RESPONSE TO THE SCOTTISH LAW COMMISSION DISCUSSION PAPER ON COMPULSORY PURCHASE ("CP")

Note: This response represents the views of Odell Milne personally and does not represent the views of Brodies LLP

Chapter 1

Question 1 – Agreed. The confusing old legislation and lack of clarity is not conducive to fairness to the public nor to those acquiring authorities which want to use CP. However, the legislation must continue to reflect the need for a balance between the interests of the acquiring authorities seeking to deliver a public scheme and the interference with landowners' ECHR rights. Therefore whilst simplicity and streamlining procedure may be attractive, this should not be delivered at the cost of removing landowners' rights to be consulted and to object.

Certainty on compensation entitlement and clear dates on which land value is to be assessed and payment made is in the interests of both landowner and acquiring authority, as is simplicity and clarity as to procedure and time limits; and timing certainty is also of value to both. Therefore new legislation, alongside balancing the conflicting interests of the acquiring authority and private property rights, should concentrate on these areas.

Where a public sector acquiring authority utilises CP powers to assist with delivery of public works by a private sector company, the balance must be more rigorous. Such companies are likely to be focused on their own commercial needs in the interest of shareholders. Acquiring authorities which utilise CP powers prior to handing over delivery of the scheme to such a third party should be responsible for additional checks and balances to ensure protection for private land interests.

Consideration also needs to be given to the extent to which compulsory purchase power can be contained in private Acts of the Scottish Parliament, Transport & Works (Scotland) Orders (TAWS) and in UK statutes such as in relation to electricity, gas provision and telecommunications. Whilst legislation on these matters may not be within the scope of the SLC's remit and recommendations, there should be an awareness of how any reforms or improvements to "compulsory purchase law" (based on the 1947 Act) could be delivered in such a way as to benefit or be used for CP authorised by such other authorising statutes.

Question 2 – I have already provided information to the SLC committee with regards to the definition of land. I consider that the definition should encompass all rights in land (including the interests of life-renters, heritable creditors, common property, common interest in water, mineral rights, sporting rights, fishing rights etc). I also consider that it should be possible to obtain new rights rather than taking full ownership if that would minimise the interference with private rights or the need to take land. There should be a clear entitlement to take land temporarily where that would be sufficient to deliver the public benefit and the provisions for compensation in the event of such temporary land take should provide for payment of compensation for the duration of the temporary occupation.

Widening the legislation to include all these rights, and (as is set out later) provision of a comprehensive list of parties on whom notification is to be served, brings a heavy burden on promoters to identify and serve notice on all interests.

I do not agree that the Section 106 procedure should be used widely in relation to all these interests since in my view such interests can be significant. Therefore, careful consideration needs to be given to the entitlement to notification and to the parties who are entitled to be treated as "statutory objectors". However, this must be balanced with the reasonableness of requiring the acquiring authority to identify and notify all such parties.

Question 3 – Yes because taking lesser rights or interests in land can minimise the land take or impact on a landowner. There can be an issue with taking rights for, say, drainage, in that often the route of flow will not be known until after construction. There may therefore be a need to draft the entitlement to take such rights to allow the precise location of the right to be determined later, provided it is not outwith agreed limits of deviation. Whilst this does mean that there is less certainty, it may result in a lesser interference with landowners' rights. It would also give the promoter the flexibility needed.

Question 4 – I have made a number of comments in previous correspondence and meetings with the Committee with regards to the relationship between compulsory acquisition of new rights or interests and general property law. I have mentioned particularly those rights where the legislation is not clear.

Consideration needs to be given to the practicalities of notification of interested parties. Whilst on the face of the relevant register there may be evidence of an agricultural tenant's or a community's pre-emptive right to buy, these are not currently parties entitled to notification as holders of such interests. Whilst an agricultural tenant may be entitled to notification as lessee or occupier, there does not appear to be any obligation in the CP legislation in its current form to notify communities who have registered pre-emptive rights to buy nor agricultural tenants who have done so in respect of that right. On one view, there can be no problem with "over-notification", but over-notification may result in more objections and further work for the acquiring authority to determine whether or not such objectors are "statutory".

Another category of interest which is not visible from the register is the interests of beneficiaries under a Trust. Where a Trust holds title the beneficiaries under the Trust are not entitled to notification. However to include parties with registered pre-emptive rights to buy such as agricultural tenants and community bodies, where (the landowner may never choose to sell the land and so the pre-emptive right may never be exercised) is that any different from the position of a beneficiary whose title to the land may vest at, say, age 18, 21 or 40? It would not be reasonable for promoters to have to investigate the provisions of trust deeds (and indeed many are confidential and not publicly available or registered). It may be that trustees' obligation to act in the best interests of the trust beneficiaries, avoids any problems of that nature and perhaps all that is required is that legislation makes it clear that the acquiring authority is entitled to rely on that and therefore notification to the Trustees is sufficient to comply with the obligation to notify.

Although partnerships can now hold title to land in the name of the partnership, title is often held in the names of some or all of the partners. There is no clarity on the face of the Register as to any changes in the partnership and as to who the current partners are. Whilst investigation and enquiries can take place, there is a risk for an acquiring authority that notice is not served on the party who is the "owner" of the property. Furthermore, ownership may be dealt with in the partnership accounts where interests in the property are allocated to the partners' capital accounts and the allocation may not coincide with the position on the title at all. Information which enables the "owner" in such situations to be determined is not easily obtained by an acquiring authority. An acquiring authority can serve notice on all parties whom it understands are partners and on the partnership itself. Should provision be made that notification to a partnership by name of itself is sufficient? However that approach is not without risk since the partner who receives the notification may not tell the other partners and they would be deprived of an opportunity of objecting.

Common property can result in problems for promoters of schemes. Whilst the "*PMP Plus Limited v Keeper of the Registers of Scotland Lands Tribunal (Scotland) 20 November 2008* case" may now have been decided, the position of acquiring authorities is still difficult. The land may remain vested in the original developer since the disposition did not transfer title, but that land is subject to the rights and interests of all the common property owners. Should the valuation of that land take into account those interests even if at the time of the transfer, there was no certainty as to ownership? In some cases the developer has now been taken over by another company or been dissolved. The interest may have fallen to the Crown and should acquisition from the Crown be possible in those limited circumstances? Whilst the QLTR may have indicated that in general they are open to sale of land at the DV's valuation, if notification has been served on a company thought to own the land at the time of acquisition, it may have been included in the CPO and it is not until later that it is discovered that the land interest lies with the QLTR. Separate negotiations then need to take place for title to transfer and that can delay delivery of title which can interfere with a tight programme for construction. Should there be an obligation to serve notice on all the holders of a common right to use (i.e. the beneficiaries of burdens in that common land) or only on those owners if they have a right of common property?

Where Registers of Scotland in conjunction with Ordnance Survey redraw maps, issues can arise in relation to the authority contained in the authorising CPO, TAWS or private act. If an area is "re-mapped" part way through a CP exercise could legislation be put in place to enable the acquiring authority to acquire the land on the "new OS" even if that does not coincide with the original OS on which the CPO plans were based? An example of this issue in practice occurred in Stowe on the Borders Railway where the OS was redrawn for the area. Parliamentary plans (equivalent of CP maps) did not coincide with the version of OS scheme being used at the time of acquisition. Therefore the authority to acquire the land did not "match up".

It is possible that other issues may arise as a result of the ongoing collaboration between Registers of Scotland in conjunction with the OS team following the coming into force of the Land Registration etc (Scotland) Act 2012. It is understood that that process may involve title boundaries being drawn to match "fence boundaries", whether or not the actual title reflects that position. This could result in problems for promoters determining compensation where the title which is provided to them, does not reflect the same boundaries as the Title Sheet or reports based on the OS being used by Registers of Scotland at the time of acquisition. Can provision be made in the legislation to clarify these uncertainties and difficulties?
An issue arises with regard to common interest in water, which is enjoyed by any owner of the *alveus* from source to sea. Whilst there is no specific legal provision, it might be considered that the interest is akin to a servitude which would mean that advertising and lamppost notice would be sufficient. However, the owner of the *alveus* of the river with a common interest in the water could have a genuine interest in the flow and could be materially detrimentally affected by a change in the flow in the case, for example of an owner of the *alveus* downstream from the compulsory acquisition who either has a hydro scheme or salmon fishings.

Question 5 – Yes, as noted above, this would be useful for acquiring authorities although from the perspective of landowners this entitlement must be on condition that the temporary occupation is for a definite duration. Recent private Acts have allowed for temporary occupation until one year after "completion of the works". Whilst this is an attractive approach for promoters, it does leave landowners in a difficult position since they are not sure how long the term of the occupation will continue. Furthermore, it is difficult for the landowner to know what would constitute "completion of work". Provision must be made for compensation. Many landowners feel that it is unreasonable that compensation for loss only is payable, rather than rent. This is consistent with the rest of the CP compensation regime but it might be considered that there is some justification for such a view, since any other party to whom land was made available would normally be obliged to pay. Furthermore, for landowners, proving loss of rent or other loss can be time consuming and expensive and the time taken for promoters to negotiate and deal with them can also be significant. Therefore providing for a fixed "statutory" loss of occupation/rent payment might not be unreasonable.

Any provisions relating to temporary occupation would need to make clear what the acquiring authority was entitled to do on the land and in particular whether or not the acquiring authority is entitled to demolish buildings, build structures temporary or permanent; and what is to happen to the land at the end of the period of temporary occupation by way of reinstatement obligations etc. A lease would make provision for these types of issues.

Chapter 3

Question 6 – Agreed. However, whilst at first glance this would seem like a "no brainer", such a statement might cast doubt on the availability of compensation in situations where compulsory acquisition is being promoted other than under a CPO e.g., where compulsory acquisition is being promoted under a private Act, TAWS or under UK wide statutes, or where the nature of the acquisition is "quasi compulsory purchase". Provided any such statement does not take away any existing rights to compensation, it should be included.

Question 7 - I agree that the current statutory provisions applicable to CP in Scotland are compatible with the Convention although there is inconsistency as between CP procedures under different authorising authorities and as to the application of compensation. If those differences were identified analysed and considered, I am not sure that all statutory provisions would be considered compatible. I am not a human rights specialist, but iIt is my understanding that to be compliant, any interference with ECHR rights must not discriminate. I would also have a concern that for CPOs promoted by the Scottish Ministers, where the Scottish Ministers also act as confirming authority, there may be a suggestion that the Ministers are "judge and jury" in their own cause. Perhaps consideration could be given to the creation of an independent confirming authority so that it is clear that justice is not only done but seen to be done.

Chapter 5

Question 8 - Agreed –where possible a standard and consistent procedure should be used. One of the issues in relation to CP and quasi compulsory purchase is the apparent "unfairness" for landowners faced with different procedures. In many cases the inconsistencies arise in relation to utilities compulsory acquisition carried out by statutory undertakers which is outwith the scope of the SLC consultation. However, the more that can be done to avoid such inconsistencies and apparent unfairness, the better.

Question 9 - I see no reason why the proposed new statute should not be used for compulsory acquisition under any of the enactments. The only proviso I would add is that it would be unfair to change the position

for current schemes already authorised since, if compulsory acquisition had already taken place under a private Act of Parliament, and any additional acquisition is authorised after the coming into force of any new CP legislation, it would not be equitable for parties affected by such acquisition to be treated differently to those from whom land was acquired prior to the coming into the force of the new CP procedures. This may not be so much of an issue for new acquisition, but may be relevant for outstanding compensation claims under recent private Acts to which the current framework must apply. I do not anticipate that any legislation would be retrospective so I do not think this would be a problem.

Question 10 - I am not aware of any missing legislation.

Question 11 – So far as I am aware they work in practice although a simpler process not unlike the Section 140 process under the Roads (Scotland) Act 1984 might be worth considering. It should be clear that any investigations which result in loss or damage should be compensated. In some cases landowners are left with damage to land and find it difficult to claim for that loss or damage. There should be provision that compensation for damage is paid, or reinstatement carried out by the acquiring authority to the satisfaction of the landowner, whether or not land is acquired at a later date. I consider that such provisions should be subject to a time limit for payment or carrying out reinstatement.

Question 12 - See below with regard to landowners. In my view, the key element of "unfairness" with regard to the parties considered to be "statutory objectors" is the position of landowners from whom no land is acquired.

In some cases such parties may be more seriously affected than landowners from whom land is acquired, particularly where the frontager is a residential property. At the risk of increasing the number of statutory objectors, might consideration be given to the possibility of including, in the list of statutory objectors, house owners for residential properties which are within a certain distance from the land to be acquired?

Question 13 – In my view, in the first instance, residential property owners of the type mentioned in response to question 12 above who are non-statutory objectors should be entitled to insist upon a hearing or inquiry and should also be entitled to progress a legal challenge on a point of law or flaw in process.
It must be acknowledged, however, that for most objectors, the cost of such a challenge would prevent most people from proceeding. There is a genuine issue with the imbalance between the promoter and an ordinary member of the public. Of course, this is a much wider issue in relation to litigation generally but perhaps where a member of the public is facing so great an interference with his ECHR rights, consideration could be given to the availability of public funding for objections. Such objections could be approved by a funding authority, perhaps similar to the way legal aid is awarded. This must be balanced against the needs of the promoter whose strict budget cannot be expected to meet the cost of objections. Perhaps the justification for not funding the costs of objections is that a scheme is for public benefit. However, the issue becomes less clear cut if the scheme is being delivered by a private developer for profit. I wonder whether, given the serious interference with ECHR rights which compulsory acquisition reflects, there should not be some provision for legal advice to be met by the promoter up to a certain limit with provision that, if an independent tribunal determines, additional advice should be provided at public inquiry.

Question 14 – Yes, this would be helpful. As set out below, this need not prevent ongoing consultation and negotiation. I would suggest an appropriate time limit might be six months from the receipt of the final objection.

Question 15 – No.The nature of the compulsory acquisition and the seriousness of its interference with private interests mean that any objector must have a fundamental right to be heard in writing or orally. This is one of the checks which should not be removed in any streamlining of procedure.

Question 16 – Agreed. However I have some concern that this risks consistency and fairness as between landowners facing different kinds of process. On the basis that the Scottish Ministers would weigh such considerations carefully before making a determination, the process of setting out the timescales in subordinate legislation should remain.

Question 17 - A third party review is essential and constitutes one of the important checks and balances which protects landowners' interests and ECHR rights. The Scottish Ministers may not be the best body to carry out the reviews. Indeed the recent M74 extension case where the reporter recommended that the scheme not be confirmed, but the Scottish Ministers rejected the recommendation, is an example of a situation where this may not, at least on the face of it, show the kind of fairness that is essential in any CP

situation. Perhaps an independent confirming authority should review all CP schemes rather than the Scottish Ministers.

Question 18 – Some of my answers to other questions provide further information with regard to the type of notification for different parties and the complexities and difficulties which arise. I have a concern that the balance between those parties entitled to personal notification and those who are only entitled to "lamppost notification" may not be fair and, as set out elsewhere, an example is the case of the owner from whom no land is acquired in comparison to those frontagers who have a small area of land taken and who are treated entirely differently under the law. I also have a concern with the different treatment of owners of lands as compared with those with different interests in land (such as rights of access, interests in the *alveus* which is essential for river flow for a hydro scheme etc) where the value in "real terms" and the importance of being able to object and be heard, may be significant. However, this must be balanced against the burden on the acquiring authority to identify interests.

Another issue which can arise is in relation to recorded delivery where recipients of notices choose not to accept them or, having been left a card, do not go to the delivery office to collect them. Perhaps a fall back procedure could be introduced so that, provided a recorded delivery notice and, say, an ordinary postal notice are served (and of course due diligence done in order to identify the parties to whom such notice should be served and where), notice could be deemed to have been given where the party either refuses to accept notice or apparently does not go to the delivery office to collect it. I do not consider that email or electronic communication should be sufficient notification.

Question 19 - An acquiring authority should be able to revoke a confirmed CPO if it becomes apparent, for reasons of practicability or affordability, they can no longer proceed with the development. In some situations, early revocation is preferable to leaving the CPO "on the books" for landowners, since it gives them certainty. However, revocation does not deal with the impact of blight. I am aware that blight is outwith the remit of this consultation but the impact of revocation does need to be dealt with whether this is by way of an introduction of a "quasi blight provision" or in some other way.

Question 20 - There should be provision whereby, if a CPO is revoked, the acquiring authority should not be entitled to promote a new CPO in relation to the same land or same scheme within a certain period. I would suggest an appropriate period would be 10 years. Any less than that will have an impact on value. It might also be appropriate for an acquiring authority revoking a CPO to pay compensation to any landowners who have incurred expenses or incurred losses in relation to the original CPO.

Question 21 – Agreed - See 20

Question 22 – Agreed

Question 23 – I do not think it would be a good idea to have a separate register for CPOs since the risk is that parties will not know that a search in that register should be made. However, I do understand the concern here as there have been cases where the existence of CPOs and GVDs affecting property is not noticed by solicitors acting for purchasers**.** This is more common where the acquisition is carried out under some other authority such as a Private Act. For a Private Act, there is no evidence on the Registers at all. If CPOs are be registered, it is suggested that any authorising statute or other orders such as a TAWS should also be registered so that it is clear to any party dealing with the land that there is a CP in contemplation.

Question 24 – I consider that three years is at the limit of what is reasonable.

As set out elsewhere in this response, there is a need for certainty for landowners and three years' uncertainty results in difficulty in managing businesses. The landowner does not know whether to sell; enter into contracts; obtain replacement land, grant leases etc. Perhaps consideration could be given to introducing a procedure for landowners affected whereby the acquiring authority can agree to an advanced purchase.

Advanced purchase schemes have been used to good effect with some of the private railway schemes, such as the Airdrie to Bathgate railway and Borders Railway. Amongst other things, these advance purchase schemes can enable residential parties affected to find new homes to replace those which are to be demolished. Given the possible increase in compensation bill for a promoter at an early stage, particularly where there is no certainty that a scheme is to go ahead, there may be arguments against this. However, this should not be a common occurrence since, if a scheme has been found to be necessary in the public interest and has been properly budgeted, funds to pay compensation should be available by the

date on which confirmation of the CPO is granted by the Scottish Ministers or, at the very least, the source of that funding should have been identified and there should be some certainty for the acquiring authority as to where and when that money will be available. However, I recognise that for any acquiring authority, budgets are tight and payments allocated in particular budget years cannot easily be moved into other years.

A further issue arises during the six week "challenge period", and during the further period during which a right of appeal to the Inner House or Supreme Court could be pursued. Such a process can take many years, as the AWPR case shows. In such circumstances even a three year validity period can be tight. It could be provided that the three year validity period can be extended so that it does not start to run until the end of any legal appeal process. However, the disadvantage of that for a landowner is again the uncertainty during the intervening period and overall the current balance is perhaps the right one.

Question 25 - I consider there should be a clear precondition to this effect. The promoting authority should be obliged to show that the project is necessary and in the public interest, and the interference with private rights which the acquisition involves is proportionate. In order to be satisfied of that, the acquiring authority must be certain that the project can be delivered. It seems to me that the compulsory taking of rights and land for a scheme that is only aspirational, cannot be justified as proportionate interference. In my view, this should not prove a problem for acquiring authorities since, in order to commence work on such a project, they must be satisfied that the project is capable of delivery.

Question 26 - No, there should still be an inquiry since the replacement may not be suitable for various reasons and affected parties should have the chance to consider the proposed alternative and, if appropriate, object to it.

Question 27 - Yes, public inquiries should be combined if possible.

Question 28 - No additional comments.

Chapter 6

Question 29 - I disagree with this proposal and do not see why bad faith on the part of those preparing an Order should not be a competent ground for objections. For compulsory acquisition constituting so great an interference with private property and ECHR rights, a right to object in a case of bad faith is essential and I do not consider that damages alone are sufficient.

Question 30 – Agreed. However, I do not consider damages alone to be sufficient, as noted above.

Question 31 – My concern is that whilst I consider the opportunity for challenge absolutely essential (indeed I consider that a challenge on the grounds of bad faith should also be competent), the effect on other parties can be just as severe as on the party challenging. Indeed in some cases it can be more so (the example of the AWPR CPO is a case in point). However, I do not think that this situation can easily be avoided and it is one of the situations where the right balance may have been drawn by the existing legislation.

Question 32 - Agreed – the six week period seems reasonable. There are attractions for both promoter and landowner in certainty.

Question 33 - I would suggest that a late challenge could be permitted where the party challenging has not been notified and could not reasonably have become aware of the CPO until after the expiry of the six week period. However, whilst provision for a late challenge should be made, I consider that if land has been acquired, any court order should not seek to "wind back the clock" but should provide that compensation only should be paid. Otherwise a late challenge could prejudice other landowners whose land has been taken who have been paid compensation and have taken other steps (eg to buy other land). The unsatisfactory situation which has arisen following the decision of the Supreme Court in the case of *Salvesen v Riddell*, comes to mind, so a "cut off date" after which the compulsory acquisition cannot be reversed but compensation only be payable is appropriate.

Question 34 - Yes, the court should have discretion in such circumstances.

Question 35 – It is with some reluctance (due to the uncertainty that this means for landowners) that I see no alternative but that the three year period of validity should start from the date of the court's decision.

Chapter 7

Implementation of a CPO

Question 36 – Agreed – though some of these no longer apply.

Question 37 - A complete list would be helpful in clarifying who is entitled. In particular it would help to make sure schemes are consistent. It is however essential that any such list includes provision for all possible interests (and therefore decisions will need to be made with regard to those with interests such as liferents, common interests in water, interest of sporting syndicates where title may be vest in a company and individual interests allocated under agreements which are not registered; trust, common property, fishing and other sporting interests, mineral interests etc).

Question 38 - Agreed.

Question 39 - I consider that there must be a time limit and it should be linked to the date on which the claimant became aware of the compulsory acquisition, or might reasonably have become aware of that. This is essential for promoters of schemes who must "close off their budgets". Such a time limit for raising proceedings could be qualified by a proviso that claims outwith it could be considered, say, with consent of the tribunal in exceptional circumstances.

Question 40 - Whilst at first glance the provision of such information may appear to be an obvious way of making the process of claiming compensation simpler for claimants and providing the information necessary for claimants about their rights, there is a danger that it will only be able to provide very general information with regard to compensation. There is no "one size fits all" and there is a danger that, if a compensation guide is provided, the promoter who does not include details which would entitle some claimants to claim all they are entitled, might be faced with a claim that the parties affected were disadvantaged by the information provided by the promoter. It is not clear what indemnity or guarantee would "stand behind" the information provided.

That concern must be weighed against the need for parties faced with complex legislation and the loss of private property rights and where, in almost all cases, the acquiring authority has greater resources to draw upon than the claimant (although there are exceptions to this). In these circumstances natural justice seems to require there to be information of some kind be provided on compensation matters.

Reimbursement of reasonable professional advice (legal and valuers) forms part of the disturbance element of a compensation claim, so simple guidance covering the basics could be provided referring to the entitlement to take legal and valuers advice.. There is a risk that claimants will seek advice from solicitors and agents who are not well versed in compulsory purchase compensation but their protection must lie in the Law Society Professional Indemnity Insurance and Guarantee Fund for providing advice where they are not appropriately qualified. Whether the Law Society might consider compulsory purchase law and compensation as an "accredited specialism" is something that could be looked into. If that were to be feasible, the simple CP compensation guidance issued by promoters could contain a reference to the availability of specialists as listed on the Law Society website. Even if the availability of specialists is brought to the attention of claimants, claimants will always be concerned that solicitors or agents may result in expenses being incurred and may not want to pay for those fees. This is particularly an issue if the ultimate compensation claim in money terms is low, as it may be difficult to recover and is genuinely an issue for recovery of valuers' fees since often acquiring authorities restrict these to Rydes Scale plus a small percentage uplift. This can leave claimants with large bills for professional fees which cannot not be recovered as part of the claim.

Perhaps promoters could be asked to offer to pay for initial advice. Solicitors and agents would know that any fees charged over and above the "fixed fee" would need to be justified.

Question 41 - This provision does not work well in practice but there is a need for a provision of this type. The key issue in my experience is where there is a significant delay between the notices of the making of

the CPO and issue of the actual notice to treat or notice of making of the GVD. An example is the AWPR where many landowners threatened with compulsory purchase were left in a very difficult position. They were at risk of being found to have intentionally increased their claim by activities that would in normal circumstances have been perfectly sensible business activities. The provision should work so that such actions are not found to have been undertaken with a view to obtaining increased compensation. However, it is not always clear and a landowner faces a difficult decision about continuing normal business operations following his becoming aware of an upcoming compulsory purchase. For example, if a landowner is considering erecting a new farm building or wind turbine - there could be an opportunity to obtain a commercial advantage which might be lost if the landowner waits. The landowner has to weigh the risk of losing that commercial advantage against the risk of expenditure on a project which at a later date could be found to have been reasonably undertaken with a view to increasing compensation.

Question 42 - I do not think the difference is necessarily justifiable in fairness terms. Clearly in legal terms the position after service of the notice to treat could be considered to be different since the notice to treat fixes the interests. Any provision needs to take account of the possibility of a long delay.

Question 43 - In my view, the three year time limit on validity of the notice to treat is too long as it leaves landowners in a position of uncertainty where they cannot proceed with their business, or do not know whether to look for a new home. They have no certainty as to when they will receive payment, which means that they cannot contract for purchase of another property. They have no certainty as to their possible tax liabilities and/or for farmers how to manage their obligations under the CAP scheme.

Whilst clearly some flexibility must be allowed to promoters, I cannot see why such a long delay is necessary. I appreciate that sometimes the delay is unexpected (as was the case with the AWPR) and not due to any action or inaction by the promoter. However, in normal circumstances it should not be difficult to comply with a provision that requires a promoter to proceed within a shorter timetable than 3 years and, if there is uncertainty as to whether the land is required, it should not have been included in the CPO.

Furthermore, if there is uncertainty as to delivery of the scheme (eg because there is uncertainty as to availability of budget or just dependent on some other permission being obtained), then the scheme should not have been authorised. If the delay is due to unexpected delay such as the need for additional environmental surveys or ground investigation works, or something being discovered which had not been foreseen, in all but a very few cases, the promoter whilst affected by delay can probably make an informed decision as to whether or not the delay is going to prevent the project going ahead at all or simply delay its delivery. If the latter, there is no reason why the promoter cannot take ownership of the land and then make it available to the landowner until it is required either by renting it or on some other basis.

If there is a delay as a result of a third party appeal or challenge, it is more difficult to strike the right balance. However, the promoter is likely to be more able to bear the burden of the delay than the individual and I would think that the legislation should be drafted so as to minimise the risk of delay which interferes with the private individual's ability to manage his business etc.

Since such alternatives must be considered reasonably by the promoter, it would not be fair to penalise the promoter for the delay resulting from that. However, for the parties who were faced with the original scheme or whose land may not be required because of the change, the uncertainty does result in unfairness.

Question 44 - Withdrawal of a notice to treat has the consequences of uncertainty and unfairness for landowners which have been mentioned in other responses above. However, from a promoter's point of view, there may be genuinely unforeseen circumstances. I would suggest that the promoter is the party most able to bear the costs arising from the uncertainty as to whether or not the land is to be needed. I do not consider this is unreasonable since promoters should carry out appropriate investigations and checks to enable them to budget for compensation. In circumstances where the uncertainty relates entirely to promoters being faced with a larger than expected bill for compensation, I do not consider an acquiring authority should be able to withdraw a notice to treat. However, for those situations where there has been a genuine unforeseen circumstance, there may be thought to be more justification. However, on balance, I think the impact on the landowner arising from the uncertainty or impact on his business is so severe that the promoters should bear the risk.

Question 45 - No, I cannot think of any circumstances where this would be reasonable.

Question 46 - Yes. In some cases even 28 days may be too short – for example for farmers who need to make provision for stock or to harvest or sow crops etc or businesses who need to make alternative provision for their business needs. Balancing this with the position of the promoter, who may have faced delay through a Public Local Enquiry and who is up against a delivery timetable (for example for an event such as the Commonwealth Games or the Ryder Cup), further delays could seriously impact up on delivery of the project. Therefore 28 days is a reasonable compromise but there may be scope for a provision whereby landowners can serve a counter notice suggesting an alternative date which the promoter should be bound to agree to unless there is good reason for insisting on entry within 28 days. I think probably that is what happens in practice.

Question 47 - Answered in 46

Question 48 - I would suggest this should be for no longer than six months and, if possible, for a shorter period. For any longer period, promoters should be obliged to provide good cause for an extension.

Question 49 – I am not sure if this is a good idea since it places a significant burden on an acquiring authority. That said, affected parties would be severely impacted by acquisition therefore to provide that notification is not required does seem to be unfair and does not reflect the reality of the interests of those parties. In practice I think many acquiring authorities serve notice on these parties, considering them to be tenants with a tenancy of more than a year, although strictly speaking the continuance of the tenancy is based on statute rather than the tenancy itself. Tenants of short tenancies or long tenancies with less than a year to run will need to vacate their properties and therefore giving them notice seems reasonable.. Considering amendments to the notice procedure whereby, if parties do not collect recorded delivery items and at least two attempts to serve by recorded delivery have been made, requirement to notify might be deemed to have been complied with. This does of course run the risk of opening the door to promoters not taking all reasonable steps to ensure notification is completed.

Question 50 – One issue which arises in relation to paragraphs 19 to 29 of the Schedule is that, given the stage in the CP process when such a notice is served, a promoter may have little choice but to accept the notice of objection to severance and acquire all the land. This can have a significant impact on promoters who have not budgeted for such an acquisition. Promoters are in a difficult position. In determining which land to acquire, they are obliged to minimise land take as far as possible to minimise the interference of private property rights. That means drawing lines across properties rather than drawing lines which take in the whole property. Promoters will have determined that they do not need the additional land or they would have included it in the compulsory acquisition plan. When faced with a notice of objection to severance at the stage of GVD, promoters may be at a stage where obtaining the land in order to deliver the scheme is urgent; contractors may have been engaged and procurement exercises complete (the contracts with contractors may include penalties payable by the acquiring authority for any delay in commencement of works). Even if contractors are not yet engaged, the timetable for completion of schemes may have become tight due to delays at an earlier stage e.g. in PLI. Therefore promoters may not have time to refer the matters to the Lands Tribunal where further period of uncertain duration can hold up delivery of the land. Having assessed the land at the stage of CPO, they would not have included it if it was not needed for the scheme. Therefore the option of removing the land is unlikely to be available to them. Therefore, the only real option available to promoters in my experience is to acquire the whole property and pay the additional cost.

Perhaps this cannot be dealt with in any other way but consideration could be given to an equivalent notice arrangement exercisable at the stage of notification of the making of the CPO, whereby a party receiving notice of the CPO is asked to indicate, at that stage, if the land included in the CPO is to be acquired, they intend to serve a notice of objection to severance. If such a notice was served at that time, the promoter would have time within the programme to refer the matter to the Lands Tribunal; or consider a variation of the scheme to allow the land to be excluded. By the GVD stage, it is not possible to add in alternative land to replace the land in respect of which the notice of objection to severance was served since, unless such land is made available voluntarily by a third party. Acquiring the replacement land would require a fresh CPO process. Notice at the CPO stage would mean that, if neither removal of the land nor referral to the Lands Tribunal is attractive, at least the promoter obtains information at a comparatively early stage.

From a landowner's perspective this is an important provision which I consider must remain. However, whilst the courts may have determined that houses, factories etc. should all be treated similarly, perhaps that test could be looked at again. Removal of a small part of a commercial site may be inconvenient or result in the need for rearrangement of accesses, deliveries, parking etc. but may not cause real material detriment to the business. The argument would be that, if that is the case, it would not be found to be material detriment by the Lands Tribunal. However, that fails to take account of the issues set out above that at the stage of the notice, the promoter may not have time for such a referral. Moreover, any detriment caused can be compensated. In comparison, loss of a piece of land forming part of a garden of a house may be more likely to cause material detriment to the owner. Essentially as the stage of the notice is so late, the practical result may often be that a party serving a notice of objection severance is required to satisfy the Lands Tribunal that there is indeed material detriment caused. Reconsideration of the test, perhaps so that it is different for different types of property (commercial/residential), or the limit with regard to the size of the land acquired in comparison with the area of the land remaining which is the subject of the counter-notice is changed; or whether the entitlement could be restricted where the land owner concerned has a property of over a certain size remaining, the process is subject to a higher test, might improve the position.

Question 51 – I consider that a GVD should be available for all major projects since delivery of all land at the same time in order to promote such a project (e.g. a linear project or major town centre scheme) is essential. It is not so clear that a GVD is the appropriate method where there are less interests to be acquired. However, introducing a provision that makes a GVD available in some circumstances and not in others, seems to me to be difficult to put in place. Projects where there are more than 50 landowners may be no more difficult to deliver than a project where there are 20 landowners where one of them is particularly difficult to work with, so on balance I think a GVD should be available in all circumstances.
From a promoter's perspective a GVD has the benefit of simplicity. Provided the procedures have been complied with, from a landowner's perspective, if his land is to be acquired, the actual procedure that is done may not be of great importance. More important is the date on which entry is to be taken and the date on which compensation is paid. Therefore looking more carefully at the provisions which provide for entry and payment may be more important to landowners than the procedure being used.

Question 52 – The time limits for implementing a GVD are tight but reasonable. Extending them any further for a promoter's benefit could leave landowners in a difficult and uncertain position.

There is one aspect of the procedure which appears to allow a delay that can be used by a promoter who wants to delay actual acquisition. The availability of this period may be a good thing since it provides time for the promoter to look into the possibility of minimising land take. For example, with the landowner's agreement, additional investigatory work can be carried out to see whether retaining walls or structures could reduce or avoid land take; or realignment could achieve the desired end without land take at the stage of the CPO, insufficient design detail is available to be certain with regard to some of these matters and so land may be included which further investigation shows is not required and therefore this period can be of value to promoters and landowners alike. The period to which I refer is the period between the notice of intention to make a GVD and its execution – that does not need to be at the end of the two month period. Promoters can delay executing the GVD for some months. There should be a cap on the length of this period, to give landowners certainty. However, I am well aware of the benefit of this period to promoters and landowners alike in some circumstances. The danger is that the delay is used for some other purpose rather than with a genuine view to improve the impact on landowners.

Question 53 – Agreed. However, where statutory interest rates are low the obligation to pay interest does not work as an incentive to pay compensation or advance payment and there is no method by which acquiring authorities can be forced to pay compensation other than by referral to the Lands Tribunal. Whilst the provisions governing Advanced Payments provide for a time limit for payments, there is no penalty if the acquiring authority fails to pay within the 90 day period. Historically, payment was made promptly by acquiring authorities in times of high interest rates since they have an incentive to do so. Therefore landowners can be faced with long delays and no simple remedy. Perhaps provision could be made that provides that, where compensation is payable or an Advance Payment is requested, compensation must be paid within a set period or an automatic penalty on the acquiring authority is imposed. This may help encourage early payment.

Question 54 – Agreed, but with the above comments with regard to payment of interest being taken into account.

Question 55 – Agreed.

Question 56 – This is more difficult since to allow such discretion brings in uncertainty for both promoter and landowner. However, there could be circumstances where this may be in the interests of justice and I therefore wonder whether a very tightly drawn provision where there is a high test to overcome might be appropriate. I do have a concern though that, if such a procedure were to be used often, this would make it very difficult for promoters to budget since they would not know at what possible date land might be valued. It could also make it difficult for those advising landowners. I consider that an acquiring authority in these circumstances should be able to use a GVD in respect of all the land and register that GVD in the Land Register. However, I think in practice this may be possible anyway.

Question 57 – If the acquiring authority has title to the land concerned, that title is already registered in either the Land or Sasine Register. Since an acquiring authority cannot acquire land from itself, including the land in the GVD will not change the position. It cannot legally be acquired and therefore it will not be acquired. However, registering a GVD in relation to land which that authority already owns may not change the ownership of the land but may change the nature of the acquiring authority's title ie a Sasine or other title will be replaced by a modern title sheet.

Whether in practice this has any negative implications, is something I have not considered in detail. On the face of the Register the landowner is the acquiring authority and that is the position in fact.

However, this may not be fair where the original title on which the acquiring authority held title was in some way qualified or burdened. If it was, then it is not correct for that land to appear unburdened in the title sheet which follows upon the GVD (unless any third parties benefiting from those burdens have been compensated). However, in almost all cases of this type, the acquiring authority will be acquiring all other interest in the land concerned or will be utilising the provisions set out in the 2003 Act section 106, and so the end result seems to be the same.

Therefore in practice this may not be an issue although for the legislation to state that such a procedure is competent might avoid uncertainty. The downside is that the GVD is stated to be "acquiring land from the acquiring authority" which it cannot do. Perhaps one way of dealing with that would be simply to say that where land owned by an acquiring authority is included in a GVD, the GVD does not change the ownership nor does it invalidate the GVD.

A benefit of such a provision is that it is sometimes difficult to determine whether land is or is not owned by an acquiring authority. In particular, in city centres where there have been changes over many years and where the local authority may have title based on an old borough charter or similar. There is a need to obtain all land which is not owned by the Council and the precise boundaries cannot be determined. It is quite possible that land which is owned by acquiring authorities is included in a GVD where there is uncertainty as to precise boundaries and its inclusion is often not challenged nor is it questioned by Registers of Scotland.

Question 58 – Agreed. I am not aware of this procedure having been used in recent years.

Question 59 – Time limits are difficult for both sides since landowners want certainty but they also want time to put their affairs in business in order. Promoters also want certainty but they also want flexibility, at certain stages. Delay between the making of a CPO and land acquisition can have a serious negative effect on landowners (landowners affected by AWPR or the shops on Leith Walk threatened with the tram line, are perhaps the most obvious examples in recent years). The key issue is that the uncertainty with which landowners are faced, combined with provisions which mean they cannot take steps which might be considered to have been intended to increase their compensation, may have an unfair impact on their businesses or homes.

Whilst it may be possible to tighten up some of the time limits, I am not sure that much can be done to deal with this issue. Setting a time limit between the last date of serving an objection to the unconfirmed CPO and the date for a Public Local Inquiry may be a provision that would provide a reasonable balance. Whilst it might be said a time limit of this type prevents ongoing consultation and work to agree changes and

provisions with the landowners, there is no reason why that type of process cannot carry on right up to and even during the initial stages of such an inquiry and, indeed, a fixed time limit might "focus the minds" on such matters. However, I am aware that the availability of reporters and constraints on the time of officials makes fixing such time limits difficult. In my experience the Assessor's Hearing for the Airdrie to Bathgate railway appeared a much speedier procedure for the consideration of most aspects of the private Bill in comparison with the consideration of the private bill by the full committee which took place for the Edinburgh tram line Bills. Therefore, perhaps provisions which make for a simpler procedure (which would be of attraction to many landowners as well as acquiring authorities) rather than a full PLI may make processes simpler and fairer and indeed even more accessible.

Question 60 –I may be a lone voice here in considering that there is a benefit in there being two systems. The GVD procedure is simple, easy and effective and acting for promoters, and I would almost always recommend that it be used to ensure complete seamless title with no "gaps" for delivery of a large scheme. However, there are situations where only a few landowners or parties are affected, and where the notice to treat procedure could deliver title to land more quickly and provide more flexibility for landowners (for example including negotiation with regard to entry and even with regard to suitable accesses or perhaps substituted sites).

Using a notice to treat followed by a notice of entry where there are only a few landowners can be a comparatively cheap, quick and efficient procedure. In comparison the GVD process is complex and expensive and can rarely be completed in less than six months given the need for advertising and complex notification processes. Such delays and expenses can be avoided for a small scheme and I therefore believe that a notice to treat "type" procedure should remain available as an alternative.

Question 61 – In my view the two systems should remain and therefore the features for each would be different since they both have benefits for particular circumstances. Provisions to tighten up notice periods etc and to provide more certainty and clarity should be made with regard to both procedures. Perhaps guidance should be put in place with regard to the availability of the processes but I would think too restrictive an approach (such as to say that a notice to treat is not to be used for sites with more than ten owners) may be unduly restrictive in practice.

Chapter 8

Question 62 – Agreed.

Question 63 – Agreed.

Question 64 – As suggested above I think there is scope for two different procedures and therefore a need for two different methods of taking title. Perhaps a "Compulsory Purchase Notice of Title" could be set out in a schedule and worded so that it can be used in both schemes. I would envisage that such a notice would be similar to a GVD.

Question 65 – I am not sure that a "one size fits all" method is necessarily the best way but, provided that a Disposition is always available, it may be possible to agree such a single statutory method. I am not sure how this proposal deals with the fact that there is a suggestion, in an earlier paragraph, that a GVD might be capable of including an acquiring authority's land. Moreover it seems to me that a GVD may not be the best way of taking title to smaller sites where detailed provision, for example with regard to accesses, needs to be included. Therefore availability of an ordinary disposition or conveyance is essential. Whether or not there is a unitary procedure, I see no need for there to be different statutory methods of transferring title provided that the provision which allows for use of a disposition remains.

Question 66 – Agreed.

Question 67 – Agreed.

Question 68 – This would be helpful. However, the availability of acquiring the Lease may be something that should remain available as an option since there could be some circumstances where the acquiring authority wishes to acquire that interest.

Question 69 – Agreed. In my experience consideration needs to be given to the treatment of fiars. The interest of fiars may be dependent on the fiar surviving the liferenter, and therefore the argument may run that, at the vesting date, there is no legal interest which should be compensated. However, even if the fiar does not survive the liferenter, the fiar's successor may do so, therefore consideration should be given to the parties entitled to notification - even if the compensation is in practice payable to the life-renter. I consider that for a liferent, the liferenter should receive notification and compensation is paid to the liferenter for the liferent's interest. For the true fiar, that fiar does have an interest in land as set out in the title and therefore should be entitled to notification, but not to compensation. However, whether or not it is appropriate to give notice to the fiar should be clearly set out together with clarification as to the position with regard to entitlement to compensation. It is clear that, for a testamentary liferent, the intention was that the fiar receive the capital value of the land. If however compensation to the liferenter means that the capital value of the land is going to the liferenter instead of the the fiar as intended by the testator, that may seem to be unfair. While tax treatment, make such a payment "tax neutral", there are circumstances where such a payment may interfere with valid tax planning exercises or succession planning exercises. Therefore some flexibility if the liferenter and fiar agree may be appropriate here.

Question 70 – Agreed. But see below with regard to the procedure for dealing with compensation which currently leaves promoters and solicitors acting for borrowers in a difficult position due to uncertainty.

Question 71 – I note the SLC's view that the intention of section 107 is that it can also apply where an acquiring authority could have obtained a CPO, but did not. In my view, if that is the correct interpretation, it is a cause for concern. An interest in land such as a private right of way or other servitude can be of significant value. To be deprived of such a right, without an opportunity of objecting, seems to me to remove the appropriate balance between public interest and private interest which the compulsory purchase regime should protect. The provision of an opportunity to apply to the Lands Tribunal for renewal of variation of the servitude does not appear to me to be equivalent to the CP requirement for consultation and a need for the acquisition to be in necessary in the public interest and proportionate and for those affected to be given the opportunity to object and be heard. I am not sure if the Lands Tribunal is the right forum to consider such issues and in any event it seems to me unfair that parties who are having rights of access acquired (which may be equally or even more valuable that someone who is having a small piece of land acquired) should not receive equivalent and fair treatment under the law. It seems to me that to allow this procedure to be used where an acquiring authority has CPO powers but is not obliged first to use those powers in order to make and confirm a CPO does not place a sufficiently onerous burden on the acquiring authority to satisfy itself that the acquisition is necessary, in the public interest and proportionate and does not contain an appropriate opportunity for the confirming authority to challenge that decision or an opportunity for objection and to be heard. For those reasons it has always been my view that the intention of this provision is that it is to be used where an acquiring authority has obtained a CPO but chooses not to use it because a negotiated agreement has been reached. Considering the position as set out in the SLC's discussion paper, I can only assume that I am in the minority in that opinion. However, I think it is a view that may be worth further consideration for the reasons set out above. There is a risk otherwise that this process can be used without appropriate checks and balances and, as mentioned above, what is acquired could be of significant value and constitute a serious interference with ECHR rights.

In answer to question 71, if this procedure is available in situations where a CPO has not been confirmed, the provisions need to be qualified by appropriate checks and balances which ensure that this is not a "back door way" of interfering with private interests without appropriate procedures including an opportunity to object and be heard and a requirement that the local authority utilising the procedure has not first checked that the acquisition is necessary in the public interest and proportionate, and, if appropriate, that there should be some provision for confirmation or appeal.

Question 72 – Agreed.

Chapter 9

Question 73 – A mining code equivalent is an important part of compulsory purchase legislation. It is unlikely that a promoter will wish to pay compensation for minerals which may never be worked at the date of acquisition and the current procedure means that, should they be worked in the future, the minerals owner is entitled to compensation. This is in the interest of the public purse and does not treat the owner of the minerals unfairly.

However, simplified procedures would be better which do not require reference to a version of a 1923 Act in its original form. I do not think a new version of the Mining Code should be included "automatically" in all compulsory purchase situations. There may be some circumstances where the acquiring authority wishes to acquire the minerals and should be able to do that and pay appropriate compensation.

However, an issue arises from Registers of Scotland's procedures. In many cases, ownership of minerals is not clear from examination of the Land Register. This is because a disposition which is "silent" as to minerals will "carry the minerals" but a disposition which specifically refers to them will result in the Keeper excluding warranty in relation to minerals unless there is evidence that they have been worked. Therefore conveyancing practice has grown up whereby dispositions are "silent" in order to carry minerals. This means that on the face of the title sheet or Land Certificate, it is not clear who is the proprietor of the minerals.

This will pose a serious burden on promoters who need to notify mineral owners and, at a later date landowners seeking to prove entitlement to compensation due to ownership; and indeed at that later date the owner of the public scheme who is seeking to acquire or interfere with the minerals at that later date who will not know on whom to serve notice. Therefore perhaps in the proposed note to be entered by the Keeper on the Register to the effect that the land was acquired by CP, it may be possible to add a note that the land was acquired using the "new mining code" so it is clear whether minerals were acquired or not.
This will at least alert people to the issue if minerals have been reserved, however, how in practice it will be possible to identify mineral owners, is a different problem but not one that is unique to compulsory purchase.

There is one aspect of the situation where I think provision should be made to improve the landowner's position and that is in relation to proving title to minerals in claiming compensation at a later date. If a landowner has a title that is habile to include the minerals, that should be sufficient to entitle that landowner to compensation without there being a need for the landowner to prove that title is registered or that minerals have been worked.

Chapter 10

Question 74 – Agreed.

Question 75 – Yes.

Question 76 – It is difficult to see how any provision can be justified which effectively means that more compensation is paid to somebody who has incurred borrowings than to another who has not. However, in some cases negative equity prevents acquiring authorities progressing a scheme which could leave people who are living in owner occupied homes with negative equity. Therefore it might be appropriate to put in place a scheme which acquiring authorities can use where faced with issues of this type. I am aware of an estate where council house tenants who purchased properties originally erected by the council were placed in a difficult position when the houses were found to be of such a construction that they became unsellable. The properties owned by the council could be vacated but those which had been purchased by the tenant were still occupied because the purchasers had found themselves in a negative equity position. The acquiring authority could not pay compensation sufficient to enable these owners to redeem their loans.

Question 77 – Agreed.

Question 78 – Agreed.

Question 79 – Agreed, the onus should rest on the claimant to prove that the test is satisfied.

Question 80 – Agreed.

Chapter 12

Question 81 – I consider that the "Scheme" should be defined as the relevant CPO but if there are several CPOs being promoted to assemble land (such as is the case for the A9), then all related CPOs should be considered to form "the Scheme".

Question 82 – I do not consider that an increase in value of the land which results from the scheme should be taken into account for the purpose of assessing compensation. However, nor do I consider that the compensation should necessarily be discounted to reflect "betterment" since such a provision may unfairly treat those whose property is increased in value and against whom any loss is "set off" in comparison with those who do not suffer any set off but who have equally benefited from the scheme.

Question 83 – See 82.

Question 84 – I do not consider that the relevant period is the time elapsed since the adoption of the scheme, rather than the stage at which the Scheme became widely known e.g. at the pre-CPO or earlier stage when a planning authority commences feasibility studies or allocates land for a scheme in a local development plan.

Chapter 13

Question 85 – I consider that statutory assumptions should apply to other land where that land is retained land in a part only compulsory purchase.

Question 86 – Agreed, any existing planning permission should continue to be taken into account.

Question 87 – I think the relevant date must be the date of vesting or, if a positive CAAD has been obtained earlier, then that earlier date.

Question 88 – I think this is necessary. The rule is complicated and I am not sure if it can be simplified, but it must be recognised that there may be situations where a landowner might have obtained planning permission independently of the Scheme. For example, a farm shop or café might have been feasible in any event but the acquiring authority's new infrastructure might increase footfall. The landowner may have had a successful business anyway therefore both rules are needed to preserve the position.

Question 89 – I think that such planning permission should be limited to planning permission which might reasonably be expected to be granted to the public and the Pointe Gourde Principle should be retained, but restated, since I think use of the term is unhelpful for people who are not familiar with CP legislation and I believe in plain English!

Question 90 – Agreed.

Question 91 – Agreed.

Question 92 – I think the date must be the vesting date or the date on which a CAAD is obtained, if earlier.

Question 93 – Agreed.

Question 94 – Agreed, I think that is particularly important so as to treat landowners fairly where a scheme is progressing by way of several separate CPOs e.g. A9 dualling project.

Question 95 – Agreed, simplification of the rules relating the CAAD would be welcome. However, the availability of CAADs in some situations where CP is used and not in others does not work fairly in practice. Whilst it is understood that the remit of the SLC does not include legislation without its agreed scope and in particular in relation to authorising statutes which are UK wide, any opportunity to make the process available on a more uniform way would be welcome.

Part 9

Question 96 – I think this provision needs to be retained since, whilst I have never seen it used, it is fair that it be available in these circumstances.

Question 97 – I think ten years is reasonable.