Scottish Law Commission
promoting law reform

RESPONSE FORM

DISCUSSION PAPER ON COMPULSORY PURCHASE

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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.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

The statutory framework within which compulsory purchase is carried out is somewhat piecemeal with diverse, overlapping and confusing legislation in force which does not lead to clarity of process. We would agree that the current legislation should be repealed and replaced by a new statute.

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

We would agree that the current definition of land is satisfactory as it encompasses subordinate rights.

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

We would agree that in certain circumstances, the ability to create new rights or interests in or over land would be more proportionate than outright acquisition and would be attractive (i) to acquiring authorities as the compensation following from acquisition of such a right may be less than if the land was acquired outright, and (ii) to landowners, who would not experience the same level of disturbance as would be experienced if their rights as proprietor must be acquired. As an example, a servitude right of access may be mutually beneficial to both parties (with a new access route capable of being used by all parties).

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

An approach which allows the acquisition of new rights by compulsion would more closely mirror the approach that is taken by acquiring authorities when negotiating the acquisition of rights in land voluntarily. At present, if an acquiring authority cannot agree a voluntary arrangement for a right in land, it has to pursue a CPO to acquire the land which may be disproportionate.

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

A general power to take temporary possession would be very useful for acquiring authorities – again it mirrors what would be negotiated in a voluntary situation for a short term land requirement, say for a site construction compound which might only be neded for the duration of a construction project. Again, having the ability to seek such an order would mitigate the impact on both the affected landowner in terms of certainty of duration and the acquiring authority in terms of compensation payable.

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

We would agree that although the right to compensation exists in practice, a definitive statement would give clarity to affected parties.

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

In the absence of evidence to the contrary, we would agree.

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

We have no particular view on this.

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

It is an over-simplification of legislation to suggest that a unified procedure could or should be used for *all* types of acquisitions under all of the enactments listed in Schedule B.

The consultation paper envisages that only heritable rights in "land" are to be affected by the present proposed reform, however if the new unified procedure is intended to encompass all compulsory acquisitions (either now, or by extension in future), including non-heritable rights in land, it is considered likely that there will be an argument for maintaining separate procedures in relation to the procedure used for the making of applications to Scottish Minsters for authorisation to acquire particular rights and the procedure that would govern the application process. It may be the case that procedures to hear objections to such applications could be unified, as could any proceedings related to compensation issues. The particular types of

acquisition which we envisage may continue to require a separate procedure are discussed in the Table below.

For completeness, it may prove useful to the Commission to have a summary of the statutory powers of compulsory acquisition that statutory undertakers / utility companies are entitled to exercise:

(i) The Electricity Act 1989, section 10(1) and (5), and Schedules 3,4 and 5;
(ii) The Communications Act 2003, section 118 and Schedule 4;
(iii) The Telecommunications Act 1984, as amended by the Communications Act 2003, Schedule 2;
(iv) The Gas Act 1965, section 12(1) , section 13(1) and Schedule 4;
(v) The Gas Act 1986, section 9(3) and Schedule 4.

The comments made in the Table below address competing considerations and are not intended to indicate that we necessarily disagree with a possible widening of the procedure to cover acquisitions other than "land". The appropriateness of any future single unified procedure for different acquisitions broader than of "land" will depend upon the detail of the proposal.

Authorising Power (include section)	Reasons why special procedure is required
The Electricity Act 1989 ("the 1989 Act"). Section 10(1), Schedule 3 and paragraphs 6 to 8 of Schedule 4.	In terms of Section 10(1) of the 1989 Act, a person authorised by licence to carry out activities falling within the terms of section 6 of the 1989 Act, has various powers under both Schedule 3 and Schedule 4 to the 1989 Act, for the purposes of carrying out the authorised acitivity. Schedule 3 is concerned with the compulsory purchase of land and in terms of paragraph 15 of Schedule 3, the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies to the compulsory purchase of land or rights. In terms of paragraph 1(2) of Schedule 3, "land" is defined as including any right over land, which can include the creation of new rights as well as acquiring existing rights. Clearly the rights that can be acquired under these provisions are intended to be heritable rights over land and it appears that these could be covered by a reformed procedure. Under Schedule 4, paragraph 6, a licence holder is given the power to acquire necessary wayleaves for the purpose of installing or keeping installed electric lines on, under or over any land. This is an important provision for the generation, transmission, distribution and supply

		businesses of utility companies. The lawful entitlement to acquire necessary wayleaves, together with the temporary continuation of existing wayleaves for a period following termination of a wayleave by a landowner or occupier of land, are both of considerable importance to these businesses in maintaining security of supply to customers. A wayleave is not a heritable right in land and when a necessary wayleave is granted by the Scottish Ministers it is normally for a limited period. The 1947 Act does not apply to the compulsory acquisition of wayleaves. The procedure is contained in paragraphs 6 to 8 of Schedule 4 and involves an application being made direct to the Scottish Ministers. Thereafter, in the event that the owner and/or occupier objects to the grant of a necessary wayleave, the procedure to hear objections is similar to that followed through to hear objections into a compulsory purchase order. Normally a hearing, rather than a public inquiry, is fixed and a reporter appointed to hear the parties and report to the Scottish Ministers with a recommendation to either grant or refuse the application. Disputes over compensation are dealt with using the same procedure that is used for compulsory acquisitions under the Land Compensation Act 1961 and the Land Compensation Act 1963. The application process for necessary wayleaves is much simpler and and straightforward than the procedures under the 1947 Act. It is generally a much speedier and flexible procedure to that contained in the 1947 Act. It is not clear whether or not the compulsory acquisition of wayleaves is a form of compulsory acquisition that would be covered by the proposal for a single procedure. While it is acknowledged that a wayleave does not create a heritable right in land, nonetheless it does involve the compulsory acquisition of a right in, under or over land. We understand that the current review will no affect procedures for necessary wayleaves. We would be concerned if the procedure related to necessary wayleaves became more complex, rigid and time consuming. Whilst the equivalent acts in respect of the Gast Act 1984 and the Telecommunications Act 2003 do not contain rights for necessary wayleaves, compulsory purchase powers are included within those statutes, and the same considerations as with the Electricity Acts apply. There is a separate power provided under section 10(5) of

	Section 10(5) of, and Schedule 5 to, the 1989 Act.	the 1989 Act for the compulsory acquisition of water rights for hydro-electric stations. In relation to the exercise of that power, a separate and distinct procedure is provided under Schedule 5 to the 1989 Act. The procedure under the 1947 Act does not apply to this compulsory acquisition. There are various complexities associated with the acquisition of water rights that don't apply to the acquisition of other property rights. One of the main differences is that the procedure makes provision for the draft Order to be served on a number of named affected persons on whom the draft Order must be served, which is unique to the acquisition of water rights, and which wouldn't apply in relation to the acquisition of land. Such consultees include salmon fisheries boards and SEPA. Consultation with SEPA is if of particular importance having regard to its responsibilities in relation to implementation of the EU Water Framework Directive. The requirements of that Directive are of relevance to the issue of making provision for compensation water, which may be associated with the compulsory acquisition of water rights. It is therefore considered necessary to give particular consideration to ensuring a separate procedure is maintained for the compulsory acquisition of water rights.

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

(Paragraph 5.18)

Comments on Proposal 10

We are not aware of any legislation that is missing from that list.

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

(Paragraph 5.20)

Comments on Proposal 11

We have had no particular experience of using these rights here, as some equivalent rights do exist, particularly under the Electricity Act 1989 which allows for power to survey upon notice. We would agree however that a provision to allow powers for an acquiring authority to survey land in advance of making an Order would be practical as it allows for accurate information to be obtained to allow for refinement of engineering designs and a more targeted delivery of land acquisition. This ability to take access on to land at an early stage is

therefore to the potential benefit of all parties.

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

We would suggest that statutory undertakers are added to the current list, as often they have infrastructure within land which is held by way of statutory consent, and not necessarily by servitude or other registerable deed.

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

We would suggest that objections should be relevant and pertinent to the Order. Often an objector will maintain their objection as a means to assert a negotiating position on compensation to force an acquiring authority to negotiate in the hope that they would prefer to do that rather than go to hearing or inquiry.

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

Specification of time limits within the new statute would give certainty of timing and clarity on process to ensure programme delivery and also minimise periods of uncertainty for all affected parties. We woud suggest a period of 3 months for reference of cases by the Ministers to the DPEA.

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

We would suggest that the DPEA should have discretion over the process, with the ability to take representations from the parties and reach their own informed decision on the most suitable process in the circumstances.

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

We would agree with this proposal, but the legislators should be mindful of keeping timescales as compact as possible, whilst at the same time recognising that there may be need for flexibility in more complex cases.

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

We would suggest that the involvement of the Scottish Ministers in the CPO process adds transparency and a level of independent scrutiny which would otherwise be absent and which might give rise to the potential for challenge if not available.

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

We would suggest that where possible more use be made of electronic media. We recognise that there is a requirement for press advertisement and local deposits given that not everyone has the benefit of access to the internet

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

(Paragraph 5.46)

Comments on Proposal 19

We would agree that this should be an option available to an acquiring authority. The possibility of revocation is in the interest of all parties.

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

We are of the view that any decision taken to the effect that a CPO should be revoked would be made in good faith by an acquiring authority at the time of that decision, but it is not unknown for circumstances to subsequently change again, which might necessitate an order having to be made anew. We would suggest that attaching any condition to a revocation may restrict the ability of any acquiring authority to carry out their statutory obligations.

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

We would suggest that any claim should be limited to recovery of professional fees incurred in dealing with a CPO.

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

(Paragraph 5.50)

Comments on Proposal 22

We would suggest that this is a sensible proposal.

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

We would suggest that there is no requirement for a separate register of CPO's.

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

(Paragraph 5.59)

Comments on Proposal 24

For certain acquiring authorities, certainty on availablility of funding or the need for a project (where the project is required to facilitiate other infrastructure for example) can be outwith their control and therefore it may be the case that certain investment decisions are not finalised within that 3 year period. We suggest that acquiring authorities should be able to make a case for the validity of a confirmed CPO to be extended on cause shown.

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

An acquiring authority does not undertake the making of a CPO lightly and in doing so has to set out it's needs case and the confirmation of the Order will take into account consideration of that needs case. It has to be recognised that an acquiring authority will be acting in good faith in making an order and in doing so, it has a clear expectation that the project is reasonably likely to proceed so we do not see that there should be any separate precondition.

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

Whilst we have had no experience of this, we would suggest that this would be sensible.

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

Again, whilst we have had no experience of this, we would suggest that this approach would be sensible.

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

We have no particular coments

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

We would agree that allegations of bad faith should not be competent as a ground of objection to a CPO. The DPEA will decide applications on their merits, and any applications made in bad faith will not pass the existing requirements in any event.

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

Firstly, we would assume that the word “applicants” in this question, should read “objectors”. We would not agree that an objector should have a right to claim damages as we do not think that bad faith should be a ground of objection.

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

(Paragraph 6.39)

Comments on Proposal 31

We have no particular view on these provisions.

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

(Paragraph 6.44)

Comments on Proposal 32

We would agree that any objections on the grounds of incompatibility with the Convention should be raised within the 6 week period for general challenges so as to ensure that any appeal is transparent and the grounds of objection known to the acquiring authority at the outset. Acquiring authorities need certainty to ensure project delivery so it is not desireable that an objection can be made outwith the 6 week period.

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

We do not agree that there would be any circumstances which would necessitate a challenge at a later stage.

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

We would suggest that the court should have a discretion to grant a remedy less than the quashing of the CPO. It could make an order suggesting that the process be reconvened from the point at which the procedural failure manifested itself. Such an option may allow for a more proportional response to the procedural failure, and avoid a situation where the acquiring authority is unduly penalised by a procedural failure which may have been outwith their control.

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

We would agree that this should be the case. Whilst there have been efforts to speed up the judicial timetable, time can still be lost whilst formal proceedings are ongoing, and we would suggest that the time period of validity be extended pending the resolution of any court challenge. Such an approach may also serve to limit vexatious challenges which seek only to prevent a project through continued delay.

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

We would agree that this would be a sensible proposal.

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

We would agree that such a move would give rise to procedural clarity which has to be welcomed for both acquiring authorities and affected parties.

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

We would suggest that this would be fair and ensure that there is no risk of a challenge once an order has been made.

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

(Paragraph 7.19)

Comments on Proposal 39

We would suggest that a period of 3 months would be appropriate.

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

(Paragraph 7.25)

Comments on Proposal 40

We would suggest that providing affected parties with information as to how compensation can be claimed would be a sensible proposal so as to allow them to take targeted advice as to their rights and heads of claim.

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

(Paragraph 7.29)

Comments on Proposal 41

We have no experience of paragraph 7 of Schedule 2 to the 1947 Act.

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

In general, we would suggest that any actions taken or alterations made after service which have the effect of increasing the value of land should be viewed as being in bad faith. We consider that wording following the general principles of that of paragraph 7 of Schedule 2 to the 1947 Act should continue to be appropriate.

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

We would agree that it does

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

We would agree that allowing an acquiring authority to withdraw a notice to treat would be a sensible proposal as it would give more certainty to affected parties.

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

We would suggest that there may be circumstances where entry is taken and land might be found to be unsuitable for the purpose of the order due to ground condition etc. If so, we would suggest that the acquiring authority should be able to withdraw the Notice to Treat but subject to a possible requirement to pay compensation for surface damage.

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

We would suggest that a 28 day period would be more appropriate.

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

We suggest that any counter notice should be served within 14 days of the notice of entry only but not after entry has been taken.

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

(Paragraph 7.73)

Comments on Proposal 48

A notice of entry should remain valid for 2 months to allow for any delays in mobilisation of contractors due to delays for weather or other events.

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

We would suggest that this is a requirement as although there is a limited duration left of the tenancy, the tenant still has a subsidiary right to the property and should be notified.

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 have no experience of this in practice so have particular view on this matter.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

Comments on Proposal 51

We would suggest that a GVD should be available in all circumstances.

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

(Paragraph 7.89)

Comments on Proposal 52

We have no experience of using GVD's so have no particular view.

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

We would agree that compensation should be assessed as at date of vesting.

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

We would agree with this.

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

This proposal would seem satisfactory.

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

We would suggest that this proposal might take account of any circumstances where there is the possibility of hardshop to a landowner.

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

We would agree as this allows for securing land required for project delivery and allows certainty for acquiring authorities.

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

Whilst we have no practical experience of this, we can see where it would be of use. We would suggest that any repeal is resisted and carefully considered.

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

We are of the view that timescales should be as compact as possible having regard to the formal processes required for notifications and land registration requirements.

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

The proposals put forward by the Commission would seem to promote a sensible procedure and we would wecome a single statutory procedure for the making and confirming of CPO's but it should be recognised that this should not be applied in relation to separate statutory processes already in place under the Electricity Act 1989, and certain other legislation as outlined in our response to Question 9.

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

We have no additional comments.

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

If the affected party is willing to grant a Disposition then we would suggest that this could be used to register the acquiring authority's interest in the land acquired.

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

We would agree with this.

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

This would seem like a sensible proposal.

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

Again, we would agree with this.

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

Acquisition of a valid title is essential to ensure that the acquiring authority has all the land or rights in land that it needs to deliver a project and we would agree with this suggestion.

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

We have no particular view on this.

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

We would agree with this – all subsidiary rights should be extinguished to ensure certainty and validity of titles obtained by acquiring authorities.

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

We would agree with this – all subsidiary rights should be extinguished to ensure certainty and validity of titles obtained by acquiring authorities.

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

We would agree with this for the reason stated in Question 69.

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 have no comment to make on this.

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

We would agree that the ability for an authority to acquire subordinate rights would be

desireable.

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

We would agree that there should be an option for the acquiring authority to decide whether or not it wishes the code to apply.

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

We agree with this position and compensation should continue to be based on the value to a willing seller whilst taking account of any restrictions which would if the subjects were to be disponed of by means of a voluntary sale rather than under compulsion.

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

The overall valuation should ascertain values of the whole and the part in order to ensure a balanced assessment. It should also ensure that the claimant is no worse and no better off, and that the principles of equivalence apply.

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

We believe that the concept of negative equity has certainly become a more prominent concern than perhaps has generally been the case in the past. A willing seller would be highly unlikely to voluntarily divest a property in negative equity and therefore any compensation claim must not leave the seller with any additional financial burden as a consequence of market recession. However on no account should a willing seller be allowed to increase the debt ratio on a potential CPO asset in order to leverage any financial betterment. The difficulty of drafting rules to adequately cover all scenarios in a way which is fair to all parties means that whether it is appropriate to legislate on this point should be given careful consideration.

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

We believe that the current Rules 2, 4 and 5 should be included in the proposed new statute on the following grounds: Rule 2 provides that the value of land shall be taken to be the amount which the land is sold in the open market by a willing seller. Any willing seller would always seek to maximise its sale price if selling the asset voluntarily and therefore this premise should stand in the case of a forced disposal. Rule 4 ensures that the value of land must recognise the lawful use of the asset and the case of the 10 year rule whereby planning enforcement can't be served must be recognised. However a certificate of lawful development should not be deemed necessary in order to prove the case for established use but the onus must fall on the willing seller to evidence and indeed warrant that the ongoing operations had indeed taken place over the ten years. Rule 5 should continue to be included within the statute and the onus on any claimant to demonstrate compliance with the following criteria must be included within the statute: (1) the property must be devoted to a particular purpose; (2) there must be no general demand or market for land for that purpose; and (3) there must be a bona fide intention to reinstate the property in some other place.

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

(Paragraph 11.55)

Comments on Proposal 78

We believe that the wording "devoted to a purpose" and "normally used" should be maintained to accord with the extant position within England.

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

We believe that the proposed legislation should require the claimant to prove the case of equivalent reinstatement.

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

We believe that the LTS should be entitled to impose conditions on the payment of equivalent reinstatement in order that any compensation is appropriately used for reinstatement. Furthermore the claimant should be subject to full auditing and/or reinstatement payments made on a stage basis when evidence of any expenditure can been satisfactorily proven.

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

The scheme should be defined as the works / project set out by the acquiring authority as defined in the CPO notice.

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

We believe that any increase in value of the acquired land by as a result of the scheme must be excluded. Recourse should be had to the principle of equivalence – i.e the landowner shall not be financially better off as a result of the scheme.

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

Please refer to the statement in proposal 82. Again, we do not believe that the increase in value on adjacent land should be taken into account.

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

We do not have any particular comment to make.

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

We believe that uniformity should exist for both England and Wales and for Scotland therefore cognisance of section 14 of the 1961 Act, pertaining to England and Wales, should be replicated for Scotland.

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

We agree that as planning runs with the land it is reasonable that the value of any extant permission should be considered.

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

We believe that the relevant date is determined by the date the notice is served which would reduce any move by the claimant to artificially increase the value of the land between the date of service of the notice and the confirmation of the order.

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

We believe that no account should be taken of any increase in value as a result of the acquiring authority's scheme on the end use of the land resulting from the CPO.

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

We believes that any increase in value due to the overall scheme should not be taken into accountand the valuation should be carried out assuming the existence of any valid planning permission unrelated to the scheme, but disregarding the effect of the scheme.

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

We agree that paragraph 1 of Schedule 11 to the 1997 Act should be repealed to reduce any unnecessary complication.

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

We believe that paragraph 2 of Schedule 11 to the 1997 Act should be repealed to accord with that of the 2011 Act for England and Wales.

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

We believe that the relevant date for referring to the applicable development plan should be the date of serving of the CPO notice.

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

We believe that any increase in value due to the overall development scheme must be left out of account and the valuation should be carried out assuming the availability of planning permission but disregarding the effect of the scheme.

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

We agree that the scheme of development underlying the acquisition should be assumed to be cancelled on the launch date. In accordance with legislation for England and Wales, we agree that the assumption is that the whole scheme will be cancelled and not simply the intention to acquire the relevant land. In the Margate case, the acquiring authority's

underlying proposal should be disregarded.

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

We agree that the subject land should be valued with the benefit of any permission which would have been expected in the absence of compulsory purchase and therefore the rule regarding "appropriate alternative development" should be included within the new statute.

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

We believe that the provisions should be repealed. Acquiring authorities will be under a duty to obtain best value from land, and that may include further development of small areas of land which were not fully developed under the initial scheme. Furthermore, the principle of equivalence means that the former landowner should not benefit from any further increase in value of the land, and there are risks to the acquiring authority of further costs for remote claims some time after the initial acquisition – this strikes at the certainty required by statutory authorities. Finally, the difficulty in enforcing such provisions should be taken into account. However, if equivalent provisions are to be retained or included in new legislation, we would strongly recommend that these are time limited.

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

(Paragraph 13.76)

Comments on Proposal 97

We have no particular proposals to make in this regard.

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

We believe that a reasonable period should be allowed for applying for a CAAD would recommend that this should be a period of three months.

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

(Paragraph 14.12)

Comments on Proposal 99

We believe that whilst Section 25(4) of the 1963 Act provides that a CAAD certificate will identify any classes of development for which permission would have been granted the certificate does not have to provide great detail regarding the nature of the development. Whilst section 25(5) should specify those conditions which might reasonably be expected to be applicable, the certificate does not provide sufficient detail to determine an accurate valuation of the property in question. It is our opinion that any willing seller should have a reasonable understanding re the type of development that they hoped to secure planning permission prior to CPO and therefore it is reasonable to request that any CAAD certificate should be able to provide details which would normally be issued in respect of an outline planning permission.

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

We agree that the relevant date for determination of a CAAD should be the date of publication of the notice of making of the CPO as it establishes a degree of certainty. It is also acknowledged that a significant period of time can lapse between the date of publication of the notice of the making of the CPO and the date of entry and hence before compensation is ultimately settled. However when assessing the CAAD, the local authority should assess the potential for development at the time the notice is served as changes to the development plan could be negotiated which may alter the overall outcome of the CAAD certificate

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

We agree with Lord Bridge's opinion that the essential purpose of the procedure for obtaining certificates of appropriate alternative development is to secure the payment of fair compensation to landowners who are compulsory expropriated. We agree that any application for CAAD must require the local planning authority to issue their opinion regarding the grant of planning permission in respect of the land in question if it were not proposed to be acquired by an authority possessing compulsory purchase powers therefore it must be determined by the application of ordinary planning principles which existed at that date.

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

We agree that a consistent approach would be beneficial and should be set out in statute.

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

(Paragraph 14.30)

Comments on Proposal 103

We agrees that a consistent approach would be beneficial and should be set out in statute.

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

As discussed above, wee agree that the relevant date for determination of a CAAD should be the date of publication of the notice of making of the CPO as it establishes a degree of certainty. It is also acknowledged that a significant period of time can lapse between the date of publication of the notice of the making of the CPO and the date of entry and hence before compensation is ultimately settled. However when assessing the CAAD, the local authority should assess the potential for development at the time the notice is served as changes to the development plan could be negotiated which may alter the overall outcome

of the CAAD certificate.

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

We believe that the reporter should have some discretion in terms of dealing with an appeal by adopting alternative forms of procedure such as written representations.

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

We believe that a consistent approach is desirable and have no major concern with increasing the time limit to three months to accord with ordinary planning appeals.

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

We believe this is a spatial planning matter and as such should be made to the Scottish Ministers.

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

We would refer to our reply at Proposal 107.

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

We believe that there should be consistency within the UK and recommend that the provisions within England and Wales should be reflected in Scotland. Subject to our answer below, it is appropriate that any assessment of the compensation should take account of situations whereby planning permission could reasonably have been expected to be granted.

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

(Paragraph 14.64)

Comments on Proposal 110

We believe that such planning permission be reflected in hope value only.

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

(Paragraph 14.64)

Comments on Proposal 111

We believe that the same criteria be applied in relation to all relevant planning assumptions.

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

We are in agreement with this.

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

We believe that since the RICS requires any valuation to be undertaken by a Registered Valuer governing valuation guidance will be taken into account, however the “before and after” basis is deemed to be a sensible approach.

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

(Paragraph 15.37)

Comments on Proposal 114

We believe that the assessment of injurious affection must continue to be assessed as at the date of severance.

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

(Paragraph 15.44)

Comments on Proposal 115

We agree that compensation for injurious affection must be limited to the damage caused to the market value of the retained land in order to prevent any duplication of claims in respect of those which are more akin to disturbance.

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

We agree with the present discretionary principle whereby an acquiring authority maybe able to mitigate the amount of compensation payable to the claimant whilst the claimant is under a duty to mitigate loss. We agree thatthe acquiring authority should have a discretion to carry out works, but that the value of such work to the claimant should be taken into account on the overall compensation paid.

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

It is for the acquiring authority to establish that betterment has occurred and that the value of the land retained would not have increased but for the scheme. Compensation claims assessments should seek to balance the private interests of the landowner against general public interest and should betterment be disregarded, this could provide a landowner with compensation which goes beyond the spirit of equivalence.

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

The underlying ethos of CPO seeks to balance private interests of a landowner against the interest of the general public.Whilst a landowner may lose part of their property the financial loss should assessed alongside any betterment which they may also enjoy in respect of their remaining land. The fact that other non-connected owners may perhaps also benefit from the proposed scheme, as a consequence of good fortune, this windfall is not as a consequence of the direct actions of the acquiring authority to purposely ensure that the scheme seeks to benefit a certain individual against all others. Thus, to commend to repeal the provisions of offsetting betterment on the presumption that it is perhaps unfair is contrary to the spirit of equivalence.We disagree with this proposal for the reasons stated in our response to Proposal 117.

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

We agree with the judgement of Goddard LJ that the assessment of compensation for disturbance should be carried out separately from the assessment of the market value of the property.

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

(Paragraph 16.34)

Comments on Proposal 120

We agree with the proposal of an express statutory provision for disturbance.

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

We recognise that it may be challenging to agree on a form of words within statute, we support the recommendation that parliamentary counsel should try and draft appropriate wording for further consultation.

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

We support the concept that a reasonable balance should be struck between the landowner who is threatened by compulsory purchase and the acquiring authority who should only be liable for reasonable expenses which are required to satisfy the principle of equivalence. Therefore if the "starting date" whereby a claimant may recover pre-acquisition losses is before the date of confirmation, this should minimise any delay caused by a claimant talking such steps to recover such losses. Furthermore, the fact that this date is brought forward would also place an onus on the claimant to mitigate loss and discourage unreasonable claims.

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

We agree with the recommendation that abortive costs should be covered by statute as the construct of equivalence should not leave a landowner with unnecessary costs as a consequence of a potential compulsory purchase being withdrawn. However, the landowner must properly and reasonably mitigate loss.

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

We believe that claimants should be able to recover costs associated with redevelopment works which cannot be fulfilled as a consequence of a CPO but not the potential loss unless full planning permission and all other necessary consents had been previously secured by the claimant and that proposed development had already commenced. Likewise the onus on the claimant is to mitigate such losses so that they do not burden themselves with additional costs which could have been avoidided or mitigated when knowledge of the potential CPO first arose. Where any losses are to be recovered, a high factual burden by the claimant must be satisfied.

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

(Paragraph 16.50)

Comments on Proposal 125

We have no particular views on this matter.

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

We have no particular views on this matter.

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

We are of the opinion that every case should be assessed on its individual merits and that equivalence does require some degree of flexibility. Therefore every claimant must continue to mitigate loss on becoming aware of an impending compulsory purchase and a test of reasonable foreseeability should endure.

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

(Paragraph 16.77)

Comments on Proposal 128

We are of the opinion that each claim has to be assessed individually on it's own merits.

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

We believe that should statute allow a claimant to recover pre-acquisition losses, a claimant must be under a corresponding duty to mitigate such losses to accord with the test of equivalence.

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

We agree that such cases are likely to be rare but statute should make it clear that relocation compensation may be available even where this exceeds the total value of the business. However it must be noted that the greater the disparity, the more closely the claim should be considered to ensure that the business does intend to relocate rather than seek to profit from a higher level of claim.

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

We recognise that compensation on the basis of relocation will usually be in the best interests of both parties and therefore any proposed legislation should perhaps include for a general assumption that compensation should be paid on a relocation basis and that

evidential onus should be on the party which seeks to argue that compensation should be on the basis of total extinguishment of the business.

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

We agree that the assessment of disturbance cannot be fully assessed until such time as the dispossession and potential relocation of the business has had effect. We support the adoption of the New Zealand situation whereby business loss resulting from the relocation of the business made necessary by the taking or acquisition which loss shall not be determined until the business has moved and until sufficient time has elapsed since the relocation of the business to enable the extent of the loss to be quantified. This would also address the concerns in respect of Q.130.

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

We would refer you to our response to statement 132.

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

(Paragraph 16.101)

Comments on Proposal 134

We agree that Section 38 of the 1963 Act should be repealed.

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

We agree that Sections 34 and 35 of the 1973 Act should be retained.

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

We believe that the provisions in England and Wales should be mirrored in the new statute.

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

We have no particular experience of, or comment on this proposal.

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

We have no firm opinion or experience on this matter.

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

We have no opinion on this matter.

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

We have no opinion on this matter.

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

We believe that the current provisions relating to farm loss payments do not require any amendments.

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

We believe that any changes should take cognisance of the range of available payments within England and Wales to ensure uniformity across the Country.

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

We would agree with this proposal.

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

We have no relevant experience to be able to comment on this point.

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

We would suggest that this is appropriate.

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

We would agree that this adds certainty and clarity for parties.

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

As per proposal 146, we would agree.

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

(Paragraph 18.23)

Comments on Proposal 148

No changes are suggested to the time limit.

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

(Paragraph 18.23)

Comments on Proposal 149

We do not agree with this proposal, as this would undermine the principle of certainty which is important to the process.

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

We would suggest that such an extension could encourage claimants to raise vexatious claims. Any award of expenses should have regard to the conduct of claimants.

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

(Paragraph 18.27)

Comments on Proposal 151

Such provisions should be applied only in cases where hardship is shown.

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

(Paragraph 18.29)

Comments on Proposal 152

We would agree that this would be to the benefit of all parties, but particularly the claimant.

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

We would agree that this may be appropriate in particular circumstances.

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

We would agree that this seems appropriate.

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

We would consider that the statutory interest rate is most appropriate.

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

This may be appropriate in certain circumstances, having regard to the terms and balance of the security.

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

We disagree with this proposal, as this goes against the requirement for certainty.

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

We believe that both options have merits and could be retained.

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

We have no relevant evidence to provide any particular view.

Chapter 19 Crichel 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

We disagree with the proposal, and believe that the CPO process should adequately compensate landowners for the land. For the reasons stated in our response to Proposal 96, we do not believe that it is not appropriate to continue to burden the land with pre-emption rights.

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

(Paragraph 19.9)

Comments on Proposal 161

We refer to our answer to proposal 160.

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

If a pre-emption right must be included, this appears to be a sensible limitation, although we would question the difficulty in identifying land or parts of land which could be considered to have undergone no change.

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

Again, if such a right must be provided for, we would suggest that the interest be limited to the proprietor from whom the land was acquired.

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

If such a right is to be included, we would suggest that the same rules should apply regardless of land type, but that the time period should be limited to no more than 10 years.

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

(Paragraph 19.15)

Comments on Proposal 165

The period should match the period noted above, and hence these rights would now fall

away.

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

We consider that the seven situations are appropriate, but would also suggest the inclusion of a right for an acquiring party to transfer ground to other parties who have compulsory purchase powers (this would be a widening of the first ground).

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

We do not feel that such provisions are necessary.

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

We have little direct experience, but would refer to our earlier comments on the timeframe.

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

We consider that a 10 year time limit is appropriate.

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

(Paragraph 19.26)

Comments on Proposal 170

Yes, we agree that this is an appropriate approach.

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

We agree that the provisions should be repealed, given the overlap with other procedures available.

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

We would agree with this proposal.

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

(Paragraph 20.10)

Comments on Proposal 173

We have particular view relative to the application of this section in practice.

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

We note that it is not possible to definitely ascertain whether or not the tenancy would have

continued. Short tenancies inherently carry a risk to the tenant that they could be terminated, and the proposed legislation should recognise that.

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

We agree that equivalent provisions should be included.

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

We do not feel that it is appropriate that acquiring authorities be liable for tax liabilities. The compensation paid should already reflect the value of the property if it was sold on the open market, and so the landowner would be no worse off. Ascertaining tax affairs is a difficult proposition and reduces the certainty on cost required by the acquiring authority. We also note that on the vast majority or most controversial of cases (primary residences for example) there would be no capital gains tax liability in any event.

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

We have nothing further which we would wish to raise.

General Comments

We thank the Commission for the time and consideration given to an important area of law, and would be willing to discuss and elaborate on our answers if required.