

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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.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

The Council fully support this proposal. The current legislation is not fit for purpose – it is piecemeal, complex and out of date.

### 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

The Council are satisfied with the current definition of “land”.

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

The Council believes that there should be a power to create new rights or interests in or over land where the land itself is not being compulsorily acquired. It considers that this would benefit both parties e.g the creation of a new servitude would allow the land owner to continue to enjoy his land subject to the servitude and would mean the acquiring authority would only need to acquire what it required and also have the advantage of requiring to pay less compensation.

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**

The Council would suggest that any new rights or interests in or over land would be limited those rights recognised by general property law. This would have the advantage of ensuring the rights are capable of registration and will bind successor owners of the land affected.

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**

The Council would welcome a general power to take temporary possession as described in paragraphs 2.71 to 2.73 of the report. It would reduce the impact on the owner of the land who would still be entitled to compensation for the temporary interruption to the occupation of his land while recognising that the acquiring authority only had a temporary need to use the land in question. To take temporary possession the acquiring authority will need to be able to:-

- Clearly identify the land required
- Detail the reason for the land being required i.e. site compound during construction project; and
- Detail the period the land was required for. However this may be problematic for some projects and there would need to be provision allowing the period to be extended if required (without requiring the consent of the land owner).

The Council acknowledge that compensation would be payable for the temporary possession which would be calculated according to the normal rules with the right of recourse to the LTS.

### **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**

The Council agrees with this proposal. Given that the exercise of CPO powers deprives the land owner of his property it should be recognised that the land owner is entitled to compensation. This would clearly recognise the rights of both parties when CPO powers

where being exercised.

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**

The Council fully supports this proposal. This will ensure a standardised approach regardless of the enabling act which will also have the benefit of making it easier to understand.

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)

Not in the Council's opinion

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

(Paragraph 5.18)

**Comments on Proposal 10**

Not as far as the Council is 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)

#### **Comments on Proposal 11**

The Council suggests that the power to survey land should be amended to allow the acquiring authority to seek warrant to authorise entry onto the land in question to survey and/or carry out boring in the event that:-

- entry to the land has been refused or refusal is expected or
- the land is unoccupied or the occupier is temporarily absent

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

(Paragraph 5.24)

#### **Comments on Proposal 12**

The Council does not believe that changes to the current list of statutory objectors are required.

13. Should there be any further restrictions on the circumstances in which a statutory objector can insist upon a hearing or inquiry?

(Paragraph 5.25)

#### **Comments on Proposal 13**

The Council acknowledges the importance of balancing the interests of the owners of the land affected by a CPO and the acquiring authorities. However it may be that the grounds for objecting should be tightened up to minimise the risk of a frivolous or vexatious objection resulting in an inquiry or hearing being held with the resultant delay to a project. Under the present rules the Scottish Ministers act as intermediary between objectors and acquiring authorities as the parties seek to agree a compromise to objections. The Council would suggest that the Scottish Ministers should have the right to declare objections frivolous or vexatious subject to an appropriate review mechanism being put in place.

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**

The Council would support the inclusion of a specified time limit for referring cases to the DPEA. This would give the CPO process more certainty for all parties and reduce delays associated with the current process. The Council would propose referrals are made within 2 months

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**

Given that the effect of a successful CPO is to deprive the owner of their property it would seem reasonable for that person to expect a hearing. However it may be beneficial to have the option of written submissions and/or site visit being made available to the objectors by DPEA.

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**

Agree.

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**

The Council believe the the current confirmation process involving the Scottish Ministers is appropriate. It is hoped that by having the Scottish Minsiters carry out the confirmation process there is consistency of approach. It also allows for a balancing of the public and private interests by a body who is not directly invoved in the CPO itself.

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**

The Council would welcome the ability to use electronic advertising and notification of the making and confirming of CPOs. This would reduce costs and potentially improve accessibility of parties concerned to the relevant paperwork. However it is acknowledged that not all persons on whom notices require to be served will have access to the internet and therefore personal service may be still be required. The Council recommend that the current documents which need to served on the various parties is reduced to allow a single notice to be served on them giving details of the website and address of where the CPO and Statement of Reasons can be accessed.

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

(Paragraph 5.46)

**Comments on Proposal 19**

The Council supports the proposal as it gives clarity to all parties in the event that the CPO is not to proceed.

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**

The Council do not support including conditions limiting making a CPO for the same reasons within a certain period. There may be good commercial or other reasons why it would be appropriate to proceed with a fresh CPO. The Council would suggest that the Statement of Reasons for the new CPO should refer to the revoked CPO, its reasons for revocation and provide reasons for why it is appropriate to proceed with a new CPO for the same purpose at this time. The Council do not believe that the Scottish Ministers consent should be required as the new CPO will be submitted for confirmation to them at which point they can consider the reasons for making the CPO as part of that process.

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**

The Council would not support this proposal. Such costs are not recovered in the event that compensation is payable so the Council would not support in these circumstances.

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

(Paragraph 5.50)

**Comments on Proposal 22**

The Council is of the view the CPOs and revocations of CPOs should be registered in the Land Register of Scotland. The Council do not believe that that the Keeper of the Land Register should be notified if not all the land acquired by CPO was required by the acquiring authority for the particular scheme/project.

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**

The Council suggests that there should be an entry in the Land Register rather than a new Register of CPOs.

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

(Paragraph 5.59)

**Comments on Proposal 24**

The Council acknowledges that the current 3 year validity period may lead to uncertainty for persons affected by the CPO. The Council expects to proceed to vesting as quickly as possible and until now this has been well within the 3 year period. However the Council acknowledges for some schemes/projects it may take longer before the acquiring authority is in a position to proceed to vesting. The Council would support shortening the 3 year validity period to no less than 18 months on condition that this period can be extended with approval of the Scottish Ministers.

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**

The Council does not consider that this is appropriate given the terms of the Scottish Government's guidance.

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**

Yes this would seem a sensible approach which will allow consideration of the issues at the same inquiry. It would also minimise costs and delays to the project/scheme arising from having 2 separate inquiries.

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**

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**

The Council does not consider that this is required. This is a remedy currently available.

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

(Paragraph 6.39)

**Comments on Proposal 31**

The Council is satisfied with the operations of 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**

Yes this gives certainty to all the parties involved and will reduce delays in the implementation of the scheme/project.

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

(Paragraph 6.45)

**Comments on Proposal 33**

No as this will reduce the certainty for all the parties concerned. In addition once the challenge period has expired the acquiring authority has the right to proceed to vesting, to take possession of the land and start work on the project/scheme and this should be without

the right of legal challenge.

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

(Paragraph 6.48)

**Comments on Proposal 34**

Yes the Council would support the Court having more flexibility in the remedy it can grant in the event of an applicant being substantially prejudiced by a procedural failure. It would allow the Court to take account of the failure, its effect and when it occurred in the CPO.

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**

The Council agrees with this 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**

Yes this would be advantageous.

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**

The Council supports this proposal as it provides clarity for the parties.

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

(Paragraph 7.19)

**Comments on Proposal 39**

Yes.

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

(Paragraph 7.25)

**Comments on Proposal 40**

This would seem sensible.

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

(Paragraph 7.29)

**Comments on Proposal 41**

Yes

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**

This would depend on whether the owner was aware of the Acquiring Authority's interest in acquiring their land rather than whether or not a notice to treat had been served. If the owner was aware of the proposed CPO, i.e through discussions regarding voluntary acquisition prior to a decision being made to proceed with a CPO, it would seem sensible to deal with the actions taken or alterations made prior to service of a notice to treat in the same way as such actions taken or alterations made after such service. However if the owner has not been aware prior to the making of the CPO of the Acquiring Authority's interest in acquiring the land then there could be a case for treating actions taken or alterations made prior to service of a notice to treat in the same way as such actions taken or alterations made after such service.

43. Does the three-year time limit on the validity of the notice to treat work satisfactorily in practice?

(Paragraph 7.40)

**Comments on Proposal 43**

Yes.

44. Should it be competent for an acquiring authority to withdraw a notice to treat and, if so, within what period?

(Paragraph 7.51)

**Comments on Proposal 44**

Yes – 6 weeks as currently provided for.

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**

No

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 would seem sensible as it is consistent with the timescales allowed in other parts of the CPO legislation.

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**

The Council would not support this proposal as it leads to uncertainty for the acquiring authority.

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

(Paragraph 7.73)

**Comments on Proposal 48**

The Council is of the view that it is difficult to set a fixed period that would be appropriate for all circumstances. There may be circumstances where the owner needs to find alternative accommodation for himself/his business which may need a longer period of time but in other cases the land being acquired may already be vacant. The Council would suggest a minimum of 14 days and maximum of 3 months may be appropriate with the Scottish Government having the power at the request of the Acquiring Authority to extend this period where necessary in the particular circumstances of the case.

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**

The Council supports the proposal.

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**

The Council do not believe any amendments to the process are required.

51. Should a GVD be available in all circumstances?

(Paragraph 7.89)

**Comments on Proposal 51**

The Council is of the view 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**

The Council consider the time limit for implementing a GVD to be satisfactory. The timescales give clarity to the parties and for the acquiring authority it has the benefit of allowing the GVD to take affect quickly allowing early entry and possession.

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**

The Council agrees with this proposal as it clarifies the position for all the parties

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**

This seems a sensible approach to adopt.

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**

The Council supports this proposal.

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**

The Council do not agreed that the LTS should have a discretion as this may lead to lack of certainty among parties as to when the valuation

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**

The Council supports this proposal.

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**

The Council has no opposition to this proposal.



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**

The Council believe the time limits are appropriate subject to:-

1. a time frame for referring cases to the DPEA. This is on the basis that they are not too long (provided there is a time frame established for referring cases to the DPEA) to cause difficulty to the Acquiring Authority and not too short to prevent owners objecting to the CPO and making alternative arrangements if the CPO proceeds.
2. The current voluntary periods which the Scottish Government work to in making a decision on whether to confirm a CPO are made mandatory.

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 Council would support a single method of implementing a CPO.

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**

Clarity is requested on whether it is a notice to each affected person or a a single notice served on all affected persons that is being proposed. The Council would suggest a single notice covering all the land to be acquired

**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 Council would support this approach but is unlikely to be used by the Council who will be more likely to continue to use a GVD or the new single statutory method of transferring title (if implemented).

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**

The Council agrees with this approach if the GVD procedure is retained.

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**

The Council believes this to be sensible approach as it will rationalise and update the current approach where a notice to treat is used.

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**

The Council agrees with this proposal. It is of particular importance if the Council is to transfer ownership of the land at a future date.

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. The Council believes that this should be done. It gives any party examining the title fair notice of the fact that the land had been acquired by CPO and the effect that has on burdens, servitudes, securities etc.

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**

The Council supports this proposal as it streamlines and standardises the effect of compulsory purchase on lease.

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**

The Council supports this proposal

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**

The Council supports this proposal as it clarifies the position.

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**

The Council do not consider that the provisions should be consolidated as S194 of the 1997 Act applies to land acquired for planning purposes and is more extensive in its application. The Council considers that no changes are required to the provisions.

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**

The Council supports this proposal. The Council have in previous CPOs and subsequent GVDs acquired and new rights of servitude access at the same time as land itself. It would seem sensible for this to be able to done in a single deed.

### **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**

Given the intention of the new Act is to consolidate, update and simplify the law on compulsory purchase it seems appropriate to include the Code in the new Act.

The Council would suggest any disputes over compensation arising from the application of the Code should be determined by the LTS not arbitration.

## **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 “no-scheme” 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**

«InsertTextHere»

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

(Paragraph 19.9)

**Comments on Proposal 161**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**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**

«InsertTextHere»

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**

«InsertTextHere»

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

(Paragraph 20.10)

**Comments on Proposal 173**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

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**

«InsertTextHere»

**General Comments**

«InsertTextHere»

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