

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.

Please note that information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

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. 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.

Name: Graham Nelson
Organisation: The Scottish Borders Council
Address: Legal section, Council Headquarters, Newtown St Bowells, TD6 0SA
Email address:

Summary of Questions and Proposals

PART 1: INTRODUCTORY AND GENERAL

Chapter 1 Introduction

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 The current legislation as to compulsory purchase should be repealed, and replaced by a new statute.

(Paragraph 1.14)

Comments on Proposal 1

Agreed

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

I would agree that the land definition under the Interpretation of Legislative Form (Scotland) Act 2010 is sufficiently wide subject to the marine work gloss given by the 1937 Act

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

I would largely concur with the views expressed by Douglas Blyth from SOLAR in his response on this proposal.

I would add that in my view having the ability to tie everything properly together within part of the overall compulsory purchase process would benefit all parties, by limiting acquisition of rights to what is actually necessary. It would also aid the Reporter in being able to assess whether the project to which the compulsory acquisition relates is likely to be achievable.

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

I concur with the views expressed by Douglas Blyth from SOLAR in his response on this proposal.

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

Agreed that general power to take temporary possession would be helpful and that this would be a good alternative to there being the ability to compulsorily enter into a lease. However it would be preferable to have both.

In terms of features of possession, I would suggest that the acquiring authority would have whole rights in terms of using the land for that period as if they had compulsorily purchased it subject to returning the land to its original state at the end of the fixed period at their own expense. I think it would be unhelpful to have it any more narrowly restricted than this in terms of features.

Chapter 3 Human rights

6. The right to compensation as a result of compulsory purchase in Scots law should be expressly provided for in the proposed new statute.

(Paragraph 3.51)

Comments on Proposal 6

Agreed

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

(Paragraph 3.87)

Comments on Proposal 7

Agree

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

Chapter 5 Procedure for obtaining a CPO

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

(Paragraph 5.5)

Comments on Proposal 8

I would concur that compulsory purchase by local authorities on the local acts should be carried out by means of the standard procedure. In terms of standard procedure it is stated what meant is the procedure set out in the 1947 Act. I would agree that this is a helpful start point and would observe that it would be worth in terms of the finalised legislation reviewing the standard procedure to make sure it is entirely fit for purpose.

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 known

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

(Paragraph 5.18)

Comments on Proposal 10

None known

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

No comment

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

No comment.

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

Point raised is whether a single objector of only a small part of the land covered by the CPO should be able to delay the project by insisting upon a hearing.

I have some disquiet with the fettering of one's rights to have a matter listened to at an inquiry hearing based on just the percentage of land they hold in terms of the overall project. It would be perfectly possible for 95% of the land to be relating to someone with an extensive farm holding or just an extensive land holding where that land a small amount in relation to the holding, is of little intrinsic value and does not including any buildings. Whereas in the same scenario it could be the other 5% someone holds is their home and therefore is therefore arguably of added significance and importance to them in terms of being compulsorily forced to sell it.

Provided a safeguard was put in place for a right to a hearing if it is the compulsory acquisition of an objector's principal residence, then I can see the benefit in respect of all other land and buildings of having a restriction in terms of an individual objector having a right to a hearing. If a percentage is to be used then perhaps 10% of the total land being acquired by the CPO would be an appropriate threshold.

14. Should the proposed new statute provide that Scottish Ministers must refer cases to the DPEA within a specified time limit and, if so, within what time limit?

(Paragraph 5.26)

Comments on Proposal 14

Yes, there should be a specific time period for the Scottish Ministers to refer the case to the

DPEA.

If a case has been referred to the DPEA this does not of itself prevent an inquiring or hearing ceasing to be needed to be held in the event that the objectors have removed their objection. In theory negotiations can remain on-going right up until the actual inquiry or hearing date to try and resolve matter. It is acknowledged there could be some cost implications if a hearing was cancelled at the last minute, however having set timescales for reference to the DPEA to ensure that the CPO is determined as quickly as possible in my view outweighs this.

I would propose that Scottish Ministers must refer the case to the DPEA within a period of 28 days from whenever Ministers first receive the CPO or the period for objection ends, whichever is the later would be appropriate.

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

In general, subject to my comments at proposal 13, I would concur with the assertion in respect of compulsory purchase that given the importance of the process to the landowner concerned that their right to be heard is of utmost importance.

Up until recent years the right to be heard was often interpreted as meaning inquiry, this has changed to hearing in most cases now. Arguably this move away from an adversarial system to an Inquisitorial one already limits a private individual's ability to be heard and to make their case. It is acknowledged that generally a hearing does enable matters to be more quickly dealt with and considered by the Reporter. On one level the DPEA having the discretion to opt for a hearing or an Inquiry while still balancing parties' rights, might be seen as sufficient discretion.

It is only in relatively recent times in planning that is has become entirely at the discretion of the Reporter to assess whether a matter be dealt with by written submissions or hearings. Arguable this can be to the detriment of all parties concerned as where there are complex issues that they do not believe can actually be dealt with by written submissions, they have no ability to force the matter to be heard. Given the critical importance of compulsorily purchasing someone's land it would not in my submission generally be appropriate for this change to occur in respect of compulsory purchase.

As observed in paragraph 5.27 if it is agreed between statutory objectors and the Council that a hearing just comprise written representations without oral proceedings then this can occur currently on occasion. This could perhaps be more clearly stated in the new statute or indeed the accompanying regulations.

What might well be possible would be for the Reporter to either through written submission or indeed through a pre-hearing meeting with all parties set out what the Reporter considers to be the various issues and give parties the opportunity to submit whether they believe

these can be dealt with by written submission, hearing or indeed inquiry.

If either the statutory objector or indeed the acquiring authority believes that either a hearing or inquiry if necessary on a particular topic then their right to be heard on that topic should be respected in terms of the statute and it should be necessary for that issue to be heard. It should be at the discretion as it currently is of the Reporter whether that can be by hearing or inquiry.

However if such a process was put in place it may well be possible for certain aspects to be dealt with by agreement, by written submissions therefore restricting hearings down to a limited number of issues.

If in terms of proposal 13 there is a restriction on certain statutory objectors being able to insist upon inquiry or hearings, because of their relatively small holding, then if they are the only party holding out for a hearing on a topic once this initial step has been done and everyone else is happy to be dealt with by written submissions then on that adapted principle they would not to be able to force a hearing on the subject and it would be at the discretion of the Reporter.

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

This seems reasonable

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

If a CPO is objected to, objection remains and a hearing of some sort takes place then it is agreed that it is appropriate that the CPO must eventually be confirmed by Scottish Ministers.

However in our view it would be appropriate like in England and Wales that if a CPO is not objected to or indeed all statutory objections have been removed and therefore there are no current objections, that the acquiring authority should be able to confirm the Order.

The statement made in the paper, is not our view correct, that for an acquiring authority to confirm their own CPO requires just as much involvement of the confirming authority as the confirming authority themselves doing the confirmation. The difficulties that we have

encountered in the past have been in respect of how promptly, once there are no objections & no other issues, that Scottish Ministers have then proceeded to get around to confirming the Order.

It would be far less onerous, if it was the case that all that was needed was for a Scottish Government Department to provide confirmation, on behalf of Scottish Ministers, that either no objections have been received within the statutory period or indeed if statutory objections were received, confirmation between the parties that all objections had been removed and evidence of this. Indeed currently confirmation on this point is quite quickly supplied. The Council could then just proceed to confirm the CPO, it would not be likely to generate the same unnecessary delays as often occur at present in such a scenario.

The two stated benefits to having confirmation are noted and are in general agreed. However in our view whilst we would agree that these are essential if objections remain and the matter goes to a hearing or indeed a Reporter ends up dealing with it by written representations if there are no such objections the benefit of expediently having a confirmed CPO outweighs the benefits of these safeguards.

There does not appear to be a question in this paper regarding a reasonable period for Scottish Ministers to confirm a CPO once a Reporter has conducted a hearing. Whilst I acknowledge that is maybe is something to be dealt with by subordinate legislation to allow some flexibility, timescales on these points would be useful both in respect of the Reporter issuing a report and Ministers thereafter making a determination.

It would appear that even guidance on these periods is lacking at the moment and would be welcome. Compulsory purchase is often necessary because of time constraints meaning that work needs to be urgently done and therefore having gone through the rest of the process months or even years further delay before a verdict is finally given is not particularly compatible with this.

It would be far better for all parties with standard periods for both the Reporter to report and the confirming authority to either confirm or object, with both subject to provision that exceptionally these periods could be extended by Scottish Ministers subject to notification of the reasons why this exception is being applied in a particular case.

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 current requirement for advertisement and notification do remain helpful in terms of trying to inform the people of the confirmed CPO. However it would be helpful to have a requirement to have the confirmed CPO published both in the Ministers' and the acquiring authority's websites so that potentially more people see it.

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

(Paragraph 5.46)

Comments on Proposal 19

Yes

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

Difficult to envisage a period that would both give adequate protection for third parties but also allow authorities to be able to address problematic property if the economic climate improved. If there was to be a condition attached to revocation perhaps it should just be specific consent of the Scottish Ministers as it would be the case of the Council having to set out its reasoning why they first had to revoke the CPO and why now they are seeking a fresh CPO to be made before they can proceed with it.

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

It would be reasonable for parties affected by the revocation of a CPO to be able to recover their reasonable out of pocket expenses

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

(Paragraph 5.50)

Comments on Proposal 22

Currently as a matter of practice I tend to register or record a CPO once it has been confirmed so that any party looking to acquire that title will at least be aware of it. I have no difficulty with this step being made compulsory, which to me would seem reasonable. There are neither excessive costs nor difficulty in doing this currently so I see no difficulty with the proposal.

I would agree that if a CPO is being revoked, this should also be registered.

In terms of points at paragraph 5.50 where the acquiring authority doesn't need to utilise all land which may be affected by a CPO then I would concur with view that in theory it would be helpful if the Keeper is informed, however there is some difficulty with exactly how this is done. This may become slightly easier as everything transfers on to the Land Register. However I would have thought that technically speaking, unless revoked, all the land does remain affected by the CPO. What would actually be reflected in the Land Register would be the fact of what land has then been transferred/acquired either by way of General Vesting Declaration or otherwise by transfer of title. Clearly there would also be in respect of the remaining land the provision of a time constraint to use a CPO.

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 chief benefits of there being a new register of CPO's:

- firstly Check whether CPO has been made; and
- secondly that each CPO would just need to be registered to this register regardless of how many different land certificates or sasine titles are affected, all of that could just be presumably listed within the entry on the register of CPO's.

On one level this Register will just create another level of checks to be made and from an individual purchasers or sellers perspective having entry made in the land register might be simpler. However on balance my view would be that a new register of CPO's would be beneficial as it would be formed in such a way as to reflect the nature of CPO's, such as clearly stating the date at which the 3 year period of confirmed CPO commenced.

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

(Paragraph 5.59)

Comments on Proposal 24

In my view the three year validity period of a confirmed CPO is reasonable. Compulsory Purchased Land may in many cases only form one part of a project deliverable, time should be allowed for the acquiring authority to put all other aspects in place before implementing a CPO if that is what is required.

Another factor for the three year validity period would be maybe that in the background to the CPO process, that acquisition by compulsory means has been ongoing and that in fact in more beneficial terms for all parties involved can be reached through this. In having these

negotiations it is useful for the CPO to remain valid for a three year period other than something shorter and that might result in the negotiations having to be cut off at an early juncture due to the time constraints.

25. Should there be a precondition that a CPO will only be confirmed where there is clear evidence that the project is reasonably likely to proceed?

(Paragraph 5.59)

Comments on Proposal 25

No, in my view the guidance contained in the Scottish Government circular strikes the right balance to there being a reasonable prospect that the project will be able to succeed while recognising that in certain cases the authority may be able to justify acquiring the land although funding is not guaranteed. In my view going beyond this would be too restrictive of where the authority would be able to act.

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

In my view if the Authority is offering to replace the public right of way it would be appropriate for the right to insist upon an inquiry to be removed.

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

It seems sensible to me to deal with any issue of loss of public right of way by a combined Inquiry into making of the CPO. In planning hearings/Inquiries it is certainly common to deal with multiple topics under separate sessions within the same Hearing/Inquiry and this could easily also be done here.

28. Are there any other aspects of the process for making or confirming a CPO upon which consultees wish to comment?

(Paragraph 5.65)

Comments on Proposal 28

No.

Chapter 6 Challenging a (confirmed) CPO

29. Should the proposed new statute make it clear that objection 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

No, In my view the wording of paragraph 15 of Schedule 1 to the 1947 Act should just be plain in terms of what it includes. Generally and in my view correctly legislation avoids attempting to explain what all it excludes as inevitably aspects would be missed. It would be appropriate for interpretation of this to remain with the Courts.

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

In my view this falls out with the issue of Compulsory Purchase Orders per say and it is not appropriate for it to be incorporated into the statute.

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

(Paragraph 6.39)

Comments on Proposal 31

No comment.

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.

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

(Paragraph 6.45)

Comments on Proposal 33

No.

34. Where an applicant has been substantially prejudiced by a procedural failure, should the court have 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. It is reasonable for the Court to have the discretion to go ahead and grant a proportionate remedy.

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. It seems highly reasonable the time period of validity of a confirmed CPO to be expressly extended pending the resolution of any court challenges to the CPO. This would discourage claimants from potentially deliberately adopting a strategy of raising court challenges to the order in order to run down the clock on the limit. It would also avoid the scenario where simply through court delays the confirmed CPO is no longer valid by the time the Court actually determines in favour of the acquiring Authority that the CPO has validly been made.

Similar provisions to those implemented in Ireland would appear a reasonable step.

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

Agree.

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

Given past experience of how quickly Compulsory Purchase has been reviewed it is likely that such a statutory list would have to be changed over time. In my view it would be more appropriate that a list of all the interests in respect of which notices to treat should be served should be contained in guidance to the legislation rather than the legislation itself.

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

Not having a time limit does not seem in keeping with other aspects of the legislation such as the validity of a confirmed CPO being three years, or six weeks for appeals to be made.

For certainty of all parties it would be more appropriate for there to be a time limit and I would suggest three years.

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

(Paragraph 7.25)

Comments on Proposal 40

It would be considered good practise to provide such information, where appropriate. However I don't think that this should be a statutory requirement rather something that is recommended within guidance.

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

(Paragraph 7.29)

Comments on Proposal 41

No comment.

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

(Paragraph 7.29)

Comments on Proposal 42

In terms of pre-notice to treat it would simply be on the balance of evidence available at that point in time, what land owners intention.

Post Notice to Treat I would suggest it be presumed to be for the purpose of obtaining increased compensation and to be for the party seeking compensation to prove otherwise.

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

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, the current period is three years and appears reasonable.

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

The 1996 UK case you refer to clearly demonstrates why the Local Authority should be able to withdraw from notice to treat after they have entered onto the land, provided they have not commenced any work. It is acknowledged that if you entered the land and have commenced work without resolving the issue of compensation then the Council is accepting that withdrawal is no longer possible.

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

No. Notice to Treat and Notice of Entry tend to be used by Authorities in Scotland only in cases where urgent entry is required, therefore general vesting declaration procedure takes too long. In my view it would not be reasonable to extend the period from two weeks to 28 days, delaying matters further and potentially jeopardising a project.

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

While not ideal, in my view it should remain competent for a landowner to serve a counter-notice within a set time limit following service of a notice of entry, regardless of whether the acquiring authority has entered on to the land, I suggest that this be standardised to 28 days or perhaps six weeks, this would provide is reasonable time for the landowner to obtain legal advice on the issue and to then serve notice if they so choose.

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

(Paragraph 7.73)

Comments on Proposal 48

I do not take issue with the suggestion that if the local authority do not take possession of the land within specified period that the notice should lapse and that a further notice should be required to be served before entry can be taken. This appears reasonable in terms of giving Landowners some certainty on what is happening.

I suggest that Notice of Entry only remains valid for a period of 28 days from the date on which the notice states that entry can be taken.

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

It does not appear unreasonable for the Authority to have to give notice to these parties as well as all the others are already provided for.

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

No comment.

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

In general terms they are satisfactory but it would be helpful if they could be shorter. Although through GVD acquire both title and take entry the 12 weeks is somewhat long when compared with entry being possible after 14 days under Notice to Treat.

Given that there can be urgency issues for time the CPO is finally confirmed would be helpful if the period for GVD to take effect and for entry title to be given could be brought down to a period of eight weeks in total from confirmation of the CPO. In our view this would still allow adequate periods for each part of the GVD process.

53. Compensation should be assessed as at the date when the property vests in the acquiring authority, and interest should run on the compensation from that date.

(Paragraph 7.97)

Comments on Proposal 53

Agreed.

54. Where the acquiring authority enter on to the land before it has vested in them, compensation should be assessed as at, and interest on compensation should run from, the date of entry.

(Paragraph 7.98)

Comments on Proposal 54

Agreed, but subject to provision being made for the acquiring authority seeks to withdraw after entry but prior to any works.

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

No comment.

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

Agree

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.

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

In respect of the GVD process I would submit that the period after confirmation that a GVD can be made should be reduced from the two months to the six weeks in line with the period for challenge to the Court. In terms of the GVD itself I would submit that in line with the period where notice to treat /notice of entry takes effect that 14 days would be adequate given the authority already has to give notification to the public when they publish

confirmation of the CPO of the intention to use the GVD powers.

This shortened 8 week total period would still provide adequate protection to the parties that the land is being acquired from, whilst enabling the acquiring authority to more quickly finally obtain the land.

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

In my view a new combined method which transfers title whilst still giving entry quickly would indeed be useful.

I would observe that in terms of the current process envisaged this could result and title entry having being passed prior to the six week period that currently exists for the court challenge to be made having expired, which could pose difficulties.

In addition in certain case 6 weeks could be too long a delay post confirmation of the CPO. It would remain useful to have the notice to treat option.

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

I would suggest the court challenge period would need altered to 4 weeks to accord with the 4 week period between publishing confirmation and the new process taking effect.

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

Agree.

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

Agree.

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

Difficult to say with any certainty on this point until the unitary procedure is fully worked out.

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

Agree.

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

Agree.

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

Agree.

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,

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

No comment

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

Agree

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

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

No comment

75. Should depreciation of the value of the acquired land, caused by its severance from the retained land, be taken into account when assessing its value?

(Paragraph 11.34)

Comments on Proposal 75

No comment

76. Does the current law take account of negative equity satisfactorily and, if not, what changes should be made?

(Paragraph 11.42)

Comments on Proposal 76

No comment

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

No comment

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

(Paragraph 11.55)

Comments on Proposal 78

No comment

79. In cases of equivalent reinstatement, should there be an onus on the claimant to show that compensation assessed on the basis of market value (and disturbance, where appropriate) would be insufficient for the activity to be resumed on another site?

(Paragraph 11.58)

Comments on Proposal 79

No comment

80. Should the LTS be entitled to impose conditions on the payment of equivalent reinstatement compensation in order to ensure that such compensation is properly used for the reinstatement in question?

(Paragraph 11.66)

Comments on Proposal 80

No comment

Chapter 12 Valuation of land to be acquired – rule 3 and the “no-scheme” world

81. How should the “scheme” be defined?

(Paragraph 12.78)

Comments on Proposal 81

No comment

82. Should an increase in the value of the land being acquired as a result of the scheme be taken into account for the purpose of assessing compensation?

(Paragraph 12.78)

Comments on Proposal 82

No comment

83. To what extent should an increase in the value of the land being acquired, as a result of the effect of the scheme on other land being acquired, be disregarded?

(Paragraph 12.78)

Comments on Proposal 83

No comment

84. Should any such disregard be limited by reference to the time elapsed since the adoption of the scheme or, if not, on what alternative basis should or might it be limited?

(Paragraph 12.78)

Comments on Proposal 84

No comment

Chapter 13 Valuation of land to be acquired – establishing development value

85. Should the statutory planning assumptions apply to land other than the land which is compulsorily acquired?

(Paragraph 13.14)

Comments on Proposal 85

No comment

86. Any existing planning permission should continue to be taken into account in assessing the value of the land to be acquired.

(Paragraph 13.19)

Comments on Proposal 86

No comment

87. What should be the relevant date for determining whether there is existing planning permission over land to be compulsorily acquired?

(Paragraph 13.22)

Comments on Proposal 87

No comment

88. Should there continue to be a statutory assumption that planning permission would have been granted for the acquiring authority's proposals if it were not for the compulsory purchase?

(Paragraph 13.30)

Comments on Proposal 88

No comment

89. If so, should this continue to be limited (a) to planning permission which might reasonably be expected to be granted to the public and, (b) by the *Pointe Gourde* principle?

(Paragraph 13.30)

Comments on Proposal 89

No comment

90. The statutory assumption of planning permission for development in terms of paragraph 1 of Schedule 11 to the 1997 Act should be repealed.

(Paragraph 13.34)

Comments on Proposal 90

No comment

91. Should the statutory assumption of planning permission for development in terms of paragraph 2 of Schedule 11 to the 1997 Act be repealed?

(Paragraph 13.36)

Comments on Proposal 91

No comment

92. In terms of special assumptions in respect of certain land comprised in development plans, what should be the relevant date for referring to the applicable development plan?

(Paragraph 13.40)

Comments on Proposal 92

No comment

93. The underlying "scheme" should be deemed to be cancelled, for the purposes of considering statutory planning assumptions, at the time when the CPO is first published.

(Paragraph 13.59)

Comments on Proposal 93

No comment

94. The scope of the underlying “scheme” to be deemed to be cancelled for the purposes of considering statutory planning assumptions, should be the entire scheme and not simply the intention to acquire the relevant land.

(Paragraph 13.61)

Comments on Proposal 94

No comment

95. Provision along the lines of section 14 of the 1961 Act, as amended, should be included in the proposed new statute.

(Paragraph 13.68)

Comments on Proposal 95

No comment

96. Should the provisions of Part V of the 1963 Act, relating to compensation where there is permission for additional development after the compulsory acquisition, be repealed and not re-enacted?

(Paragraph 13.76)

Comments on Proposal 96

No comment

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

(Paragraph 13.76)

Comments on Proposal 97

No comment

Chapter 14 Valuation of land to be acquired - CAADs

98. Should there be a time limit for applying for a CAAD following the making of the CPO and, if so, what should that limit be?

(Paragraph 14.6)

Comments on Proposal 98

No comment

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

(Paragraph 14.12)

Comments on Proposal 99

No comment

100. Provision along the lines of section 30(2) of the 1963 Act should be included in the proposed new statute and should apply to statutory planning assumptions as well as to CAADs.

(Paragraph 14.19)

Comments on Proposal 100

No comment

101. When an acquiring authority are considering a CAAD, the proposal to acquire the relevant land, and the underlying scheme, should be assumed to be cancelled at the time when the CPO is first published, with no assumption to be made about what may or may not have happened before that date.

(Paragraph 14.30)

Comments on Proposal 101

No comment

102. The cancellation assumptions in relation to CAADs should be set out expressly in the proposed new statute.

(Paragraph 14.30)

Comments on Proposal 102

No comment

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

(Paragraph 14.30)

Comments on Proposal 103

No comment

104. Should the relevant date for determining a CAAD be linked to the date for cancellation of the scheme for the valuation of planning assumptions?

(Paragraph 14.31)

Comments on Proposal 104

No comment

105. Should the parties continue to be entitled to insist upon a public inquiry when appealing against a CAAD decision?

(Paragraph 14.33)

Comments on Proposal 105

No comment

106. Should there be any change in the current (one month) time limit for appealing against a CAAD?

(Paragraph 14.36)

Comments on Proposal 106

No comment

107. Should an appeal against a CAAD be made to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

Comments on Proposal 107

No comment

108. If so, should the inquiry procedure before a DPEA reporter be retained, with the reporter reporting to the LTS rather than to the Scottish Ministers?

(Paragraph 14.53)

Comments on Proposal 108

No comment

109. Should planning permission, which could reasonably have been expected to be granted as at the relevant valuation date, be assumed to have been granted?

(Paragraph 14.64)

Comments on Proposal 109

No comment

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

(Paragraph 14.64)

Comments on Proposal 110

No comment

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

(Paragraph 14.64)

Comments on Proposal 111

No comment

Chapter 15 Consequential loss – retained land

112. The statutory definition of retained land should continue to be based on the effect of the acquisition on that land and not merely on the physical proximity of the retained land to the acquired land.

(Paragraph 15.18)

Comments on Proposal 112

No comment

113. The proposed new statute should provide that the assessment of compensation for severance or injurious affection should be carried out on a “before and after” basis.

(Paragraph 15.25)

Comments on Proposal 113

No comment

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

(Paragraph 15.37)

Comments on Proposal 114

No comment

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

(Paragraph 15.44)

Comments on Proposal 115

No comment

116. The proposed new statute should confer a discretion on an acquiring authority to carry out accommodation works.

(Paragraph 15.49)

Comments on Proposal 116

No comment

117. Is the current rule, that set-off for betterment applies to land which is “contiguous with or adjacent to the relevant land”, satisfactory?

(Paragraph 15.59)

Comments on Proposal 117

No comment

118. The provisions which require any betterment to the retained land to be set off against any compensation paid to the landowner in respect of the acquired land should be repealed and not re-enacted.

(Paragraph 15.70)

Comments on Proposal 118

No comment

Chapter 16 Consequential loss - disturbance

119. The assessment of compensation for disturbance should be carried out separately from the assessment of the market value of the property.

(Paragraph 16.30)

Comments on Proposal 119

No comment

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

(Paragraph 16.34)

Comments on Proposal 120

No comment

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

No comment

122. The proposed new statute should make it clear that compensation for disturbance is payable from the date of publication of notice of the making of the CPO.

(Paragraph 16.44)

Comments on Proposal 122

No comment

123. The proposed new statute should make it clear that compensation is payable in respect of costs incurred in relation to a compulsory acquisition which does not ultimately proceed.

(Paragraph 16.45)

Comments on Proposal 123

No comment

124. If compensation for disturbance is to be payable from before the confirmation of the CPO, should it include losses caused as a result of lost development potential?

(Paragraph 16.47)

Comments on Proposal 124

No comment

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

(Paragraph 16.50)

Comments on Proposal 125

No comment

126. Do the current rules of compensation for disturbance work satisfactorily where there are issues of corporate structuring involved?

(Paragraph 16.57)

Comments on Proposal 126

No comment

127. Should the proposed new statute remove the impecuniosity rule as it has been established at common law?

(Paragraph 16.69)

Comments on Proposal 127

No comment

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

(Paragraph 16.77)

Comments on Proposal 128

No comment

129. Claimants should be under a duty to mitigate loss in terms of compensation for disturbance from the date of publication of notice of the making of the CPO.

(Paragraph 16.78)

Comments on Proposal 129

No comment

130. It should be made clear that relocation compensation may be available even where this exceeds the total value of the business.

(Paragraph 16.88)

Comments on Proposal 130

No comment

131. Should the rules regarding disturbance compensation for the displacement of a business be set out in the proposed new statute and, if so, what, if any, modifications should be made to them?

(Paragraph 16.92)

Comments on Proposal 131

No comment

132. Should the valuation date for disturbance compensation be different from the valuation date in relation to the compulsorily acquired land, in particular where GVD procedure is used?

(Paragraph 16.99)

Comments on Proposal 132

No comment

133. Should it be made clear, in the proposed new statute, that a claim for disturbance compensation on the basis of relocation of a business will only be determined when sufficient time has elapsed following the relocation to enable the extent of the loss to be quantified?

(Paragraph 16.99)

Comments on Proposal 133

No comment

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

(Paragraph 16.101)

Comments on Proposal 134

No comment

135. Should disturbance payments along the lines of those currently provided for by sections 34 and 35 of the 1973 Act be retained?

(Paragraph 16.104)

Comments on Proposal 135

No comment

136. Should the LTS have jurisdiction in relation to any question arising with regard to disturbance payments, whether mandatory or discretionary?

(Paragraph 16.104)

Comments on Proposal 136

No comment

Chapter 17 Non-financial loss

137. Should the minimum period of residence necessary in order to qualify for a mandatory home loss payment be increased and, if so, by how much?

(Paragraph 17.14)

Comments on Proposal 137

No comment

138. Should the current system, of calculating home loss payments as a prescribed percentage of market value, be retained?

(Paragraph 17.21)

Comments on Proposal 138

No comment

139. If so, should primary legislation provide for the periodic review of the relevant maxima and minima or for an automatic increase (or reduction) to reflect inflation?

(Paragraph 17.21)

Comments on Proposal 139

No comment

140. As an alternative, should a system, either of a flat rate payment, or of a payment individually assessed in each case, be introduced?

(Paragraph 17.21)

Comments on Proposal 140

No comment

141. Should the provisions relating to farm loss payments be amended so as to be more flexible and less onerous on the agricultural landowner?

(Paragraph 17.28)

Comments on Proposal 141

No comment

142. The proposed new statute should provide for two supplementary loss payments, one for home loss, and one for farm loss, which would, in each case, compensate for all aspects of non-financial loss arising from compulsory purchase.

(Paragraph 17.33)

Comments on Proposal 142

No comment

**PART 4: RESOLUTION OF DISPUTES; THE CRICHEL DOWN RULES;
MISCELLANEOUS MATTERS**

Chapter 18 Process for determining compensation

143. Sections in the 1845 Act relating to the process of dispute resolution should be repealed and not re-enacted.

(Paragraph 18.4)

Comments on Proposal 143

Agree.

144. What evidence can consultees provide of shortcomings in the current LTS procedures for determining disputed compensation claims, and what changes should be made?

(Paragraph 18.17)

Comments on Proposal 144

No comment.

145. Where land is compulsorily purchased which is subject to a tenancy of under one year, disputes about compensation relating to the tenancy should be referred to the LTS rather than the sheriff court.

(Paragraph 18.19)

Comments on Proposal 145

Agree.

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

Agree.

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

Agree.

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

(Paragraph 18.23)

Comments on Proposal 148

No comment.

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

(Paragraph 18.23)

Comments on Proposal 149

Agree that if there is a statutory time limit period particularly if this is reduced from six years to two or three years that the LTS should have discretion to extend the time limit in some circumstances.

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

I would agree that it would be reasonable to amend the rules to allow the LTS a wider discretion on this issue.

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

I would submit that giving the LTS greater flexibility in terms of proposal 150 strikes the correct balance in terms of expenses. I would not agree that the LTS should be able to impose protective expense orders.

Protective Expense Orders (“PEO”) can place a significant burden on Local Authorities, on what can thereafter turn into a protracted, expensive case. Making PEO’s available may also encourage disputes that are currently resolved out with the LTS to be taken there and

also discourage an early reasonable settlement to be reached.

It is not the Council's view that the LTS should be given the power to make a PEO, but if it is given this power then the test to be met should be in line with the common law for PEOs. In our view the statutory test for PEOs in Environmental appeals sets the threshold for obtaining a PEO unreasonably low.

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

(Paragraph 18.29)

Comments on Proposal 152

Prescribed claim form to claim an advance payment would be useful.

153. Are there circumstances in which an acquiring authority should be required to make an advance payment before taking possession?

(Paragraph 18.31)

Comments on Proposal 153

No.

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

No Comment

155. At what rate should interest be paid on advance payments, and should the acquiring authority be liable for an increased rate if payment is delayed?

(Paragraph 18.34)

Comments on Proposal 155

No comment

156. It should be competent, where all the parties agree, for an advance payment to be made to the landowner where the land is subject to a security.

(Paragraph 18.36)

Comments on Proposal 156

Agree.

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

The current 0.5% below the base rate remains reasonable.

I do not think that LTS should have discretion on these issues. Current approach is reasonable.

158. What are the advantages and disadvantages in resolving disputes in compulsory purchase cases by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

Comments on Proposal 158

No comment.

159. Can consultees provide evidence of costs incurred in relation to resolving disputes by (a) ADR, and (b) a reference to the LTS?

(Paragraph 18.50)

Comments on Proposal 159

No comment.

Chapter 19 Crichton Down Rules

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

(Paragraph 19.5)

Comments on Proposal 160

No. Adequate to have a policy circular on this. Should not be an absolute statutory requirement.

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

(Paragraph 19.9)

Comments on Proposal 161

No comment.

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

No comment.

164. Should the same time limit apply in relation to the obligation to offer back land, regardless of the type of land acquired, and how long should that time limit be?

(Paragraph 19.15)

Comments on Proposal 164

Simplifying the time limits would be helpful.

I would suggest for all non – agricultural land that obligation to offer back should only last for 10 years after the date of acquisition.

In respect of agricultural land 25 years from the date of acquisition does seem appropriate.

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

(Paragraph 19.15)

Comments on Proposal 165

Yes, in terms of simplifying matters perhaps a blanket time limit of 25 years from 30 October 1992 to ensure that those parties are no worse off than anyone whose land has been purchased post 30 October 1992.

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 the seven exceptions should be retained.

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

(Paragraph 19.17)

Comments on Proposal 167

No comment.

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

(Paragraph 19.21)

Comments on Proposal 168

No comment

169. Should clawback provisions in terms of the development value of surplus land be time limited and, if so, to what extent?

(Paragraph 19.24)

Comments on Proposal 169

No comment

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

(Paragraph 19.26)

Comments on Proposal 170

Agree

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

No comment

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

174. Where a short tenancy is compulsorily acquired, should account be taken, for the purposes of assessing compensation, of the likelihood that it will be continued or renewed?

(Paragraph 20.18)

Comments on Proposal 174

No comment.

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

(Paragraph 20.23)

Comments on Proposal 175

Agree

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

In some recent Planning Hearings the reporter has produced an agenda with a list of questions for each topic in advance of the hearing. While the list of questions does not limit the Reporters ability to ask others if required, it is highly useful in providing parties with advanced notice of the main questions so they can provide focussed clear responses. In my experience this further speeds up the Hearing sessions.

I would suggest it would be useful to adopt this for CPO hearings (if this has not already occurred).

General Comments

The issue of temporary possession is mentioned at proposal 5. In some CPO cases being able to obtain access to survey the land at an early point in the process would be helpful. The information from the survey may demonstrate that the project proposed in terms of the CPO is unviable. More generally being able to carry out surveys in advance can mean that when the CPO process is completed works can promptly commence.

It would be helpful if the legislation made provision for the acquiring authority to be able compel parties to allow them access for this purpose, in the event of failure to agree. I would suggest that such provision should take effect once the acquiring authority first make and advertise the CPO. It would be reasonable for compensation to be payable to the affected parties for compelling access, regardless of whether the CPO is confirmed & utilised.

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.