

**RESPONSE FORM**

**DISCUSSION PAPER ON COMPULSORY PURCHASE**

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

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

Please save the completed response form to your own system as a Word document and send it as an email attachment to [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk). Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.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

Agree

### Chapter 2 General issues

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

(Paragraph 2.56)

#### Comments on Proposal 2

Yes. Re content of para 2.52, a Standard Security ad factum praestandum may be a circumstance where a standard security could be acquired.

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

(Paragraph 2.70)

#### Comments on Proposal 3

Yes

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

(Paragraph 2.70)

**Comments on Proposal 4**

It is logical that the nature of the rights/interests should equate with general property law rights of a permanent nature and that where apposite there should be an ancillary right to attach conditions and reservations all as may ultimately be determined by the Reporter.

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

(Paragraph 2.73)

**Comments on Proposal 5**

Yes - the right to have temporary impingements of property rights would be extremely helpful and would result in interests which equate with the actual requirements being CPO'd. Sec 196 of 1997 Act does cover some of this but I don't find it straightforward to implement. Features - the purpose, the period (with relevant trigger and notice), identification of those who have the benefit, obligations re insurance, indemnification and reinstatement, all akin to a temporary licence. The right would require to be binding on successors of those enjoying the property rights impinged on.

**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**

Agree

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

(Paragraph 3.87)

**Comments on Proposal 7**

Yes

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

**Chapter 5 Procedure for obtaining a CPO**

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

(Paragraph 5.5)

**Comments on Proposal 8**

Agree

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

(Paragraph 5.18)

**Comments on Proposal 9**

None of which I am aware

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

(Paragraph 5.18)

**Comments on Proposal 10**

Not in so far as I am aware.

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)

I don't have knowledge of how this works in practice so I can't comment on that. Is it competent for an acquiring authority to permit the 3rd party in an Agency CPO to have the benefit of this power?

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

(Paragraph 5.24)

I think that the heritable creditor ought to be added.

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**

This is a difficult question because it is the balance of the delivery of the public objective against the individual's right to be heard. On the one hand it would make sense to save public money but on the other there is a need to be transparent and fair and to be publicly perceived to be so. Consequently I think that the solution might lie in good communications (with information and guidance and say a nominated liaison civil servant for the objector in question) between Ministers and the statutory objector(s) and the subsequent management by DPEA of the process so that a hearing is the forum where there are few objectors or the objectors interests are proportionally small. I think also that at times there could be greater rigour around the analysis of the statutory objectors' position to ensure that the objection is legitimate e.g. at times I have thought that the issue is really one of compensation and that the additional objections are spurious but yet the objection has been retained.

The concept of a process which enables the earlier addressing of objections in a way which leaves objectors with de minimis interests satisfied that their position is really a claim for compensation is compelling but there is a real possibility that that of itself creates a separate process of appeal etc. and so ultimately the status quo may be the best option.

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**

I think not. My preference is that CPO guidelines should indicate best practice timescales for issuing responses to objections and for the referral by Ministers to 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**

For the reason specified at 13 I think not.

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

(Paragraph 5.32)

**Comments on Proposal 16**

Agreed

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

(Paragraph 5.41)

**Comments on Proposal 17**

I think that CPOs should be confirmed by Scottish Ministers; the gravitas of the process warrants this.

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**

I think that electronic alternatives/ additions should be an option.

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

(Paragraph 5.46)



**Comments on Proposal 19**

Agreed

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

(Paragraph 5.46)

**Comments on Proposal 20**

This is difficult – a short period could be useful but on the other hand new circumstances may emerge and on the assumption that a subsequent statement of reasons would narrate the circumstances surrounding the earlier confirmed CPO and its revocation, if Ministers are minded to agree that the statement of reasons evidences sufficient justification of the promotion of the new CPO then that is probably sufficient to rely on. Separately, having such a period, might simply result in the general practice that confirmed CPOs are not revoked.

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

(Paragraph 5.47)

**Comments on Proposal 21**

Agreed

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

(Paragraph 5.50)

### **Comments on Proposal 22**

Again this is difficult to come to a position on – there are benefits from the perspective of a prospective purchaser to have access to information about all confirmed CPOs and the Land Register may be the appropriate place for this. The option to register the confirmed CPO already exists. However this doesn't really help prospective purchasers of interests other than those recorded in the Sasine/Land Register unless they carried out Sasine/Land Register searches. In addition, I would hope that registration of a confirmed CPO is not a trigger for first registration – the existence of this itself is only something of which those transacting should be aware. I assume that a sale/purchase contract (whether by standard missives or otherwise) puts a duty on the seller to disclose notices of this type.

In practice, from the promoting authority's perspective the GVD often follows closely on from the confirmed CPO and the extent of interests in the GVD is often less than those in the confirmed CPO. Therefore I think that a requirement to register the confirmed CPO is overly onerous although the guidance could indicate best practice of registering a confirmed CPO within a reasonable period of the date of the confirmed CPO unless the GVD is in the interim registered, if that is thought to be best practice.

Although the option to register in the Land Register should be retained, what would be helpful is for Scottish Ministers to maintain a record of all confirmed CPOs (with plans) and checking that could become part of the conveyancing diligence in respect of any transaction involving a land interest.

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**

I refer you to my response at Proposal 22.

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

(Paragraph 5.59)

**Comments on Proposal 24**

I think that 3 year period is a reasonable balance. In some large phased developments 3 years may be too short for the later phases and so perhaps a longer period within which to make and to serve notice of the GVD in respect of parts of the CPO ought to be permitted. Similarly it may be that in CPOs of small interests with simple development anticipated a lesser period is reasonable. However, the introduction of flexibility on this will without doubt bring with it its own complexities.

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**

This will already be inherent in the Statement of Reasons and in any subsequent Statement of Case and I think that that is sufficient.

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

(Paragraph 5.64)

**Comments on Proposal 26**

Yes

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

(Paragraph 5.64)

**Comments on Proposal 27**

Possibly - but if there is a manifest need for the loss and if a substitute right of way is being offered the adequacy of the substitute and the consideration of alternatives might be the scope of what is considered at Inquiry.

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**

None

**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**

I have no experience of this and on balance the response is no (and if I read this again the response could easily be yes)

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

(Paragraph 6.38)

**Comments on Proposal 30**

Yes

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

(Paragraph 6.39)

**Comments on Proposal 31**

No comment because of lack of experience

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

(Paragraph 6.44)

**Comments on Proposal 32**

Agreed

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

(Paragraph 6.45)

**Comments on Proposal 33**

Probably not

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

(Paragraph 6.48)

**Comments on Proposal 34**

Agreed

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

(Paragraph 6.51)

**Comments on Proposal 35**

Yes

**Chapter 7 Implementation of a CPO**

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

(Paragraph 7.9)

**Comments on Proposal 36**

Agreed

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

(Paragraph 7.15)

**Comments on Proposal 37**

Agreed that a list is a good idea but suggest that the capacity of Scot Gov to amend the list be provided for by way of secondary legislation.

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

(Paragraph 7.19)

**Comments on Proposal 38**

Agreed

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

(Paragraph 7.19)

**Comments on Proposal 39**

Yes and with the trigger for the commencement of the period assumed to be the date which is the later of (i) the date which equates with the advertising of the Vesting (if a GVD is used or I suppose the date of entry under the Notice to Treat procedure) and (ii) such later date as the claimant can evidence that he first became aware of the Notice. This sort of arrangement is similar to the right to claim compensation.

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

(Paragraph 7.25)

**Comments on Proposal 40**

Yes

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

(Paragraph 7.29)

**Comments on Proposal 41**

No comment because of no experience

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

(Paragraph 7.29)

**Comments on Proposal 42**

No comment because of no experience

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**

No comment because of no experience

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**

Yes and I suggest 1 year

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



(Paragraph 7.51)

**Comments on Proposal 45**

Yes - but subject to compensating the proprietor for the loss of use and reinstating the land to the condition it was in prior to taking entry (reserving the right to the parties to negotiate alternative terms if they want to). Guidelines on good practice in this circumstance would be helpful.

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**

This seems reasonable but I don't know whether in an urgent situation 28 days might just be too long. Again I have no direct experience of this

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**

Perhaps this is an alternative if there is evidence of the use of a very short period in urgent circumstances being necessary.

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

(Paragraph 7.73)

**Comments on Proposal 48**

Not having real experience of this, I am not sure.

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**

I think in the case of a long tenancy (Sasine/Land Registered) with less than a year to run this is fine but in relation to short tenancies I am not inclined to agree because often with the informality of some arrangements it can be extremely difficult to identify the occupancies and the tenancies and it could be very difficult to implement this if it were a requirement. To make this an option rather than a requirement is useful.

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**

Addressing the prospect of severance earlier in the process than at vesting is suggested.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

**Comments on Proposal 51**

Yes

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

(Paragraph 7.89)

**Comments on Proposal 52**

Yes

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**

Agree.

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**

Agree

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**

Agree. Does rule 5 allow for the condition of the existing property and the benefit of having an improved property as part of the compensation calculation ?

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**

Only if there is a need for this arising from actual situations - otherwise it may introduce unnecessary uncertainty.

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**

Agree

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**

Agree unless evidence emerges of its having been used in the absence of any other option being an equally good alternative

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**

Not in any material way because I think that the existing time limits achieve a balance between the competing interests and the degree of flexibility which is required.

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

(Paragraph 7.120)

**Comments on Proposal 60**

Yes

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

(Paragraph 7.120)

**Comments on Proposal 61**

The triggering of the obligation to pay compensation needs to be clear and this should probably not be the date of advertising/serving notice of the confirmation of the CPO since in practice there can be a significant difference between the subjects of the confirmed CPO and the subjects ultimately acquired by CPO procedure. In advance of the creation of a new process and timeline it would be good to see the whole draft proposal and from that work out where there might be difficulties instead of reviewing it on the basis of these bullet points only.

Sometimes there is a need not to move onto the next stage in the CPO process with haste because of other dependencies and therefore a timescale of as short as 4 weeks should be a minimum and not perceived as an expectation.

I think there needs to be clarity on what registrable transfer means in the context of new interests being created and also in the context of short leases/licences etc.

## 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

The retention of this is probably not contentious. I have no experience of this. In recent times only the GVD process has been used by us.

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

Agree

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

A unitary method is a good idea if that can be accommodated as part of a single process which is effective and flexible enough to respond to the various scenarios (eg Agency CPOs, new rights, temporary rights, emergency access requirement)

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

(Paragraph 8.43)

**Comments on Proposal 65**

Yes

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

(Paragraph 8.45)

**Comments on Proposal 66**

Yes

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

(Paragraph 8.46)

**Comments on Proposal 67**

Yes

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

(Paragraph 8.54)

**Comments on Proposal 68**

Yes – this should be retained as an option

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**

Agree

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**

Agree - the provisions re the settlement of the debt need to be clear as also provisions re negative equity where the compensation due for the heritable interest is less than the debt as also provisions re ranking amongst secured creditors. See comments at [ ] above.

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**

A mixture of reform and consolidation

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**

Yes

**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**

I have no direct experience of this and consequently have no comment.

**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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 11.55)

**Comments on Proposal 78**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**Chapter 12 Valuation of land to be acquired – rule 3 and the “noscheme” world**

81. How should the “scheme” be defined?

(Paragraph 12.78)

**Comments on Proposal 81**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 13.76)

**Comments on Proposal 97**

«InsertTextHere»

## 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

«InsertTextHere»

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

(Paragraph 14.12)

### Comments on Proposal 99

«InsertTextHere»

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

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 14.30)

**Comments on Proposal 103**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 14.64)

**Comments on Proposal 111**

«InsertTextHere»

**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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 15.37)

**Comments on Proposal 114**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**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**

«InsertTextHere»

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

(Paragraph 16.34)

**Comments on Proposal 120**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 16.50)

**Comments on Proposal 125**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 16.77)

**Comments on Proposal 128**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 16.101)

**Comments on Proposal 134**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 18.23)

**Comments on Proposal 148**

«InsertTextHere»

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

(Paragraph 18.23)

**Comments on Proposal 149**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 18.29)

**Comments on Proposal 152**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**Chapter 19 Crichton Down Rules**

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

(Paragraph 19.5)



**Comments on Proposal 160**

I do not have a strong view on this. If it were to be placed on a statutory footing I think that provision should be made for the scenario where the original purpose may not have been delivered but there is an alternative proposal for the land which is legitimate in the context of CPO by way of say an application to the Scottish Ministers that this alternative proposal is to be treated as if it were the original purpose. In addition, it should be clarified whether the right of pre-emption is to be exercised on sale only or sale or grant of a long lease.

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

(Paragraph 19.9)

**Comments on Proposal 161**

I think not in respect of pro indiviso interests unless each of the parties seeks to re-acquire. This may already be an exception.

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**

Yes

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**

yes

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**

probably

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**

probably

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**

yes

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

(Paragraph 19.17)

**Comments on Proposal 167**

no comment

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

(Paragraph 19.21)

**Comments on Proposal 168**

no comment - no experience of this

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**

10 years is probably appropriate.

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

(Paragraph 19.26)

**Comments on Proposal 170**

agreed

**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**

If there is confidence that this is covered elsewhere then yes

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

(Paragraph 20.5)

**Comments on Proposal 172**

Agree

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

(Paragraph 20.10)

**Comments on Proposal 173**

No comment because of no experience

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**

This is difficult but on balance I do not think that this likelihood of continuation or renewal should be taken account of ; the tenant occupies under the terms of the lease and will have made his choices in part informed by the terms of the lease.

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

(Paragraph 20.23)

**Comments on Proposal 175**

Agreed

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

(Paragraph 20.27)

**Comments on Proposal 176**

No comment

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

(Paragraph 20.29)

**Comments on Proposal 177**

Just in case it is not covered it would be good to have certainty re the right to acquire by CPO the benefited proprietors' interests in burdens in property owned by the acquiring authority or the relevant third party in a back to back CPO.

In relation to common/open space it would be useful to have a procedure for CPOing same which is part of the normal CPO procedure.

**General Comments**

I have not considered questions 74 to 159 at all because the subject is not one in respect of which I have detailed experience and although I have used the first person singular throughout, the responses in part reflect collective responses of the conveyancers at

Glasgow City Council.

Thank you for the quality of this Discussion Paper.

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