borrowing should be between the security holder and the owner.

Clarification is also needed on how to treat the interrelationship between the competing compensation claims of an owner and security holder in respect of an affected property and the extent to which the acquiring authority can discharge its obligations to both.

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

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

(Paragraph 11.55)

Comments on Proposal 78

No comment

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

No comment

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

No comment

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

No comment

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 comment

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

No comment

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

No comment

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 comment

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

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

No comment

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 comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

(Paragraph 13.76)

Comments on Proposal 97

No comment

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

No comment

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

(Paragraph 14.12)

Comments on Proposal 99

No comment

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

No comment

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

No comment

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

No comment

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

(Paragraph 14.30)

Comments on Proposal 103

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

No comment

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

(Paragraph 14.64)

Comments on Proposal 111

No comment

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

No comment

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

No comment

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

(Paragraph 15.37)

Comments on Proposal 114

No comment

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

No comment

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

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 comment

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 comment

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

Agreed

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

(Paragraph 16.34)

Comments on Proposal 120

Yes but the circumstances in which it would be applicable would need to be set out

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

Yes

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

No comment

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

This seems equitable

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

No comment

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

(Paragraph 16.50)

Comments on Proposal 125

No comment

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

No comment

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

No comment

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

(Paragraph 16.77)

Comments on Proposal 128

No comment

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

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 comment

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

No comment

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

No comment

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

No comment

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

(Paragraph 16.101)

Comments on Proposal 134

Agreed

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

No comment

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

Yes

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

No comment

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

No comment

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

No comment

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 comment

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

No comment

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

No comment

**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

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

No comment

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

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

Yes

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

Yes

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

(Paragraph 18.23)

Comments on Proposal 148

Consideration should be given to shortening the time limits

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

(Paragraph 18.23)

Comments on Proposal 149

Yes

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

No comment

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

No comment

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

(Paragraph 18.29)

Comments on Proposal 152

Agreed

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

No comment

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

Yes

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

No comment

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

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

No comment

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

No comment

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

No comment

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

Yes

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

(Paragraph 19.9)

Comments on Proposal 161

Yes

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

No comment

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

No comment

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

No comment

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

Yes

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

No comment

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

No comment

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

No comment

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

No comment

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

Yes

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

Yes

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

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

(Paragraph 20.10)

Comments on Proposal 173

No comment

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

No comment

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

Yes, although consideration should be given to clarifying the requirements in cases where the principal and interest due under the security exceed the value of the affected property.

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

No comment

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

The idea of acquiring rights short of ownership and the creation of burdens on property not being acquired to benefit property that is being acquired is covered in Chapter 2. There is no suggestion, however, of conferring on an acquiring authority a right, while compulsorily acquiring property to impose a burden or servitude on the acquired property to benefit adjoining or potentially severed property. Such a right would be desirable and in the spirit of mitigating loss to the party whose land is being acquired and to that of third parties. For example, where acquiring land would otherwise sever other land, a right of access over the acquired land to the severed land could be conferred. At the moment that can only be done by agreement and such a right would avoid protracted negotiations on accommodation works or arguments about severance and the risk of never reaching agreement at all. It would also potentially reduce the compensation due to affected parties.

General Comments

«InsertTextHere»

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.